



November 13, 2013

**BY FIRST CLASS MAIL**

Cable Television Division  
Department of Commerce  
and Consumer Affairs  
P.O. Box 541  
Honolulu, Hawai'i 96809

CABLE DIVISION  
COMMERCE AND  
CONSUMER AFFAIRS  
2013 NOV 18 P 2:14  
A-E P/S  
FILE

**Re: Testimony on the Application of Oceanic  
Time Warner Cable LLC for Renewal of Franchises  
For Maui County and Lāhaina/West Maui**

Aloha,

Enclosed please find six (6) original petitions signed by 334 individuals, commenting on the application of Oceanic Time Warner Cable LLC to renew its franchises for Maui County and Lāhaina/West Maui.

After hearing my comments at the DCCA's public hearing in Lāhaina on October 22, 2013, a resident asked me to prepare a written summary in the form of a petition. He quickly collected 334 signatures on six copies of the petition, reporting that the people he approached were eager to sign.

Based on this experience, we respectfully submit these petitions not only as the views of those who signed, but as representative of the views of many people in Maui County, whom we do not have the resources to reach.

Many thanks for your consideration.

Sincerely,  
*Suki Halevi*  
Susan (Suki) Halevi

**Comments on Oceanic Time Warner Cable's  
Application for Franchise Renewal in Maui County**

On October 22, 2013, Suki Halevi, Director of Development at Akakū: Maui Community Television, commented on Oceanic Time Warner's (OTW) cable franchise renewal application at a DCCA public hearing in Lāhaina, Maui. A Lāhaina resident asked Suki to prepare this summary.

--OTW says it won't provide cable service to areas it considers "underdeveloped," meaning no service unless there are at least 25 homes per mile. This doesn't serve the needs of Maui County. People in less populated areas should not be marginalized. They need access to cable services to stay connected.

--In 2012, OTW's parent company reported increased earnings with a decrease in subscribers. Some investors say Time Warner's strategy is to boost earnings with high-priced services and cut loose subscribers who can't afford to pay more. This may work for Time Warner, but it doesn't work for the residents and businesses of Maui County.

--Although DCCA doesn't regulate the internet, it can negotiate with OTW as part of the franchise renewal. In 2005, DCCA negotiated with the cable company to provide internet for Hana, even though the cable company claimed it was not feasible.

--OTW recently upgraded Molokai from microwave to fiber optic service. Until then, Molokai subscribers paid RoadRunner prices for much slower speeds. It's faster now, but still not as fast as RoadRunner. Lāna'i and Hana are still struggling with microwave. What is OTW's plan to improve service to Molokai, Lāna'i and Hana?

--From 2007 – 2012, OTW's total revenue from its Maui County cable franchises was \$367,333,780. OTW received over \$68.5 million from Maui County subscribers in 2012 alone. Many of the upgrades OTW talks about are new product lines that will cost subscribers more money. What is OTW's plan to give back to the community? We would like to know the specifics.

--OTW says it will increase bandwidth by moving channels from analog to digital and using switched digital video. Cable TV will be part of the multi-screen distribution of video content, on TVs, the internet and mobile devices. We don't want to lose public, governmental and educational (PEG) access channels in this transition. We want community media to make the transition too.


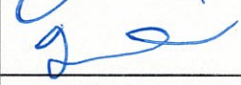


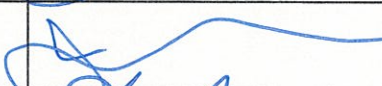


--Last year, when OTW moved UHMC channels, people couldn't find favorite shows, such as "Preserving Our Recollections." There are many analog subscribers in Maui County. How many received digital set-top boxes and knew how to find the channels that OTW moved? What specific benefits did these subscribers receive, in exchange for losing analog channels?

--In the new franchise, DCCA can make sure that community channels don't get lost as the cable company transitions to digital. Akakū should be treated the same way other local broadcast channels are treated. During the transition, Akakū channels should be on analog and digital with similar numbers, so people can find them, and they should be listed in the cable guide. Akakū should also be available in HD, so subscribers with HDTV can find it. People also want video on demand (VOD). To provide this, Akakū needs more VOD capacity from OTW.

--Akakū needs increased financial support to build community access media programs, including digital media training, internships and jobs for Maui youth. Support for Akakū should include internet related to cable TV, so that community media can go wherever OTW goes, not be left behind. On Oahu, cable franchise fees support internet related to cable TV for the HENC, and cable franchise fees support PBS with no restrictions on the use of funds.

Now more than ever, there's a need for community media, especially in Maui County where strong communities live in remote areas, and central areas include many diverse communities. Hawai'i was a leader in community media when the cable companies first arrived. Now community media is at risk of being marginalized, remote areas are being marginalized, and subscribers who can't afford high rates are being marginalized----unless local regulators negotiate with the cable company on behalf of the community. The cable company can be an important resource for the continued support of community media. Community media has to evolve into the future together with OTW, and DCCA is the vital organizing force that can make this happen.

The undersigned residents of Maui County agree with this testimony:

NAME	ADDRESS	SIGNATURE
David Incopi	1580 P. in h Rd Makawao 96718	
Jess Quinn	PO Box 1384 Haiku HI 96725	
Kaiuon K. Foster	P.O. Box 803	
Lianne Ngata	Paia	
Jenny Estes	Paia	
Stephen Dark	Kula, HI	
Cady Summer	Kula, HI	

JH AUGUSTINE	PO Box 427 Kula	<del>Signature</del>
Geoffrey Moore	33 Hoolawa Haiku HI 96708	<del>Signature</del>
W. P. Donovan	105 E. Kwiaka Haiku 96708	W. P. Donovan
DANA DUG	PO Box 1250 Linn WA 98724	<del>Signature</del>
Jefferson ESPINOZA	34 HOLE LIO PL HAIKU 96708	<del>Signature</del>
Joy Carlson	PO Box 762 Haiku	<del>Signature</del>
Ethan Sisier	77 Kahiapo Haiku	Ethan S.
Alina Brown	P.O. Box 99786	Alina Brown
AMC	PO Box 791 H83	Amilia DE GHAHO
Greg Owen	PO Box 172 Kula	<del>Signature</del>
D Carlson	<del>Signature</del>	<del>Signature</del>
Jean Dym	c/o Jinks	Jean Dym
Kate Vandy	33 poni place	Kate Vandy
Shirley Davis	415 Dairy Rd Kahului, HI 96732	Shirley Davis
Ann Marie Pelt	285 710E St Hilo, HI 96725	Ann Marie Pelt
Meredith Lindley	POB 869 Lakini	Meredith Lindley
Greg Westcott	Bay St Haiku	<del>Signature</del>

Tracema Cahill	HCI Box 962 Kulaha	96790 Hawaii
Sara Campbell	27 Mele Dr.	96708
Gregory Lee	110-C NAYAMA	96708
<del>LAURA CHITELY</del> <del>LAURA CHITELY</del>	2555 KAUPAKALUA HAIKU, HI	96708
SUSAN WHITE	" "	96708
Jennifer Livingston	1525 Kaupakalua Rd. Haiku HI 96708	Jennifer Livingston
Deborah Van Blitterswijk	856 Kokomo Rd. Haiku, HI 96708	Deborah Van Blitterswijk
2812720 Gib Bran	240 W. Waiholo Rd Waiuku, HI 96791	Gib Bran
Gib Bran Vicente	240 Waiholo St. Kihel, HI 96747	Gib Bran
Andrew van Sonn	PO Box 791538 Paeo, Maui, HI 96739	Andrew van Sonn
John Perry	PO 703 Kula	John Perry
John Perry	4471 Opunui Pl.	John Perry
John Perry	POB 1703 MATANAO	John Perry
Kather Hollabaugh	611 Kulaike Haiku 96708	Kather Hollabaugh
Alexandra Mitchell	1303A Haiku Rd Haiku, 96708	Alexandra Mitchell
Lana Stewart	40 MOIKI ST. Paliamaik, HI 96760	Lana Stewart

Susan Sweet	1215 S. Kihoi Rd #0-162	Sam Surt
Sam Surt	0-151	Sam Surt
<del>Susan Sweet</del>	704 Haiku	Wm. Dutton
Brent Chambers	77 Malena	Brent Chambers
Hayden Tibora	780 Napua St	[Signature]
[Signature]	PO Box 791445 Paia	[Signature]
Carol Fredrick	PO Box 33015	[Signature]
[Signature]	1037 Kamae St #25	[Signature]
Kalen Gialer	2333 Lili'oi Haiku, HI 96708	Kalen Gialer
Marla Morris	485C Kulike Rd. Haiku, HI 96708	[Signature]
J. Dukerfeld	PO 547 Haiku HI 96708	J. Dukerfeld
[Signature]	100 Hana Hwy	[Signature]
Kanani Franco	2611 Olinda Rd Makawao HI	[Signature]
Sam Park	General Delivery Paia 96779	Sam Park
Joanna Green	435 Omapio Rd Kula HI 96790	[Signature]
Phen Fiddis	82 Vakoko	Phen Fiddis
Sid Cronin	1666 Olinda Rd	Sid Cronin

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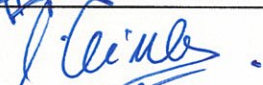
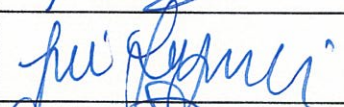



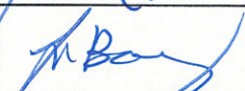
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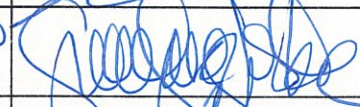


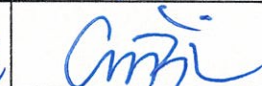
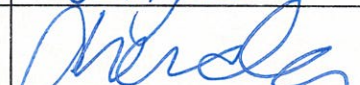


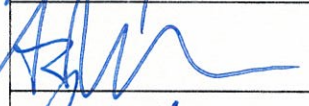
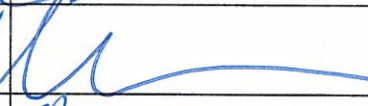
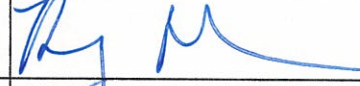
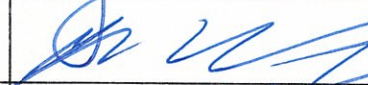


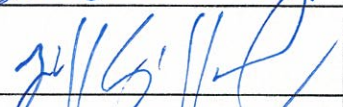
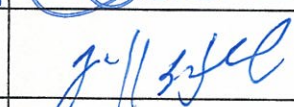
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NAME	ADDRESS	SIGNATURE
Nina Aferio	105 E. Kuiaha Haiku, HI 96708	
Michael Heydweiller	↑            ↑	
Juliana Guinle	789c H2m2z Pl. Haiku	
Tori Fryczynski	Haiku Road	
Samantha Deacon	Pala	
 Jimmy Lewis	2430 Mehe Pl. Haiku	
LARRY USCINEZ	2085 Ak. Wa: 123	



Natasha Quinn	1040 Kaipukalua	
Sunny Savage-Lusk	747 Hamana Pl <sup>Haiku</sup>	
Erin Pedersen	"	
J. L. Turner	Po 381543 Hilo	
Celeste Meek	PO Box 1247 Haiku	
Amanda Squarar	P.O. Box 760816 PAIA	
S. Pentland	P.O. Box 442 HANA	S. Pentland
S. Kelly	141 Hui F Rd Lahaina HI 96761	
Melody Maria	141 Hui F Rd Lahaina 96761	
	902 Holoapuni	
Karen Hoenback	902 Holoapuni	
Gabriel Latiguer	475 Upper Kimo Kula HI 96790	
Dot Brick	1923 North Wailuku HI 96791	
Christine Hign	PO BOX 790066 paia HI 96779	
	61 Baldwin	
Jennifer Day	PO BOX 791177 Paia	Jennifer Day
Natasha Quinn	A 201 1057 Makawao	Patricia Hailley

Corinne Kaufman	P.O. Box 881068 Pukalani HI 96788	Corinne Kaufman
Mia Kiemele	18 Panani Pl. Paia	Mia Kiemele
Nancy Edelheit	250 Apala Pl. Haiku	Nancy Edelheit
Richi Eskimo	P.O. Box 741002 Kula HI	
Jason Maggs	PO Box 83 Pukalani HI 96788	Jason Maggs
Eddie Plebs	PO Box 62 Puka HI 96788	Eddie Plebs
Diane Bellisle	P.O. BOX 791378 PAIA, HI	Diane Bellisle
Christina Brill	109 Wialani Cr Kula HI 96790	Christina Brill
Amanda Kimmel	2945 Hualani Way Kahului HI 96732	Amanda Kimmel
Michelle Douglas	PO Box 1115 Haiku HI 96709	Michelle Douglas
Carol Doherty	2266 HAUKU RD	Carol Doherty
Eric Marck	220 Puuani Pl. Kula	Eric Marck
RANDY DUNINGO	1351 KEA ST. LAHANA	Randy Duningo
CLAIRE KELLERMAN KRANE	17 Makai Pl. Kula 96790	Claire Krane
Ruth	7041 Puuani Rd Veter. Rd.	Ruth
Kate	1565 HAUKU RD	Kate P. de
Karen	1980 Sun Dr Kula HI	Karen
William Ricks	204 Linnier Way Haiku	William Ricks

MARTHA RHODES	10422 Steadon Salem, OR	<del>Handwritten signature</del>
Pave Siegal	57-101 W. Twilina Kahuku, HI	<del>Handwritten signature</del>
Azi Pimia	808-339-9759	<del>Handwritten signature</del>
N. Hyne	179081 PAIFA	N Hyne
Lauren Trester	HUOAO U)	<del>Handwritten signature</del>
Jim Burg	Kakawad	<del>Handwritten signature</del>
in Sui	Box 1	PAIFA Sui
C. Campri	P.O. Box 1260 Honolulu, HI 96700	Clayn
C. PLENOST	P.O. Box 100113 Honolulu, HI 96713	<del>Handwritten signature</del>
<del>Dante Gmeaux</del>	<del>P.O. Box 323</del>	<del>Handwritten signature</del>
<del>Handwritten name</del>	<del>P.O. Box 142</del>	<del>Handwritten signature</del>
Nanol Larsen	4233 SW Conus Portland, OR 97219	Ross Markit
Geena Gioia	50 VeJay St #401 Kahului, HI 96732	Marla
TINA GARTZHO	65 Kahuiapo Pl. Honolulu 96708-	Handwritten signature
Jane Heaven	10 <del>St</del> SK 9109	Jane Hea
Carol Pilger	Zandel Pava HI	Carol Pilger
Summer S.	P.O. BOX 190390	Handwritten signature

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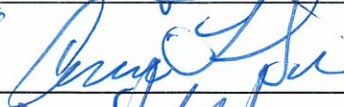
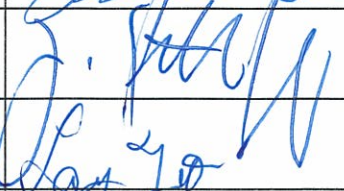
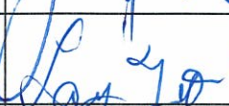

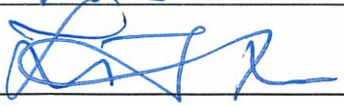



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NAME	ADDRESS	SIGNATURE
C. Apple Barr	146 Pamaikai Pl MAK HI	
C. Sakunij	67 meha makawao	
J. FAW	37 M. pl. n paia	
LARRY ACH	79111 PAIA HI	
Wicde Sklem	47 Kahoea 96790	
Lilaemya Singh	791540 114 PAIA 96779	
Carol L. Hulet	PO Box 201890 Paia HI 96779	
GLENN CARPENTER	PO BOX 790948 PAIA HI 241	
Shirley P. Kates	PO Box 201890 Paia HI 96779	

Harper Browman	496 Pili loko st.	<del>Harper Browman</del>
Katie Paradise	1258 Haiku Rd.	<del>Katie Paradise</del>
Dave Anthony	100 Kana Rd	<del>Dave Anthony</del>
JAMES Kittie	Kula	<del>James Kittie</del>
<del>D. J. K.</del>	"	<del>D. J. K.</del>
ANGIE G.	Kihei	<del>Angie G.</del>
Melissa Brock	Haiku, HI	Melissa Brock
Nea Mills	Ikea 5TH	<del>Nea Mills</del>
Kevin Holway	Hona	<del>Kevin Holway</del>
Tom Bom	Maui	<del>Tom Bom</del>
Steve Beck	P.O. Box 10934 Lahaina	<del>Steve Beck</del>
JIM CANNON	P.O. BOX 1182 MAKAWAO, HI 96768	Jim Cannon
Nikki Duncan	BOX 401 Kula 96790	<del>Nikki Duncan</del>
Ginseng Miller	325A Kaper ST	<del>Ginseng Miller</del>
Alexa Derby	77 Oili Road Haiku, Hawaii	Alexa Derby
Ron MAS	" "	<del>Ron MAS</del>
Kawika K. Kapurua	1101 O'inda Road Makawao, HI 96768	Kawika K. Kapurua

LEONARD ERNST

Katy Lyons	Makawao HI 1087 Mole Pl. 96768	
Jurgens Karpond	42 Lae Pl. Paia HI 96779	Jurgens Karpond
Conchelo Bronck	44 KANANI RD Building 1-304	
Anita Bulla	644 Makawao Lane + 1986 Makawao	A Bulla
Thomas Nooney	PO Box 952 Haiku, HI.	
Edfan C	655 Puricua Haiku HI	
Erika Lindberg	655 Puricua	EL.
Jody Brown	124 Haiker - HI Pauwahi Makawao	
Ben Barreras	PO Box 11835 LATTINATI HI 96761	
Lance Holter	Box 790 656 Paia	
Rachel West	96708 52 eono pl Haiku	
Stax Helbo	333 Kaimanani Pl - Haiku 96775	
Alex Ramsey	31 A Panini Paia, HI 96779	
Kara Whitaker	PO Box 1541 Makawao HI 96768	
<del>Sierra Whitaker</del>	<del>PO Box 1541</del> <del>Makawao HI 96768</del>	
Sloan Brockman	1633 West Kuaitia Haiku 97605	
Claudia Roseboom	17 Koloraha Pl. Keolu, HI 96790	

NEIL COSHEVER	PO BOX 818 KULA 2690	<i>Neil Coshever</i>
<i>Judith Da</i>	2846 Omega Kula	<i>Judith Da</i>
<i>Lena K.</i>	495 Kakauly Loop Makawao 96765	<i>Lena K.</i>
<i>Rita M.</i>	1702 Haulan Rd Haulan	<i>Rita M.</i>
<i>Mr. Gates</i>	6 P.H.I. Paia 96793	<i>Mr. Gates</i>
<i>Ronald Deardorff</i>	1015 Blyde	<i>Ronald Deardorff</i>
<i>Christine Hinshaw</i>	PO Box 1416 Makawao	<i>Christine Hinshaw</i>
MARTIN SPORNOLD	89 ANAHEIM ST PAIA HI	<i>Martin Spornold</i>
Holly Gates	PO BOX 1324 HAULAN, HI 96708	<i>Holly Gates</i>
YOUNG LORNA JIMARON	77 BOX 790226	<i>Young Lorna Jimaron</i>
ERIN BENSON	24 PULCOA PL HAULAN HI 96708	<i>Erin Benson</i>
Sara Doll	115 Horizon Dr Ventura Ca 93003	<i>Sara Doll</i>
Roxanne Bradley	103 O'Leary Rd Hauku HI 96708	<i>Roxanne Bradley</i>
Johnson Gibbs	Paia, HI	<i>Johnson Gibbs</i>
<i>Rodney</i>	Hauku Maui Pt. Hauku 96708	<i>Rodney</i>
Mike Q	Hauku 96708	<i>Mike Q</i>
Gyatts m	Paia 96799	<i>Gyatts m</i>
Scott Antalfi	Hauku 96708	<i>Scott Antalfi</i>
<i>Gerald Beck</i>	Paia 96779	<i>Gerald Beck</i>



**Comments on Oceanic Time Warner Cable's  
Application for Franchise Renewal in Maui County**

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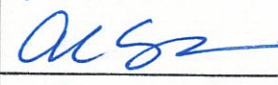

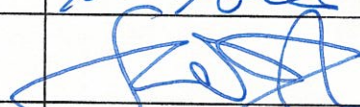
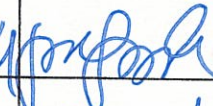
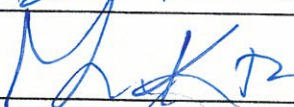
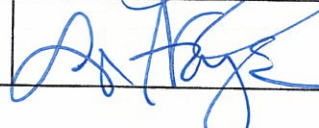
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The undersigned residents of Maui County agree with this testimony:

NAME	ADDRESS	SIGNATURE
Joan Albert	30 Wahelani St. Kula	Joan Albert
Theresa Finn	13406 Kahului HI 96733	Theresa Finn
Deb Guimaraes	2823 Puuhooli St Hilo HI 96723	Deb Guimaraes
Michele Heligan	P.O. Box 492 Makawao 96768	Michele Heligan
Linda Petersen	1523 Baldwin Ave.	Linda Petersen
M Burns	42 Westmont Tortu 207	M Burns
K. Tozzolino	102 Johnson Kula	K. Tozzolino

Terry Heller	PO Box 80240 HAIKUA, HI 96708	
Steve Stajkowski	1834 Emerell Ave LEWISTON, ID 83501	Steve Stajkowski
Robin Krueger	1135 Mukunoo Ave PMB 114 Mukunoo 96768	Robin Krueger
Amy Erickson	861 Hupoe St. Luharua, HI 96761	Amy Erickson
Nohe Paleka	PO Box 791072 Paia, 96779	Nohe Paleka
	2121 Liliwa Rd Hahaione	Jordan Koltan
Jessica Wilson	1401 Kikau St. Wailuku HI 96793	Jessica Wilson
Adam Greene	1640 Haku Rd.	Adam Greene
James Alexopoulos	Canada	James Alexopoulos
Jill Mazzonini	2158 Wai Maku Kula HI 96753	Jill Mazzonini
Frederic Boyd	995 MAKANI MIKUAO 96768	Frederic Boyd
Tales Dechert	PO Box 791086	Tales Dechert
JARRO	PO Box 5048	JARRO
Kim Roth	Alberta Canada	Kim Roth
Joe Smith	134 Kahala Kula	Joe Smith
Bill Jones	PO Box 98351	Bill Jones
Sage Nekato	PO Box 191552 KULA	Sage Nekato

SAVANA McHenry	491 Honolulu PAA Road	
Oleanna Castellon	PO Box 790096 PAA	
Sam Masterson	PO 735 Kala 96740	
Jack Planché	391 A Lankau P. Kihikihi 96753	
Martin Volpert	316 Eulani Pukalani HI	
James Coft	10 Masaka PAA	
JOAN Ames	230 Kua Kua PAA KULA	
Marie Lopez	380 Alakani	
Don Brown	39 melia st PAA	
Bob Toomey	15705 BERKELEY DR HAYMARKET	
GUYLE BRIGG	230 KAKOAWAY KULA	
Margaret Shirley	1051 W 14th Lanikai Id	
Emily Goss	996 Kipukulu Kihikihi, HI	
Joe Chesler	157 Keonika Kihikihi	
	KANOE ST. PO Box 70014 PAA HI 96711	
Alexandra Susan Wilson	TO nanele Hailu	

Bonney Ebbensen	1215 S Kihei Rd Kihei	Bonny Ebbensen
Patrick J. H. HEIN	—	Patrick H.
Ryan Tuzon	PO Box 924 Wailuku HI 96793	
Amanda Skinner	PO BOX 1123 Makawala HI 96764	
Cai Noël	1 Lino Place, Pukalani HI 96768	Cai Noël
Caleb Pacheco	405 Koa Cir Kahului HI 96732	
Dan Friss	1217 S Kiki Rd Kihuna	Dan Friss
S. Wade Dineen	940 Kikaulike Ave Kula HI	
Michael Malabon	Box 1511 Kula HI	Michael Malabon
Jaime Lynch	PO Box 710 Haleakala	
Wangdu Hovey	" "	wangdu hovey
Carb Wilson	" "	Carb Wilson USA Paris
Janet Schoenhaut	General Delivery Kihei HI 96753	Janet Schoenhaut
Blair Reddish	52 Vakoko Pl. Kihei HI 96753	Blair Reddish
Guy K. Bette	Kihei HI 96753 REPRESENT	
TABATHA GIPPERNS	MAUI BEE FARM KULA	T. Gipperns
Vesley Kane	PO Box 791264 Pana HI 96779	

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NAME	ADDRESS	SIGNATURE
D. Maguire	720 Kono	[Signature]
Liam McCormick	618 HANA HWY PAIA HI 96779	[Signature]
BI+ART	newi (20) street Hula	[Signature]
Max Ludwig	244 N. Holo Kai Rd	[Signature]
Alexis Kohn	220 Waipoo Rd	[Signature]
OHAD Amidor	" " "	[Signature]
[Signature]	70154 790108 Paia	[Signature]

Steven Capobianco	225 Kulpo Pl Haiku HI 96708	
Tyler Cole	Paioy HA	Tyler Cole
Kenneth McNick	Hana HI	
briffany	kula, hi	
PETER WARD	P.O. BOX 741005	OTO WARD
Kristel Bandisch	180 Kalyn	
Jean Foght	317A Auhuan Khei	
Nancy Lewis	MANA FOODS PAPA	Vivian Larusa
Ari	@gmail.com	
Rachel M. Reac	PO BOX 790646 PAPA HI 96779	
Scott Normal	1050 W. Waihaha Haiku HI	
Walter Hoch	81 Lee St 190 Haiku	WALTER HILLINGER
		Greg Clayton
		ANTHONY DULLO
	22 ULUMAU ST	CHRIS WISEMAN
	22 ULUMAU ST	Sue Yoshida
Samp Reece	828 SUSUMU ST Edmonds	



mauro	190 Hana Hwy	H. 10
R. Pisano	2575 Hana Hwy	R. Pisano
D. Woodcock	10 Hana Hwy	D. Woodcock
R. Emery	50 PALMYRA	R. Emery
P. LAURENIN	101 Piko Way HI 96724	P. Laurenin
M. BASON	PO BOX 559 HAWAII HI 96708	M. Bason
D. Delapina	P.O. Box 754 PAIA HI	D. Delapina
Nicole Wilder	PO baldwin Hwy	Nicole Wilder
Genafurlonghi	1010 Front St. CAH	Genafurlonghi
Rainya Tz	P.O. 3012 PAIA HI	Rainya Tz
Zachary Senter	P.O. Box 854 KAHALA HI	Zachary Senter
Madi Sabido	100 Heiaula Pl.	Madi Sabido
David Pollinger	PO + Kaula Place	David Pollinger
Eli Nelson	PO Box 1286 HAWAII	Eli Nelson
W.S. Harris	PO Box 61 MAKAHA	W.S. Harris
Kathleen Sheehan	PO BOX 206 PAIHA HI	K. Sheehan
Helga Fiedler	PO Box 790761 PAIA HI 96779	Helga Fiedler

Abumehi	14 bewapute	Itiuku	
E Sinak	PO Box 818 Hawa II 96713 627 CAROLINA	Joe	
PS JPH	W. KANT. NEKA	Joe	
Abeyathup	250 Heaulast	Abg. luluhtingta	
Kathy Munson	30 Makain P.	Kai Ku	
Chris Puder	400 e h v rd.	Makawao	

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NAME	ADDRESS	SIGNATURE
<i>David Warren</i>	458-C FRONT	<i>David Warren</i>
<i>[Signature]</i>	685 W. Maui Rd	<i>[Signature]</i>
<i>[Signature]</i>	3513 WEST Mt Tins	<i>[Signature]</i>
Ben Kij	11334 Densmore Ave W	<i>Ben</i>
<i>Mu</i>	PO Box 791540	<i>LADDAN</i>
Jeri GRS	PO Box 791537 Paia	<i>Jeri GRS</i>
<i>Niki de GRS</i>		

Sarah Howard	Wahalaun	2008
Sean	285 Aunoh	3578796
LANCE SHAKEN	100 OHEMA	
Just Shym	Lolo PC	-
W. Putama Collier	681 Hana Hwy Paia	Hi. 96119
N. Grace	57 Kulohani	g
N. Richards	303 Humana	
R. Wallenstein	250 Haukei M	
L. Richardson	Paia, HI	<del>Sh</del>
E. J. D.	PAIA - HI	<del>PAIA</del>
Justin Vangorff	Paia, HI	
J. J.	PAIA HI	281-1016
J. M. Miller	HAIKU HI	
Leanne Hatake	Kinei, HI	
J. LEBERMAN	PAIA, HI	J
T. DORRIS	Wailuku HI	A
VICTOR	LAHAINA	U

Colin Howard	19 Puleh Rd Kula, HI 96790	
Michelle Watson	P.O. Box 330841 Honolulu HI 96733	
Richard Cunningham	64 Aoiiki Makawao 96735	
Bella Moon	1633 West Kulaha Hauku, HI 96708	
Evan Rea	Pala, HI	
Shawn Amond	Hauku 96708	
JACOB RAMOS	KIHEI HI 96703 HI 1214969	
Mr Brian	KIHEI HI 96703 HI Kaimanoloa 1214	
Nathan Belmont	PAIA 96768	
Edward Branagan	635 Awaiahi Hauku	
Abelle Palmer	62825 <sup>c</sup> Aiea	
Tamara Ueburo	84 bel-Horizon Aiea	
SANDRA DIAZ	2685 Kokoona Rd. Hauku, HI 96708	
Rita O'Keane	P.O. Box 534 Makawao	
Brenda Klean	800 E Kaula Haden	
Cecily Ouelton	Pala 96768	
Achimtia Hsiao	Adm Office	

Erin Kannel	945 Peahi Rd. Hilo	(204) 625-573
GP, Gabele	298 Ponoa	
Robert Schen	263 Middelk	9679
Raya	PO BOX 502	Kilauea 96753
Kulia	644 Meakunu	Wailuku, 96793
Ciera	644 Meakunu	Ln 96793
Lani	644 Meakunu	Ln 96793
Rob	PO Box 7922	Pain

**STATE OF HAWAII DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
CABLE TELEVISION ADMINISTRATION**

These are my written comments RE: The consolidated application for renewal of the Maui County and Lahaina cable television franchise application submitted by Oceanic Time Warner Cable

Maui County is the only county in the United States separated by water. Made up of four islands, Maui County has a significant concentration of Native Hawaiian population and some of the most rural and underserved areas in the nation when it comes to access to broadband and television media. Akaku is Maui County's only electronic public media resource. These important characteristics position Maui County as deserving of a comprehensive cable franchise agreement that fits its needs and guarantees a sustainable community media future for all its residents. Time Warner has collected more than \$68,000,000 in revenue from Maui County subscribers in 2012 and will collect billions more if it's franchise is renewed for another twenty years. I recommend that, at minimum, the following public media provisions be provided as a condition of franchise renewal, *as rent for the use of Maui County's public rights of way:*

1. Time Warner should be required to build out cable tv and broadband service to every home in Maui County
2. Akaku's PEG channels must be carried in the same format and with the same signal quality as all local broadcast channels. This will require guaranteed channel placement on all service tiers, keep them easy to find and repeat them in HD
3. There should be no diminishment of current dedicated PEG analog electronic spectrum without the full written consent of Akaku and the DCCA.
4. Funding for Akaku should be increased with no cable company restraints on Akaku's use of cable fees to provide content on cable TV, internet, digital devices or any other media platform currently in use or yet to be invented.
5. Oceanic Time Warner must provide PEG services to Akaku and Maui County that are the same or better than the PEG services it provides to any other jurisdiction for the duration of the franchise.
6. Time Warner needs to pay 5% of franchise fees from cable gross revenue and a reasonable capital contribution of no less than \$4.00 per subscriber per year with annual 4% increases for the duration of the franchise term. Funding should be contractual for the term of the franchise notwithstanding changes in state or federal legislation.

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CABLE DIVISION  
COMMERCE AND  
CONSUMER AFFAIRS



7. Oceanic Time Warner should be required to provide fast, affordable, broadband that will achieve minimum speeds of 1 gigabit symmetrical service by 2018 for all Maui County residents and business subscribers
8. Oceanic must provide free broadband and/orWiFi in all county parks, recreational areas and community centers.
9. To support economic development and education, Oceanic Time Warner must provide live upstream transmission capability and high speed broadband service to designated Community Anchor Institutions, public and private schools, government buildings, hospitals, libraries, community centers, community media centers, non-profit agencies, Akaku and public parks at no charge.
10. Oceanic Time Warner must provide 25 hours per month of video on demand capability to Akaku for the duration of the franchise with increased capacity to be negotiated during the franchise term.
11. Oceanic Time Warner must provide 100 promotional spot inventory per month in run of schedule to be programmed by Akaku.
12. If the franchise agreement with the DCCA is superseded or replaced with federal and/or state broadband regulation and/or state video programming/broadband franchises, Time Warner must agree that equivalent fees or revenue from taxes on broadband revenue will be used to fund local access and programming (formerly PEG access channels), which will be program sources connected to the internet.
13. Oceanic Time Warner must bear cost of PEG conversion of NTSC signal to digital and the cost of connecting Akaku to other carriers as a condition of franchise.
14. Time Warner must provide PEG channels on digital tiers with closed captioning capability and all PEG channels must be recordable and able to work with DVR recording devices.
15. Since PEG access channels and services are "electronic public commons" with narrowcast and non-market based characteristics, ratings and viewership metrics must have lowest priority on evaluating community communications needs in order to establish channel expansion and/or increased public bandwidth requirements.
16. Net neutrality principles and bandwidth symmetry characteristics must be guaranteed for the duration of the franchise.
17. Oceanic Time Warner's franchise should be revocable for cause after notice and due process for failure to perform.

In conclusion, Oceanic Time Warner's franchise renewal application must be looked at in the context of a rapidly evolving video market so that the PEG access paradigm can

continue to flourish with adequate technical support and funding, in exchange for use of public rights of way regardless of the technology.

Mahalo

Barbara Trecker

BARBARA TRECKER

3445 Kela

Kahe'i HI 96732

808. 205-2632

Dear Sirs,

I gave up cable in no small part because I resented contributing to Akaku. The programming is completely unmonitored allowing the indulgence of individuals of various stripes ranging from the most boring TV time imaginable to the most outrageous. The last straw for me was a program wherein the speaker (Don Brown) , spewing anti-Semitic diatribe over a banner reading "Jew Watch", was featured and kept on.

Most of the rest of the programming simply did not justify the resources spent on them.

Robert Sine

*RSine*

CABLE DIVISION  
COMMERCE AND  
CONSUMER AFFAIRS

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FILE

*I pledge allegiance to the flag of the United States of America, and to the Republic for*

*of America, and to the Republic for*

RE: Decease Call  
How many HI 96809

Justa notes:  
Read report about cable service in Maui whop, NOV. 13, 2013 issue

My husband and I love classic TV p.k. and have lost eight (8) channels - but pay 69.70 per month.

Our complaint is that Decease substitute programs (other than one scheduled) repeat one commercial, and more advertising their program

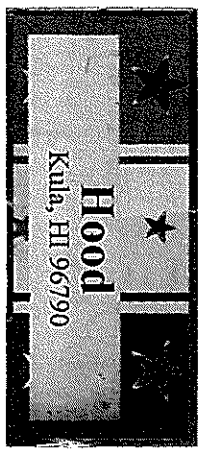
time. They are more interested in making money than giving us quality programs for \$10.00.

Decease handle about (3) quality clearly people ready or quality cable viewing for entertainment. Sincerely, Ma a Mrs Robert Hood

*outside of standards, some Nations consider*

*God, indivisible, with liberty and justice for all.*

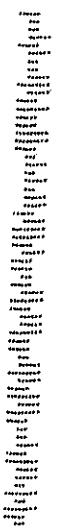
NOV 18 2013  
2:07 PM  
MAIL ROOM  
U.S. POSTAL SERVICE  
HONOLULU, HI 96809



HONOLULU HI 96809  
NOV 13 2013 PM 1:11



DECA-CATV  
PO. Box 541  
Kawela, Hawaii  
96809





"Michelle Esteban"  
<Michelle.Esteban@co.mau  
i.hi.us>

11/15/2013 04:09 PM

To <cabletv@dcca.hawaii.gov>

cc

bcc

Subject Franchise Renewal Testimony

1 attachment



DCCA.pdf

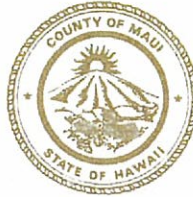
Aloha,

Attached you will find the franchise renewal testimony from the County of Maui that is addressed to Keali`i Lopez, Director.

Mahalo,

Michelle Esteban  
Secretary  
Office of the Mayor  
County of Maui  
200 South High St.  
Wailuku, HI 96793

ALAN M. ARAKAWA  
MAYOR



200 South High Street  
Wailuku, Hawai'i 96793-2155  
Telephone (808) 270-7855  
Fax (808) 270-7870  
e-mail: mayors.office@mauicounty.gov

## OFFICE OF THE MAYOR

Ke'ena O Ka Meia  
COUNTY OF MAUI – Kalana O Maui

November 15, 2013

Keali'i Lopez, Director  
Department of Commerce and Consumer Affairs  
P.O. Box 541  
Honolulu, Hawaii 96809

Aloha Director Lopez,

I am writing to comment on the Oceanic Time Warner Cable franchise renewal proceeding now underway in Maui County. Maui Nui is unique from the rest of the state. We are the only county in the nation with four islands separated by water and we have many underserved rural areas, many with significant native Hawaiian population. We need an agreement that fits Maui, not the same agreement negotiated for the County of Honolulu in 2009.

As cable technology evolves from the delivery of entertainment and broadcast television channels, to a system that provides voice, internet and a variety of new services via broadband, it is important that the state take an active role in preserving and protecting the public "electronic commons" currently operating as Public, Education and Government (PEG) Access under the auspices of Akaku. Akaku is Maui County's only television media. We rely on Akaku to help us talk to one another and it deserves increased funding and full support.

The following are the minimum services I recommend the state require from the cable company in exchange for the use of public rights of way during the franchise term.

1. Make cable TV and affordable high speed internet available to every resident and business in Maui County
2. Cablecast Akaku channels with the same format and signal quality as local broadcast channels. Keep them easy to find and repeat them in HD
3. Increase funding and capital support to Akaku with no restrictions on funds
4. Provide Maui County all public benefits Time Warner provides to any other franchise in the nation.

5. Provide a minimum of 10 origination locations designated by Akaku for "live" and recorded upstream video transmission to and from Molokai, Lanai and East and West Maui
6. Include Maui representatives in negotiations with Oceanic Time Warner.
7. Franchise term should be no longer than 10 years with a 5 year review by DCCA

I also believe that Oceanic Time Warner should advertise affordable service to low income populations, activate unused fiber on the Institutional Network for public use and offer compensation for consolidation of the Lahaina and Kahului franchises.

Sincerely,



ALAN M. ARAKAWA  
Mayor of Maui County

AMA:ha/me



Suki Halevi  
<suki@akaku.org>  
11/15/2013 04:03 PM

To cabletv@dcca.hawaii.gov  
cc  
bcc  
Subject Comments of Akaku: Maui Community Television

1 attachment



Comments of Akaku, Maui Community Television.pdf

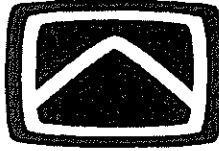
We are submitting for your consideration the attached comments of Akaku: Maui Community Television on the Application of Oceanic Time Warner Cable LLC to renew its franchises for Maui County and Lahaina.

Mahalo nui,

*Suki*

Suki Halevi  
Director of Development  
Akakū: Maui Community Television  
Office: (808) 871-5554  
Cell: (808) 281-4378





AKAKU: MAUI COMMUNITY TELEVISION  
333 DAIRY ROAD,, KAHULUI., HI. 96732  
www.akaku.org (808)873-3437

Catherine Awakuni  
Cable Television Administrator  
DCCA-CATV  
PO Box 541  
Honolulu, HI. 96809

November 15, 2013

Aloha Catherine,

Akaku is pleased to present its written comments and recommended franchise provisions for Oceanic Time Warner's Maui County Franchise Renewal.

We would like to respectfully suggest that the Department carefully consider the proposed draft franchise language herein. It is our sincere belief in consultation with some of the most knowledgeable and informed public sector cable television attorneys and experts in the United States, that we have provided language representing provisions that are state of the art and best of genre anywhere in the country.

Mahalo for helping to make Maui Nui's franchise renewal No Ka Oi!

Kind Regards,

Jay April  
President and CEO  
Akaku: Maui Community Television

**Comments by Akakū: Maui Community Television  
On the Application of Oceanic Time Warner Cable LLC (“OTW”)  
To Renew Its Franchises for Maui County and Lāhaina**

**Part One: General Comments**

Maui County Community Television, Inc., doing business as Akakū: Maui Community Television, respectfully submits the following comments on the Application of Oceanic Time Warner Cable LLC (“OTW”) to renew its cable franchises for Maui County and Lāhaina (“Application”). These comments refer to and should be read together with Akakū’s recommendations for specific provisions to be included in the renewed franchises, submitted herewith as Part Two of these comments.

In its Application, OTW addressed certain issues with respect to broadband availability although it contended it was under no obligation to do so. We address those as well, and we urge the DCCA to carefully consider the manner in which broadband deployment and consumer protection issues can be addressed consistent with any limitations on a franchise issued solely to comply with the requirements of Title VI of the Communications Act of 1934 (the “Cable Act”). Time Warner reads Title VI and current FCC decisions as limiting authority to establish any requirements (other than I-Net requirements) that are not cable-service related. Even if Time Warner were correct, in our view, broadband service obligations may be imposable in at least two ways.

First, a state may be able to require any entity that uses public property to provide non-cable services to obtain an appropriately conditioned authorization from, and pay appropriate fees to the state. If the state does so, it will want to carefully distinguish between Title VI provisions and those imposed pursuant to state law requirements; Time Warner has interpreted recent FCC decisions to permit it to unilaterally offset against franchise fees the cost of satisfying any requirement in a Cable Act cable franchise to provide benefits that are not cable-related.

Second, broadband obligations may be imposed to remedy past deficiencies in service, or in return for relieving an operator of obligations that otherwise apply.

Hence, it was appropriate to examine, and the DCCA should examine, how and whether any broadband-related issues can or should be addressed.

**Page 2:** “In 2005, DCCA acknowledged that Oceanic had completed the 750 MHz upgrade to all areas of Maui County, and had also completed expedited broadband internet service to the residents of Hana.”

**Comments:** It is misleading for OTW to claim that it completed the 750 MHz upgrade to “all areas of Maui County,” without mentioning the large areas of Maui County that are not served by OTW at all, as shown on the map included in DCCA’s 2012 Hawaii Broadband Strategic Plan.<sup>1</sup>

OTW did provide “expedited broadband internet service” for Hāna in 2005, but only after DCCA requested that it do so. Until then, OTW claimed that such service was not “feasible.” As DCCA explained:

The Department determined that due to the remote geographical location of the area, the rural Hana community and its residents would greatly benefit from broadband Internet access services. The Department requested TWE to provide this service to Hana as soon as possible, as opposed to having Hana subscribers wait until the service became technically and economically feasible based on TWE’s business plan.”<sup>2</sup>

In 2005, TWE (the predecessor to OTW) requested that DCCA agree to a four-year extension of the term of its Maui County franchise and terminate certain Development Fund requirements. In this context, DCCA requested that TWE provide Internet service for Hāna, and TWE voluntarily agreed. When OTW says something is not “feasible,” it may mean that it is not in its business plan. The renewal of OTW’s franchises that expire in 2013 is an opportunity for DCCA to request that OTW voluntarily agree to modify its plans as may be needed to improve broadband service for Maui County.

To provide cable service for Hāna and the island of Lāna‘i, OTW uses microwave technology, not fiber optic cable. Microwave is not capable of achieving fast Internet speeds and is affected by weather conditions that cause intermittent disruptions of cable service. Community members in Hāna confirm that OTW was recently able to improve the microwave service there (which OTW had said was impossible, but then somehow accomplished). However, residents and businesses in Hāna and on Lāna‘i are still struggling. Microwave technology is not adequate to deliver 21st century service.

In oral testimony gathered in Hāna by Akakū and submitted to DCCA by video, the teacher for Hawaii Technology Academy in Hāna explained how her work is impeded by slow Internet, and the Executive Director of Hāna Youth Center reported that the Youth Center had to withdraw from an OHA grant because OTW Internet service at the Youth Center could not support the videoconferencing that was integral to participation. Hāna’s school is the one of the most under-resourced in the State, yet talented youth backed by a deeply committed local community have won Gates Millenium Scholarships—three of them in 2012.<sup>3</sup> Instead of further marginalizing East Maui (including Hāna, Nahiku, Wailuanui, Ke‘anae, Kipahulu, Kaupo), Lāna‘i, the East End of Molokai, Huelo, Olinda, and more---areas where there is either no cable service or limited cable service---we request that OTW do everything possible to expand its subscriber base and provide service to all residents and businesses in Maui County. Youth, schools, businesses and families all want and need to connect with other communities in Hawai‘i and around the world, through cable service and high-speed Internet.

These are only a few examples of the ways in which remote areas of Maui County have been abandoned by OTW, on the wrong side of the digital divide. This policy may have been defensible in the early years of the Time Warner Cable franchises, when the company was building out and upgrading its system. However, Time Warner Cable subsidiaries have been the only cable providers in Maui County for more than 15 years, reaping significant revenues; in the

six years from 2007 – 2012, OTW’s total revenues from its two Maui franchises were \$367,333,780, with over \$68.5 million in 2012. OTW has requested a franchise for the next 20 years. It is not acceptable for OTW to continue to leave significant areas of Maui County unserved or underserved.

Several people at DCCA’s public hearings on OTW’s Application asked for a “most favored nation” clause in the renew franchises, which would provide Maui County with benefits equal to those obtained by any local franchising authority from a Time Warner Cable provider. Here is some of what a Time Warner Cable subsidiary agreed to in New York City in 2011:

New York City on Wednesday announced a deal with Time Warner Cable and Cablevision over their cable franchises that will bring greater broadband Internet access into low-income communities and commercial districts around the city . . . [and require] the cable companies to commit to a limited time window for appointments and for answering calls to customer service.

The deal . . . grants Time Warner Cable and Cablevision each a franchise to provide cable television service in exchange for those concessions and a handful of others, which the city pegs at an estimated value of \$60 million. These include a \$10 million investment in wi-fi service in about 30 parks and public spaces, more money for public access cable systems, and a \$1.5 million commitment from Time Warner to support the NYC Media Lab, a public-private partnership to conduct new media research. The city’s own institutional fiber network will also get a \$20 million infusion. Each provider will pay the city five percent of its revenues from cable service.

....

In a statement released today by the city’s Department of Information Technology and Telecommunications, city officials announced that Gotham’s cable providers had promised to work with local non-profits to set up 40 centers around the city where residents could access high-speed Internet.

....

In a press release, the city highlighted a provision of its deal that allows the city to renegotiate with cable providers if Internet access rather than cable service begins to account for a greater proportion of the providers’ profits. Were that to happen, the city’s cut — based on cable revenues — would start to decline.

....

The deal also requires cable companies to commit to a four-hour window for service calls, answer calls within 30 seconds and commit to resolving service outages within a set time period.<sup>4</sup>

Time Warner Cable has acknowledged that franchise renewal may require significant investment in community benefits; this is a cost of doing business that the company must accept when the local franchising authority requires it. As Time Warner Cable explains in its 2012 annual filing with the SEC:

Franchise agreements typically require payment of franchise fees and contain regulatory provisions addressing, among other things, upgrades, service quality, cable service to schools and other public institutions, insurance and indemnity bonds. . . . After a franchise agreement expires, a local franchising authority may seek to impose new and more onerous requirements, including requirements to upgrade facilities, to increase channel capacity and to provide various new services. . . . TWC may be required to make significant additional investments in its cable systems in response to requirements imposed in the course of the franchise renewal process.<sup>5</sup>

**Page 6: "Oceanic now passes over 82,000 homes in Maui County."**

**Comment:** According to the U.S. Census, there were 71,222 housing units in Maui County in 2011 (including homes in areas with no access to OTW cable), and there was a population increase of just over 3,000 people between 2010 and 2012.<sup>6</sup> OTW's statement that it passes over 82,000 homes appears to include many thousands of homes more than the number reported in the Census for Maui County, even taking population growth into account.

**Page 7: "In mid-2103, Oceanic upgraded and substantially increased the Internet speeds for its Molokai customers through the use of fiber optic connections."**

**Comments:** *The Molokai Dispatch* reported in July 2013 that OTW broadband internet customers on Molokai "have waited for years, filed dozens of complaints and wrung their hands in frustration" because of slow speeds.<sup>7</sup> According to the *Dispatch*, Molokai customers paid the same price for slower microwave service (known as "WAVE") that other OTW customers paid for their faster RoadRunner service. Even after the upgrade in mid-2013, speeds on Molokai are still slower than other places, and large areas of the island (such as the East End) have no cable service at all.

**Page 7: "Oceanic has constantly strived to bring equity to all of its subscribers in the State, rectifying perceived service inequities that might otherwise arise between more sparsely-populated areas (particularly on the Neighbor Islands and rural Oahu) and the densely-populated areas of metropolitan Honolulu."**

**Comments:** What are the specific ways in which OTW has brought "equity" to cable subscribers in Maui County? If OTW is "constantly striving" to rectify "perceived service inequities," what is OTW's plan for the unserved and underserved areas of Maui County? The Application does not say.

OTW's Application fails to mention that in some areas of Maui County, residents pay the same amount of money as subscribers in metropolitan Honolulu, but receive much slower speeds, limited customer service, and in some cases, limited programming. Residents of the remote areas of Maui County are accustomed to making do with less and having little recourse. This is not right, especially when they are paying the same amount of money and receiving less. The renewed franchises should require OTW to upgrade service to underserved areas, provide service to unserved areas, and until then, to reduce fees and provide pro-rated refunds to customers who pay for services they do not receive.

According to the minutes of the DCCA Cable Advisory Committee from its meeting on December 12, 2011, Bob Barlow, President of OTW, "indicated that Oceanic invests \$100 million a year in capital improvements in order to serve its customers and to keep up with the state concerns."<sup>8</sup> At the same meeting, "Mr. Barlow stated that while there are some differences among the various islands, Oceanic views the whole state as one system and provides the exact same service throughout the state . . . ."<sup>9</sup>

However, the financial statements submitted to DCCA by OTW show that its capital expenditures in 2011 for its O'ahu, Kona, Hilo, Kaua'i, Lāhaina and Maui franchises totaled just over \$80.3 million, not \$100 million as Mr. Barlow claimed. This is a discrepancy of almost \$20 million. Moreover, 84% percent of OTW's \$80.3 million in capital expenditures in 2011 was for its O'ahu franchise. Capital expenditures in 2011 for the Maui and Lāhaina franchises totalled \$4.8 million. The Maui County franchises had 53,000 subscribers in 2011, which is 19% of O'ahu's 280,000 subscribers. If OTW had invested in Maui County 19% of the amount it invested in O'ahu, capital expenditures in Maui County would have been \$12.8 million, not \$4.8 million. The numbers for 2011 show how Maui County has been shortchanged and neglected by OTW. Mr. Barlow's statements to the CAC at the end of 2011 demonstrate the difference between what OTW claims to be doing and what the numbers really are.

One of Time Warner Cable's recent innovations is TWC WiFi™ Hotspots, which provide free WiFi for Time Warner Cable customers with Standard Internet or higher. If you are in downtown Honolulu, this is a great benefit—there are TWC WiFi™ hotspots in many areas of the city. If you're in Maui County, there's almost no benefit at all. There are three TWC WiFi™ hotspots in Maui County---one at the OTW service center in a remote area of Kahului (where there are few homes or businesses), and two on the same street in Kihei.

**Pages 7 – 8:** "Oceanic has also taken its obligation to be a good corporate citizen very seriously. Over the course of its history in Hawaii, Oceanic has made available substantial amounts of funding for various non-profit entities in the State."

**Comments:** On September 27, 2012, *Pacific Business News* reported that OTW had terminated its discount program for non-profit organizations. OTW sent letters to Hawaii nonprofits stating, "Courtesy accounts with either free or heavily discounted cable or Internet service have been grandfathered since May 2011 and will no longer be offered."<sup>10</sup> Hidden toward the end of the letter was the warning, "If we do not receive a reply from you within 30 days of this notice to update your account, it will be necessary for us to disconnect your existing service."

For one Honolulu non-profit, "updating" their account meant paying \$227 a month for Internet service---more than double the rate that they had been paying.

**Pages 8:** Oceanic states that switched digital video (SDV) will allow it to "accommodate increasing demands for greater capacity in its network" without "costly upgrades" to its network architecture. **Page 10:** "[I]n order to receive Oceanic's two-way video services [including SDV], customers generally must have an Oceanic-provided digital set-top box."

Comments: Cable companies have three options for increasing bandwidth. They can migrate analog channels to digital (which uses less bandwidth); they can deploy SDV to decrease the amount of bandwidth in use at a given time; or they can upgrade to 1 GHz transmission from the now standard 750 – 850 MHz. For the most part, Time Warner Cable has chosen to migrate channels and use SDV, rather than upgrading their infrastructure to 1 GHz. Time Warner Cable has little incentive to upgrade. As telecommunications policy expert Susan Crawford explains:

"Having made their significant network investments some time ago, the big cable guys are in harvesting mode and have been reaping enormous revenues for years. Comcast's and Time Warner Cable's revenues of \$172 billion (between 2010 and 2012) were more than seven times their capital investment of \$23 billion during that same period. Not only are all of the big cable companies' revenues exponentially larger than their capital expenses, but this difference is getting much larger over time."<sup>11</sup>

Time Warner Cable is freeing up bandwidth for a media environment that is steadily shifting towards the Internet. The *MIT Technology Review* reported that Time Warner Cable makes a 97% margin on its existing Internet services.<sup>12-</sup>

OTW's move to SDV will maximize its profits with a minimum investment by the cable company. However, customers must have an OTW set-top box to receive SDV programming. This creates an obstacle for viewers who do not have digital television and viewers who prefer to purchase their own cable modems and obtain a Cable CARD from OTW. The FCC notes on its website that "[m]any consumers prefer the convenience (and the cost-savings) of being able to receive their cable programming without having to lease a set-top box from their cable operator."<sup>13</sup> The FCC further explains:

Your right to use your device with a CableCARD to receive all "linear" channels (channels other than "on-demand") in your subscription package, including premium and specialty channels, is protected by FCC Rule 76.1205(b)(4). (For some channels delivered using a technique called "switched digital video," you may need a second device called a "tuning adapter," which is typically provided at no additional charge.)<sup>14</sup>

In keeping with this guidance from the FCC and because of the importance of PEG channels to the local community, we recommend that the renewed cable franchises for Maui County only allow SDV transmission of PEG channels only if (i) there are no differences in the

viewer experience between switched and non-switched channels and (ii) there is no need for the subscriber to pay any additional charges than the subscriber already pays or request any different equipment than the subscriber actually uses to receive commercial services from OTW. OTW may satisfy the requirements of clause (ii) by providing the subscriber (at no charge and without special request) with a device that enables the subscriber to receive the SDV signal.

**Pages 12 – 16:** OTW lists numerous cable-related innovations that it has made during the last ten years.

**Comments:** OTW’s representative has stated at DCCA’s public hearings that OTW has made \$14 million of improvements without passing the cost through to the subscribers. What were these improvements? How many of the innovations listed on pages 12 – 16 of the Application resulted in increased fees or charges to subscribers?

**Page 13:** OTW provides video on demand (VOD) by charging subscribers to watch “featured movies and special events” and also provides “free access to selected movies, programs and program excerpts from broadcast cable networks, music videos, local programming and other content.”

OTW also provides over 100 channels of high-definition (HD) television. OTW provides HD simulcasts (HD channels that are the same as their standard-definition counterparts except for picture quality) at no additional charge, while subscribers pay to receive HD programming that does not have a standard definition counterpart.

**Comment:** Akakū production equipment is HD, and Akakū transmits in HD, but no subscribers are able to watch Akakū channels in HD because OTW has not made HD transmission (or video on demand) available to Akakū. This should be remedied in the renewed franchises.

**Page 14:** OTW provides high-speed data services “based on the level of service received.” **Page 16:** “Oceanic offers commercial customers a variety of high-speed data services, including Internet access . . . Commercial subscribers pay a flat monthly fee based on the level of service received.”

In its 2012 Hawaii Broadband Strategic Plan, DCCA found that for \$32/month, a resident of Honolulu gets a maximum download speed of 3 Mbps from OTW, while residents of Seoul enjoy download speeds of 100 Mbps for the same cost, and residents of San Francisco can obtain speeds of 200 Mbps for \$38/month.<sup>15</sup> DCCA concluded that “comparative pricing with selected cities around the world reflects that the cost for broadband in Hawaii is very high for the speed of service received.”<sup>16</sup> Governor Neil Abercrombie has pledged 1Gigabit Internet by 2018, and Google Fiber subscribers are already able to purchase 1Gig Internet for \$70 a month.

As a subscriber to OTW’s “Business Class” data service, Akakū struggles daily with slow speeds and high prices. Small business owners in Kahului have discovered that they can’t obtain for their offices the same speeds for the same prices that they from OTW at home, creating a significant burden and constraint on small businesses and non-profit organizations. Many



businesses and organizations have simply resigned themselves to OTW's slow speeds and high costs because there is nothing they can do about it. OTW claims to be a good corporate citizen, but its pricing and service packages impose unfair constraints on the economic health of Maui County. A good corporate citizen does not strangle the economic prospects and well-being of the communities it serves and the people who are the source of its revenue.

**Page 14:** Through its TWC TV apps, OTW “enables in-home viewing of up to 300 channels of live programming on iPad, iPhone and Android devices and over 4,000 VOD programs and movies on iPad, iPhone and iPod Touch devices. Subscribers also may watch the same Oceanic programming on their home computer via *twctv.com*.”

**Comment:** To ensure that subscribers have the same access to PEG programming as other OTW cable programming, including local broadcast channels, we recommend that OTW make PEG programming available on any platform it makes commercial programming available, including without limitation the TWC TV apps and video on demand services.

**Page 17:** OTW is requesting a 20-year franchise renewal in Maui County. DCCA asked OTW to describe future changes in the cable system in the near and long term.

**Comments:** In every public hearing that DCCA held in Maui County, residents expressed surprise and dismay at OTW's request for a 20-year franchise. There is a strong consensus in Maui County that 20 years is too long, especially given the rapid pace of technological change and OTW's uneven track record in Maui County. Residents suggested a five-year franchise, or at most at ten-year franchise. In New York City in 2011, OTW's affiliate, Time Warner NY Cable LLC, was given a nine-year franchise (until 2020).

In its Application, OTW offers very few improvements over the next 20 years and has no plans to upgrade the existing 750 – 795 MHz system. The three “longer term” improvements mentioned in the Application include “[p]lanned increases in broadband Internet speeds.” OTW doesn't say what the plan is—how long will it take, how fast will the speeds be, and how much it will cost subscribers to obtain faster service. OTW's Application does not even mention the upgrade of its top-tier “Ultimate” Internet service to 100 Megabits per second, which will be offered in Hawai'i before the end of 2013 for \$105 per month. This service, which Time Warner Cable has described as a “thank you” to Ultimate subscribers, was launched in Kansas City in 2012 in response to competitive pressure from Google Fiber, although it is significantly slower and more expensive than Google's offering.

**Page 30:** DCCA asks whether OTW is obligated to guarantee or otherwise be responsible for “any outstanding debt of any equity interest” in OTW.

**Comments:** OTW did not answer this question. Instead, it stated: “Oceanic currently does not have any outstanding debt and does not anticipate having any outstanding debt.” A guarantee is not an outstanding debt, it's a contingent liability.

OTW's financial statements for the Maui and Lāhaina franchises state that "[Maui's][Lahaina's] assets are legally available for the satisfaction of debts of TWCE and TWC . . . ."<sup>17</sup> The debts of TWC include tens of billions in net debt and mandatorily redeemable preferred equity. OTW's liability for the obligations of its immediate and ultimate corporate parents are not disclosed in the Application.

**Pages 32 - 34:** To determine OTW's "Character Qualifications," DCCA asked OTW to provide information about any judgments or administrative orders that were adverse to OTW or "any controlling entities."

**Comments:** In its Application, OTW discloses four forfeiture orders issued against it by the FCC, then states that "[t]he FCC recently vacated most of the findings of liability against TWC . . . ." OTW failed to disclose in its Application which of the FCC's forfeiture orders was not vacated. Specifically, OTW did not disclose that after reviewing the Forfeiture Orders *en banc*, the FCC ruled: "[W]e affirm the Bureau's previous decision instituting a forfeiture against TWC for failure to provide the requisite thirty (30) day advance written notice to the Hawaii LFA before implementing a service change caused by the migration of certain channels to its SDV platform."<sup>18</sup>

Such omissions of material information in OTW's franchise renewal Application calls into question OTW's good faith. Moreover, the record shows that OTW ignored the clear requirements of Section 76.1603(c)<sup>19</sup> in deploying SDV in Hawai'i, aggressively marshaling argument after argument as it insisted that no notice to DCCA was required—a position which the FCC found was "contrary to the express language of the rule . . . ."<sup>20</sup>

In its Application, OTW also failed to disclose a 2012 FCC order requiring OTW to carry KLEI-DT in Kailua-Kona after OTW refused to honor the local station's mandatory carriage rights.<sup>21</sup> The State of Hawai'i supported KLEI-DT's position in this matter.

Although OTW discloses that OTW and DCCA "are currently engaged in a dispute regarding the provision of digital boxes for public access channels," it does not provide details of this dispute so that the public can be aware of the issues. (See further comments below.)

OTW does not disclose that the New York Attorney General recovered \$2.2 million that Time Warner Cable improperly passed through to cable subscribers in ten towns from 2007 to 2013 and also required Time Warner Cable to pay the State of New York \$200,000 in legal fees.<sup>22</sup> OTW also does not disclose that prior to the Attorney General's investigation, Time Warner Cable voluntarily refunded an additional \$1.7 million to subscribers in eight other towns, for a total of \$3.9 million collected from subscribers in violation of the franchise agreements.<sup>23</sup> In addition to failing to disclose the magnitude of the settlement and voluntary repayments, OTW persists in claiming that there was nothing wrong with what Time Warner Cable did. A close examination of OTW's Application reveals a consistent pattern of Time Warner Cable aggressively pushing (and frequently ignoring) the limits and requirements of the law.

DCCA did not ask about pending litigation against OTW and its affiliates. Two class-action lawsuits were filed in 2012 against Time Warner Cable on behalf of subscribers in 29 states, alleging that Time Warner Cable imposed modem rental fees in violation of consumer fraud laws.<sup>24</sup>

OTW offers Internet and phone service using the same cables that provide cable TV. In its Application (p.2, n.1), OTW states that its high-speed data service is an example of “the types of innovative services that Oceanic has (and will continue) to provide to the residents of Maui County.” Similarly, OTW’s decisions regarding data service are examples of its policies towards customers and its Character Qualifications for continuing to serve subscribers in Maui County.

Initially, Time Warner Cable provided subscribers with cable modems at no charge, as part of their cable service. In 2012, the company began charging modem rental fees. In September 2013, OTW increased the monthly cable modem fee to \$5.99, which equals \$71.88 a year. It gave notice of the fee increase in the small print on subscribers’ August bills.<sup>25</sup> In its Residential Services Subscriber Agreement, Time Warner Cable says it can change any terms and conditions of its service simply by updating the terms on the Time Warner Cable website, without providing any notice to subscribers at all.<sup>26</sup> OTW is required to give reasonable notice of changes to video service; if it gives “notice” by making changes on its website, there must be ubiquitous, high-speed Internet in the service area so that everyone can access this information. Until then, it should give prominent, written notice of any changes in service to every subscriber. In addition, OTW must comply with all applicable state law requirements protecting consumers.

The curious thing about the \$71.88 annual cable modem fee is that Time Warner Cable (including OTW) charges this fee only for Time Warner Cable modems that are used for Internet. If a Time Warner Cable modem is used for telephone service but not Internet, there is no cable modem fee—even though the same modem that provides telephone service can also provide Internet service.<sup>27</sup> If a customer subscribes for Internet and phone service from Time Warner Cable, but purchases their own cable modem for the Internet, they must still use a Time Warner Cable modem for phone service, but they will not pay a cable modem fee. Nor is there a modem fee if a Time Warner Cable modem is used only for IntelligentHome security or for the TWC TV app.<sup>28</sup>

The *New York Times* published an illuminating article in which Time Warner Cable justifies the modem fee by claiming that it was “necessary to cover the cost of repairing and replacing cable modems over time.”<sup>29</sup> However, the director of public relations at Time Warner Cable acknowledges that charging a fee for Internet use but not voice service contradicts this rationale.<sup>30</sup> His only real explanation for the charge was, “It’s a business decision.” The real motive behind the business decision is especially apparent when one considers that the \$71.88 annual cable modem fee is more than the cost of purchasing a new cable modem suitable for OTW’s Standard level of Internet service. Unless OTW is replacing every customer’s modem every year and paying retail for the replacement modems (which it is not), there is no justification for the amount of the modem lease charge. Time Warner Cable’s “business decision” is to impose new fees and increase existing ones, wherever and whenever they can. Time Warner Cable’s accountants, Ernst & Young, have projected 41% profit margins for cable operators in 2013.<sup>31</sup>

Time Warner Cable admits that its pricing has nothing to do with costs. As Glenn Britt (the CEO of Time Warner Cable) explained in discussing usage based pricing for broadband, "I think that the conversation about usage based pricing should not be tied to a conversation about costs . . . We have a lot of different products, a lot of different offerings and we're aiming at different segments and different combinations and the pricing will relate to that. This is not a strict cost-base thing so those facts are interesting but not terribly relevant to pricing."<sup>32</sup>

This business model is evident in Time Warner Cable's video pricing as well. Time Warner Cable reported an increase in average monthly residential video revenue (per subscriber) in 2012, "primarily due to price increases, a greater percentage of subscribers purchasing higher-priced tiers of service and increased revenue from equipment rentals."<sup>33</sup> A recent *Wall Street Journal* blog reports, "Some investors blame Time Warner Cable's management for not investing adequately in the business, instead hiking rates on customers to hit quarterly earnings marks, perhaps at the risk of customer satisfaction in the long term."<sup>34</sup> This may be good for Time Warner Cable's shareholders, but it is bad news for Maui County residents and businesses.

OTW's questionable Character Qualifications are also demonstrated in its dealings with the public, educational and government access organizations that serve the communities of Hawai'i. When DCCA granted OTW a renewed franchise for O'ahu, the terms of the franchise Decision and Order required OTW to come to an agreement with 'Ölelo on the appropriate amount of capital payments to be made by OTW for PEG access facilities and equipment. Agreement with OTW was impossible, mediation failed, and OTW called in one of Time Warner Cable's most aggressive litigators from Washington, D.C. OTW hounded 'Ölelo for years in a grueling arbitration, costing 'Ölelo upwards of \$200,000 in legal expenses. 'Ölelo was required to justify every individual item of capital expense—it was not even allowed funds for a new piece of office furniture unless it could show that its existing furniture was worn out. When the arbitration finally concluded, OTW filed a petition for a contested case hearing so that it could continue the litigation and bring additional pressure to bear on 'Ölelo. OTW brought to Hawai'i the kind of ruthless, scorched-earth tactics that its parent company, Time Warner Cable, later used in its negotiations against CBS.

One of the strangest moments at the DCCA's public hearing in Kahului came when Dick Mayer, President of the Kula Community Association, testified that OTW failed to comply with DCCA's requirement that it have a copy of the Application available for inspection at its Kahului office. When Dick went to OTW's office to examine the Application, he was told that if he wanted to see the Application, he could find a copy at Akakū: Maui Community Television. These and many other actions consistently demonstrate OTW's disregard for regulatory authority and disdain for the community.

Page 43: DCCA asked OTW to "Describe your proposed policy about cable service being available to all subscribers in the franchise area." OTW replied: "Oceanic's current policy for extension of service to underserved and underdeveloped areas will continue to remain the same. Oceanic will extend the HFC [hybrid fiber-coaxial] architecture to all areas where a minimum of 25 homes per mile of strand or conduit is developed, and Oceanic monitors underdeveloped areas yearly to determine if any

new construction of homes has occurred to meet the criteria for minimum extensions of plant. Additionally, Oceanic will extend a service drop without charge to a resident for up to 200' and will provide an estimate for a service drop installation only for the additional cost beyond the 200' limit."

Comments: OTW considers all areas of Maui County in which there are fewer than 25 homes per mile to be "underdeveloped." OTW's choice of words is strikingly at odds with the pride that Maui County takes in managing development to protect its natural beauty and traditional communities. OTW should not be allowed to limit cable service to densely populated areas. The accompanying suggested franchise language includes requirements to complete the build-out of OTW's cable system to serve the needs of all areas of Maui County.

Page 45: OTW states, "In 2009, Hawaii television broadcasters converted to digital transmission. At the present time, Oceanic will continue to distribute SD broadcasters in analog and carry HD broadcasters in both analog and simulcast HD."

Comment: Akakū is an HD broadcaster, but OTW does not carry Akakū in both analog and simulcast HD. The accompanying suggested franchise language remedies this omission.

Page 45: "The ongoing strategy for bandwidth recovery is to transition the lesser-viewed analog channels to digital-only distribution and provide the viewer with means to tune those channels either via digital directly to the television or through a device that converts the digital channel back to analog at the set. Growing distribution of digital channel offerings – whether SD or HD – will be either through dedicated linear digital channels (if highly viewed) or switched (if lesser viewed)."

Comments: When OTW recently migrated two PEG access channels in Maui County from the analog to the digital tier of service, the channels simply disappeared from view for all subscribers who do not have digital televisions or set-top boxes. A year later, Akakū still receives phone calls from subscribers trying to find "Preserving Our Recollections," a popular show produced by University of Hawaii Maui College, which was previously on an analog PEG channel.

The DCCA's Cable Advisory Committee (CAC) considered this issue in November 2012. At that meeting, Mr. Barlow stated that over 60% of OTW subscribers have digital boxes.<sup>35</sup> This means that approximately 40% of OTW subscribers are watching analog television. This is in stark contrast to the United States generally; digital television has 89% penetration in North America.<sup>36</sup> The unique situation in Hawai'i calls for a comprehensive, responsible approach to channel migration, with extensive outreach to subscribers, because channel migration affects far more subscribers here than anywhere else. (OTW has not mentioned that even digital subscribers may be unable to see the migrated channels, unless they rescan or reprogram their television.)

At the November 2012 CAC meeting, Director Lopez asked Mr. Barlow to provide data on how many subscribers requested digital boxes when channels were migrated and how many set-top boxes OTW distributed, on a franchise by franchise basis.<sup>37</sup> Mr. Barlow did not have the

information at the meeting, but stated that “across the state,” the number of boxes distributed “was between 1200 and 1300 boxes.”<sup>38</sup> According to financial statements filed with DCCA, OTW had 404,000 subscribers in Hawai‘i in 2011. If 40% of subscribers watch analog television, that would mean that OTW distributed digital boxes to 0.8% of the analog subscribers statewide. OTW’s existing digital box distribution program fails to reach subscribers or facilitate access to the migrated channels. In addition, Mr. Barlow stated at the CAC meeting that OTW would provide the boxes for free “for a certain length of time and after that, start charging a nominal fee.” If there was no fee to watch University of Maui Hawaii College channels prior to their migration, why will there be a fee to watch them in the future? This appears to be another instance of OTW imposing more and more fees on subscribers, with little or no relation to actual costs.

In his comments to the CAC, Roy Amemiya, President and CEO of ‘Ōlelo Community Media, expressed concern that subscribers were unable to obtain free boxes.<sup>39</sup> J Robertson, Managing Director of Hō‘ike Kaua‘i Community Television, commented that viewers on Kaua‘i were reluctant to pick up boxes or even request OTW to send them by mail.<sup>40</sup> A more proactive approach is required as OTW continues to migrate channels. We recommend that OTW be required to offer organized outreach and support for the transition and to provide digital boxes to every analog subscriber free of charge, without requiring subscribers to request one.

In its Application, OTW disclosed that Time Warner Cable entered into an agreement with the Office of the New York Attorney General, after the Attorney General found that Time Warner Cable “had passed through to subscribers franchise fees in excess of the limits set in its cable franchises in several upstate New York communities.” In its Application, OTW states that Time Warner Cable “took the position that the franchise agreements and applicable law did not prevent its passing through the franchise fees as it had done . . . .”

Page 50: PEG

Comments: Akakū received strong, unequivocal support from the public in the community needs assessment and in the public hearings on OTW’s Application, including signatures from 334 individuals on a petition supporting Akakū. Detailed proposals for PEG support are included in the accompanying recommended franchise language.

Page 51: OTW states that when it comes to customer service, it provides “Continuous Technical Improvement . . . Ease of Access . . . First Call Resolution . . . [and] Expanded Capacities . . .” OTW states, “Oceanic plans no further expansion of its customer service offices . . . .”

Comments: OTW does not disclose in its Application the widespread dissatisfaction with OTW’s customer service. Numerous subscribers who testified at DCCA’s Kahului hearing on OTW’s Application complained bitterly about OTW’s terrible service. Responding to OTW’s request for a 20-year franchise, one resident exclaimed, “Twenty years? I wouldn’t give them twenty mintues!” The situation is even worse in other parts of Maui County. Several subscribers from Hāna who provided video testimony to DCCA explained that OTW provides service to Hāna only once a week. If a problem occurs on the day after the OTW service person was there,

the subscriber has to wait six days for service---or longer if several people need service at the same time and can not all be assisted in one day.

OTW's failure to acknowledge these serious customer service issues, let alone commit to remedying them, is further evidence of its lack of good faith and disregard for the needs of Maui subscribers. One observer was amazed that Mr. Barlow, upon hearing the serious complaints in Kahului, didn't offer a pledge to address them.

OTW has two customer service offices in Maui County: one in Lahaina and one in a difficult to find location in Kahului. There are no customer service offices in South Maui, East Maui or Upcountry, or on Lāna'i or Molokai. OTW states in its Application that it has no plans for new customer service offices anywhere in Maui County for the next 20 years.

OTW's disregard for its subscribers in Maui County reflects the policies of its corporate parent. On the national level, Time Warner Cable is among the very worst performing companies in customer satisfaction.<sup>41</sup>

In 2013, Time Warner Cable showed its disdain for subscribers by using them as pawns in its hardball negotiating against CBS. Time Warner Cable blacked out CBS, Showtime and The Movie Channel programming for millions of customers. After an enormous public outcry, the company agreed to provide a credit for Showtime and The Movie Channel programming, but not the lost CBS programming.<sup>42</sup>

Time Warner Cable is literally a national joke when it comes to customer satisfaction. After the shutdown in October 2012, the public approval ratings of the United States Congress dropped to 10%. The audience on John Stewart's *Daily Show* burst into applause and laughter when correspondent John Oliver said that "the only previous instance of that level of disapproval, combined with that level of market retention, is Time Warner Cable." Another round of laughter followed as John Stewart called Congress the "Time Warner Cable of democracy."<sup>43</sup> The popular TV show "South Park" also skewered Time Warner Cable for its notoriously poor customer service.<sup>44</sup>

Cable subscribers continue to see a steady increase in fees, with Oceanic Time Warner Cable annual revenues from Maui County rising from \$52,647,675 to \$68,586,000 in the past five years, with fewer subscribers. This is consistent with Time Warner Cable's national strategy of focusing on higher-paying customers to boost earnings. The *New York Times* reported that Time Warner Cable's revenues increased in the second quarter of 2013, even after losing 191,000 television subscribers.<sup>45</sup>

OTW's financial statements support the claim that the company is pulling money out of the community without delivering adequate value in return. OTW's annual revenues from Maui County subscribers have increased by 30% in the six years from 2007 to 2012. OTW's annual revenues from Maui County were \$52,647,675 in 2007 and \$68,586,000 in 2012, an increase of \$15,938,325, even though the number of subscribers decreased by almost 1,000. OTW's net profit margin for the Maui County franchises was 34% in 2012.

During the same six-year period, OTW's selling, general and administrative expenses for its Maui County franchises increased by \$9,244,250. This does not include its cost of revenues or its capital expenditures. Time Warner Cable's most recent annual financial statement filed with the SEC explains what is included in selling, general and administrative expenses.

Selling, general and administrative expenses include amounts not directly associated with the delivery of services to subscribers or the maintenance of the Company's delivery systems, such as administrative labor costs, marketing expenses, bad debt expense, billing system charges, non-plant repair and maintenance costs and other administrative overhead costs.<sup>46</sup> (p39)

For example, in 2012, Time Warner Cable's selling, general and administrative expenses increased as a result of higher compensation, higher pension costs, increased facilities expense and increased legal costs.<sup>47</sup> It is hard to believe that these types of expenses have increased by more than \$9 million in Maui County alone in 2007 – 2012. Although the public has no access to OTW's detailed financial information, DCCA in examining the financial fitness of OTW may inquire as to where all these millions from Maui subscribers are going.

Time Warner Cable's 2012 financial statements claims that "TWC is continually improving its installation and service processes, including shortened service windows and guaranteed on-time appointments."<sup>48</sup> The accompanying proposed language for the renewed franchises includes recommendations for improving OTW's customer service in Maui County.

Thank you for your consideration in reviewing these detailed comments and the proposed language for the renewed franchises, in Part Two of these comments.

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<sup>1</sup> *Hawaii Broadband Strategic Plan*, State of Hawaii Department of Commerce and Consumer Affairs (2012), p.39

[http://files.hawaii.gov/dcca/broadband/arra-1/Hawaii\\_Broadband\\_Strategic\\_Plan\\_Dec\\_2012.pdf](http://files.hawaii.gov/dcca/broadband/arra-1/Hawaii_Broadband_Strategic_Plan_Dec_2012.pdf)

<sup>2</sup> DCCA Decision & Order (D&O) No. 317 (Mar. 28, 2005), p.6

<sup>3</sup> *Three Hana Seniors Win Prestigious Gates Scholarships*, Civil Beat, April 20, 2012.

<http://www.civilbeat.com/articles/2012/04/20/15621-three-hana-high-seniors-win-prestigious-gates-scholarships/>

<sup>4</sup> *In Cable Franchise Deal, New York City Snatches Up Commitments to High-Speed Internet*, techpresident.com, August 10, 2011.

<http://techpresident.com/short-post/cable-franchise-deal-new-york-city-snatches-commitments-high-speed-internet>

<sup>5</sup> Time Warner Cable Inc. Form 10-K for the fiscal year ended December 31, 2012, p.13.

<http://www.sec.gov/Archives/edgar/data/1377013/000119312513062081/d483194d10k.htm>

<sup>6</sup> United States Census, State and County QuickFacts, Maui County, Hawaii.

<http://quickfacts.census.gov/qfd/states/15/15009.html>



<sup>7</sup> *Oceanic Internet Upgrade*, The Molokai Dispatch, July 22, 2013  
<https://themolokaidispatch.com/oceanic-internet-upgrade/>

<sup>8</sup> DCCA Cable Advisory Committee (CAC) Minutes of Meeting on December 12, 2011, p.3,  
[http://files.hawaii.gov/dcca/catv/cable\\_advisory\\_committee/CAC-minutes-meeting-12-12-2011-final-01-11-2012.pdf](http://files.hawaii.gov/dcca/catv/cable_advisory_committee/CAC-minutes-meeting-12-12-2011-final-01-11-2012.pdf)

<sup>9</sup> *Id.* at p.2.

<sup>10</sup> *Oceanic Time Warner Cable ending deep discounts for Hawaii nonprofits*, Pacific Business Journal, September 27, 2013  
<http://www.bizjournals.com/pacific/news/2013/09/27/oceanic-time-warner-cable-ending-deep.html?page=all>

<sup>11</sup> “*Big Cable’s Sauron-Like Plan for One Infrastructure to Rule Us All*,” Wired, July 10, 2013.  
<http://www.wired.com/opinion/2013/07/big-cables-plan-for-one-infrastructure-to-rule-us-all/>

<sup>12</sup> “*When Will the Rest of Us Get Google Fiber?*” MIT Technology Review, February 4, 2013.  
<http://www.technologyreview.com/news/510176/when-will-the-rest-of-us-get-google-fiber/>

<sup>13</sup> <http://www.fcc.gov/encyclopedia/cablecards>

<sup>14</sup> *Id.* (emphasis added)

<sup>15</sup> *Hawaii Broadband Strategic Plan*, *supra*, p.44

<sup>16</sup> *Id.*

<sup>17</sup> Financial Statements (Unaudited) of Oceanic Time Warner Cable (Maui) and Oceanic Time Warner Cable (Lahaina) for year ended December 31, 2012, p.5, n.2.

<sup>18</sup> *Oceanic Time Warner Cable, a subsidiary of Time Warner Cable, Inc.*, Order on Review, 24 FCC Rcd 8716 (2009), p. 8726 (footnote omitted).

<sup>19</sup> 27 C.F.R. § 76.1603(c) requires a cable operator to provide “30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change.”

<sup>20</sup> 24 FCC Rcd at 8727.

<sup>21</sup> *Mauna Kea Broadcasting Company, Licensee of Television Station KLEI-DT, Kailua-Kona, Hawaii v. Time Warner Entertainment Company, L.P., d/b/a Oceanic Time Warner Cable, and Hawaiian Telcom, Inc., d/b/a Hawaiian Telcom Services Company, Inc.*, Memorandum Opinion and Order, 27 FCC Rcd 13188 (Med. Bur. 2012).

<sup>22</sup> <http://www.ag.ny.gov/press-release/ag-schneiderman-obtains-22-million-refunds-18000-time-warner-cable-consumers-upstate>

<sup>23</sup> *Id.*

<sup>24</sup> “*Time Warner Cable Faces Class Action Suits in NY, NJ Over Modem Fees*,” Nov. 14, 2013,  
<http://stopthecap.com/2012/11/14/time-warner-cable-faces-class-action-suits-in-ny-nj-over-modem-fees/>

<sup>25</sup> *Oceanic Time Warner to Increase Monthly Fee for Internet Modem*, August 14, 2013.  
<http://damontucker.com/2013/08/14/oceanic-time-warner-to-begin-charging-monthly-fee-for-internet-modem/>

<sup>26</sup> [http://help.twcable.com/twc\\_sub\\_agreement.html#section8](http://help.twcable.com/twc_sub_agreement.html#section8)

<sup>27</sup> <http://www.timewarnercable.com/en/residential-home/support/faqs/faqs-internet/internetmodemlease/why-are-you-charging-me-for-the-internet-modem.html>

<sup>28</sup> <http://www.timewarnercable.com/en/residential-home/support/faqs/faqs-internet/internetmodemlease/does-the-internet-modem-lease-apply.html>

<sup>29</sup> *A Quirk in Time Warner Cable's New Modem Fee*, The New York Times, October 9, 2012. [http://bits.blogs.nytimes.com/2012/10/09/time-warner-cable-modem-fee/?\\_r=0](http://bits.blogs.nytimes.com/2012/10/09/time-warner-cable-modem-fee/?_r=0)

<sup>30</sup> *Id.*

<sup>31</sup> *Cable Tops Media Sector Profitability: E&Y Forecast*, Multichannel News, October 331, 2013. <http://www.multichannel.com/blogs/i-was-saying/cable-tops-media-sector-profitability-ey-forecast>

<sup>32</sup> *Time Warner CEO: "Bandwidth Costs Are Not Terribly Relevant to Broadband Pricing" Stop the Cap!*, July 28, 2011. [http://stopthecap.com/2011/07/28/time-warner-ceo-bandwidth-costs-are-not-terribly-relevant-to-broadband-pricing/?utm\\_source=twitter&utm\\_medium=social&utm\\_campaign=Time+Warner+CEO:+%22Bandwidth+Costs+Are+Not+Terribly+Relevant+to+Broadband+Pricing%22](http://stopthecap.com/2011/07/28/time-warner-ceo-bandwidth-costs-are-not-terribly-relevant-to-broadband-pricing/?utm_source=twitter&utm_medium=social&utm_campaign=Time+Warner+CEO:+%22Bandwidth+Costs+Are+Not+Terribly+Relevant+to+Broadband+Pricing%22)

<sup>33</sup> Time Warner Cable Inc. Form 10-K for the fiscal year ended December 31, 2012, *supra*, p.43.

<sup>34</sup> <http://blogs.wsj.com/corporate-intelligence/2013/10/01/coming-soon-to-time-warner-cable-a-proxy-fight/>

<sup>35</sup> DCCA Cable Advisory Committee (CAC) Minutes of Meeting on November 13, 2012, p.3. [http://files.hawaii.gov/dcca/catv/cable\\_advisory\\_committee/CAC\\_11-13-12\\_Meeting\\_Minutes.pdf](http://files.hawaii.gov/dcca/catv/cable_advisory_committee/CAC_11-13-12_Meeting_Minutes.pdf)

<sup>36</sup> *Study: Number of Global Digital TV Homes Hits 675 Million*, The Hollywood Reporter (June 27, 2012) <http://www.hollywoodreporter.com/news/global-digital-pay-tv-households-342491>

<sup>37</sup> CAC Minutes of Meeting on November 13, 2012, *supra*, pp. 2-3.

<sup>38</sup> *Id.* p.2.

<sup>39</sup> *Id.* p.3.

<sup>40</sup> *Id.* p.4.

<sup>41</sup> <http://consumerist.com/2013/05/21/comcast-time-warner-cable-bring-up-rear-in-cable-customer-satisfaction/>

<sup>42</sup> *Time Warner Cable Will Credit Showtime Subs for Blackout, But Nothing for Loss of CBS*, Variety, August 2, 2013 <http://variety.com/2013/biz/news/time-warner-cable-will-credit-showtime-subs-for-blackout-but-nothing-for-loss-of-cbs-1200573053/>

<sup>43</sup> <http://jezebel.com/john-oliver-congress-is-the-time-warner-cable-of-demo-1440622814>

<sup>44</sup> <http://variety.com/2013/tv/news/south-park-skewers-cable-companies-murder-porn-tv-1200693322/>

<sup>45</sup> [http://www.nytimes.com/2013/08/02/business/media/directv-and-time-warner-cable-lose-subscribers-but-revenues-rise.html?\\_r=0](http://www.nytimes.com/2013/08/02/business/media/directv-and-time-warner-cable-lose-subscribers-but-revenues-rise.html?_r=0)

<sup>46</sup> Time Warner Cable Inc. Form 10-K for the fiscal year ended December 31, 2012, *supra*, p.39

<sup>47</sup> *Id.*, p.46

<sup>48</sup> *Id.*, p.5.

**Comments by Akakū: Maui Community Television  
On the Application of Oceanic Time Warner Cable LLC (“OTW”)  
To Renew Its Franchises for Maui County and Lāhaina**

**Part Two: Recommended Franchise Provisions**

This document sets out some of the specific provisions that we believe should be included in any renewal franchises issued to Oceanic Time Warner Cable LLC (“OTW”). We would be happy to provide more information as to why we believe that each provision is supported by the needs assessment for Maui County and public hearings.

If these conditions, or similar conditions are not agreed upon, we believe the State should seriously consider commencing a contested proceeding.

Generally, we have limited the language to cable-service related matters. However, as we have explained in our accompanying comments on OTW’s Application for franchise renewals, the Application does raise important broadband issues that the DCCA should approach carefully. As is apparent from our comments on the Application, Akaku shares the interest of many members of the Maui community in ensuring that broadband services are available universally, as demonstrated in the needs assessment. It may be possible to address those issues. Among other things, in many of its franchise areas (including Maui County), Time Warner Cable and its affiliates are installing wi-fi gateways in the streets and using those gateways to provide wi-fi services. If the gateways are part of the cable system used in the provision of cable services, then it may be appropriate to address the deployment of those wi-fi nodes, and possibly the provision of free services in the cable franchise. If the gateways are *not* cable-related, the DCCA or another state agency may be in a position to adopt conditions (in the form of fees, deployment conditions, free services or the like) on OTW’s use of public property to provide WiFi gateways. Either way, the State should ensure that the public receives benefits from OTW’s use of public property to provide commercial services. What we believe is important is that the DCCA (a) carefully consider the scope of its authority and ensure that it does not ignore broadband issues that it is in a position to address, and equally importantly (b) ensure that nothing in any Decision & Order grants authorizing to use public rights of way to provide non-cable service without receiving appropriate benefits for the public.

We also recognize that any language would need to be incorporated into an appropriate Decision & Order format, with additional appropriate explanations. Our goal was to provide language that we believe may provide a sound basis for moving forward on key issues for the future.

1. SCOPE OF FRANCHISE

Provisions of this franchise that relate to cable services are adopted consistent with Title VI of the Communications Act of 1934, 47 U.S.C. § 521 et seq. The franchise issued subject to Title VI is only for construction and operation of a cable system to provide cable

services. The franchise fee provided for in this Decision and Order is only a fee in return for the grant of the right to provide cable services via a system located in the public rights of way. Any non-cable service obligations contained herein are either voluntarily assumed by OTW, or are pursuant to the authority of the State to establish conditions on the use of the rights of way to provide non-cable services via facilities in the rights of way.

Renewal of this franchise does not relieve OTW of obligations under previous Decisions and Orders except as expressly stated.

*Rationale: OTW points out that recent FCC Orders can be read to limit the scope of franchises issues pursuant to Title VI. Those same orders recognize that states may have authority to impose obligations based upon use of the rights of way to provide other services. See, e.g., Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, Second Report and Order, 22 FCC Rcd 19633, 19638 n.31 (2007) (cable operator is not required to pay franchise fee on revenues from non-cable services, but "[t]his finding, of course, does not apply to non-cable franchise fee requirements, such as any lawful fees related to the provision of telecommunications services.")*

*OTW appears to agree that it can be bound by conditions to which it agrees. In light of OTW's position, to the extent the renewed franchises contain any broadband conditions, it should be clear that those are undertaken voluntarily and do not depend on Cable Act authority. This also requires carefully delimiting the scope of the franchise granted.*

## 2. DEFINITIONS

2.1 Gross Revenues: "Gross Revenues" means all cash, credits, property of any kind or nature or other consideration derived directly or indirectly by OTW, its affiliates, subsidiaries, parents, and any other person or entity in which OTW has a financial interest or which has a financial interest in OTW derived from the operation of the Cable System to provide Cable Services, and such other revenues as may be included consistent with federal law as it now exists or may hereafter be amended, including by way of example and not limitation:

- (a) Revenue from all charges for entertainment and non-entertainment services and equipment provided to Subscribers, including DVR and other services and equipment;
- (b) Revenue from all charges for the insertion of commercial advertisements upon the Cable System;
- (c) Revenue from all charges for the leased use of studios or Channels;
- (d) Revenue from all charges for the installation, connection and reinstatement of equipment necessary for the utilization of the Cable System and the provision of Subscriber and other service; and

(e) Revenue from the sale, exchange or use or cablecast of any programming developed for community use or institutional users.

(f) Gross Revenues shall include, valued at contract price levels, the value of any goods, services, or other remuneration in non-monetary form, received by OTW or others described above in consideration of performance by OTW or others described above of any advertising or other service in connection with the Cable System.

Provided that, this definition shall not be interpreted to require affiliates, subsidiaries, parents, and any other person or entity in which OTW has a financial interest or which has a financial interest in OTW to pay a franchise fee on revenues for which OTW has already paid a franchise fee.

*Rationale: This definition is based on prior definitions used in the original Decisions and Orders for the cable franchises granted to Time Warner Entertainment Company, L.P. It allows the State to collect the maximum allowable franchise fee for cable service under federal law, which the current definition does not. We would suggest that the State collect the full franchise fee, and then use the additional funds to support broadband initiatives by Akakū. (See Section 3)*

2.2 Designated Entity: "Designated Entity" means Maui County Community Television, Inc. d/b/a Akakū: Maui Community Television as the entity designated by the Director to manage the public, education and government ("PEG") access channels in Maui County.

2.3 Provide: Except where otherwise specifically stated, an obligation to "provide" any facility or equipment (including but not limited to interconnections and connections) shall include the obligation to provide initially, to maintain, and to upgrade and replace such facility or equipment as required to achieve the objectives of the obligation.

### 3. FRANCHISE FEE

The State desires to collect the maximum cable service franchise fee it may collect consistent with federal law, in return for the grant of the franchise to provide cable services, currently 5% of Gross Revenues. OTW is required to pay that maximum franchise fee. Three percent (3%) of Gross Revenues is to be paid to the Designated Entity, as described in Section 5.18(a) below. One per cent of Gross Revenues is to be paid to the Hawaii Public Broadcasting Authority. [ ] percent ( %) is to be paid to DCCA for administrative costs. The remainder shall be paid to the Designated Entity for use in broadband development projects (this specific designation does not prevent use of Access Operating Fees and other funds for broadband). Aside from these franchise fee amounts, OTW agrees that no cost it is required to incur in connection with this franchise, and no amount it is required to pay constitutes a franchise fee within the meaning of 47 U.S.C. § 542.

*Rationale: This maintains the current allocation of franchise fees among the Designated Entity, HPBA and DCCA, but ensures that OTW pays the entire 5% (or higher amount) permitted under federal law. Any additional amounts collected would be available for use by the Designated Entity to promote broadband adoption and use.*

#### 4. SYSTEM DESIGN

##### 4.1 Network upgrade.

(a) Within two years of the date of this Decision and Order, OTW shall upgrade the Cable System so that it provides the same level of services in Maui County, with the same technical quality and reliability, as OTW provides in the City of Honolulu.

(b) It must provide this upgraded service in any area within the franchise area where it is providing cable services as of June 1, 2013.

(c) It must also provide this upgraded service to any area where:

(i) Twelve entities within a one square mile area agree to take any service offered by OTW for a period of at least twelve months; or

(ii) The density is at least twenty-five residential units per square mile; or

(iii) The entity requesting service is willing to pay a percentage share of the actual incremental cost of extension construction where the percentage equals the number of residential units per square mile divided by 25.

(d) If OTW modifies the Cable System or its operations in a manner that has the effect of requiring modifications to public, educational and governmental ("PEG") use facilities and equipment, or institutional network facilities and equipment, OTW will bear any cost required to ensure that there is no adverse effect on the Designated Entity or to users of the institutional network.

*Rationale: Given the length of time that OTW has held the franchises for cable service in Maui County, and its profitability, we believe it is fair and essential to require it to take advantage of technologies and to expand its systems so that it can reach residents and businesses throughout the County, who will greatly benefit from connectivity and access to cable services. A build-out requirement based on linear mileage is not appropriate in a rural setting and where roads follow natural, non-linear geography.*

*OTW can always seek appropriate relief in particular cases, and where justified, the DCCA can consider alternative means of ensuring all communities in the County receive adequate service.*

#### 5. PEG CHANNELS

5.1 Number. OTW shall make available six (6) channels on the subscriber network for PEG use and in addition provide any statewide PEG channels it may be required to carry under any Decision and Order. Except where otherwise stated, the requirements of this Order do not relate or refer to the statewide channels.

5.2 Additional Channels. Additional channels shall be provided upon request by the Designated Entity when PEG channels are in use during 80 percent of the weekdays, Monday to Friday, for 80 percent of the time during any consecutive three hour period for six weeks running. OTW shall have six months from the date of the request in which to provide the new channel, but OTW need not provide additional channels until after the date scheduled for completion of the upgrade required by Section 4.1 above.

5.3 Management. Each PEG channel shall be managed by the Designated Entity.

*Rationale: The proposal maintains the current PEG channels in the County, the need for which has been firmly established, and also provides for reasonable growth in channel capacity if the channels are meeting certain use triggers. This ensures that the public is not "capacity strapped" in the future.*

5.4 Channel Defined. The term "channel" refers to the capacity equivalent to that provided to carry the full signal provided by full-power local broadcast television stations carried on the system. If some broadcast stations are provided more capacity than others, the term refers to the maximum capacity provided to any station. The capacity provided to broadcast stations is currently used at least to deliver simulcasts of standard definition and high definition signals, and may be used to deliver a standard definition analog version, a digital analog version, and a high definition version. Capacity may also be provided for multicasting. A Designated Entity may use the PEG capacity in the same way local full-power broadcasters use capacity on the cable system, including without limitation, for simulcasting PEG programming in standard definition and high definition formats; for multicasting; or for transmitting data or interactive content. The Designated Entity may place any information in the PEG signal that a broadcaster includes in its signals, including but not limited to closed captioning, multi-lingual audio, and video description, and the same shall be as accessible to viewers as similar information provided by local full-power broadcasters. Each signal stream provided and each signal for simulcast shall be carried on a unique channel number. The system shall be designed so that the Designated Entity may take full advantage of the capacity dedicated for PEG use. Nothing in this Section 5.4 prevents OTW from providing PEG signals to subscribers on a switched basis, so long as (i) there are no differences in the viewer experience between switched and non-switched channels and (ii) there is no need for the subscriber to pay any additional charges than the subscriber already pays or request any different equipment than the subscriber actually uses to receive commercial services from OTW; provided, however, that OTW shall satisfy the requirements of this clause (ii) if it provides the subscriber (at no charge and without special request) a device that enables the subscriber to receive the SDV signal.

*Rationale: We recognize that the current definition of channel is probably outdated, but the old definition required provision of the same amount of capacity used to deliver full-power broadcast stations, and the new franchises should do the same, thus ensuring that PEG can provide programming equivalent to that provided by broadcast stations. This also ensures that PEG can be provided in high definition, something increasingly critical given the broad acceptance of the format, and the fact that programming is now being produced in that format by Akakū, but reduced in quality for delivery to subscribers.*

*We recognize that capacity may be switched or not switched. As long as the viewer experience is identical, the switched channels meet all other PEG requirements, and subscribers are not required to make special efforts or pay more to receive PEG, switching is not inherently objectionable. OTW should satisfy the requirements of this section by providing digital converters to all subscribers who do not have them. This section should be read in conjunction with the digital transition section.*

5.5 Delivery of Channels.

(a) Except as otherwise provided in this Decision and Order, every PEG channel must be delivered so that it is viewable by every subscriber without any expense or equipment beyond the expense incurred or the equipment actually used by the subscriber to receive comparable broadcast signals. For example, if a subscriber can view a high definition broadcast station, that subscriber must also be able to view high definition PEG channels, without additional cost or equipment; and if a customer cannot view high definition broadcast signals, that customer need not be able to view the high definition PEG channels.

(b) OTW currently delivers signals in analog and digital formats. DCCA permitted OTW to transition two educational channels in Maui County to digital format, on the condition that OTW provide converters on request that would allow subscribers to view the PEG channels. However, the best available evidence indicates that the vast majority of analog subscribers in Maui County did not receive converters, meaning that the subscribers have lost access to important local programming. About 40% of OTW subscribers remain analog subscribers. Because of the importance of PEG, except with respect to the channels that have already transitioned, OTW shall:

i. either continue to provide PEG channels in an analog format until all broadcast signals on the cable system are provided in a digital format (while delivering PEG simulcast signals in the same format as local broadcast signals are delivered); or

ii. provide the current analog signals in a digital format and ensure those signals are viewable by every subscriber by providing every subscriber who does not already lease a converter from OTW with two devices that convert the digital signals to an analog format at no charge, until such time as all signals on the Cable -System are provided in digital format, or such time as OTW shows that 95% of all subscribers receive digital service and would be able to view the PEG signals without additional equipment or expense. The converters must have been provided to subscribers before any PEG channel being delivered in an analog format as of June 1, 2013 may be provided solely in digital formats.

*Rationale: Experience suggests that the provision of PEG in digital format has resulted in a substantial part of the population losing access to the PEG channels. Given the support for Akaku and community media, we believe that this is because of the cost and inconvenience of requiring consumers to take special steps to receive PEG that is not required for any other channel. If a subscriber takes a premium program package, OTW*



*ensures the customer gets the equipment required to view the channel. Similarly here, every subscribers should receive the equipment required to view PEG. And since the digital transition provides a substantial commercial benefit to OTW, the cost of providing that equipment should be borne by OTW, not subscribers.*

(c) OTW will not change the current existing PEG channel numbers or positions except with the consent of the DCCA and after consultation with the Designated Entity. Consent to a change will not be granted unless:

(i) the channel number or position being changed has not been previously changed in the preceding 24 months;

(ii) the new channel position is near the current channel positions, or near the local, full-power broadcast channels;

(iii) OTW agrees to pay all the costs of the Designated Entity associated with the change in the channel number or location; and

(iv) OTW agrees to publicize the change by broadcasting alerts on the affected channels continuously for two weeks prior to the change; airing 1,000 cross-channel public service announcements per week regarding the change, for the two weeks prior to the change; and publishing a one-quarter page ad explaining the change in a Maui County newspaper of daily circulation every day for one week prior to the change. All such publicity shall include information about what is changing and why; instructions for installing converters; reminders to rescan or reprogram digital set-top boxes as may be needed to continue to view the channels; where the channels may be found on a QAM tuner, if this is a different location than on the converter; and a telephone help number and website url for questions and assistance. ;

(d) New PEG channels, or multicast (including high definition) PEG signals will be assigned a channel number near other local full power broadcast channels; if channels are grouped based in part on format, PEG and local full power broadcast channels carried in the same format will be grouped together. Once a channel number is assigned, the process for changing the channel number will be as described in subparagraph (c).

*Rationale: PEG channels operate on a relatively low budget, so it is important that subscribers are able to easily locate them. In addition, some of the target markets will rely on channel surfing to find critical PEG programming. This also adds to the importance of maintaining a consistent channel identity for PEG channels and locating PEG channels where the channels may be easily found.*

(e) OTW will provide PEG channels on frequencies so that the signals will be viewable to schools and other public institutions if they are currently viewable..

*Rationale: digital signals can be delivered on any frequency designated by the*

*operator. If PEG channels are placed on high frequencies, some of the internal wiring in schools and other public buildings may not support the distribution of that programming throughout the building. In Texas, Time Warner agreed to provide PEG channels on frequencies so that the signals could be viewed by schools and public institutions over existing wiring – at least if the wiring were adequate to view the analog signals (in some cases, of course, wiring to a particular outlet may be so defective that it would not support transmission of PEG programming at any frequency). In other words, this simply requires OTW to maintain the status quo.*

(f) In addition to the channels described above:

(i) OTW will provide the equipment and facilities and make improvements to them necessary to allow subscribers to access PEG programming “on demand.” Subscribers must be able to select PEG programming via a menu that is reasonably acceptable to the Designated Entity, and the format, performance and other characteristics that affect the viewer experience must be comparable to video on demand provided for commercial services. OTW must provide the facilities and equipment required, and make improvements to the same, and provide the necessary information so that the Designated Entity is able to remove and add programming for viewing “on demand” without significant delay. OTW must provide at least 25 hours of on-demand capacity within six months of the date of this Decision and Order, and may be required to provide up to 250 hours of on-demand capacity within eighteen months of the date of this Decision and Order, provided that the Designated Entity shows DCCA that it has a reasonable plan for utilizing additional capacity; or

(ii) Within twelve months of the effective date of this franchise, OTW must make PEG programming available on any platform it makes commercial programming available. A “platform” may include, but is not limited to a OTW website through which subscribers may view programming on the cable system in real time or on demand; or an application through which a cable service subscriber can view programming on a tablet, smartphone or other device. PEG will be accessible via the platform in a manner such that format, performance and other characteristics that affect the viewer experience are comparable to the viewer experience for other commercial programming provided via the platform (for example, if commercial programming is available in real time and on demand, PEG programming must be available in real time and on demand). OTW shall provide the facilities and equipment (including servers) required, and make improvements to the same, and provide any information required so that the entity designated by the State to manage PEG channels is able to take full advantage of the capabilities of the platform. If commercial programming is provided on demand via the platform, OTW must provide at least 250 hours of on-demand capacity, provided that the entity responsible for managing PEG shows DCCA that it has a reasonable plan for utilizing that capacity.

*Rationale: The needs and interest report showed a clear interest in video on demand provided via cable system servers. However, it may be as beneficial, and serve similar interests, if the Designated Entity is able to take advantage of the platforms operators are developing to provide “cable anywhere” to subscriber on computers, smartphones, tablets*

*and other devices. We have therefore proposed to give OTW an alternative for satisfying video on demand needs and interests by providing adequate video on demand capabilities or through another means. The 250 hours reflects the fact that VoD may be particularly useful for archiving series programming – for example, classes aimed at people seeking a high school equivalency degree. Each course would require about 40 hours of archiving per semester. Public meetings likewise would require significant archival capacity.*

(g) PEG channels may be used for any purpose permitted under federal law. Nothing herein prevents a Designated Entity from using the PEG channels to generate revenues to support PEG, through sponsorships or other means.

5.6 In addition to activating and providing fifty (50) origination points on the institutional network, OTW, at its cost, shall maintain and operate the subscriber network and provide and maintain ten (10) sets of the necessary encoding and decoding devices and modems so that the Designated Entity may transmit signals in “real time” upstream from distant locations to the playback centers for any of the PEG channels (the parties anticipate that this may be done by providing mobile DOCSIS cable modems that can be connected to the subscriber network at permanent or temporary drops and that can use upstream capacity on the subscriber network to transmit programming via the subscriber network and the connections to PEG playback centers). OTW shall also maintain and operate the system so that signals can be routed onto the PEG channels and so that the Designated Entity may, from its master control site, receive signals from and transmit signals to the headend and out through the institutional network and the subscriber network on the appropriate channels. The Designated Entity must be able to control signals from distant locations and preview them before they are transmitted to subscribers or to the institutional network.

To facilitate the exchange of recorded programming from locations throughout the County, the Designated Entity may identify 10 locations within the County to serve as permanent upload points, and OTW shall provide the highest speed Internet connection offered by OTW within that location’s area, or an alternative connection with equivalent capacity.

5.7 OTW shall at all times provide a dedicated connection to the master playback center for each PEG channel with sufficient upstream and downstream capacity so that each Designated Entity can program the channels under its control; so that the full signals provided by the Designated Entity are picked up and delivered without deterioration or manipulation that may affect signal content or quality; and so that the Designated Entity may take full advantage of the channels and capabilities required under Section 2.3. In addition, OTW shall provide a connection with sufficient activated capacity so that the Designated Entity may program all the subscriber network PEG channels for which it has playback responsibility simultaneously, and so the public access master playback control can preview signals originated elsewhere and route them onto the appropriate channels.

*Rationale: Akakū’s ability to originate and easily receive programming from locations throughout the County is hampered by the absence of adequate connections to remote locations. We believe those needs could be satisfied with dedicated connections, but could also be satisfied through other means, including using cable system upstream capacity*

*at temporary and permanent locations. We therefore propose to provide the connections but to allow OTW some flexibility in terms of the means of providing the connections]*

5.8 OTW shall ensure that signals as received by subscribers (whether originated at the master control or at distant locations) meet or exceed signal quality standards established by the FCC, or such other standards as may be required under other provisions of this franchise, but OTW is not responsible for signal quality problems that result from the failure of the Designated Entity to provide an adequate signal at the point the signal is delivered to OTW for transmission to the playback center, or to the OTW headend. Delivery is deemed to occur at the input of the modulator, cable modem, encoder (or other device used to place a signal on the network for transmission to a playback center or to the headend). OTW shall use components and provide maintenance services for PEG channels and associated system equipment at least of the same quality as the components and maintenance services for other channels. The obligation to maintain and operate includes, but is not limited to, the obligation to provide connections and electronics, including temporary drops, and connections from the playback center to the headend as required to accomplish the foregoing, including all necessary modulators, demodulators, cable modems, decoders, encoders or similar devices.

5.9 Each subscriber must be able to record, select and view PEG channels in the same manner local, full-power broadcast channels can be recorded, selected and viewed. From a subscriber viewpoint, there should be no difference between PEG and local full-power broadcast channels (other than differences that are a result of the signal delivered to OTW). PEG channels shall be provided so that designated entities may deliver, and subscribers may receive, PEG signals equivalent in quality to local full-power broadcast signals carried on the system (this includes, but is not limited to, delivery of a high definition signal to subscribers who have the capability of receiving high definition signals, and simultaneous delivery of a standard definition signal, closed captioning, stereo, and multiple audio programming).

5.10 The Designated Entity has no obligation to provide a signal to OTW in a particular format. OTW may convert PEG programming to any format, so long as it is delivered in a manner that complies with the other requirements of this section. If OTW simulcasts broadcast signals in higher quality format and lower quality formats, the Designated Entity may, at its option, deliver a single higher quality signal for delivery in the higher quality and lower quality formats used for simulcasting broadcast signals. OTW is not obligated to upconvert a signal under this section, but may be required to downconvert a signal.

5.11 OTW, upon request of the Designated Entity, will provide technical assistance or diagnostic services to determine whether or not any problem with the PEG signals is the result of matters for which OTW is responsible, and if so OTW will take immediate corrective actions.

*Rationale: These provisions ensure that the PEG channels are in all respects provided to the subscriber such that (a) there is no signal deterioration; and (b) the channels function identically to the broadcast channels in all respects. By contrast, some operators in*

*other states are providing PEG in a manner such that it is less accessible, cannot be recorded, and is of lower quality than broadcast channels. This language protects the traditional equality of treatment accorded PEG in Hawaii; it is intended that as broadcast channels improve and change with technology, so will PEG.*

5.12 OTW shall provide the PEG channels to any person who subscribes to any level of cable video programming service.

*Rationale: Universal access to PEG is usually a requirement of franchises, and is usually accomplished by requiring that PEG be provided as part of basic service. But it is not clear that operators will always be required to provide a "basic service" tier. Rather than tie to a particular tier, we've required what the "basic tier" requirement was meant to ensure – every subscriber should have access to every PEG channel without special costs, and without making special requests.]*

5.13 If channels are selected through a menu system, the PEG channels shall be displayed in the same manner as other channels. If the channel guide includes individual program information for any broadcast channel, it must also provide individual program information for the PEG channels, so long as it, or its designee, is provided that information by the Designated Entity.

*Rationale: In the current environment, channel listings are critical to allow viewers, and especially viewers who have disabilities, to identify programming of interest, to select that programming, and to record that programming.*

5.14 Whether specifically enumerated herein or not, OTW shall continue through this franchise term to provide all PEG use facilities and equipment that it was providing or was required to provide as of January 1, 2012.

5.15 OTW shall interconnect its cable system in the County with other cable systems owned by OTW or an affiliate in Hawaii, for the purpose of allowing the exchange of PEG programming, and shall deliver the interconnected PEG signals to the Designated Entities for retransmission on the PEG channels.

5.16 OTW shall also interconnect its system with any other cable systems in Maui County for the purpose of exchanging PEG programming, upon such terms and conditions as the DCCA may direct.

5.17 Each interconnection must support, by way of example and not limitation, retransmission of PEG signals from another location in real time to permit exchange of live coverage of public meetings.

*Rationale: If competition does develop, we need to be able to exchange PEG programming across cable systems; and within the OTW network, there is an increasing need and interest in being able to view PEG programming from other counties, as reflected by the statewide educational channels.*

5.18 In addition to satisfying the other requirements of this Decision and Order,

OTW is required to provide the following additional PEG use funding:

(h) An Access Operating Fee equal to three per cent of Gross Revenues, paid annually to the Designated Entity;

(b) The amount payable pursuant to Section 3 above for use in broadband development projects; and

(b) Capital support equal to \$0.75 per subscriber per month, paid annually to the Designated Entity, and increased annually by the U.S. Department of Commerce Consumer Price Index for the State of Hawaii, with 2013 being the base year.

*Rationale: This maintains the status quo for operating funds; provides additional franchise fees for local broadband projects; and provides an ongoing capital support that is consistent with Akaku needs for the future.*

5.19 OTW shall provide the following promotional support for access: 100 cross-channel public service announcement spots daily to promote PEG programs and the availability of community programming facilities and training; Free drops to subscriber network.

5.20 OTW shall provide free drops to the subscriber network, as follows:

(a) continue to provide a free drop to the subscriber network and free basic and expanded basic service to each public and private school, public library branch, police and fire station, community center and public building and to such other institutions, including the Designated Entity as has been required, where the drop and service had been provided prior to January 1, 2014;

(b) provide a free drop to the subscriber network and free basic and expanded basic service to each public and private school, public library branch, police and fire station, community center, public building that requests a drop in writing. Where a drop requested under this Section would require OTW to install a drop longer than 400 feet in length measured from the closest street, OTW may charge the location for the reasonable cost of the labor and materials required to extend the drop beyond the 400 feet.

(c) OTW is only required to provide a single free drop to the subscriber network, to a single outlet at a point within the location selected by that location. However, the location at its own expense may extend the drop to multiple outlets and receive free basic and expanded basic service at each outlet, so long as such extension does not result in any violations of leakage standards which OTW is obligated to meet. A location that wishes to install multiple outlets may do so itself, or may contract with OTW to do so. OTW shall provide equipment so that the services can be received and individually tuned by each receiver connected to the drop at a location.

*Rationale: Cable franchises have long provided for free drops, but with the digitalization of the system it is now important to ensure that OTW also provides the*

*equipment that will be necessary to take advantage of those drops.*

5.21 If OTW utilizes technologies that allow it to collect data as to the number of viewers tuning to a particular channel or selecting a particular program, it will upon request share the viewership data for the PEG channels and programs, and such other channels or programs as may be reasonably designated for comparison purposes, with DCCA and the Designated Entity.

5.22 OTW shall not charge the State, the Designated Entity, or any PEG channel programmer for use of the PEG access channels, equipment, facilities or services, or for satisfying any of its obligations hereunder.

## 6. CUSTOMER SERVICE

6.1 OTW shall comply with all federal and state customer service standards, and in addition will comply with the customer service requirements established by the DCCA from time to time. Without limiting its obligation to comply with customer service standards established under federal, state law, OTW shall comply with the customer service standards set forth in this Decision and Order, which standards shall be treated as minimum, not maximum requirements. In the event of conflicts between standards, the stricter requirement shall control.

6.2 An "outage" is any event that results in a significant deterioration in the quality of any service offered by OTW. A loss of picture or sound, or a substantial deterioration in picture or sound on one or more channels is an outage.

6.3 At a minimum:

(a) OTW must install equipment, and maintain records so that it may prove that it is in compliance with each obligation hereunder. Failure to maintain records and install equipment shall be a violation of these standards.

(b) OTW shall provide the means to accept complaint calls twenty-four (24) hours a day, seven (7) days a week via a toll free number. A subscriber must be able to navigate any menu tree and reach a customer service representative within sixty (60) seconds. OTW must satisfy this standard 90 per cent of the time during normal operating conditions during each calendar quarter. Any outage or other service problem that affects cable services and non-cable services shall be treated as a cable service complaint for purposes of OTW's obligations under this provision.

(c) During normal operating conditions, any service complaints from subscribers shall be investigated and acted upon within twenty-four (24) hours. Any service complaint shall be resolved within three (3) business days. Any outages affecting more than one subscriber must be resolved within two (2) business days. If because of the nature of the complaint it cannot be resolved within these time periods (as might occur in the aftermath of a storm that causes significant power outages), OTW will not be deemed to be in violation of this section. But delay is not excused merely because of the location of the affected customers in the County.

(d) Upon notification by a subscriber of an outage, OTW shall credit a subscriber's account for loss of service. A subscriber is entitled to one day's credit for any day where the outage exceeds four (4) hours. The subscriber need not request a credit to receive a credit. The outage will be presumed to be a four hour outage unless OTW can verify otherwise. If OTW becomes aware of an outage that affects more than one subscriber, it will credit subscribers affected by the outage, to the extent that they may be identified, without the need for each subscriber to request a credit. OTW may seek a waiver of this automatic crediting requirement from DCCA if OTW can demonstrate that it is answering calls regarding outages and credit promptly.

(e) Subsection (d) applies to cable services, but OTW may opt to apply the same credit in connection with its provision of Internet services, and if so must notify DCCA, and will be liable for its failure to provide the credit. If OTW does not so opt, then the provision of a credit to a subscriber shall not affect operator liability under applicable consumer protection law, including for failure to deliver services promised, or for charging for services not actually delivered and shall not prevent the subscriber, the state or any entity authorized to bring an action from seeking relief under any provision of state law.

(f) Service windows shall be three hours. Installation and repair services must be provided six days a week, eight hours per day.

(g) During normal operating conditions, company must respond to a request for service and install service within seven (7) days. This standard must be met 95% of the time measured quarterly.

6.4 DCCA is aware that at the present time, certain areas of Maui County are not receiving service with the same speed as other areas. For this reason, these provisions will be read to require OTW to meet the install standard for each distinct geographic area within Maui County, as defined by DCCA.

## 7. TERMINATION PROVISIONS

If during the term of the franchise, the amounts payable by OTW to the Designated Entity decrease by more than 15% from higher of (a) the amount paid to the Designated Entity for the year prior to the date of this Decision and Order or (b) the amount paid to the Designated Entity during the first year of the renewed franchises, in 2013 dollars, DCCA may by written notice shorten the franchise term and require OTW to apply for a renewal franchise unless, within six months following the date of such written notice, DCCA and OTW agree to terms that, to the extent possible, restore funding for PEG.

DCCA may also by written notice shorten the franchise term and require OTW to apply for a renewal franchise if any material provision of the franchise is preempted or otherwise unenforceable or if OTW refuses to comply with any such material provision on the ground that it is preempted or unenforceable, or claims a right to compensation or offset if the provision is enforced; unless, within six months following the date of such written notice, DCCA and OTW agree to terms that, to the extent possible, restore the relative benefits and burdens of the franchise.



This provision is designed to allow DCCA to modify the franchise in light of technological or federal regulatory changes that result in changes in the amount received by the Designated Entity pursuant to this Decision and Order, or to terminate the franchise if the franchise no longer provides adequate protections to the public. DCCA may not shorten the franchise term if the reduction in payments to the Designated Entity is due to loss of subscribers to another franchised cable operator that is paying fees to the Designated Entity.