

Unapproved-Pending Board Approval

‘Ōlelo Community Media
Minutes of the Board of Director’s Meeting
October 21, 2009
5:30 p.m. - 7:30 p.m.
Māpunapuna Facility - Screening Room
1122 Māpunapuna Street

Present:

Steve Van Ribbink (Chair), Roy Amemiya, Jim Boersema, Marsha Bolson, Lubuw Falanruw, Robert Filius, Pat Garvey, Rochelle Gregson, Ormond Hammond, Keali`i S. López and Diane Peters-Nguyen.

Excused:

Bennette Evangelista, Keali`iolu`olu Gora, Melissa Pavlicek and Gerald Sumida.

Board Chair Steve Van Ribbink called the meeting to order at 5:30 p.m.

Public Comment:

1. Fetu Kolio
2. Glenn Booth

Approval of August 26, 2009 Minutes:

Board Chair Steve Van Ribbink asked for a motion to approve the August 26, 2009 minutes.

Action:

After thorough review, the Board moved, seconded and unanimously approved the minutes.

Nominations Committee Report:

Mr. Amemiya reported that the Nominations Committee recommends that three of the four Board seats that are set to expire on December 31, 2009 be appointed at this time. The three seats to be appointed are currently held by Roy Amemiya, Pat Garvey and Gerald Sumida.

Mr. Amemiya added that the Committee recommends that the seat currently held by Mr. Steve Van Ribbink be addressed at the first Board meeting of 2010.

The Nominations Committee recommends the following slate of candidates to the Board in priority order to fill the appointed Board member seats scheduled to expire on December 31, 2009 for additional three-year terms (Jan. 1, 2010 to Dec. 31, 2012):

- **Roy Amemiya**-Central Pacific Bank
- **Pat Garvey**-Mid Pacific Institute
- **Gerald Sumida**-Carlsmith Ball LLP
- **Sherlyn Franklin Goo**-INPEACE
- **Lincoln Jacobe**-Hawaii Pacific Entertainment

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The Nominations Committee requests that the Board approve that three of the five candidates, Mr. Roy Amemiya, Mr. Pat Garvey and Mr. Gerald Sumida each be appointed to fill a Three-Year Term on the Board from January 1, 2010 to December 31, 2012.

Action:

The Board moved, seconded and unanimously approved the Nominations Committee's recommendation that three of the five candidates, Mr. Roy Amemiya, Mr. Pat Garvey and Mr. Gerald Sumida each be appointed to fill a Three-Year Term on the Board from January 1, 2010 to December 31, 2012.

The Nomination's Committee also recommends that Ms. Sherlyn Franklin Goo and Mr. Lincoln Jacobe, if appropriate continue to be considered should other vacancies occur on the Board.

Mr. Amemiya also gave an update on the Board elections that has been delayed in an effort to more effectively clarify eligibility. The Nomination's Committee after reviewing the necessary corrections and clarification related to eligibility, recommended that the staff move forward on reissuing the Board election process and materials. Mr. Amemiya added that he looked forward to having the elected Director present at the first Board of Director's Meeting in 2010.

Program and Marketing Committee Report:

Program and Marketing Committee Chair Ms. Marsha Bolson reported that the Committee met on October 13, 2009.

At this meeting, there was significant discussion around Oceanic's franchise renewal. Ms. Bolson added that the franchise renewal process is still in progress and provided brief highlights of the public hearing that was held on September 15 at McKinley High School's Hirata Hall.

Ms. Bolson added that the Committee also discussed the current series scheduling crisis due to increased programming growth, she noted that staff reviewed different options with the Committee that were based on client feedback through an online survey.

Ms. Bolson noted that the biggest challenge would be in addressing the shift in programming with producers who have had the same time slot for well over fifteen years and some for almost twenty years and the viewers who have been following the same program.

Ms. Bolson also added that the Committee was supportive of the different options that were presented by staff and that President and CEO, Ms. Keali'i López would address the programming issues in the President's report as well.

Finance Committee Report:

Finance Committee Chair Mr. Pat Garvey reported that the Committee met on October 14, 2009. At this meeting, they reviewed the year to date financials as of August 31, 2009 and the operating and capital budgets for 2010.

Mr. Garvey added that other matters discussed related to legal and financial matters would be addressed in Executive Session along with the approval of the 2010 budgets.

President's Report:

Series Scheduling Challenges

President and CEO, Ms. Keali'i López started her report by adding to the Program and Marketing Chair's report that related to the current scheduling crisis. Ms. López informed the Board that it has been 'Ōlelo's past practice to provide prime time airings for local programming, however, due to continued increase in local programming 'Ōlelo is unable to accommodate the increase without additional channels. 'Ōlelo is aware that in Oceanic's application for franchise renewal, Oceanic has asked to reduce the number of PEG access channels from six to five. Ms. López added that even with Oceanic's request for a reduction in channels 'Ōlelo plans to request a seventh channel with the understanding that the DCCA may not approve the request. However, 'Ōlelo's responsibility to the community producers warrants such a request.

The Program and Marketing Committee have asked staff to prepare for two scenarios should the request for the additional channel not be approved. One scenario would be to prepare for the added government programming when the legislature is back in session with the current six channels. The other scenario would be in preparation should the provisional sixth channel be taken away with the awarding of the cable franchise and with only five channels. Ms. López noted that it is clear that whatever the situation, programming needs to be equitable in accommodating all local P, E and G programming and that staff is close to determining the best solution, given the current circumstances.

Franchise Fee Cap Removal

Ms. López informed the Board that on September 11, 2009 the Director of the DCCA, Lawrence Reifurth responded to 'Ōlelo's February 23, 2009 request to remove the cap on access operating fees provided for PEG access purposes. The DCCA denied 'Ōlelo's request to remove the cap.

'Ōlelo will submit a request for reconsideration to the DCCA. Based on the DCCA's response it is likely that the DCCA will not lift the cap as part of its renewal of Oceanic's franchise. Both the Finance and Executive Committees have directed staff to work with the DCCA to have the Director consider modifying the calculation method for annual CPI adjustments, should the cap remain in place.

Ground Lease Renewal

Ms. López informed the Board that the 'Ōlelo and HRPT arbitration panelists, Mr. Jan R. Medusky and Mr. Paul D. Cool, respectively, recently selected the third appraiser panelist. The third panelist is Mr. Robert R. Braig of Hastings, Conboy, Braig & Associates, Ltd. Should there be no disclosure issues or disqualification lodged by 'Ōlelo or HRPT, the Panel will likely convene a pre-hearing some time in November. The Servco arbitration was conducted for five days from Monday, October 12 through Friday, October 16, 2009. The final outcome of the Servco arbitration is likely to be available around the middle of December of this year.

DCCA Property and Assets Mediation

Ms. López informed the Board that due to confidentiality requirements this matter would be addressed in Executive Session.

City Council Contract

Ms. López informed the Board that the Honolulu City Council denied Access Service Corporation's (ASC) protest regarding its Telecasting contract that was awarded to 'Ōlelo in June of this year. ASC has exercised its option to request an Administrative Hearing. A pre-hearing conference was held on Tuesday, October 13th and the first hearing occurred today (October 21, 2009). The City has filed a

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motion to have ASC's appeal denied. The hearing officer did not make a decision on the motions and indicated she hoped to issue a decision by tomorrow. If she is unable to make a decision by tomorrow she will at least inform the parties about how she intends to rule so that everyone can prepare appropriately for a hearing, if needed. Should the hearing officer's decision be favorable to the City Council, 'Ōlelo will move forward in negotiating the Telecasting contract with the City Council to begin covering productions related to the contract in December of this year.

Procurement Policy Board Petitions

Ms. López updated the Board that two of 'Ōlelo's petitions that were submitted to the State Procurement Policy Board (PPB) are still awaiting hearing dates. If the petitions are not scheduled for a hearing in November, the PPB is likely to delay scheduling a hearing until some time early next year.

Community Access Preservation Act

Ms. López informed the Board that the 111th Congress is looking to potentially amend the Communications Act. Bill H. R. 3745 is intended to address the following:

- a) Removes use restrictions on negotiated PEG access fees;
- b) Ends operators' discriminatory treatment of PEG channels (digital channel slamming & U-Verse Channel 99);
- c) Directs the FCC to study and report on recent states' video franchising legislation impacts on PEG access; and
- d) Defines all video services delivered to the home over wire as "cable", regardless of the transmission protocol used.

Oceanic Time Warner Cable Franchise Renewal

Ms. López updated the Board on Oceanic's franchise renewal, the DCCA held a franchise renewal hearing on September 15th at McKinley High School's Hirata Hall. The hearing lasted 3.5 hours and about 75 percent of the 80 plus individuals signed up to testify were able to do so. Most of those who testified were in support of PEG Access. The DCCA extended the September 18 deadline for written testimony to September 30, 2009. Additionally, the DCCA originally planned to award the Oceanic franchise by October 23, 2009. The DCCA has since extended this time frame to December 31, 2009.

Oceanic Time Warner's application for renewal and its supplemental submission of additional information are only part of the issues to be addressed by the DCCA. As part of the franchise renewal process the DCCA is likely to consider splitting out "E" from 'Ōlelo's PEG access efforts. This is a longstanding issue regarding funding provided by 'Ōlelo for distance education programs and services. The current funding of 25% of access fees to the Hawaii Educational Consortium (HENC), the two channels currently programmed by 'Ōlelo's educational partners and the State's INET system and Broadband initiatives will also be considered in the renewal process.

Oceanic states in its application that it will continue to provide the same fees required under the current franchise, 3 percent for PEG franchise fees and annual PEG capital payments at \$3.00 per subscriber. However this is with the provision to adjust the rates should changes be made to PEG services (i.e. PEG channels to digital, video on demand, etc.).

Oceanic also proposes that the number of PEG channels under the new franchise not exceed five channels with the provision to adjust the number of channels based on the level of demand for PEG programming such as viewership. In its supplemental information, Oceanic clarifies that as part of its

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digital transition, it will first move two of the PEG access channels to the digital only spectrum, while the remaining PEG channels will be kept on both the analog and digital spectrum. When the final transition occurs to fully digital spectrum as required by the FCC in 2012, the remaining channels will be moved to the digital only spectrum.

In closing, a short video highlighting DCCA's public hearing on September 15 was shared with the Board.

Executive Session:

Board Chair Steve Van Ribbink requested that the Board move into Executive Session to review proprietary information.

Action:

The Board moved, seconded and unanimously approved to move into Executive Session.

The Board moved into Executive Session at 6:30 p.m.

Board Chair Steve Van Ribbink reconvened the Regular Board Meeting at 7:30 p.m.

Board Chair Steve Van Ribbink announced that the Board had approved the 2010 Operating and Capital Budgets and no other actions were taken by the Board.

The Board adjourned at 7:32 p.m.

Respectfully Submitted,

Diane Peters-Nguyen, Secretary