Testimonies Received at DCCA

From Maui Nui

Aloha Director Awakuni-Colon,
My name is Rosalyn Baker, I have the privilege to represent the 6th Senatorial District of South and West Maui in the State Senate and chair the Senate Committee on Commerce, Consumer Protection and Health. Mahalo to you and DCCA staff for coming to Lahaina so that we might comment on the franchise transfer request that affects the Hawaii marketplace. I appreciate this opportunity to share some thoughts and concerns regarding the pending request by Charter Communications to acquire the Oceanic Time Warner Company cable (OTWC)franchises in Hawai'i.

Hawai'i is a small cable market, nevertheless cable services are very important for our residents and visitors and we are a visitor-based economy. And on behalf of my constituents I request that Charter Communications share with us their commitments for the Hawaii franchises. The application by Charter is very generic in its proposals which is understandable. However, to go forward, I request that Charter be specific and explicit about how it will treat the Hawai'i franchises, specifically the services, plan for improvements and approach it will take to the Hawai'i franchise area. We expect transparency and we want bench marks with which to measure Charter's performance in Hawai'i.

It is important that the Hawai'i agreement with Charter Communications address the following:

1st -- Charter must agree to comply with all terms, requirements, currently in the HI Cable Franchises including any decisions and orders made by the DCCA

2nd -- Charter must provide details specific to Hawai'i about their proposed broadband service program to assist low-income customers -- how will it be implemented in Hawai'i -- eligibility, speeds, terms conditions, etc., in other words all the details. It sounds like great how idea, but we need Hawai'i specifics please. In addition, some of the customers who may be able to qualify also may be analog customers. How will you help them?

3rd -- Hawaii has significant parts of the state w/o access to cable services -- Charter's application speaks about expanding service to underserved and unserved and commits $2.5B to build out its network w/ 4 years of merger -- what is your commitment to Hawaii. We have a large analog users, partly because of our geography, partly because of cost. How will your commitment to all digital channels impact all our residents? What's your plan to assist that transition? Incentives, plans for a low cost package.

4th -- Charter must keep sales and customer service centers local for Hawaii. Need customer service personnel on Molokai and Lanai as well.

5th -- OTWC is currently expanding wifi access in HI. I respectfully request that Charter Communications commit to increasing those access points including but not limited to state/ local government buildings including schools and parks. The application says that Charter is committed to adding 300,000 new access point. How many of the 300,000 will be in Hawai'i.

6th -- Community TV PEG channels are very important to our far-flung communities. PEG channels keep citizens connected to their state and local government, offer educational opportunities online and on air and give community groups and individuals a voice. Charter Communications must commit to fund and support PEG access channels with the same quality of broadcast and channel reliability that is provided to commercial broadcast channels. Those channels need to be available without additional charge in all of the packages provided or sold by Charter.

7th -- Freeze the rates in Hawai'i for at least 4 years and then make sure that our rates are competitive with other service areas of similar size. Hawai'i customers shouldn't have to pay more just because of our location. I applaud Charter's operating model that has as a company value no hidden charges or additional fees. I encourage the new company to keep that value as a hallmark for moving forward. Billing transparency and no additional charges after service contracted is a very important commitment to keep.

Finally I'd like to reiterate a concern about all digital conversion. Because Hawai'i has so many analog users and some may not have the wherewithal to get a new tv and pay for large monthly fees for a cable box. It is important that you address this concern prior to the franchise transfer . Perhaps you can make that a feature of your broadband program for low income customers.

Mahalo for allowing me to share the thoughts and concerns for the record regarding the request by Charter Communications to acquire the Oceanic Time Warner cable franchises in Hawai'i, including the franchise in West Maui.

From: thomas figueira <thomas.figueira@yahoo.com>
Sent: Monday, September 14, 2015 1:35 PM
To: DCCA Cable Television
Subject: Charter/timewarnertv

Dear sirs, I'd like to take this time to give you my testimony about this.

I believe it would be fair to get and make sure that, 1). Akaka gets paid more, like other public TV,

Free WiFi, faster internet speed, more TV channels, including HD, better customer service and so much more on many levels. My hope is that these public held meetings will do some good to the people of Maui county. I'll be watching for a good outcome. Thomas.figueira@yahoo

From: suntrops@aol.com
Sent: Friday, September 25, 2015 2:33 PM
To: DCCA Cable Television
Subject: Oceanic Time Warner Transfer to Charter Communications

September 25,2015

DCCA Director Catherine Awakuni Colon,

I am writing you my concerns as a Maui County resident with the transfer of Oceanic Time Warner to Charter Communications.

DCCA should enforce service level agreements and rate transparency in Cable TV & Internet contracts, so they cannot lie to Maui County residents and charge them for fast internet speeds and other services without actually delivering advertised performance.

Make digital cableTV, fiber to the home, and afforable, gigabit internet available to every resident and business in Maui County by 2010.

Guarantee by contract that Akaku/PEG channels will be fully funded for the term of the franchise and displayed in the same manner and accessibility as PBS and Oahu local broadcast channels in analog, digital, HD, and on every tier and on-demand on every device.

Customer service call centers, locations, field technicians, and technical assistance must be available locally 24/7 x 365 with response times regulated by service agreements that include automatic refunds for lost power or outages.

Free WIFI, live transmission capability, and high speed broadband service to public and private schools, government buildings, hospitals, libraries, community centers, community media centers, non-profit agencies, and public parks.

Guarantee that Charter Communications matches the best public benefits it provides to any other location in the nation.

Thank you,

Terrie Roberts

From: Matthew <surfratmaui@aol.com>
Sent: Friday, September 25, 2015 2:51 PM
To: DCCA Cable Television
Subject: Transfer of Oceanic Time Warner to Charter Communitcations Testimony

Aloha,

I am testifying regarding transfer of Oceanic Time Warner to Charter Communications.

1) We want DCCA enforced service level agreements and rate transparency in CABLE TV and Internet contracts so they cannot lie to us and charge us for fast internet speeds and other services without actually delivering advertised performance.
2) Make digital cable TV, fiber to the home, and affordable, gigabit internet available to EVERY redident and business in Maui County by 2020.
3) Guarantee by contract that Akaku/PEG channels will be fully funded for the term of the franchise and displayed in the same manner and accessability as PBS and Oahu local broadcast channels in analog, digital, HD, on every tier and on-demand on every device.
4) Customer service call centers, locations, field technicians, and technical assistance must be available locally 24/7 x 365 with the response times regulated by service agreements that include automatic refunds for lost service or outages.
5) Free Wi-Fi, live transmission capability and high speed broadband service to public and private schools, government buildings, hospitals, libraries, community centers, community media centers, non-profit agencies, and public parks.
6) Guarantee that Charter matches the best public benefits it provides to any other location in the nation.
Thanks,
Matthew Roberts
surfratmaui@aol.com

From: ruhi zandra <ruhizandra@gmail.com>
Sent: Friday, September 25, 2015 1:57 PM
To: DCCA Cable Television
Subject: Testimony

Aloha,

My name is Ruhi Moran. I am the Community Outreach and Education Coordinator for the Akaku Molokai Media Center.

I currently serve as a facilitator for the YBeam program (Youth Broadband Education and Awareness Mentoring). This is a 30 hour training which allows youth from the ages of 11-19 to bring their voices to the airwaves. This program also provided stipends for certified kids to further their media making skill set and develop career opportunities.

The media center on Molokai as part of Akaku Maui Community Media supports freedom of speech and diverse viewpoints. I would love to see this continue now and well into the future. For some our PEG channels are the only way residents of Maui Nui are able to stay informed. Don't cut this most important lifeline off.

Our island does not have full internet access. We also do not have promised speeds available to us for those that have a way to get online.

I wholeheartedly support the following:

1. *We want DCCA enforced service level agreements and rate transparency in Cable TV and Internet contracts so they cannot lie to us and charge us for fast Internet speeds and other services without actually delivering advertised performance.*

2. *Make digital cable TV, Fiber to the Home, and affordable, gigabit Internet available to EVERY resident and business in Maui County by 2020*

3. *Guarantee by contract that Akaku/PEG channels will be fully funded for the term of the franchise and displayed in the same manner and accessibility as PBS and Oahu local broadcast channels in analog, digital, HD, on every tier and on-demand on every device.*

4. *Customer service call centers, locations, field technicians and technical assistance must be available locally 24/7 x 365 with response times regulated by service agreements that include automatic refunds for lost service or outages.*

5. *Free Wi-Fi, live transmission capability and high speed broadband service to, public and private schools, government buildings, hospitals, libraries, community centers, community media centers, non-profit agencies and public parks.*

Mahalo for your thoughtful consideration.

Ruhi Moran
808-281-4378

From: tutuprouty@aol.com
Sent: Friday, September 25, 2015 3:09 PM
To: DCCA Cable Television
Subject: Oceanic Time Warner Transfer to Charter Communications Testimony

Director Catherine Awakuni Colon,

Here is my written testimony:

1. We want DCCA enforced service level agreements and rate transparency in Cable TV and Internet contracts so they cannot lie to us, and charge us for fast internet speeds and other services without actually delivering advertised performance.

2. Make digitale cable TV, Fiber to the Home, and affordable, gigbit internet available to EVERY resident and business in Maui County by 2020.

3. Guarantee by contract that Akaku/PEG channels will be fully funded for the term of the franchise and displayed in the same manner and accessibility as PBS and Oahu local broadcast channels in analog, digital, HD, on every tier and on-demand on every device.

4. Customer service call centers, locations, field technicians, and technical assistance must be available 24/7 x 365 with response times regulated by service agreements that include automatic refund for lost service or outages.

5. Free WiFi, live transmission capability and high speed broadband service to, public and private schools, government buildings, hospitals, libraries, community centers, community media centers, non-profit agencies, and public parks.

6. Guarantee that Charter matches the best public benefits it provided to any other location in the nation.

Aloha,

Jacqueline Prouty

From: Stephen Luksic <tree@hawaii.rr.com>
Sent: Friday, September 25, 2015 1:08 PM
To: DCCA Cable Television
Subject: Charter Application Incomplete - DO NOT ACCEPT

Aloha,
I read the application Charter Communications filled out to become the new cable franchise owner for the state of Hawaii. I was appalled by the lack of disclosure and the blatant disregard to many of the questions. Note 13 in their application says.

"13 Charter and TWC respectfully submit that the information requested by this item is not within the DCCA's scope of review related to the Application in that such information is not reasonably necessary to evaluate the legal, financial, and technical qualifications of New Charter to become the new controlling parent of OTWC. "

This is unacceptable and I am repulsed by this application.
Please serve the people of Hawaii and do not accept this incomplete application for transfer. Please do a better job for the people of Hawaii, and do not allow these corporations to take advantage of the citizens of Hawaii.

Stephen Luksic
PO Box 73
Kula, HI 96790

From: Dana Fulton <dana@akaku.org>
Sent: Friday, September 25, 2015 1:18 PM
To: DCCA Cable Television
Subject: Say NO to Charter

Aloha, my name is Dana Fulton,
I have a BA in Social Behavioral sciences with a focus in political science and disability studies. I was born and raised on Maui my whole life. I am extremely interested in the impact of charter communications and their ethics on this diverse County if they were to get this contract.

Aside from several websites dedicated to how terrible they are, over 5, 271 formal complaints have been launched against Charter to the Better Business Bureau

Pertinent to me were the results found by simply Googling "charter communications discrimination"

*2002 A female former employee launched a lawsuit alleging harassment and discrimination for wrongful termination after suffering a back and head injury. In this lawsuit she alleged that she was harassed and made fun of for the symptoms of her head injury and was treated hostilely for taking medical leave

*2005 A female African-American former employee launched a lawsuit alleging the racial slurs in the workplace and when denied any reconciliation by HR, she was let go for recording workplace conversations that corroborated her allegations

- 2012- they started moving around channels whose demographics were elderly citizens, such as the TCM channel, forcing the elderly to upgrade their systems, inherently disrupting their lives by having to make an appointment with Charter to come in their homes and install the equipment

*2014- A disabled male former employee launched a lawsuit alleging that charter interfered with his medical leave, retaliated against him for medical leave, and was discriminated against for his disability

*2014- 11 employees launched a collective suit on the grounds of not getting paid overtime for hours worked over 40hours, being requested to work off the clock, and alleging unpaid wages

*2015- A female former employee reached a $105K settlement with Charter for the wrongful termination of a woman with Multiple Sorosis after an alleged wrongful termination and harassment for her medical problems

Note that these are actual lawsuits where people had to pay for lawyers and start these ongoing lawsuits to have any chance at defending their rights against this company. These lawsuits do not account for the hundreds of thousands of reviews and complaints that customers have written on business review sites.

Also note that 3 out of these formal lawsuits had female plaintiffs, 3 were disabled, and one was non-white.

This is is important to keep in mind when we look at some demographics here in Maui County:

* Nearly 10% of the population here in Maui County has a disability
  - 47% of labor-force aged persons with a disability in Maui County are currently employed or working
  - and 45% of the population here in Maui County are non-white

Will a company with the questionable ethics alleged in these lawsuits have a positive or negative effect for the next 20years on Maui County's population? If 53% of disabled persons in Maui County are not working, will Charter be an opportunity for these persons to get into the work force or will Charter just be another company that merely collects their money each month? Of the citizens forced to work from home, unable to go to a job every day, who will make charter uphold their internet speed promises? What is our plan B when they fail on all levels of customer service and we're left in the technological dark ages?

Nearly 30% of the population lives below the poverty line here. If a company this large and this ethically-questionable takes this monopoly over, are they going to be offering opportunity to our people or are they going to be doing as little as possible from as far away as possible with as few employees as possible for the next 20 years? Maui County is not a place where it's citizens can simply pack the car and drive to another county if they are unhappy with living conditions. A corporate monopoly is truly forceful and economically damaging here. Protect our people and protect our economy, put teeth into this contract and force this repulsive company to provide the internet speeds, public access support, and customer service that Maui County so heavily relies on for ALL of it's citizens.

This application is incomplete, these concerns are not at all discussed, and they are purposely omitting their heinous business practices to seal this “slam dunk” monopoly on our islands. They have not even stated that they will have a main office on MAUI, let-alone Molokai, Lanai, and Hana. In order to take the $70million out of Maui County that OTW currently gets, shouldn’t there be REQUIREMENTS?! Not “up to” vague phrases, teeth. DCCA, you DO NOT work for them, you work for the people AGAINST them. Please keep this in mind. Public access is very important here and public access is the only entity working to protect the people in this buyout right alongside you, the DCCA. Wild your power for good and protect public access for the next 20years, protect the people for the next 20 years, and MANDATE them to hold up their promises. If your'e going to approve this, we want consequences for inactivity by them.

If you can't uphold the protection for public access, the people’s right to technology and ensure promised services, say NO to this entire buyout. Support the people AGAINST Charter.

Sincerely,
Dana Fulton
736 Alulike Street
Kihei HI 96753
808 385 2172

From: Guy Gaumont <guygaumont@hawaii.rr.com>
Sent: Thursday, September 24, 2015 4:38 PM
To: DCCA Cable Television
Subject: Testimony (Cable TV)

Aloha,

1. I *want DCCA enforced service level agreements and rate transparency in Cable TV and Internet contracts so they cannot lie to us and charge us for fast Internet speeds and other services without actually delivering advertised performance.*

2. *Make digital cable TV, Fiber to the Home, and affordable, gigabit Internet available to EVERY resident and business in Maui County by 2020*

3. *Guarantee by contract that Akaku/PEG channels will be fully funded for the term of the franchise and displayed in the same manner and accessibility as PBS and Oahu local broadcast channels in analog, digital, HD, on every tier and on-demand on every device.*

4. *Customer service call centers, locations, field technicians and technical assistance must be available locally 24/7 x 365 with response times regulated by service agreements that include automatic refunds for lost service or outages.*

5. *Free Wi-Fi, live transmission capability and high speed broadband service to, public and private schools, government buildings, hospitals, libraries, community centers, community media centers, non-profit agencies and public parks.*

6. *Guarantee that Charter matches the best public benefits it provides to any other location in the nation.*

Thank You for your consideration.

Sincerely,
Guy Gaumont / Maui

**Comments by Akaku Maui Community Television
On the State of Hawaii Application for Transfer of Cable Television
Franchises by Time Warner Cable and Charter Communications**

**Respectfully submitted by
Jay April
President & CEO
September 23, 2015**

Maui County Community Television, Inc. doing business as Akaku Maui Community Media respectfully submits the following comments on the "Transfer Application" referenced above. These comments should be read together with the attached Exhibits. Exhibit A contains recent nationwide research conducted by the Alliance for Community Media in Charter franchise jurisdictions across the nation (Please note that Charter is charging "connection fees" to schools and public buildings and outright refuses to pay franchise fees in several California jurisdictions.) Exhibit B (Comments on the Application of OTW to Renew It's Franchises for Maui County and Lahaina) was previously submitted to DCCA on November 15, 2013 in the still pending Time Warner Maui County Franchise Renewal proceeding. This document is relevant to this case in that it will inform the present proceeding by presenting the Department with legal arguments; draft franchise language and analysis derived from some of the most knowledgeable and informed public sector cable attorneys in the nation.

The bottom line is that the state should ensure that the public receives benefits from Charter'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.

Because this is a TRANSFER of CONTROL from Time Warner to Charter and not a Franchise Renewal, the state DCCA has powerful discretion in requiring by contract enforceable, *tangible public benefit* for Maui residents in exchange for Charter's use of our valuable publicly owned rights of way. DCCA is granting a telecommunications monopoly that is worth billions over the franchise term and is in a unique position to negotiate reasonable *voluntary commitments* from Charter in excess of those authorized by the Cable Act.

Akaku has reviewed and analyzed the transfer documents on the DCCA website and prepared the following comments for consideration by the Department:

1. CHARTER APPLICATION FOR TRANSFER OF CABLE SERVICE IS INCOMPLETE

In its Response to DCCA questions in its application, Charter refused to answer questions re: Section IV.C (1) listing names and locations of current franchises, and number of subscribers and gross revenues for each. It has claimed in several incidences that essential information requested by DCCA is "not within the DCCA's scope of review", "not reasonably necessary", "burdensome", "non-jurisdictional", "overbroad" or "unrelated to the Transaction". Charter has not adequately explained character issues regarding sexual

discrimination and discrimination against people with disabilities cited in Section IV.B of their Application and in FCC Form 394 Exhibit 6., Charter has not adequately explained or outright refused to explain its legal, financial or technical capabilities. The Charter Application lacks specificity and detail in multiple responses to DCCA questions i.e. Response in Section II.G, General Information regarding changes, is deficient and incomplete. Response to IV.E, Technical Qualifications and Plans, are so incomplete that their lack of specificity makes them almost meaningless.

2. THE STATE OF HAWAII REQUIRES A COMMUNICATIONS SYSTEM FOR THE 21st CENTURY WITH ENFORCABLE SERVICE LEVEL AGREEMENTS.

We expect DCCA to put concrete language in ironclad contracts *in addition to* the franchise agreement that enforce rate transparency and *service level agreements* with Charter so they cannot lie to us and charge us for fast broadband Internet speeds and MVDS/OTT services without actually delivering advertised performance. We want cable programming service agreements as well. These agreements should contain penalties for non-compliance and be reviewable by DCCA every two years.

3. DCCA MUST NOT ALLOW CHARTER TO USE MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTION SERVICES (MVPDS) OR OTHER TECHNICAL MEANS TO CIRCUMVENT FRANCHISE FEE PAYMENTS

We all know that the pace of technology is outstripping that of regulation and due to technical changes in the way video is delivered on cable such as Over the Top (OTT) or Multichannel Video Programming Distribution Services (MVPD) - like Netflix - or what they call Internet Protocol Television (IPTV) we may well be experiencing the **beginning of the end of local cable franchising** and consequently **local franchise fee revenue is at risk.** Revenue that funds: PEG, KHET, DOE, UH (HENC & MENC) and the DCCA cable and broadband divisions.

Because technology is evolving at blinding speed, what we used to call "TV" is being delivered everywhere and on every device. Internet Protocol TV (IPTV) delivery of multichannel distribution of video content (MVPD) and Over the Top (OTT) TV should not be used to circumvent franchise fee funding of community communication and cable regulation.

4. PEG CHANNELS MUST HAVE PARITY WITH PBS AND ALL LOCAL BROADCAST CHANNELS ON CABLE AND VIA IPTV, OTT & MVPD

DCCA must recognize and mandate *by contract* that **Akaku/PEG channels are fully funded for the term of the franchise at minimum present day levels and displayed in the same manner, signal quality and accessibility as PBS and Oahu local broadcast channels in analog, digital, HD, on every tier and on-demand on every device. It also must agree that when channels are transitioned to digital or IPTV that PEG channels are not discriminated against in the transition and that channel designations are agreed to and approved by Akaku prior to transition. Charter must also agree to minimum technical requirements regarding signal quality, accessibility and placement of channels on every platform and every device.**

5. CHARTER'S NON-COMMITMENT TO PEG ACCESS IN RESPONSE TO SECTION IV.E 10 IN ITS APPLICATION and NOTE 13 NOTWITHSTANDING, CHARTER NEEDS TO AGREE TO FULLY FUND AKAKU, PBS, AND DCCA CABLE AND BROADBAND REGULATION AT AMOUNTS EQUIVALENT TO NO LESS THAN PRESENT (2015) FRANCHISE FEE LEVELS ADJUSTED FOR INFLATION FOR THE FRANCHISE TERM. THIS MINIMUM LEVEL OF FUNDING MUST BE PROVIDED REGARDLESS OF CHANGES IN FEDERAL OR STATE LEGISLATION DURING THE TERM OF THE FRANCHISE.

6. CHARTER MUST PROVIDE MINIMUM BROADBAND SPEEDS AND PERFORMANCE STANDARDS BY CONTRACT

We urge the DCCA to carefully consider in which consumer protection issues and broadband deployment can be addressed consistent with limitations on a franchise issued solely to comply with the Cable Act. 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

Upload and download Internet speeds must be guaranteed by contract at affordable rates. Currently Internet service from Oceanic Time Warner is inconsistent, unreliable and erratic in most areas of Maui Nui making it difficult to move large media, data or medical files. In its application, Charter has promised minimum download broadband speeds of 60 mbps and a 300 mbps rollout on Maui. In the era we are entering called the "Internet of Things", this is simply not good enough. Charter needs to demonstrate concrete plans to meet the State of Hawai'i's stated broadband goal of Symmetrical Gigabit Internet Service to all Hawaii residents by 2018. These speeds need to be codified by contract in enforceable service agreements with its customers and all rural areas including Hana, Lanai and Molokai must be included in the expansion. A three-year rate freeze should be put into effect as well.

7. THE CHARTER APPLICATION PROMISED TRANSITION TO ALL DIGITAL NETWORKS WITHIN 30 MONTHS OF CLOSE OF TRANSACTION with a caveat that 1% of homes will not be upgraded to digital within this timeframe. Charter must agree by contract that Maui, Molokai and Lanai subscribers will not be part of this 1% digital divide and that Akaku PEG channels and channel designations will be preserved

and transitioned to digital and HD in the same manner as PBS and local broadcast with channel placement and compression algorithms approved by Akaku and by DCCA in advance of transition.

8. CHARTER MUST COMMIT TO PUBLIC INTEREST BANDWIDTH AND FIBER TO THE HOME.
Charter must set aside a minimum of 10% of its total bandwidth for HD and on-demand options for all PEG channels. Charter must also agree to a 100% Fiber build out to the home (FTTH) for all voice, data, cable and Internet subscribers within 4 years of close of transaction or by the end of 2020 whichever comes first.

9 LOCAL CUSTOMER SERVICE STANDARDS MUST BE MAINTAINED
Customer service call centers, locations, field technician and technical assistance must be available locally 24/7 x 365 with prompt response times regulated by service agreements. Agreements must include automatic refunds for lost service or outages.

10. CHARTER MUST PROVIDE FREE Wi-Fi AND UPSTREAM VIDEO CONNECTIONS TO COMMUNITY ANCHOR INSTITUTIONS AND DESIGNATED FACILITIES. To support economic development and education, Charter Communications 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, and public parks.

11. CHARTER MUST MATCH BEST PUBLIC BENEFIT DEAL ANYWHERE IT DOES BUSINESS

A "most favored nation" clause should be included in the franchise agreement that would require Charter to meet or exceed any public benefit service provided by Charter in any of its markets at the request of the DCCA if the DCCA determines the service to be in the best interest of the public.

SUMMARY

There was a debate at the recent annual conference of the National Association of Telecommunications Officers and Advisors (NATOA) over how long a significant decline in franchise fee revenue due to MVPD would take to materialize. Most predictions fall between three and seven years. Current revenues are holding steady due to cable rate increases or declining slightly because cord cutters and cord shavers are precipitating a dip in subscriber counts. How fast it erodes has to do with a lot of factors including: what LFA's include as "revenue", cable rates, preference and price for cable services vis a vis the cost of emerging a la carte services, the speed at which cable companies increase broadband capabilities by upgrading to fiber networks, marketing and business decisions within companies and, when the big enchilada, ESPN will decide to offer video content on IPTV over the top of cable. All three hundred elected representatives, government regulators and telecommunications attorneys in attendance agreed that all jurisdictions would experience a decline in revenue when cable companies use OTT, MVPD and IPTV to simply stop paying the rent for the public rights of way. They will do this by claiming these are not "cable services" NATOA is forming a task force of elected and government officials to develop a national, state and local strategy to impress upon Congress, the FCC, state and local regulatory agencies and legislatures that we need to emphasize the simple fact that telecommunications companies: phone, broadband, wireless and cable **all** must be required to pay rent for use of public property, period *We cannot afford to tie our future to a fading platform- plain old cable TV- and we need to develop technologically independent funding mechanisms to collect fair rent from all carriers*. We will also need new terminology to replace "franchise fees" so semantics cannot be used by carriers to restrict revenue obtained from services traveling on the same exact wire; and we need to integrate PUC regulations with DCCA regulations in areas that overlap. We need to do this work now, knowing full well that a federal rewrite of the telecommunications act is still at least three or four years away (albeit with the comforting notion that Senator Brian Schatz may be a big part of that rewrite)

Failure to act now will be death by a thousand cuts for state and local authority. We will continue to experience incremental losses as a result of not taking bold, far-reaching action now in what may be final cable franchise proceedings. In the sale of Time Warner to Charter, we have a golden opportunity to start this process. In order to succeed we will need to scrutinize this deal like never before. In lieu of ironclad contracts that protect the public interest, particularly in rural areas where Charter is negligent, the DCCA will need to seriously consider a denial of this merger based on the Charter application itself and subsequent revelations about the company to date.

None of this stuff is easy because of the sheer legal power of incumbent cable companies and their presumption of "regulatory capture" at the FCC. It is not easy but it is not impossible either. It takes some spine and good legal work to stand up to these guys but it can and should be done. Just look at the FCC Net Neutrality order. No one thought that would happen and it did. No one thought DOJ would block the Time Warner/Comcast merger either, but it did - mostly because of the size of the new entity and the sheer monopoly market power over programming that the Comcast behemoth would control.

The so-called, "New Charter" situation is different. The new entity is huge, but not quite as large and Charter does not own NBC and Universal Studios either. There are a lot of very serious problems with Charter and a ton of unanswered questions - but right now most experts think that the FCC will allow the transfer- but it is not a done deal. Until it is - input from SOH is extremely valuable. There are serious character issues, technical issues, customer service and performance issues that Charter has not addressed. Charter has filed an arrogant and incomplete application and has refused to answer many of DCCA's very thorough questions. The State of Hawaii is in a unique position to affect and influence the outcome of this transaction in a number of areas no matter what the FCC does. Because this is a sale and not an ordinary franchise renewal, the state also has the ability to request that Charter provide public benefits ***in excess*** of those provided in a normal franchise renewal - some of which are restricted by the cable act. These benefits are very important - like equal treatment of PEG channels, technical specifications for signals, customer service standards, service level agreements, etc. Some of these "voluntary requirements" can be made as "conditions of sale." For instance, the ideal scenario to protect Akaku would be that in *addition* to including enforceable franchise requirements in the franchise itself, the DCCA would facilitate a separate PEG funding and performance contract with Charter and Akaku for the franchise term as a good faith "voluntary agreement" agreed to before the sale is final. The same holds true with the expectation that Charter provide service level agreements with its broadband and Internet customers as well as its cable customers.

DCCA may not be able to *require* all of that but they can and should ask Charter to deliver particularly because of all the reasons that exist to deny the merger. The reasons are real and they are legion. As long as Charter feels that the sale is presumptive, that they will be approved by DCCA no matter what - which is exactly what they think judging from the contents of their application - they will have no incentive to provide anything but the bare minimum. Once the franchise is granted they will do their best to not comply with anything they do not agree with. The proof is in the pudding, not in the recipe.

As to the question of whether not SOH can deny the merger if the FCC approves. Yes it can. There is absolutely no danger of Hawaii residents going without cable and Internet service. There is too much money at stake. TWC will continue to operate until another buyer is found. No one disagrees with that analysis.

Without disparaging in any way the resolve, expertise, acumen and good work of DCCA, I feel strongly when one considers what is at stake, that because of the time restraints and limited resources available to SOH and due to the complexity of the issues before it, the DCCA use compliance resolution monies and appropriate the funds to retain the best legal support in the country that can yield positive results that may not be easily obtainable by the agencies current Washington DC law firm.

Thank you for holding public hearings on this issue on all of our neighbor islands. It is much appreciated and mahalo for the opportunity to submit written testimony as well.

EXHIBIT A

ALLIANCE FOR COMMUNITY MEDIA CHARTER REPORT

CHARTER COMMUNICATIONS, PEG ACCESS AND OTHER PUBLIC SERVICE OBLIGATIONS September 21, 2015

The Alliance for Community Media (www.allcommunitymedia.org) and its members are concerned about the ramifications of the proposed merger between Charter Communications, Time Warner and Bright House Networks to create a "New Charter". We have identified a significant number of cases, which reveal troubling actions by Charter as it relates to the company's Public Educational and Government (PEG) Access and other local public service obligations.

We summarize the issues below. They are organized by state, but reflect a reasonable characterization of Charter's behavior related to PEG and public service obligations that are beyond the borders of any particular state.
It should be noted that one of the key "lenses" through which the Federal Communications Commission has viewed other proposed mergers has been whether the situation related to any particular concern will be worse under a merged environment than it would be if the merger does not occur.

WISCONSIN

Charter and Time Warner Cable operate the majority of cable holdings in Wisconsin. Time Warner Cable has a call center in Appleton. Charter's call center in Fond du Lac is located about 45 miles from Appleton. These call centers would likely be consolidated after the merger, which would cause significant job losses.

Channel Relocation (*Often referred to as "Channel Slamming" is an action taken by a cable company to move PEG channels from lower-numbered positions to little-viewed, high-numbered locations.*)

In 2008, Charter moved all PEG channels on at least 31[1] of its Wisconsin systems from low numbers (like 1, 2, 3, 4, 10, 12, 13, and 19 -- where they had been for decades) to 982-994. Since then, many viewers reported serious reception problems for the PEG channels in the new channel locations. Wisconsin's video franchise law only requires that PEG channels be "transmitted." Signal quality concerns are not addressed. Time Warner Cable has continued to carry PEG channels on low channel numbers. PEG channel reception problems are rarely reported by Time Warner Cable subscribers. If Charter takes over Time Warner Cable's systems, will Charter relocate these PEG channels to the upper-900s and have no concerns about their signal.

PEG Channels Rarely Appear on Charter's Electronic Program Guide ("EPG")

Recent surveys of cable subscribers throughout the United States reveal that a cable system's EPG has become the primary method used by subscribers to find information about programming on cable TV channels. Unfortunately, few of Charter's Wisconsin systems include PEG program schedules on there EPG. For example, efforts by **Chippewa Valley Community Television (CVCTV) in Eau Claire** to get their listings on the EPG were fruitless. Charter would charge them at least $100 per month for this capability, far too expensive for CVCTV and other financially struggling PEG management organizations that serve rural and other small communities in Wisconsin, where its state franchise law prohibits PEG fees. *Charter charges PEG channels – but not broadcast or satellite-delivered programming channels -- to include their program schedules on the EPG.*

Charter Charges School Districts for Cable Service

Prior to 2007, when the state franchise law was adopted in Wisconsin, local communities required that cable companies provide cable service at no charge to public buildings and schools. During legislative discussion, lawmakers were left with the impression that such free service would continue without the need for a provision in the state franchise law. However, in recent years, Charter has begun charging these institutions business rates ($70 per month) for cable service – plus a cable box fee of $5.99 to $7.99 per month per box. For example, Charter told **Merrill Area Public Schools** and the **Whitewater Area School District** that one cable box would be provided at no charge to each school, but any

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1. Including these PEG channels: **Beloit Access TV, Chippewa Valley Community Television, City of Algoma TV, Columbus Cable, Deerfield Community Access TV, Fitchburg Access Television, Janesville JATV Media Services, Jefferson JPEG and SDOJ, Lake Mills Community Access TV, Madison City Channel, Madison Metro School District, Marshfield Community Television, Monona School/Community TV, Mount Horeb Village Cable, Rice Lake Public Access Television, River Cities Community Access , Stevens Point Community Television, Sun Prairie Media Center, Superior Community Television, The Ripon Channel, Town of Sevastopol TV, Village of Cambridge TV, Village of Cottage Grove TV, Waterloo Community Access TV, Watertown Television, Waunakee Community Access TV, Whitewater Community Television, WIN-TV (Waupaca), WMCF McFarland, WSCS Sheboygan**.

additional boxes would cost $7.99 per month. Since the school district could not afford Charter's cable box fees to equip every classroom, the only location where educational cable programming is available is in the school library, where the one free box is kept.

Charter's only-one-free-box-per-school policy caused the same result for financially struggling schools in the **Village of McFarland (Monona Grove School District** and the **McFarland School District)**.

CALIFORNIA

Non-Payment of PEG Fees as Mandated by the State Franchising Law (DIVCA)

In several California communities that it serves (including **Santa Cruz County, San Luis Obispo County, and the Cities of Capitola, Morro Bay and Grover Beach)**, Charter has unilaterally ceased payments of PEG fees established by these communities in conformance with DIVCA (Digital Infrastructure and Video Competition Act), due to the company's interpretation of state law. No other cable operator has done this.

Refusal to Provide Free Connection between PEG Channel Playback Site and Charter's Facilities

In **Long Beach**, Charter discontinued its management of the Public Access channel in 2009, immediately after DIVCA went into effect. Subsequently, nearly four years passed with no Public Access channel in Long Beach, until a local nonprofit organization secured grant funding, which enabled it to set up PADNET (Long Beach Public Access Digital Network), a new Public Access management entity to serve this community. When PADNET was ready to connect its playback system to Charter's headend, its representatives were told by Charter that a substantial fee would be charged to PADNET for that connection to occur.
If PADNET had refused to pay this fee, the revived Public Access channel would not be transmitted to Charter's subscribers.

Although other PEG facilities throughout California do not – and have never -- paid such a connection fee, Charter decided to take this unilateral action against the new Public Access operation in Long Beach.

The **Los Angeles County** channel is another PEG channel that could be serving the residents of Long Beach (which is located within Los Angeles County), but it is not available to Long Beach subscribers because Charter requires the City to pay the company to transmit this channel.

We are unaware of any "connection fee" being charged by Charter to a broadcast *channel or satellite-delivered service carried on any Charter system in the United States. Charter's decision to single out PEG channels -- the least likely programming service to be able to afford such a connection fee illustrate much about Charter's attitude about PEG.*

*Based on available information, we believe that Charter was the first cable MSO in the United States to impose a connection fee as a condition of PEG channel transmission. Regrettably, other MSOs are starting to follow Charter's example (e.g., in the **San Diego** area, Cox recently sent notices to several cities and PEG channel managers to inform them that the company will begin charging for PEG channel transport from their facilities).*

Charter to Begin Charging Schools for Cable Service

Mirroring its practice in Wisconsin, Charter has informed local schools in **Long Beach** that cable service previously provided by the company at no charge to public buildings and schools is being discontinued.

PEG Channels Do Not Appear on Charter's Electronic Program Guide ("EPG")

In **Pasadena**, PEG programming information is not on Charter's EPG, due to the high fee quoted by Charter and its incorrect statement to Pasadena Media that the information has to be locked in at least one month in advance.[3] PEG programming information is also unavailable on Charter's EPG in **Long Beach**.

[3] According to Rovi (a company that provides EPG service to Charter), 30 days of current data must always be present, but ***it can be changed/updated as late as one day in advance.*** (See: http://alist.rovicorp.com/farsight/Include/ALISTHelp.pdf)

MASSACHUSETTS

Channel Relocation

Charter has moved PEG channels in several locations in Massachusetts. For example, in 2014 Charter unilaterally moved PEG channels in **Northbridge** from 11, 12, and 13 to 191, 192 and 194. This was done despite the Town's franchise agreement, which stated that the PEG channels would be on 11, 12 and 13. At a public meeting, Charter representative Tom Cohan told the Northbridge Selectmen that it was a mistake for Charter to agree to the PEG channel location terms in the franchise agreement, but Charter would not move the channels back.

Without citing any evidence, Mr. Cohan claimed that lower channel positions are unimportant.[4]

The Selectmen believe Charter is in breach of its contract with Northbridge, but are reluctant to take Charter to court because of the expense. Charter has repeated this behavior towards PEG in **Worcester, Uxbridge, and Douglas**, unilaterally moving their PEG channels and harming service to local communities.

MINNESOTA

Channel Relocation

In 2014, Charter unilaterally decided to move the PEG channels in **Rochester**, despite the City Council's previous denial of Charter's request to do so.[5, 6] The channels were moved from 10, 19, 20, 21 and 22 to the 180s. Although the "Relocation of PEG Channels" section of the Rochester franchise agreement states that "*Grantee and Grantor may at any time agree to relocate any PEG access Channel to a different Channel number*," Charter interpreted this to mean that the company just had to inform the city, not to have a mutual agreement. This section of the franchise agreement goes on to state that "*Grantee shall provide Grantor and all Subscribers with at least thirty (30) days prior written notice of any legally required relocation*." However, no advance notice was given to the City by Charter, which notified Council members of the change in a letter on the day the channels were moved.

Also in 2014, Charter moved **St. Cloud** PEG channels 12, 19, 6, 21 and 20 to channels 180, 181, 187,188 and 189, respectively.[7] Charter did not receive written consent from the City of St. Cloud prior to the relocation, which the City stated was required by the franchise agreement. In this case, the corporation made the move after it had been denied by the city.

4 https://www.youtube.com/watch?v=DZdhea-vigI&feature=youtu.be
5 KTTC, October 16, 2014. http://www.kttc.com/story/26809907/2014/10/16/charter-communications-relocateschannels-city-officials-say-potential-violation
6 Rochester Post Bulletin, October 17, 2014. http://www.postbulletin.com/business/charter-change-upsets-rochestercouncil/article_5a1b78f4-b415-5489-85d9-225235b415a7.html
7 St. Cloud Times, September 4, 2014. http://www.sctimes.com/story/news/local/2014/09/04/city-st-cloud-accusescharter-violating-agreement/15070577/

MISSOURI

Channel Relocation

Shortly after Missouri's state franchising law took effect in 2007, Charter moved PEG channels throughout the state from lower-numbered positions to the mid- to upper-900s, a move that required many subscribers to pay a $5 monthly fee for a cable box to tune in city council meetings and other community programming.

St. Louis aldermen held a lengthy public hearing about this action, to no avail. They said that Charter was not listening to those residents who care about public programming.[8] **Florissant** Mayor Robert Lowery said that this action by Charter was especially hard on older adults and others on a fixed income. **Brentwood** Mayor Pat Kelly learned about the change from residents who called him to ask why the local government channel had gone dark. Kelly said that "since we no longer have a franchise agreement with Charter, we really don't have any club to fight with."[9]

MONTANA

Charter's Switch from Analog to Digital Could Cost Schools $60,000-100,000

In **Missoula**, the existing local franchise agreement requires Charter to provide a free connection to each school. In July of 2014, Charter informed the School District that the company's switch from analog channels to digital would require new digital set-top boxes for every TV. A cable box on every TV was not needed previously in the School District's 628 classrooms. The next month, cable service was no longer available to those classrooms. To outfit each classroom with a digital cable box, the cost to the School District "could be anywhere from $60,000 to $100,000," according to Hatton Littman, Director of Technology and Communications with Missoula County Public Schools.[10, 11]

8 St. Louis Post Dispatch, July 1, 2010. http://www.stltoday.com/news/local/govt-and-politics/st-louis-aldermen-fired-upat-charter-want-cable-co/article_a215677e-853d-11df-96e2-00127992bc8b.html
9 St. Louis Post Dispatch, February 21, 2010. http://www.stltoday.com/news/local/metro/city-council-meetings-getpushed-off-many-screens/article_7944de68-5acd-5f2f-aca7-cf65d658efec.html
10 Missoulian, August 27, 2014. http://missoulian.com/news/local/charter-digital-tv-conversion-could-mean-higher-costsfor-city/article_70ae6a52-2d7f-11e4-94c7-001a4bcf887a.html
11 KECI, August 28, 2014. http://www.nbcmontana.com/news/city-schools-negotiate-with-charter-to-get-cable-serviceback/27781240

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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.[1]

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."[2]

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.[3] 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.[4]

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.[5]

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.[6] 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.[7] 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."[8] 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 . . . ."[9]

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.

<u>Pages 7 – 8</u>: "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."

<u>Comments</u>: 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."[10] 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.

> <u>Pages 8</u>: 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. <u>Page 10</u>: "[I]n order to receive Oceanic's two-way video services [including SDV], customers generally must have an Oceanic-provided digital set-top box."

<u>Comments</u>: 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."[11]

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.[12]

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."[13] 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 <u>FCC Rule 76.1205(b)(4)</u>. (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.**)[14]

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 suscriber to pay any additional charges than the subscriber already pays or request any different equipment than the subscriber actuallys 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.[15] 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."[16] 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 to 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 . . . ."[17] 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.

<u>Pages 32 - 34</u>: 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."

<u>Comments</u>: 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 <u>not</u> 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."[18]

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)[19] 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 . . . ."[20]

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.[21] 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.[22] 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.[23] 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.[24]

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.[25] 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.[26] 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.[27] 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.[28]

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."[29] 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.[30] 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.[31]

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."[32]

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."[33] 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."[34] 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 'Ōlelo 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 'Ōlelo for years in a grueling arbitration, costing 'Ōlelo upwards of $200,000 in legal expenses. 'Ōlelo 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 'Ōlelo. 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.

<u>Page 43</u>: 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.[35] 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.[36] 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.[37] 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."[38] 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.[39] 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.[40] 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.[41]

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.[42]

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."[43] The popular TV show "South Park" also skewered Time Warner Cable for its notoriously poor customer service.[44]

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.[45]

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.[46] (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.[47] 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."[48] 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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[1] *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

[2] DCCA Decision & Order (D&O) No. 317 (Mar. 28, 2005), p.6

[3] *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/

[4] *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

[5] 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

[6] United States Census, State and County QuickFacts, Maui County, Hawaii. http://quickfacts.census.gov/qfd/states/15/15009.html

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

[8] 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

[9] *Id.* at p.2.

[10] *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

[11] "*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/

[12] "*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/

[13] http://www.fcc.gov/encyclopedia/cablecards

[14] *Id.* (emphasis added)

[15] *Hawaii Broadband Strategic Plan, supra*, p.44

[16] *Id.*

[17] 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.

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

[19] 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."

[20] 24 FCC Rcd at 8727.

[21] *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).

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

[23] *Id.*

[24] "*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/

[25] *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/

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[30] *Id.*

[31] *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

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[33] Time Warner Cable Inc. Form 10-K for the fiscal year ended December 31, 2012, *supra*, p.43.

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

[35] 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

[36] *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

[37] CAC Minutes of Meeting on November 13, 2012, *supra*, pp. 2-3.

[38] *Id.* p.2.

[39] *Id.* p.3.

[40] *Id.* p.4.

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

[42] *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/

[43] http://jezebel.com/john-oliver-congress-is-the-time-warner-cable-of-demo-1440622814

[44] http://variety.com/2013/tv/news/south-park-skewers-cable-companies-murder-porn-tv-1200693322/

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

[46] Time Warner Cable Inc. Form 10-K for the fiscal year ended December 31, 2012, *supra,* p.39

[47] *Id.*, p.46

[48] *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.

<u>Rationale</u>: *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 <u>Section 5.18(a)</u> 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.

<u>Rationale</u>: *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 suscriber to pay any additional charges than the subscriber already pays or request any different equipment than the subscriber actuallys 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 shouuld 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 inanalog 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 thatthe 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).

<u>Rationale</u>: *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..

<u>Rationale</u>: *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 imay 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 <u>Section 2.3</u>. 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.

<u>*Rationale*</u>: *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 exvhange 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.

From:	Tom Blackburn-Rodriguez <tominmaui@icloud.com>
Sent:	Friday, September 11, 2015 1:24 PM
To:	DCCA Cable Television
Subject:	Testimony of Tom Blackburn-Rodriguez on Transfer of Oceanic Time Warner Cable to Charter Communications (9-11-15)
Attachments:	Charter Communications Take Over 9-11-15.docx; ATT00001.txt

TO: Department of Commerce and Consumer Affairs, Cable Division

FROM: Tom Blackburn-Rodriguez, 85 Manino Circle #202, Kihei, HI 96753 E-mail: tominmaui@icloud.com

RE: Transfer of Oceanic Time Warner Cable to Charter Communications

DATE: September 11, 2015

I wish to express my concerns regarding the transfer of Oceanic Time Warner Cable to Charter Communications and areas I would like the DCCA to address in its review of the Charter Communications application.

At a minimum I would ask that:

(1) The DCCA require a guarantee that everyone who wants to gets Cable TV and Internet service and that we get what we pay for by enforceable agreement so they can't charge us without delivering advertised performance.

(2) That we receive prompt, polite, local customer service 24/7, 365 days of the year.

(3) We can get fast, affordable Gigabit Internet; full funding for Akaku for the term of the franchise and equal treatment as PBS for community channels

(4) Free Wi-Fi in public places and the equivalent of the best deal obtainable anywhere else Charter does business.

(5) Guaranteed cable and Internet access in remote areas of Maui County such as Hana

In addition I would respectfully ask that the DCCA also examine the following:

1. CHARTER APPLICATION FOR TRANSFER OF CABLE SERVICE IS INCOMPLETE In its Response to DCCA questions in its application, Charter refused to answer questions re: Section IV.C (1) listing names and locations of current franchises, and number of subscribers and gross revenues for each. It has claimed in several incidences that essential information requested by DCCA is "not within the DCCA's scope of review", "not reasonably necessary", "burdensome", "non-jurisdictional", "overbroad" or "unrelated to the Transaction". Charter has not adequately explained character issues regarding sexual discrimination and discrimination against people with disabilities cited in Section IV.B of their Application and in FCC Form 394 Exhibit 6., Charter has not adequately explained its legal, financial or technical capabilities. The Charter Application lacks specificity and detail in multiple responses to DCCA questions i.e. Response in Section II.G, General Information regarding changes, is deficient and incomplete. Response to IV.E, Technical Qualifications and Plans, are so incomplete that their lack of specificity makes them almost meaningless.

2. WE WANT A COMMUNICATIONS SYSTEM FOR THE 21st CENTURY WITH ENFORCABLE SERVICE LEVEL AGREEMENTS. We want DCCA to put concrete language in ironclad contracts in addition to the franchise agreement that enforce rate transparency and service level agreements with Charter so they cannot lie to us and charge us for fast broadband

Internet speeds and MVDS/OTT services without actually delivering advertised performance. We want cable programming service agreements as well. These agreements should contain penalties for non-compliance and be reviewable by DCCA every two years.

3. DCCA MUST NOT ALLOW CHARTER TO USE MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTION SERVICES (MVPDS) OR OTHER TECHNICAL MEANS TO CIRCUMVENT FRANCHISE FEE PAYMENTS Everyone knows technology is evolving at blinding speed and what we used to call "TV" is being delivered everywhere and on every device. Internet Protocol TV (IPTV) delivery of multichannel distribution of video content Over the Top (OTT) should not be used to circumvent franchise fee funding of community communication and cable regulation. DCCA must recognize this and mandate by contract that Akaku/PEG channels are fully funded for the term of the franchise at minimum present day levels and displayed in the same manner and accessibility as PBS and Oahu local broadcast channels in analog, digital, HD, on every tier and on-demand on every device.

4. CHARTER'S NON-COMMITMENT TO PEG ACCESS IN RESPONSE TO SECTION IV.E 10 and NOTE 13 NOTWITHSTANDING, CHARTER NEEDS TO AGREE TO FULLY FUND AKAKU, PBS, AND DCCA CABLE AND BROADBAND REGULATION AT AMOUNTS EQUIVALENT TO NO LESS THAN PRESENT (2015) FRANCHISE FEE LEVELS ADJUSTED FOR INFLATION FOR THE FRANCHISE TERM. THIS MINIMUM LEVEL OF FUNDING MUST BE PROVIDED REGARDLESS OF CHANGES IN FEDERAL OR STATE LEGISLATION DURING THE TERM OF THE FRANCHISE.

5. CHARTER MUST PROVIDE MINIMUM BROADBAND SPEEDS BY CONTRACT Upload and download Internet speeds must be guaranteed by contract at affordable rates. Currently Internet service from Oceanic Time Warner is inconsistent, unreliable and erratic in most areas of Maui Nui making it difficult to move large media, data or medical files. In its application, Charter has promised minimum download broadband speeds of 60 mbps and a 300 mbps rollout on Maui. In the era we are entering called the "Internet of Things", this is simply not good enough. Charter needs to demonstrate concrete plans to meet the State of Hawai'i's stated broadband goal of Symmetrical Gigabit Internet Service to all Hawaii residents by 2018. These speeds need to be codified by contract in enforceable service agreements with its customers and all rural areas including Hana, Lanai and Molokai must be included in the expansion. A three-year rate freeze should be put into effect as well.

6. THE CHARTER APPLICATION PROMISED TRANSITION TO ALL DIGITAL NETWORKS WITHIN 30 MONTHS OF CLOSE OF TRANSACTION with a caveat that 1% of homes will not be upgraded to digital within this timeframe. Charter must agree by contract that Maui, Molokai and Lanai subscribers will not be part of this 1% digital divide and that Akaku PEG channels and channel designations will be preserved and transitioned to digital and HD in the same manner as PBS and local broadcast with channel placement and compression algorithms approved by Akaku and by DCCA in advance of transition.

7. CHARTER MUST COMMIT TO PUBLIC INTEREST BANDWIDTH AND FIBER TO THE HOME. Charter must set aside a minimum of 10% of its total bandwidth for HD and on-demand options for all PEG channels. Charter must also agree to a 100% Fiber build out to the home (FTTH) for all voice, data, cable and Internet subscribers within 4 years of close of transaction or by the end of 2020 whichever comes first.

8. LOCAL CUSTOMER SERVICE STANDARDS MUST BE MAINTAINED Customer service call centers, locations, field technician and technical assistance must be available locally 24/7 x 365 with prompt response times regulated by service agreements. Agreements must include automatic refunds for lost service or outages.

9. CHARTER MUST PROVIDE FREE Wi-Fi AND UPSTREAM VIDEO CONNECTIONS TO COMMUNITY ANCHOR INSTITUTIONS AND DESIGNATED FACILITIES. To support economic development and education, Charter Communications 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, and public parks.

10. CHARTER MUST MATCH BEST PUBLIC BENEFIT DEAL. A "most favored nation" clause should be included in the franchise agreement that would require Charter to meet or exceed any public benefit service provided by Charter in any of its markets at the request of the DCCA if the DCCA determines the service to be in the best interest of the public.

Thank you for your consideration of my comments.

DCCA-CATV.
P.O. Box 541
Honolulu, Hawai'i 96809

September 11, 2015

To Whom It May Concern,

As a registered, voting resident of Maui County, I understand that Charter Communications has applied to buy Time Warner Cable and become the new cable provider for Hawaii. If the state is going to approve the deal, **I request that the DCCA put conditions on the sale**. At minimum, Charter needs to agree to the following before being allowed to become the sole cable provider in Hawaii:

1. *A guarantee that everyone who wants to gets Cable TV and Internet service and that we get what we pay for by enforceable agreement so they can't charge us without delivering advertised performance.*

2. *That we receive prompt, polite, local customer service 24/7 x 365. A few months ago I called Time Warner Cable and told them I was breaking up. The agent tried mutlitple times to talk me back into it. I asked him to review my call record and add up the number of times and the amount of time I spent trying to watch my basic service. He could not answer me and I estimated I have called 10x over the past few months each time spending 10-45 minutes on the phone, often missing the show I intended to watch. I said all of your chances are up and you have actually caused me grief and not happiness. As a paying customer, there MUST be some standard or service. Mine was beyond unacceptable.*

3. *We can get fast, affordable Gigabit Internet; full funding for Akaku for the term of the franchise and equal treatment as PBS for community channels*

4. *Free WiFi in public places and the equivalent of the best deal obtainable anywhere else Charter does business.*

5. *DCCA will need to ensure by separate contract, as a condition of sale,that for the term of the franchise changes in technology & in federal legislation will not be used by Charter to evade or erode franchise fees or payment of rent for use of Public Rights of Way.*

I urge you to review the serious concerns that due to the complexity of some of these issues, the massive legal power of Charter and the legacy behavior and real world capacity issues at the DCCA cable division, that the DCCA may not able to sufficiently protect the public interest and get this done.

With deep appreciation,

Lisa Darcy
1334 W. Kuiaha Rd
Haiku,HI 96732

Cc: Akaku

---------- Forwarded message ----------
From: "**A. Chase Turner**" <chase@stumpy.com>
Date: Mon, Sep 7, 2015 at 10:14 AM -0700
Subject: [hbc] - Seeking DCCA technical staff or consultant to review my network performance findings ahead of September 16 hearings
To: "Catherine P. Awakuni" <cawakuni@dcca.hawaii.gov>
Cc: "A. Turner" <chase@stumpy.com>

Ms. Awakuni,

I cannot personally attend the DCCA hearing to be held on Maui this next week on September 16. Is there the option for me to pre-record a video presentation for inclusion in the public testimony? What follows is my first take for such a presentation :

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https://vimeo.com/138534309
password : "hold_OTWC_accountable"
```

Does the DCCA retain technical staff or consultants capable of evaluating the merits of my findings in the video – to affirm, clarify, correct, or reject the technical findings presented? NOTE: since I first engaged the DCCA back in 2012 concerning poor broadband service by OTWC, I offer to make the datums underlying my analysis available to the DCCA and OTWC so each can independently conduct an analysis to affirm, clarify, correct or reject my findings.

On a special note: I personally invite you to view the last 3 minutes of the video – where I express concerns that the DCCA is in a "regulatory capture" relationship with OTWC – and this is of concern given the forthcoming franchise hearings over a broadband service provider such as OTWC and Charter Communications. I would appreciate hearing from the DCCA as to whether my concerns of "regulatory capture" are founded … or not.

Yours truly,

A. Chase Turner 47556 HANA HWY 7G Hana HI 96713–0718 ph: 808–248–8293

From: Barry Rivers <barryrivers@me.com>
Sent: Saturday, September 05, 2015 2:01 AM
To: DCCA Cable Television
Subject: AKAKU — TESTIMONY IN SUPPORT OF AKAKU

To Whom It May Concern.

Aloha,

Charter Communications has applied to buy Time Warner Cable and become the new cable provider for Hawaii. If the state is going to approve the deal, DCCA needs to put conditions on the sale. At minimum, Charter needs to agree to the following before being allowed to become the sole cable provider in Hawaii:

A guarantee that everyone who wants to gets Cable TV and Internet service and that we get what we pay for by enforceable agreement so they can't charge us without delivering advertised performance.

That we receive prompt, polite, local customer service 24/7 x 365

We can get fast, affordable Gigabit Internet; full funding for Akaku for the term of the franchise and equal treatment as PBS for community channels

Free WiFi in public places and the equivalent of the best deal obtainable anywhere else Charter does business

The bigger picture is that since we are entering the era of the "Internet of Things" where so much will be controlled by broadband - Hawaii companies and individuals will need a minimum baseline service from the new cable provider to do business. The elephant in the room is that ***cable companies are rapidly morphing into powerful telecommunications utilities.*** DCCA will need to ensure by separate contract, as a condition of sale, that for the term of the franchise changes in technology and in federal legislation will not be used by Charter to evade or erode franchise fees or payment of rent for use of Public Rights of Way.

The writing is on the wall that in the very near future,cable companies, even though they are using the exact same telephone poles,wires and conduits,will try to get out of paying for use of Public Rights of Way(PROW) by claiming that they are Internet Protocol (IP) and IPTV delivery systems and not simply video delivery (cable) systems due to changes in the way they deliver signals and services. The simple fact remains that they will be using the same PROW regardless.

How will the DCCA act to preserve and protect funding for PEG (Akaku) community broadband, public, government and educational media?

There are serious concerns that due to the complexity of some of these issues, the massive legal power of Charter and the legacy behavior and real world capacity issues at the DCCA cable division, that the DCCA may not able to sufficiently protect the public interest and get this done. If they cannot, who will?

Sincerely,

Barry Rivers, Founder & Director
Maui Film Festival

From: Larry Koss <LKoss1@hawaii.rr.com>
Sent: Wednesday, September 09, 2015 3:40 PM
To: catv@dcca.hawaii.gov
Subject: New Charter Communications

Importance: High

Dear DCCA,

I am opposed to Oceanic Time Warner Cable being taken over by New Charter Communications. Based on evidence, it could possibly be the worst cable company ever created.

LKoss
Maui

From:	George Kahumoku <georgekahumoku@me.com>
Sent:	Monday, September 07, 2015 8:13 AM
To:	DCCA Cable Television
Subject:	Fwd: DCCA TV testimony for transfer of oceanic time Warner to Charter

Sent from my iPhone
George Kahumoku Jr.
Cell: 808-280-9948
Home: 808-249-2125
Georgekahumoku@me.com
Kahumoku.com
Slackkeyshow.com
Mailing address:
POB 12804 Lahaina Hi 96761
Farm address: (No Mail)
555 Kaukini Loop
Wailuku Hi 96793

Begin forwarded message:

> **From:** George Kahumoku <georgekahumoku@me.com>
> **Date:** September 7, 2015 at 5:10:08 AM HST
> **To:** "cabletv@decca.hawaii.gov" <cabletv@decca.hawaii.gov>
> **Cc:** Akaku Jay April Pres CEO <jay@akaku.org>
> **Subject: DECC TV testimony for transfer of oceanic time Warner to Charter**

PUBLIC HEARINGS ON TRANSFER OF OCEANIC TIME WARNER CABLE TO CHARTER

LAHAINA **Tuesday, September 8 - 4:30PM West Maui Senior Center**
WAILUKU **- Friday, September 11 - 4:30PM Cameron Center Auditorium**
LANAI **- Tuesday, September 15 - 12:00PM Lanai Senior Center**
HANA **- Wednesday, September 16 - 12:00PM Hana Community Center**
MOLOKAI **- Thursday September 17 - 4:00PM Kaunakakai Gym**

To: DECC CATV
POB 541 Hon Hi 96709
E: cabletv@DECC.hawaii.gov
Fx: 808-526-2625

From George Kahumoku Jr
Mailing: POB 12804 Lahaina Hi 96761
Physical address no mail 555 Kaukini loop
Wailuku Hi 96793

Cell: 808-280-9948
E: Georgekahumoku@me.com

Aloha DECC CATV 9-7-15
Iam a Four time Grammy winner for Hawaiian music and also a subscriber to AKAKU here on Maui and participate in Public community TV & radio. Unfortunately , I live in a remote area of Maui where Cable TV in not yet available and everything goes through our telephone line with NO band Width. We would welcome any type of Cable Service to our area. Unfortunately, I'm also working the times that you are having public testimony here on Maui, so il emailing you this letter instead . I agree & concur with AKAKU that :

1. We want DCCA enforced service level agreementsand rate transparency in Cable TV and Internet contracts so they cannot lie to us and charge us for fast Internet speeds and other services without actually delivering advertised performance.

2. Make digital cable TV, Fiber to the Home, and affordable, gigabit Internet available to EVERY resident and business in Maui County by 2020

3. Guarantee by contract that Akaku/PEG channels will be fully funded for the term of the franchise and displayed in the same manner and accessibility as PBS and Oahu local broadcast channels in analog, digital, HD, on every tier and on-demand on every device.

4. Customer service call centers, locations, field technicians and technical assistance must be available locally 24/7 x 365 with response times regulated by service agreements that include automatic refunds for lost service or outages.

5. Free Wi-Fi, live transmission capability and high speed broadband service to, public and private schools, government buildings, hospitals, libraries, community centers, community media centers, non-profit agencies and public parks.

6. Guarantee that Charter matches the best public benefits it provides to any other location in the nation.

Mahalo Nui loath your attention towards this matter

George Kahumoku Jr
Resident of Maui
At the Clifts of Kahakuloa with No cable Service

Send written testimony before Friday, September 25, 2015 to:
DCCA-CATV. P.O. Box 541. Honolulu, Hawai'i 96809
Email: cabletv@dcca.hawaii.gov Fax: 808-586-2625

Sent from my iPhone
George Kahumoku Jr.

Cell: 808-280-9948
Home: 808-249-2125
Georgekahumoku@me.com
Kahumoku.com
Slackkeyshow.com
Mailing address:
POB 12804 Lahaina Hi 96761
Farm address: (No Mail)
555 Kaukini Loop
Wailuku Hi 96793

From: John Gelert <jgelert@yahoo.com>
Sent: Tuesday, September 08, 2015 7:24 AM
To: catv@dcca.hawaii.gov
Subject: New Charter Communications

Dear DCCA,

I am opposed to Oceanic Time Warner Cable being taken over by New Charter Communications. Based on evidence, it could possibly be the worst cable company ever created,

1. CHARTER APPLICATION FOR TRANSFER OF CABLE SERVICE IS INCOMPLETE
In its Response to DCCA questions in its application, Charter refused to answer questions re: Section IV.C (1) listing names and locations of current franchises, and number of subscribers and gross revenues for each. It has claimed in several incidences that essential information requested by DCCA is "not within the DCCA's scope of review", "not reasonably necessary","burdensome", "non-jurisdictional", "overbroad"or "unrelated to the Transaction". Charter has not adequately explained character issues regarding sexual discrimination and discrimination against people with disabilities cited in Section IV.B of their Application and in FCC Form 394 Exhibit 6., Charter has not adequately explained its legal,financial or technical capabilities. The Charter Application lacks specificity and detail in multiple responses to DCCA questions i.e. Response in Section II.G,General Information regarding changes, is deficient and incomplete. Response to IV.E, Technical Qualifications and Plans, are so incomplete that their lack of specificity makes them almost meaningless.
2. WE WANT A COMMUNICATIONS SYSTEM FOR THE 21st CENTURY WITH ENFORCEABLE SERVICE LEVEL AGREEMENTS.
We want DCCA to put concrete language in ironclad contracts in addition to the franchise agreement that enforce rate transparency and service level agreements with Charter so they cannot lie to us and charge us for fast broadband Internet speeds and MVDS/OTT services without actually delivering advertised performance. We want cable programming service agreements as well. These agreements should contain penalties for non-compliance and be reviewable by DCCA every two years.
3. DCCA MUST NOT ALLOW CHARTER TO USE MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTION SERVICES (MVPDS) OR OTHER TECHNICAL MEANS TO CIRCUMVENT FRANCHISE FEE PAYMENTS
Every one knows technology is evolving at blinding speed and what we used to call"TV" is being delivered everywhere and on every device. Internet Protocol TV (IPTV) delivery of multichannel distribution of video content Over the Top (OTT) should not be used to circumvent franchise fee funding of community communication and cable regulation. DCCA must recognize this and mandate by contract that Akaku/PEG channels are fully funded for the term of the franchise at minimum present day levels and displayed in the same manner and accessibility as PBS and Oahu local broadcast channels in analog, digital,HD, on every tier and on-demand on every device.
4. CHARTER'S NON-COMMITMENT TO PEG ACCESS IN RESPONSE TO SECTION IV.E 10 and NOTE 13 NOTWITHSTANDING, CHARTER NEEDS TO AGREE TO FULLY FUND AKAKU, PBS, AND DCCA CABLE AND BROADBAND REGULATION AT AMOUNTS EQUIVALENT TO NO LESS THAN PRESENT (2015) FRANCHISE FEE LEVELS ADJUSTED FOR INFLATION FOR THE FRANCHISE TERM. THIS MINIMUM LEVEL OF FUNDING MUST BE PROVIDED REGARDLESS OF CHANGES IN FEDERAL OR STATE LEGISLATION DURING THE TERM OF THE FRANCHISE.
5. CHARTER MUST PROVIDE MINIMUM BROADBAND SPEEDS BY CONTRACT
Upload and download Internet speeds must be guaranteed by contract at affordable rates. Currently Internet service from Oceanic Time Warner is inconsistent,unreliable and erratic in most areas of Maui Nui making it difficult to move large media, data or medical files. In its application, Charter has promised minimum download broadband speeds of 60 mbps and a 300 mbps rollout on Maui. In the era we are entering called the "Internet of Things", this is simply not good enough. Charter needs to demonstrate concrete plans to meet the State of Hawaii's stated broadband goal of Symmetrical Gigabit Internet Service to all Hawaii residents by 2018. These speeds need to be codified by contract in enforceable service agreements with its customers and all rural areas including Hana, Lanai and Molokai must be included in the expansion. At hree-year rate freeze should be put into effect as well.
6. THE CHARTER APPLICATION PROMISED TRANSITION TO ALL DIGITAL NETWORKS WITHIN 30 MONTHS OF CLOSE OF TRANSACTION with a caveat that 1% of homes will not be upgraded to digital within this timeframe. Charter must agree by contract that Maui, Molokai and Lanai subscribers will not be part of this 1%digital divide and that Akaku PEG channels and channel designations will be preserved and transitioned to digital and HD in the same manner as PBS and local broadcast with channel placement and compression algorithms approved by Akaku and by DCCA in advance of transition.
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10. CHARTER MUST MATCH BEST PUBLIC BENEFIT DEAL A "most favored nation" clause should be included in the franchise agreement that would require Charter to meet or exceed any public benefit service provided by Charter T in any of its markets at the request of the DCCA if the DCCA determines the service to be in the best interest of the public.

Best regards,

John Gelert
Kihei, HI

From: Susan Douglas <sd3@hawaii.rr.com>
Sent: Wednesday, September 09, 2015 1:01 PM
To: catv@dcca.hawaii.gov
Subject: New Charter Communications

Dear DCCA,

I am opposed to Oceanic Time Warner Cable being taken over by New Charter Communications. Based on evidence, it could possibly be the worst cable company ever created:

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6. THE CHARTER APPLICATION PROMISED TRANSITION TO ALL DIGITAL NETWORKS WITHIN 30 MONTHS OF CLOSE OF TRANSACTION with a caveat that 1% of homes will not be upgraded to digital within this timeframe. Charter must agree by contract that Maui, Molokai and Lanai subscribers will not be part of this 1%digital divide and that Akaku PEG channels and channel designations will be preserved and transitioned to digital and HD in the same manner as PBS and local broadcast with channel placement and compression algorithms approved by Akaku and by DCCA in advance of transition.

7. CHARTER MUST COMMIT TO PUBLIC INTEREST BANDWIDTH AND

FIBER TO THE HOME. Charter must set aside a minimum of 10% of its total bandwidth for HD and on-demand options for all PEG channels. Charter must also agree to a 100% Fiber build out to the home (FTTH) for all voice, data, cable and Internet subscribers within 4 years of close of transaction or by the end of 2020 whichever comes first.
8. LOCAL CUSTOMER SERVICE STANDARDS MUST BE MAINTAINED Customer service call centers, locations, field technician and technical assistance must be available locally 24/7 with prompt response times regulated by service agreements. Agreements must include automatic refunds for lost service or outages.
9. CHARTER MUST PROVIDE FREE Wi-Fi AND UPSTREAM VIDEO CONNECTIONS TO COMMUNITY ANCHOR INSTITUTIONS AND DESIGNATED FACILITIES. 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, and public parks.
10. CHARTER MUST MATCH BEST PUBLIC BENEFIT DEAL A "most favored nation" clause should be included in the franchise agreement that would require Charter to meet or exceed any public benefit service provided by Charter T in any of its markets at the request of the DCCA if the DCCA determines the service to be in the best interest of the public.

Warmest Mahalo and Aloha!

Susan Douglas
Healthy Life Coach
Temple of the Spirit
3145-A Makamae Pl.
Kihei, Maui, HI 96753
808 879 1112 (24/7)
sd3@hawaii.rr.com

Proposed merger

Elizabeth Keller to: cabletv 09/01/2015 01:26 PM

From: Elizabeth Keller <elizabeth.keller@comcast.net>
To: cabletv@dcca.hawaii.gov,

I strenuously object to the idea of Oceanic Time Warner merging with Charter. We get miserable service here in Maui via Oceanic Time Warner.

Oceanic Time Warner also has dreadful, awful, insensitive and unresponsive customer service. But I understand Charter has even more unhappy customers.

This merger isnt in our, the users, best interests. Internet access is an important utility and we should have a say in what happens. Please consider the users, not the stockholders. We deserve better

Elizabeth Keller
1225 Ho'oilina Place
Haiku, Hi 96708

Testimony on Cable TV Provider
Chris Mentzel
to:
cabletv
09/03/2015 10:18 AM
Hide Details
From: Chris Mentzel <dikshahawaii@gmail.com>
To: cabletv@dcca.hawaii.gov,

I am a computer professional for 30+ years and am using cable internet in Kihei, Maui.

Every day around 5:00 pm, the internet slows down from 8 to 1 Mbit. This is most probably due to a lack of infrastructure.

Other places in the world have access to gigabit Internet and Maui's computer users, business and media firms are severely held back by our slow speeds. We do have great connectivity through multiple ocean cables, it is more a question of infrastructure and contracts. Also, the upload speed restrictions are ridiculous.

Please ask Charter to upgrade Internet services speedily.

Please guarantee by contract that Akaku/PEG channels will be fully funded for the term of the franchise and displayed in the same manner and accessibility as PBS and Oahu local broadcast channels in analog, digital, HD, on every tier and on-demand on every device.

Please ask for the provision of free Wi-Fi, live transmission capability and high speed broadband service to, public and private schools, government buildings, hospitals, libraries, community centers, community media centers, non-profit agencies and public parks.

Mahalo,

Chris Mentzel

Kihei