

## **‘Ōlelo Input to the DCCA’s Needs Assessment O’ahu’s Cable Franchise Renewal**

### **INTRODUCTION**

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In 1988 the Department of Commerce and Consumer Affairs, in its Decision and Order (D&O) 135 that awarded the current franchise to Oceanic Cablevision, Inc, stated, “The grant of a cable franchise gives Oceanic a right to use and occupy public places, highways and easements which are of limited and scarce nature. Substantial economic benefit will flow to Oceanic from such privilege. In exchange, Oceanic should be required to provide the widest possible diversity of information sources and services to the public. This order ties the length of the term of the franchise to the degree to which Oceanic is willing to be responsive to the needs and interests of the community.”

‘Ōlelo Community Television believes that the premises of D&O 135 are as valid in 2008 as they were in 1988. We are optimistic that the current franchise renewal process will yield an agreement of the same quality as the franchise that was awarded nearly two decades ago. That franchise was the result of proactive and comprehensive efforts by the State to engage the community. This helped create an agreement that fully considered the community’s telecommunication needs, interests and potential. It has been a model for other jurisdictions in the nation and served the residents of O’ahu well.

During the period of the current franchise, thousands have benefited by creating programs that allowed their messages to reach O’ahu’s large cable audience. Hundreds of thousands of others have benefited as viewers of locally-created public, educational and governmental (PEG) access programming. They have been of all ages—from elementary school students to senior citizens—and they have come from all ethnic, economic and social groups. PEG Access on O’ahu has given voice to people and issues who might otherwise not be heard.

Over the past 18 years, demand for community programming has risen from levels that were satisfied by a half channel in 1990, to the current volume that strains the capacity of six channels. A major factor in that dramatic increase in programming has been keeping the elements of community—P, E, and G—together and allowing resources to be utilized for services rather than for duplicate infrastructure. Today, education fills most of two channels, while city and state government activities can often be seen simultaneously on three channels when the Legislature is in session. In 2007, ‘Ōlelo’s first-run public and government programming totaled 5,639 hours. It was the highest output in ‘Ōlelo’s history—a 15 percent increase over 2006 and a 44 percent increase over 2004.

Since the original franchise was crafted, much has changed. Oceanic’s cable system has evolved from offering a few dozen channels in 1990, to offering nearly four (400) hundred today with the potential to provide thousands during the term of a renewal franchise.

In 2008 Oceanic serves almost 50 percent more subscribers than it did when the current franchise was negotiated in 1988. In fact Oceanic's subscriber penetration at substantially above 80 percent is one of the highest subscriber penetration levels of any cable operator serving a City in the top 100 television markets in the U.S. Oceanic provides its subscribers with the most up-to-date services including HDTV, digital phone services and high-speed data services. It is certain that more services will become available to Oahu residents during the period of the renewal and Oceanic will be willing and able to provide those services. In return, subscribers will pay Oceanic billions of dollars for services during the upcoming contract period, resulting in continued high return on investment for Oceanic Time Warner Cable.

As the technology and services provided by Oceanic have evolved so have the community's PEG access needs and expectations. This has occurred because of the work of 'Ōlelo in providing PEG facilities and services that have resulted in the community's recognition of PEG access as a highly valued service. As Oceanic adopts new technologies and delivers new services over the term of the renewed franchise agreement, these new technologies and services must also be made available for PEG access.

It is critical that the community not be left behind as technology evolves. There are still unmet technical needs. Ubiquitous high-speed connectivity is, and will continue to be, a significant community need. Capacity and functionality to permit PEG to provide video teleconferencing, live cablecasting from more communities on the island, and inter-island connectivity that supports statewide dialog, all need to be part of the community benefits package for P, E and G in the renewed franchise. People should not be limited by time, distance and the cost of fuel when they need to communicate with government or with each other. In this age of technology, bi-directional communications between citizens and their government are not only a possibility, they are an imperative.

High definition capacity and video on demand functionality should be available to PEG access so that any cable subscriber can have 24-hour access to a wide range of PEG access programming such as government meetings, credit and non-credit courses, and community events. This must be available without an additional charge as part of the community benefits package. While these are the benefits that 'Ōlelo sees as necessary today, the community must also benefit from new or enhanced services that will emerge during the course of the franchise renewal. All of this needs to be considered as community needs are negotiated.

As the designated PEG provider for O'ahu, 'Ōlelo has constantly evaluated its progress in order to assure that the services that it was providing could meet the community's identified needs and interests. In anticipation of the cable franchise renewal process, 'Ōlelo undertook several additional studies in order to have information that would represent both the current and future community cable related needs and interests. A summary analysis of these reports and studies is attached.

‘Ōlelo appreciates the opportunity to participate in the franchise renewal process and offers suggestions for consideration in four critical areas to be addressed in the new agreement:

- Funding of PEG Access
  - Access Operating Fees
  - Additional Fees for Capital and Other Services
  - Payment Schedule and Process
- PEG Access Channels
  - Capacity
  - Location
  - Requests for Additional Channels
  - Signal Quality
- Technical Improvements
  - PEG Site and Community Connectivity
  - Statewide Connectivity
  - Migration to High Definition
  - Head-End Upgrade
- Advertising, Marketing and Outreach Support

#### **FUNDING OF PEG ACCESS: ACCESS OPERATING FEES**

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##### **Current Situation:**

D&O 135 provided that three percent of the cable provider’s gross revenues be used to support PEG access. However, provisions in D&O 261 have since reduced the amount of those funds and ‘Ōlelo’s flexibility in delivering expanded services to the community.

First, a provision in D&O 261 capped those revenues in August 2000. Later, Road Runner revenue (which had been part of the gross revenue calculations) was deleted from those calculations. The net result has been a loss of nearly \$3 million in access fees during the past three years, an amount that nearly matches ‘Ōlelo’s operating losses for the same period.

Second, administrative flexibility was limited by a provision in D&O 261 that reads, “Accordingly, an amount equal to 25% of PEG access operating funds calculated to be paid by TWE Oceanic Cable shall be allocated and provided to a consortium of public and private accredited educational institutions in Hawaii designated by the Director on an annual basis.” Although this provision in D&O 261 ratified an agreement ‘Ōlelo had with Hawaii Educational Network Consortium, it was an unnecessary provision that has set a precedent and increased the risk of splitting P, E and G.

##### **Proposed New Franchise Provisions:**

The new franchise should ensure that:

- The definition of gross revenues is expanded to include any and all revenues permitted under Federal law including but not limited to advertising and home shopping revenues.
- The cap of franchise fees instituted in D & O 261 is removed and the full 5% of access fees authorized by the federal Cable Communications Act of 1984 is collected. Currently, 4.64% is collected, with the DCCA receiving .64%.
- The distribution of the franchise fees is realigned. Under the realignment, the DCCA would receive 0.5% for administration, Hawaii Public Television would continue to receive 1 percent, with the remaining 3.5 percent would be provided by the cable operator directly to the PEG Access designee. NOTE: The reduction of DCCA's administrative fees is consistent with the position taken in their 2004 PEG Plan (Issue #4: Funding – Financial Resources) to reduce administrative fees so that more of the franchise fees collected could provide “an increase in funds available for PEG purposes.”

**Justification:**

During the period of the current Franchise, PEG Access has matured as validated by programming growth and the need to increase the number of community media centers and services on O’ahu. When the current franchise was awarded, one public production center and a half channel sufficed. Today, six centers provide services and public demand would support additional centers and extended hours if the resources were there. Currently, PEG access programming strains the capacity of six channels and programming is also distributed over the Internet, a medium that did not exist when the franchise was awarded. In 1998, ‘Ōlelo’s edit facilities were used for 21,064 hours. In 2007, usage was 39,351 hours—an increase of 87 percent. Similarly, use of mini cameras in 1998 totaled 422 hours, while usage in 2007 was 1,551 hours—an increase of 368 percent.

Similarly, Oceanic has experienced substantial growth during the term of this Franchise. As they state on their website, “Nearly every household and business statewide has access to cable service. Over 200,000 homes statewide are connected to the Internet with high-speed cable modems through Oceanic’s fiber coax hybrid signal delivery system.” According to the State’s Department of Business, Economic Development and Tourism (DBEDT), in 1988, there were 212,672 cable subscribers on O’ahu with some on the Oceanic system and the remainder on a system owed by another cable operator. At the end of 2007, there were 285,811 subscribers all of whom were served by Oceanic. Not only has Oceanic’s subscriber base increased, but also it now offers a far greater range of products than those available in 1988.

PEG Access support services required by the contract between ‘Ōlelo and the DCCA include, but are not limited to; managing channels, operating production facilities and equipment, providing training, marketing and support services and insurance. All have grown during the current franchise term. The services listed above need to be

expanded to meet identified community needs and interests. Funding support must keep pace with these needs and include, (but not be limited to):

- Keeping up with increases in costs of doing business in Hawai'i, such as fuel, electricity, salaries and benefits.
- Establishing additional sites and services in underserved communities, including expanding programs in schools and at community centers.
- Expanding programs, such as the Summer Youth Media Enrichment Program, Youth Xchange, Capital Commentary and Vote!
- Reducing barriers through assistive technology, multiple languages and on-screen translation (open captioning), to name a few.
- Supporting economic development through job training, including intern programs for high school and college students.
- Expanding services through continued outreach to under-served communities and groups.

Information presented above and in *A Summary of 'Ōlelo Activities and Research* (attached), as well as 'Ōlelo's operating deficits of the past three years, document both increased community need for and use of PEG services. It is clear that the cap needs to be removed and funds increased to support these increased needs—needs that are likely to grow in the future.

Federal law allows for collection of 5 percent of gross revenues as franchise fees. Currently Oceanic provides 4.64 percent of gross revenues as rent for the use of the public streets and rights-of-way. Most cable/video services franchising authorities nationwide state or local require a 5 percent franchise fee *plus* additional funding for PEG support. Moreover, in Hawaii, the current definition of gross revenues excludes a number of revenue items (e.g. advertising and home shopping revenues) that are commonly included when computing the franchise fees.

Finally, O'ahu represents a unique and very profitable market. Therefore, it would seem appropriate for Oceanic to provide franchise fees at the full 5% level as rent for the very valuable use of public property. These franchise fees would be in addition to capital funds for equipment and facilities, as well as additional support (at no cost to the State or subscribers) to improve the capacity of PEG and Institutional networks.

## **FUNDING OF PEG ACCESS: ADDITIONAL FEES FOR CAPITAL AND OTHER SERVICES**

### **Current Situation:**

'Ōlelo's 1990 contract required that it: manage channels; provide production facilities and equipment; train people from P, E and G; market and promoted our centers, channels and programs; and provide grants, production support and special projects.

Projects such as Youth XChange, summer media programs and Vote! have been developed over the years in response to community needs. These programs have added additional value to 'Ōlelo's services.

There are needs that are not covered by franchise fees, and they need to be addressed with funds or resources that supplement franchise fees. Over the course of the current franchise, additional facilities have been opened, equipment inventory has increased exponentially, and program output has skyrocketed. All of this validates the need for PEG access services and the value of those services to the community. These trends are very likely to continue, and the new franchise needs to provide support that will keep pace with community needs over its term.

As part of 'Ōlelo's 2003 negotiations with TWE, capital projections were developed and negotiated for the period from 2004 through 2009. That is memorialized in D&O 310, signed on January 22, 2004. In 2003, costs were within the funds negotiated.

However, several factors have since changed. One was the DCCA's decision to provide capital payments in two six-month installments rather than one annual payment in January.

A second change factor was the opening of new Community Media Centers (CMCs) at Windward Community College and Waipahu Intermediate School in 2005 and 2007. In 2007, 'Ōlelo relocated its shared facility at Leeward Community College and expanded it in dedicated space at Waipahu Intermediate School. Added costs were incurred to transfer and expand operations. More change is related to the opening of another CMC at Leilehua High School by the end of 2008 in response to community need for additional facilities.

Centers are opened or relocated only after considerable research into community needs. Additionally, surveys are conducted and meetings are held with each community being considered before 'Ōlelo commits to establishing a new center. This is done to assess their readiness for a CMC. These added CMCs have substantially increased the requirement for production equipment, vehicles, facilities and other items paid for by capital funds.

The franchise must also recognize that most CMCs are on property that is not owned by 'Ōlelo. Because of that, some facility requirements at these sites, such as the build out of studio space and major electrical upgrades, must be funded by operating dollars. To

meet such needs, restrictions on the use of capital funds need to be lifted to allow the coverage of major facility costs at those sites.

Other facility costs are related to the need to replace major components at 'Ōlelo's headend, such as large air conditioning units that have reached or are nearing the end of their operating lives. Funds are necessary to address these immediate needs and to meet expanding future needs.

**Proposed New Franchise Provision:**

Supplemental funds would support equipment and facility needs at all of 'Ōlelo's centers. Two options are proposed to calculate the amount of supplemental funding.

Option 1: The proposed supplemental fee structure is:

- \$4.50 per subscriber per year to the PEG Access provider, with the first annual payment due in January 2010. These funds would be used in support of PEG access equipment and facilities. Depending on the term of the franchise, these payments may be increased to:
  - \$5.00 per subscriber after five years, with the first annual payment due in January 2015;
  - \$5.50 per subscriber after ten years; with the first annual payment due in January 2020
  - Oceanic shall provide capital funds for equipment and facilities for Access use after the fifteenth year of the franchise shall not exceed \$6.00 per subscriber (one hundred and thirty-three percent of the rate per subscriber at the beginning of the franchise).

Option 2: This option is similar to one found in the current franchise.

- As part of the 1988 franchise, the DCCA required that the cable company provide \$9,286,498 over a 15 year period for facilities and equipment. Based on the Bureau of Labor Statistics CPI inflation calculator, \$9.3 million in 1988 dollars equates to \$17.3 million in 2008 dollars. If that were to be paid out over a 15 year period, the annual payout would average \$1.2 million per year. However, if the increase in subscribers (about 50 percent during the period) were factored in, the per-subscriber amount would total about \$25.9 million (\$1.7 million per year). This is very conservative because it does not consider the additional services now offered by Oceanic that produce added profits. Further, that \$25.9 million is in 2008 dollars. It does not project that value forward over the term of the new franchise using annual CPI adjustments as provided for in D&O 135.

**Justification:**

Supplemental equipment and facilities funds are necessary to support five areas:

1. Facility construction, renovation and upgrades. This includes work at 'Ōlelo's Mapunapuna location as well as facility work at locations not owned by 'Ōlelo, such as CMCs located at schools.
2. Purchase of new and upgraded headend equipment (HD, etc.) for 'Ōlelo's headend, as well as production equipment for all centers.
3. Additional resources to support the expansion of programs such as training and the management of facilities and equipment.
4. Support of popular and needed community building programs, to include but not limited to; Summer Media Programs, Youth XChange, Vote!, Capitol Commentary, O`ahu Speaks, Giving Aloha, etc.
5. Possible additional mandated support of "G."

- Facilities: When the current franchise was awarded, one public production center was available and one headend was in operation. Today, six centers provide services and a seventh is scheduled to open by the end of 2008. In addition, the DOE and UH now operate their own headends, studios and edit facilities. Demand would support additional centers if the resources were there. All of 'Ōlelo's centers include, or will soon include, a studio.

- Equipment: This includes the replacement and upgrade of administrative, production and playback equipment. Exhibit B to D&O 135 (the original list of equipment for PEG use) shows approximately 200 items that were used at a single facility. Of these items, about a dozen were cameras, as well as equipment for four edit bays and two studios. In contrast to that, today 'Ōlelo has well over 3,000 items on its capital inventory assigned to six facilities. Of these items, there are over 140 cameras/camcorders, over 120 edit systems, and equipment for six studios. This will have to increase with the opening of the seventh CMC by the end of 2008. The growth of programming and the addition of community media centers will continue to expand requirements for equipment.

Although current production equipment is more powerful and considerably more user-friendly than equipment provided to 'Ōlelo at the start of the current franchise, program distribution systems are much more complex. For example, the automated playback system that manages the current six channels is far more sophisticated and costly than the system that managed between one and three PEG channels during the early years of the franchise.

Encoding equipment and servers that are part of 'Ōlelo's Internet services support a function that did not exist when the franchise began (Road Runner was introduced by Oceanic in 1998, a decade after the start of the franchise). Viewers of PEG Access programming should be able to receive programs on demand over the cable system as well as live or on-demand over the Internet.

The sophisticated audio and video needs of these types of programming will require new and specialized production and distribution facilities and equipment. It is also likely that large servers will be needed to store both content for editing as well as

finished programs and that new terminal services equipment will be needed to transmit large video files to 'Ōlelo's headend for playback. This would provide timely delivery of program content and decrease fuel costs.

All three PEG sectors can benefit from these technological advances. But the production equipment, facility requirements, computer power and server space to support PEG needs come at a price. Supplemental funds are needed for equipment to support new and expanded services and added CMCs in response to increasing community needs. These funds must address needs in both the near future and throughout the term of the franchise. The added challenge is that as technology accelerates, equipment may become obsolete faster and has to be replaced more frequently.

With proper planning, equipment, connectivity and integration, production facilities could provide added services to the community, such as serving as video teleconference sites and providing for interactive participation between citizens and their government. Whether these sites are at CMCs or other conveniently located community facilities, they should serve all of the community (P, E and G) and not be dedicated to a limited group or groups. This will require added financial support and appropriate network connections.

- Staff: The addition of more equipment, opening of new facilities, or increasing the hours of operation of all facilities will also require more staff with a variety of skills. These include added engineering and IT staff at the headend, as well as trainers and support staff at CMCs.
- Community Building: 'Ōlelo's community building programs (Youth XChange, Vote!, summer media programs, Capitol Commentary, etc.) have resulted in both local and national acclaim and have positioned 'Ōlelo as a national model for community access stations. During the past two years, hundreds have turned out at community meetings held by the DCCA to voice their support of these initiatives. It is vital that these programs continue and become available to a greater portion of the community.
- Unfunded Support for "G": Since July 2007, 'Ōlelo has been aware that some in government may request additional support that is not available to the public. This would include funding of production crew costs and even funding of Internet archiving services. Both are presently paid for by the legislative bodies that create programming, not by access fees. It is only fair that if these added services are mandated, that added funds be designated for those purposes. Should these services become a requirement, it is the DCCA's responsibility to identify a funding mechanism above franchise fees, rather than allowing this to become an unfunded mandate.

A number of needs assessment studies and reports prepared by or for 'Ōlelo have documented the needs expressed in this section. A summary of those studies is provided in *A Summary of 'Ōlelo Activities and Research* (attached).

## **FUNDING OF PEG ACCESS: PAYMENT SCHEDULE AND PROCESS**

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### **Current Situation:**

For the past three years, 'Ōlelo has operated at a deficit of about \$1 million a year to meet rising community demand. Support has not kept pace with basic requirements such as staff for new CMCs and sharply rising utility costs. Capping of funds and parceling of payments by the DCCA have also contributed to the deficit. The recent DCCA policy of providing funds incrementally instead of in a lump sum at the beginning of the calendar year serves no purpose and actually harms the community.

### **Proposed New Franchise Provision:**

Adopt the original franchise provision in D&O 135 with the condition that Access Operating fees will be paid directly to the PEG access provider on January 31 based on gross revenues for the previous year and fees collected during that period.

### **Justification:**

Access fees paid in a calendar year are collected during the previous year based gross revenues earned during that year. If these fees are retained by the cable company and parceled out during the current year (recent practice), interest earned on them is subject to taxes because the cable company is a for-profit organization. If the funds are released to the Access organization at the beginning of the year, these funds can be immediately used to pay for current expenses instead of having those expenses paid out of reserves.

This also allows reserves to generate added investment income that is used to provide additional services to the community. In summary, the recent practice reduces support of PEG programs by potentially drawing down investment income and by subjecting new income to taxes.

## **PEG ACCESS CHANNELS: CAPACITY**

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### **Current Situation:**

Section 5.2. (a) of Decision and Order 135, Section VI states in part that Oceanic is required to make available to the Director or his designee ten percent of all available Activated channels on its System for PEG access uses. All Access Channels shall be made available by Oceanic at no cost to the state and shall be located on the basic tier of service. However, in 2000, D&O 261 modified subsequent decisions and orders with regard to the channel capacity to be provided by Oceanic. Section (4) (a) requires "TWE provide at least five (5) full-time Activated Channels, two (2) of which shall be Educational Access Channels made available to the Director or his designee."

These provisions and those provided in D&O 135 and 261 do not effectively consider the issues raised in the digital conversion. With the move to digital technology it is critical that the traditional definition of a channel be modified to a definition that

addresses the requirements of different types of channels (SDTV, HDTV, etc) and services (VOD, etc). The new definition must also consider other factors, such as compression, that affect quality.

**Proposed New Franchise Provision:**

In order to ensure that community benefits keep pace with changing technology and evolving PEG needs throughout the term of the franchise and to ensure flexibility in the use of these services to support PEG access needs such as HDTV, video on demand and other services that either are already or will become available as technology evolves, the renewed franchise with Oceanic should provide capacity for Public, Educational and Governmental Access purposes equal to no less than ten percent of the total amount of activated bandwidth capacity and services available throughout Oceanic’s system. This allows the amount of PEG bandwidth to expand as Oceanic expands its commercial channel offerings.

In addition, it is critical that the ability to activate or trigger additional PEG channels should not be subject extremely time intensive or unreasonable barriers. Later in this document we will provide our suggested changes to the manner in which additional channels and services are activated.

All Access Channels should be made available by Oceanic at no cost to the state and should be located on the lowest cost tier of service. No equipment other than that necessary to receive the lowest cost tier of service shall be required to receive PEG access content.

**Justification:**

One of the primary focuses of ‘Ōlelo’s mission is to provide citizens with the ability to deliver messages to their constituents via cable television. Nearly two decades of experience has shown that airing programming in prime time garners the greatest number of viewers. In addition, frequent repetition provides added viewer exposure to messages during non-prime time slots. It is critical that PEG access programming on topics such as HIV/AIDS prevention, housing assistance, or job opportunities has the opportunity for multiple replays. As the chart below shows, growth of programming submitted by community members has grown dramatically during the current franchise period. Trends indicate that this growth will continue. As programming grows and technology advances, it is appropriate that PEG producers continue to receive comparable prime-time exposure and repeat showings (both prime time and non-prime time) as they have in the past. That should be no less than the number of primetime airings that justified the award of FOCUS 49 in 2005.

**Comparison of Number of PEG Channels to First-Run Program Hours over ‘Ōlelo’s History**

Interval	2 Years	2 Years	1 Year	1 Year	9 Years	2 Years
Dates	1990 – 1992	1994	1995	1996	2003 – 2005	2007
TOTAL	ATTN	IEWS	ATTN2	TEC II	FOCUS	(6 PEG

CHANNELS	& TEC (2 PEG Channels)	(3 PEG Channels)	(NATV) (4 PEG Channels)	(TEACH) (5 PEG Channels)	(6 PEG Channels)	Channels)
First-Run Hours	503		2,855		4,260*	5,639*

- These first-run hours only include programming hours from four of the six PEG access channels. Programming hours for TEC and Teach are reported separately.

This can be achieved by providing PEG access with a minimum of 10 percent of the spectrum used by Oceanic’s channels and video services. Moreover, the capacity and functionality of the bandwidth provided for PEG access programs must be the same as that of Oceanic’s premium channels to ensure that quality does not suffer because of excessive compression or other factors. At the start of the new franchise, spectrum capacity (or channel capacity) must be at least equal to the spectrum occupied by ‘Ōlelo’s current analog channels. That channel capacity needs to grow to the full 10 percent of bandwidth as community needs increase.

Furthermore, the emphasis on bandwidth and spectrum is especially important based on changing technology and applications. An example of an effective digital cable application that can be applied to PEG access programming is Oceanic’s current interactive capability. At the press of a button on a cable subscriber’s remote control, the subscriber can order pizza or let a car insurance company know that they want insurance information mailed to them. This application can be used for PEG access programs as well. Community organizations, educational institutions and government agencies that air PEG access programs could similarly send information about services to cable subscribers if this interactive capability were made available for PEG access programs.

## **PEG ACCESS CHANNELS: LOCATION**

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### **Current Situation:**

When the current franchise was awarded, Oceanic Cable provided only analog cable service. There were fewer than 40 channels and the PEG access channels were located on channels in the low twenties. As Oceanic expanded its analog channels and its digital channel offerings, PEG access channels were moved to the low fifties. At the time of this shift, it significantly impacted viewership of the PEG access channels. Although the channels and individual programs should not be evaluated based on number of viewers, ‘Ōlelo believes PEG access programs created by community members should benefit from higher visibility and accessibility to viewers through placement at the lower channel tier on the cable systems. The same is true for other local channels.

### **Proposed New Franchise Provision:**

All local stations, to include PEG access, must be located adjacent to each other on the lower channel tier (channel 20 and lower) or the most accessible, readily available and easiest to load channels, should the method of program delivery change in the future.

Should it shift, the PEG access channels should have the same loading speed, capacity and quality of any premium broadcast channel.

PEG access and local channels should be kept together; however, in the event a PEG access channel must be moved by the cable operator, the process needs to be approved by the Director of the DCCA after consultation with the PEG access provider and should include a minimum of 120 days notification to the PEG access provider and funding support by the Cable operator to cover all costs related to advertising and collateral modifications to make the public and viewers aware of the shift in channel location.

Because of projected growth in programming, provisions are also needed to allow PEG to grow to nine or more channels within the lower channel tier. The same must apply to the addition of high-definition or video on demand variations of local channels.

**Justification:**

Surveys commissioned by 'Ōlelo to assess cable viewer habits consistently show that "channel surfing" is the method most used by viewers to find programming of interest. Therefore, PEG access programming should be located in the lower channels with other local program offerings. All local programming should be kept together to make it easy for viewers to find programming about their community.

Growth of PEG access channels in the lower spectrum is necessary to provide equitable prime time exposure as PEG access programming grows and as the increase in cable program offerings make it increasingly challenging for viewers to find local programming in the vast array of imported non-local programming.

**PEG ACCESS CHANNELS: REQUESTS FOR ADDITIONAL CHANNELS**

**Current Situation:**

As programming has grown, 'Ōlelo has found the current process of obtaining an added channel to be excessively cumbersome. Based on program growth, 'Ōlelo applied for an additional channel (sixth channel) in October 2004. The channel was not made available to 'Ōlelo for programming until *February 2006*. During that period, a substantial amount of staff time was devoted to providing additional data to augment a very substantial and well documented initial request. Additionally, "P" and "G" program growth continued within the existing three PEG access channels (channels 55 and 56 are devoted to "E" programming) during that 28-month period. When the sixth channel was awarded, it was awarded on a temporary basis and has remained "temporary" for two and a half years. Since the "temporary" phase started in February 2006, PEG programming has grown rapidly to the point where a seventh channel can be justified based by the criteria that was used by the DCCA to approve the sixth channel. Clearly, the current bureaucratic process is not nimble enough to respond to growth in community programming and the concurrent need for additional channel capacity.

### **Proposed New Franchise Provision:**

Formalize a “trigger” for efficient awarding of additional PEG access channels and alternative spectrum applications. This must include, but not be limited to, standard definition TV (SDTV), video-on-demand (VOD) and high definition TV (HDTV). As discussed in a previous section of these comments, the provision in D&O 135 needs to be restored to designate that up to ten percent of channel (spectrum) capacity be made available for PEG access programming. However, because of the technological changes that have occurred since 1988, and those likely to occur during the term of the renewal, the criteria to trigger additional PEG access channels needs to be clear so that unnecessary bureaucratic stumbling blocks are avoided. ‘Ōlelo suggests the following as a basis for discussions regarding this matter.

SDTV: The award of an added standard definition (SDTV) channel should be contingent on the growth of local SDTV programming hours. Based on past experience, we suggest that the trigger be set at growth of 1,300 hours of locally created or provided SDTV PEG programming. This would be determined by computing the total number of hours of SDTV programming being broadcast on all PEG channels on the date that the most recent additional PEG channel was activated and then adding 900 to that sum. ‘Ōlelo (or the designated PEG access provider) would submit a request for activation of an additional SDTV PEG access channel simultaneously to Oceanic and the DCCA. Oceanic would have up to 120 days to coordinate with ‘Ōlelo to activate the additional PEG access SDTV channel. The request by ‘Ōlelo to the DCCA to activate an additional PEG access SDTV channel would need to be accompanied by documentation show that the trigger of an additional 900 hours or programming had been achieved.

High Definition: At such point that any local network affiliate channel is no longer cablecast in standard definition, Oceanic shall provide PEG bandwidth and functionality to ‘Ōlelo for the delivery of HDTV. HDTV capacity and functionality shall be included in and be up to the total ten percent of Oceanic’s activated bandwidth capacity and services available for PEG purposes as described in an earlier section of this document. At such time, ‘Ōlelo could submit a request for activation of HDTV PEG access channel(s). Oceanic would have up to six month within which to coordinate with ‘Ōlelo to activate PEG access HDTV channel(s). Compression on each PEG access HDTV channel must be no greater than the compression utilized on local network affiliate high definition cablecast channels.

VOD: Standards also need to be set for VOD, to include the amount of storage for PEG access VOD. That should be 10 percent of TWE’s total VOD storage. In addition to VOD storage, menu standards need to be no less than VOD selection options for any premium TWE VOD service/channel. This refers to the number of sub-menu layers required for a viewer to reasonably access VOD program titles. As a benchmark, when ‘Ōlelo initially considered VOD in lieu of a sixth PEG access channel, TWE’s VOD expert recommended three VOD channels/portals for 1,300 program titles. This would be the recommended standard for PEG access VOD channels. TWE should be required to provide and support the most expeditious and effective method for VOD

content delivery from the PEG access provider. There should be little to no delay in content availability on the PEG access VOD channels. Further, there should be no added cost to the PEG provider for VOD related storage, etc.

**Justification:**

Major transitions are occurring in the production, editing, storage and transmission of video. Consumer and prosumer HD cameras are available at nominal prices. Software that will edit HD content has been available for use by PEG producers at 'Ōlelo and at home. Programming, such as cultural shows produced by the Office of Hawaiian Affairs (OHA) and others would benefit from production in HD. In the near future, 'Ōlelo foresees a significant increase in HD programming and will request a HD channel or channels to distribute this content. Criteria for obtaining these channels should be clearly established in the cable franchise.

Similarly, many types of programming, to include government meetings and educational course work, are viable candidates for video-on-demand (VOD) viewing. Many programs created by the public would also benefit from VOD showings. Currently, digital programs reach slightly more than half the audience as analog programs. However as the percentage of digital viewers increases, PEG VOD channels will be appropriate.

The technology and delivery of PEG access programming must keep pace with the technology advances in commercial programming. PEG access programming quantity and quality continues to increase and that trend is highly likely to continue based upon needs assessment data gathered by 'Ōlelo. In addition, there is a compelling need to provide a nimble process of triggering PEG access bandwidth availability that avoids unnecessary bureaucracy and is not subject to extended delays between the time a request is submitted by the PEG operator to add additional channels or functionality and the time that (assuming the trigger criterion has been achieved) and the time that the bandwidth and functionality becomes available for PEG use.

**PEG ACCESS CHANNELS: SIGNAL QUALITY**

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**Current Situation:**

'Ōlelo has received comments from producers and viewers about the signal quality of PEG programs at various locations, to include at Honolulu Hale, Kahala and in Kaneohe. 'Ōlelo can confirm that program quality meets the requirements of the D&O when it leaves 'Ōlelo's headend and when it arrives at Oceanic's headend. However, 'Ōlelo believes that these comments about signal quality at other locations are valid. It is 'Ōlelo's understanding that switches used for the PEG access channels are often the oldest and/or used switches. As switches for other channels are replaced, the used switches are used to replace the even older switches used for the PEG access channels. 'Ōlelo believes an engineering audit needs to be conducted for PEG access channels at every hub on O'ahu.

**Proposed New Franchise Provision:**

Monitor or provide the PEG Access Operator, at no charge, with equipment and connections to monitor all PEG channels throughout the distribution system that serves Oceanic residential and business subscribers. The monitoring system must include fully operational and interactive analog and digital monitoring capability, and the ability to monitor future forms of distribution. In addition, TWE should perform monthly signal audits at major distribution hubs designated by the DCCA. A minimum of 10 hubs that serve key population centers on O'ahu should be designated. The signal quality of PEG access programming distributed at those hubs must be at least equal to the signal quality of Oceanic's premium channels.

**Justification:**

Programming created by the community should not be treated as a different class of content from that transmitted on a premium cable channel. PEG programming has great value because it is an extension of each citizen's right to free speech that is guaranteed by the U.S. Constitution.

Community programming must receive the same quality of distribution as other programming. That can only be ensured by proper monitoring of the cable system, especially monitoring of the signal that is ultimately seen by subscribers. The digital conversion has introduced several factors that can have an adverse impact on quality. Programs can be transmitted in several resolutions, and compressed in varying degrees. They can also be routed through less than optimal system components. This is why it is important that monitoring takes place to ensure that the quality of PEG programming seen by viewers is the same quality as that of premium channels. PEG programming should not reach viewers overly compressed or with low resolution.

Oceanic needs to provide this level of quality assurance or provide 'Ōlelo with the capability to monitor the quality of its broadcasts as they are seen by Oceanic subscribers. This requires two digital cable services in addition to analog service at no cost to the PEG provider.

**TECHNICAL IMPROVEMENTS: PEG SITE AND COMMUNITY CONNECTIVITY**

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**Current Situation:**

Two types of connectivity were established in D&O 135. One was the bi-directional connectivity over the INET that links E and G sites. The other was one-way connectivity used on the PEG ALS system (a fiber ring). This PEG ALS fiber ring transports PEG access programming and State Civil Defense information. Both were provided for in the original franchise. Subsequent franchise agreements (D&O 291) provide that TWE provide, maintain and repair INET interconnections at no cost to the State.

The INET is very robust and connects State and City locations, as well as the public school system. It provides features such as video teleconferencing and is structured to effectively reroute signals if an INET node fails. The PEG ALS does not allow for

rerouting of signals, cannot be used for teleconferencing and stops working when any node malfunctions. However, INET access is limited to E and G customers.

While the INET provides bi-directional connectivity between hundreds of government and education sites, The PEG ALS provides just 15 sites for programming transport with only one-way origination for live cablecasting. The sites currently included on the PEG ALS ring are: The University of Hawaii at Manoa (two feeds), each of Oahu's four community colleges, Kamehameha Schools, Kalani and McKinley high schools, State Civil Defense, Oahu Civil Defense (to include traffic camera video) the Lilioukalani Building, State Capitol (two feeds), Honolulu Hale and 'Ōlelo's Mapunapuna headend. 'Ōlelo's other five centers cannot originate programming. Additionally no PEG programming can be originated along the Ko'olau Loa coast or from major communities such as Wahiawa or Waianane. A diagram of the PEG ALS ring is attached.

Broadband Internet access is a communications necessity in the 21<sup>st</sup> century. Under the current franchise, schools and libraries are provided with free cable service, but PEG access facilities are charged for this service.

**Proposed New Franchise Provision:**

'Ōlelo believes that PEG access content requires and deserves the same reliable two-way signal transport that is provided to E and G over the INET, and more origination points need to be supported on the PEG ALS. Additionally, the PEG Net should be reconfigured. Instead of a ring, star topology should be used with redundancy to and from multiple locations so that failure at one location would still allow connectivity between sites and with 'Ōlelo. PEG access Community Media Centers are places of learning and 'Ōlelo believes that they should be provided with free broadband Internet access and cable service.

The new franchise should direct that at no cost to the State and without the use of PEG access franchise fees, that both the INET and PEG ALS be expanded, repaired and maintained and the PEG ALS system be configured to become bi-directional to allow the transport of HD video as well as data transport between centers and to and from 'Ōlelo's headend. Additionally, that each PEG access CMC be provided with cable Internet access and service and digital cable television service including interactive capability and bi-directional connectivity that allows the origination of programming from the CMC and the transport of video files between the CMC and 'Ōlelo's head end. Further, each CMC must have the capability to serve as a node on a video teleconferencing network and as a center for interactive participation by citizens in State and City government meetings. In addition, bi-directional connectivity must also be provided at a middle or high school, or City district park in each community with a population of 40,000 or more that is not served by a CMC. This will allow live community programming to be originated in those communities without the need for microwave hops or connection to the INET.

All locations must have the capability to be connected as video teleconferencing sites with bi-directional connectivity between each site as well as the State Capital, Honolulu

Hale, Kapolei Hale and the Department of Education headquarters. This will allow islandwide community conversations, as well as remote, interactive, citizen participation in State and City government, and meetings of the Board of Education.

**Justification:**

There are now six community media centers (and another in the process of opening), with substantial needs for Internet access and connectivity between each other and 'Ōlelo's head end. In order to originate live programming, the CMCs must connect to the PEG ALS ring. Further, there are major population centers and schools without a CMC or origination point that have the need to cablecast live programming. Several high schools in D&O 135 have not been connected. They are Campbell, Kalaheo and Moanalua. Others that could benefit from connectivity include, but are not limited to: Waipahu, Kapolei, Nanakuli, Waianae, Leilehua, Kahuku, Castle, Kailua, Kaiser, Kalani, Roosevelt and Farrington.

These are sites where educational programming might be originated, and also sites that could be used to originate live community events. Further, no community origination capability exists at the State Building at Kapolei, Kapolei Hale or major State or City facilities such as the Hawaii Convention Center, Blaisdell Complex, or Waikiki Shell—all of which host major community events that could be valuable sources of programming. The costs to upgrade and expand the PEG ALS ring to accomplish all of this would be insignificant in comparison to the number of connections and resources already invested in the INET.

The community has a need to create live programming from all areas of O'ahu. Government meetings, to include meetings of the Board of Education, are held at a variety of locations on the island and many do not allow for live cablecasts. Similarly, not all schools—especially private schools—are connected to the system. Community meetings and cultural events in Waianae can only be cablecast by tape delay. This lack of access disenfranchises many because they have to spend disproportionate amounts of time and money to participate in meetings.

Because of that, the system needs to be bi-directional to allow for interactive participation. The ability to provide live, timely programs is important if community members are to become immediately engaged in the issue being discussed, and for viewers to have the option of immediate action. This capability allows for interactive participation such as viewer call-in programs to obtain immediate advice, or respond to questions and receive assistance.

A number of needs assessment studies and reports prepared by or for 'Ōlelo have documented the needs expressed in this section. A summary of those studies is provided in *A Summary of 'Ōlelo Activities and Research* (attached).

## **TECHNICAL IMPROVEMENTS: STATEWIDE CONNECTIVITY**

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### **Current Situation:**

Currently, there is very limited statewide connectivity. However, it does include statewide distribution of local network affiliates and PBS. Other connectivity that is in place for PEG access is limited to access by education and government via the INET and the University of Hawaii's HITS microwave network. HITS is primarily used for closed circuit video conferencing, the cablecast of distance education content (K-12 and higher education) and transmission of State legislative proceedings during the legislative session. For live cablecast of State legislative proceedings, only one of the two houses of the legislature is able to transmit its proceedings live to the neighbor islands. 'Ōlelo re-airs legislative proceedings in the evening after midnight over the HITS system to allow neighbor island PEG access operators to record legislative proceedings from both legislative bodies that are then aired on a tape delayed basis.

### **Proposed New Franchise Provision:**

It is critical that robust statewide connectivity is ensured as part of an immediate system upgrade to support PEG access. All statewide connectivity must be bi-directional and must allow for simultaneous live and repeat distribution of both houses of the Legislature and other state programming. Additionally, there is a need for concurrent, statewide distribution of at least two channels of "P" programming that is of statewide interest created by any PEG access provider in Hawai'i. This must be done without significant barriers to the PEG access providers and without the use of PEG franchise fees. This additional connectivity must be provided at no cost to the State or the PEG provider, and should be managed by the O'ahu PEG access provider for maximum cost efficiency.

### **Justification:**

Oceanic is the only cable provider in Hawai'i. It holds all franchises in all counties. It has the ability to provide connectivity within each county, and should be required to provide connectivity for PEG use between counties. Access users from P, E, and G have a need to share timely information statewide over the cable system. This includes public hearings, government proceedings, and panel discussions on critical issues. Neighbor island communities are disenfranchised with respect to the legislative process due to limited and untimely access to state government proceedings that impact the state as a whole. Even if they are able to view one of the legislative hearings live, they need to wait from one to four days to have access to the other legislative hearing that did not air live.

In addition to important state government programs that would benefit from statewide connectivity, O'ahu and Neighbor Island communities could benefit greatly from statewide connectivity that allows communities separated by the Pacific Ocean to share stories, discuss issues of concern and to engage in more effectively statewide dialogue. This type of connectivity is even more critical in Hawaii than in other places across the nation where people can travel by vehicle throughout their state. In Hawaii where the only way to travel from one county to the next is by boat or airplane, the cost of such

interaction is often financially prohibitive for most people. This is even prohibitive when the high price of fuel is factored in.

A number of needs assessment studies and reports prepared by or for 'Ōlelo have documented the needs expressed in this section. A summary of those studies is provided in *A Summary of 'Ōlelo Activities and Research* (attached).

#### **TECHNICAL IMPROVEMENTS: MIGRATION TO HIGH DEFINITION**

##### **Current Situation:**

In mid-September 2008, there were about 50 high definition (HD) channels on the local cable system. PBS and all local network affiliates were able to cablecast in HD over Oceanic's system, as were about 40 other providers. There were no HD channels available for local Public, Educational and Governmental programming.

##### **Proposed New Franchise Provision:**

Provide 'Ōlelo with the ability to cablecast in high definition (HD) Oceanic's system and ensure that quality (both HD and SD) is equivalent to any "Premium" or "Pay" channel available to cable subscribers. The HD upgrade should not occur any later than the time when local network affiliate broadcast stations are no longer carried in standard definition.

##### **Justification:**

Community produced programs deserve to be processed and distributed over Oceanic's system with the same quality and in the same formats as commercial programming and should be distributed in the same quality as Oceanic's premium or pay channels.

#### **TECHNICAL IMPROVEMENTS: HEAD-END UPGRADE**

##### **Current Situation:**

The current system used to transport 'Ōlelo's PEG Access channels to Oceanic's headend is an antiquated one-way system.

##### **Proposed New Franchise Provision:**

Upgrade the system that transports the PEG Access Operators' programming to Oceanic's head-end to support bi-directional HD content and data. This data connection can be utilized for interoperation of the PEG Access Provider's and Oceanic's Playback systems.

##### **Justification:**

Oceanic's current system used to transport PEG channels to their head-end moves signals in a single direction and cannot transport HD signals. In order to accommodate 'Ōlelo's transition to HD, this system must be upgraded. The capability for bi-directional signals will allow Oceanic to feed signals to 'Ōlelo's head-end that may originate from other locations on O'ahu, such as community media centers and other remote access points, and may even include other PEG providers. As technology evolves, there will

also be advantages to having 'Ōlelo's playback system to communicate directly with Oceanic's system and allow for services not currently available.

## **ADVERTISING, MARKETING AND OUTREACH SUPPORT**

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### **Current Situation:**

When the first franchise was crafted, there were fewer than 40 cable channels, to include three local network affiliates, public television and an authorization for three PEG channels (although initially only a half channel was available for PEG programming). Within those limited choices, it was relatively simple for viewers to find programming that appealed to them by channel surfing or by use of printed guides in local newspapers. Today, viewers have over ten times as many choices, and during the term of the new franchise it is likely that the increase in choices will be exponential. The process of bringing viewers to a channel now requires that it be promoted on other channels. This is done with paid television spots by the networks, public television, Oceanic (OC16) and 'Ōlelo.

### **Proposed New Franchise Provision:**

At no cost to the State or PEG Access provider, the cable provider will provide advertising/marketing support on the cable system to promote PEG Access programming. This will include:

- a minimum of sixteen weeks of thirty second commercial time broken up into four week flights. Provide sufficient exposure within those flights to insure up to eighty percent market penetration. Thirty second commercials will be produced and provided to the cable operator by 'Ōlelo.
- a one-page printed promotional piece will also be inserted quarterly in the cable operator's billing without charge.
- a prominent link on the cable operator's Internet home page to 'Ōlelo's website ([www.olelo.org](http://www.olelo.org)).
- advertisement in the cable operator's monthly on-line newsletter and any future form of advertising the cable operator affords to itself.

The cable company should also provide:

- advertising on other digital information formats like billboard on program guide channel 12 and front-loaded program listings on digital channel 1.
- continued digital listing of PEG access programs.
- secured channel listings with local newspapers for all PEG channels and services, such as on-demand.
- access to viewer data for PEG access channels and PEG on-demand services at any time.

### **Justification:**

The creation of programs by community producers requires a considerable amount of time, effort and sacrifice. The cable provider promotes its own local programming on

OC 16. The costs of these programs and their promotion are offset by commercial advertising. According to the *Honolulu Advertiser*, over a million dollars was used for these promotions in 2005. Therefore, it seems appropriate that Oceanic Time Warner also promote community programming since the costs of community programming are totally borne by community producers without any advertising support

A number of needs assessment studies and reports prepared by or for Olelo have documented the needs expressed in this section. A summary of those studies is provided in *A Summary of 'Ōlelo Activities and Research* (attached).