

**Fw: TW refuses to give free digital cable boxes**  
Cable Television to: Laureen K Wong, Glen WY Chock  
Sent by: **Patti K Kodama**

04/17/2012 02:42 PM

History: This message has been forwarded.

----- Forwarded by Patti K Kodama/DCCA on 04/17/2012 02:42 PM -----



**Sharlene Rohter**  
<aahamelenew@gmail.com> To cabletv@dcca.hawaii.gov,  
04/16/2012 06:17 PM cc

Subject Fwd: TW refuses to give free digital cable boxes

Thanks to whoever at cabletv@dcca.hawaii.gov passed my complaint on to Oceanic/Time Warner. It got quick action.

A customer service rep called me this afternoon and offered me a "complimentary" 2d digital translator box, and said she could schedule installation tomorrow!

They continue to play games w/the public, however. On behalf of **a neighbor and several friends who had also been refused 2d boxes**, (and those refused because **they were digital subscribers** such as testified to by Meredith Nichols, director of community development for Olelo), I asked the customer rep if the rule was in fact 2 boxes per subscriber as attorney Laureen Wong had said on the Cable TV Advisory Comt. meeting. The Oceanic rep's reply: "I don't know. All that I have is a work order from a supervisor."

Oceanic should be **required** to scroll on all public service channels, both analog and digital, an offer of a free digital box (or a second one) **to all who were previously denied**. Also train their service reps accordingly so subscribers don't have to waste the endless HOURS as I did to get access to the public spectrum. Tiny 8 pt print notice buried on a 2-plus page long bill is certainly not in the public interest.

Mahalo and please, please protect the public spectrum and deny the ex-post facto waiver Oceanic is cavalierly expecting.

Aloha, Sharlene Rohter 394-0945 (Oahu)

Date: Mon, 16 Apr 2012 09:09:16 -1000  
To: cabletv@dcca.hawaii.gov  
From: Sharlene Rohter <aahameleNEW@gmail.com>  
Subject: TW refuses to give free digital cable boxes

Time Warner Oceanic has three times **refused** to provide more than a single free digital box to enable us to watch Olelo, TEC, TEACH and other channels that have "been migrated" to digital.

My husband is partially disabled and we live in a 2-story house, and now he can't view these channels once he is downstairs for the day. We are living on a limited fixed income and cannot afford to rent a 2d box or buy a new tv so he is now **denied right of access** to what should be public spectrum.

DCCA staff attorney Loreen Wong told the commission that TW/O is contracted to provide **two** free converter boxes for citizens with tvs that only receive "analog." I think they **SHOULD** be required to provide as many boxes as a paid subscriber has analog tvs -- and certainly at least two for those of us who have 2-story houses and challenged/disabled residents who cannot easily move about betw bed and kitchen.

Like the lady who testified at the Cable Advisory Committee on their meeting broadcast Fri. night 4/13 on "View 54 Olelo" channel, requesting even one box took at least 30 minutes of holding, checking, and signup time for even one box. They firmly and incessantly refused a second box.

I also strongly and firmly and vocally **oppose the ex-post-facto waiver to give-away the 6 bandwidth definition and spectrum** "real estate" of public tv. Members of the committee wondered why Oceanic was doing this. In my opinion the extra bandwidth to enable better Internet access they say justifies this give-away of the public property is solely to their own benefit at the expense of citizens. They want to protect their monopolistic cable fees: In the near future subscribers will drop paying \$60 month and up to receive beyond-basic service, and instead opt to access tv shows via Internet and smartphone via services such as Hulu etc. And of course, as Time Warner loses it monopoly-enabled subscribers they will jack up Internet fees to make up the lost revenue.

I am an ordinary citizen and if you have any further questions, please call me at 394-0945 (Oahu).

Sincerely, Sharlene Rohter

200 Akamaimui Street  
Mililani, Hawaii 96739-3999  
Tel: 808-625-2100  
Fax: 808-625-3888



CABLE DIVISION  
COMMERCE AND  
CONSUMER AFFAIRS

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FILE \_\_\_\_\_

April 6, 2012

**VIA FACSIMILE AND U.S. MAIL**

Members  
Cable Advisory Committee  
c/o Ms. Keali'i S. Lopez  
Director  
Department of Commerce & Consumer Affairs  
King Kalakaua Building  
335 Merchant Street, Room 101  
Honolulu, Hawaii 96813

**Re: Digital Migration of TEC and TEACH Channels on Neighbor Islands**

Dear Members of the Cable Advisory Committee:

This responds to several comments and concerns raised by the members of the Cable Advisory Committee and various individuals who testified at the advisory committee meeting on April 4, 2012 regarding the digital migration of the TEC and TEACH channels on the neighbor islands. Thank you for the opportunity to provide comments to the committee in order to ensure that the committee receives relevant information in this matter so that it may fulfill its duty to consider and provide independent, fair and balanced advice to the DCCA on cable-related matters.

As an initial matter, Oceanic takes very strong exception to statements made during the meeting that implied (or directly alleged) that Oceanic did not act in good faith (and questioned Oceanic's "character" and "intent") with respect to the digital migration of the TEC and TEACH channels on the neighbor islands. As you are aware, the DCCA recognized in connection with Oceanic's Oahu franchise over two years ago that, as a general matter, there are significant benefits to the digital migration of analog channels, and more specifically, the digital migration of the TEC and TEACH channels on Oahu would provide benefits for those stakeholders. The migration of the TEC and TEACH channels was fully supported by the education stakeholders, including the Hawaii Educational Network Consortium ("HENC") and the University of Hawaii, which continue to support the digital migration of the TEC and TEACH channels on the neighbor islands today.

Members  
Cable Advisory Committee  
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Following the successful migration of the TEC and TEACH channels on Oahu during the summer and fall of 2011, Oceanic began to work with the educational stakeholders to plan for the transition of the TEC and TEACH channels on the neighbor islands. As Oceanic has informed the DCCA, Oceanic has made concerted efforts (including significant investments in infrastructure) since obtaining franchises on the neighbor islands to ensure that service to its neighbor island customers are closely comparable, if not identical, to services that are available to Oceanic's customers on Oahu. Oceanic consulted and worked with the University of Hawaii, the Department of Education, and HENC on this migration process and informed the DCCA in September and October of the planned migration. Maui Community College requested, and Oceanic agreed to provide, enhanced video services (including an educational video on demand channel specifically for Maui residents), which would have been made possible, in part, by the bandwidth recovery through the migration of the TEC and TEACH channels.<sup>1</sup>

Oceanic provided written notifications to the DCCA of the planned neighbor island migrations of the TEC and TEACH channels on September 28, 2011 and October 17, 2011, and also provided written notifications to all of its neighbor island subscribers in October and November, 2011. Per the DCCA's request, Oceanic provided additional information regarding its discussions with Maui Community College on the migration via a letter dated November 4, 2011 and provided a copy of that letter to the neighbor island public access organizations. Following concerns raised by the public access organizations and discussions with the DCCA regarding the box distribution policy, Oceanic made further efforts to contact the neighbor island public access organizations on December 16, 2011.

While Oceanic acknowledges that the neighbor island public access organizations have raised concerns regarding the process of the digital migrations and communications relating to the migration, Oceanic worked diligently and in good faith to ensure that subscribers and relevant stakeholders were informed of the process. Oceanic further notes that the education providers, who produce programming for TEC and TEACH (and who have the most at stake with respect to this issue), did not object to the digital migration of those channels, and Oceanic believes that the migration provides greater flexibility and visibility for the education providers. While the public access providers note that they are designated as the "managers" of the TEC and TEACH channels through their contract with the DCCA, the Cable Advisory Committee should be aware that none of the existing public access providers produce any programming for these channels, nor make any significant efforts to promote these channels. The University of Hawaii and the Department of Education provide all of the programming for TEC and TEACH,

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<sup>1</sup> Unfortunately, this planned video on demand channel for Maui Community College students could not be implemented due to continuing objections on Maui to the full digital migration of the education channels and the attendant lack of available bandwidth.

Members  
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for example, and Akaku, Na Leo, Hoike and 'Olelo do not list TEC or TEACH programming on their websites, nor mention TEC and TEACH as one of the PEG channels.

Given the foregoing, Oceanic strongly disputes the allegations raised during the Cable Advisory Committee meeting that Oceanic did not act in good faith in connection with the digital migration of the TEC and TEACH channels, and Oceanic believes it diligently worked in good faith to ensure that relevant stakeholders and Oceanic's subscribers were aware of, and would benefit from this process.

Issues were also raised during the Cable Advisory Committee meeting regarding whether the digital migration of the TEC and TEACH channels would provide any immediate benefits to Oceanic's subscribers on the neighbor islands. To be clear, Oceanic expects that the digital migration of the TEC and TEACH channels, in conjunction with other bandwidth recovery efforts, will provide timely and significant benefits to Oceanic's neighbor island customers.

As noted in more detail in the enclosed letter from Oceanic's counsel dated February 14, 2012 that was sent previously to the DCCA, for example, the digital migration of the channels will assist Oceanic in launching services on the neighbor islands consistent with those offered on Oahu, including significantly faster broadband speeds, the statewide education and government channels required by the Oahu franchise agreement, and additional digital and high definition channels to neighbor island residents.

As you are aware, the Governor has made the development of high speed broadband service throughout the state of Hawaii an important priority under state policy, and the digital migration of channels directly affects Oceanic's ability to increase broadband speeds throughout the state. As recognized by the enclosed letter from the University of Hawaii System (supporting the digital migration of the TEC and TEACH channels), spectrum recovery and the efficient use of that spectrum is an important element in advancing broadband services in Hawaii, and also important to provide increased access to education for citizens on *all* islands. In short, Oceanic believes that the digital migration of the TEC and TEACH channels on the neighbor islands, consistent with other bandwidth recovery efforts, will ensure that all subscribers and stakeholders on the neighbor islands will reap the benefits of enhanced services made possible through efficiently utilizing the recovered bandwidth.

Finally, Oceanic notes there was some discussion during the Cable Advisory Committee meeting as to Oceanic's compliance with its neighbor island franchises. As noted in the enclosed February 14, 2012 letter to the DCCA, a review of Oceanic's neighbor island franchises indicates that the digital migration of channels was not contemplated by the franchises at the time that they were entered. Accordingly, Oceanic believes that the underlying premise,

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consideration and understanding for defining a "channel" only by megahertz of spectrum (as the neighbor island franchises currently do) has clearly been superseded by fundamental changes in technology since the franchises were entered. Oceanic notes that virtually everyone, including the public access organizations, agree that a "channel" can no longer be simply defined by discrete 6Mhz "blocks" of spectrum, and the definition of a "Channel" in the neighbor island franchises is obsolete.

Accordingly, while Oceanic reserved all of its rights with respect to the interpretation and application of the definition of a "Channel" in the neighbor island franchises, and its migration of the TEC and TEACH channels, Oceanic, in the interests of resolving these issues expeditiously, decided to formally request a waiver of the applicable provisions of the neighbor island franchises so that Oceanic could proceed to more efficiently utilize the available bandwidth for the benefit of all relevant stakeholders and all subscribers on the neighbor islands.

Oceanic notes that the DCCA's obligation under state law is to ensure that "the terms and conditions upon which cable service is provided are fair both to the public and to the cable operator, taking into account the geographic, topographic, and economic characteristics of the service area and the economics of providing cable service to subscribers in the service area." Haw. Rev. Stat. § 440G-8.1(c) (1993). Accordingly, Oceanic believes that it is equally important for the Cable Advisory Committee, in independently and objectively reviewing and considering this issue, to view the digital migration issue in the context of what is fair to *all* of the subscribers and stakeholders, including, but not limited to, the educational providers, broadband customers, and neighbor island subscribers who seek additional high definition channels and other advanced services.

Thank you for this opportunity to provide this additional information to the Cable Advisory Committee. Please do not hesitate to contact Oceanic should you have questions regarding the foregoing.

Very truly yours,



Bob Barlow  
President  
Oceanic Time Warner Cable

Enclosures  
cc (w/ Encls.): JoAnn Uchida, Esq.  
Mr. Donn Yabusaki  
Laureen Wong, Esq.

February 14, 2012

**VIA HAND DELIVERY**

Ms. Keali'i S. Lopez  
Director  
Department of Commerce & Consumer Affairs  
King Kalakaua Building  
335 Merchant Street, Room 101  
Honolulu, Hawaii 96813

**Re: Digital Migration of TEC and TEACH Channels on Neighbor Islands**

Dear Ms. Lopez:

Thank you for your letter dated January 31, 2012 regarding the above-referenced matter to Mr. Bob Barlow, President of Oceanic Time Warner Cable. Our office represents Oceanic Time Warner Cable with respect to this matter, and the following responds to your letter.

When the existing neighbor island franchise orders were entered over a decade ago (between 1995 and 2002), digital transmission and migration of channels was not discussed or contemplated. *See* Decision and Order Nos. 173 (Kona, June 30, 1995); 174 (Lahaina, October 2, 1995); 185 (Hilo, April 8, 1996); 241 (Kahului, May 10, 1999); and 291 (Kauai, July 12, 2002). Accordingly, these decisions and orders adopted and used the definitions and terminology for the existing technology available at the time for the transmission of cable television programming -- analog technology -- and the fundamental premise underlying the definitions, terms and conditions of these decisions and orders was that analog technology would be employed in the distribution of programming to Oceanic's subscribers in the future.

As the DCCA is aware, in the decade since the last neighbor island cable television franchise was entered in 2002, the development and implementation of digital technology in all aspects of communication, including video transmission, has increased exponentially, and digital technology is now ubiquitous. The FCC, as a matter of national policy, has embraced and promoted digital video technology, and in 2009, per an FCC mandate, all broadcasters were required to transition from analog to digital transmission. As part of that transition, millions of households across the nation were required to obtain and install digital to analog conversion boxes in order to receive digital broadcasts.

Ms. Keali'i S. Lopez  
February 14, 2012  
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The State of Hawaii, as a matter of State policy, has also actively sought to promote digital technology, through initiatives such as the Hawaii Broadband Task Force, the Broadband Assistance Advisory Council and the Hawaii Broadband Initiative. With respect to cable television, the DCCA has recognized the benefits to consumers of the transition to digital technology, and Oceanic's Oahu franchise (D&O 346), expressly recognizes that one of the primary purposes of the digital transition is to release more usable bandwidth for other services for the benefit of *all* subscribers. In a news release relating to the renewed franchise, the State recognized that Oceanic would be providing a number of digital channels for the benefit of subscribers, and further noted that Oceanic would "immediately undertake a conversion of most of its analog programming channels to digital." *DCCA Renews Time Warner Entertainment Company's Non-Exclusive Cable Franchise for Oahu* (January 14, 2010).<sup>1</sup>

The digital migration and attendant bandwidth recovery provides significant benefits to consumers. Six MHz of bandwidth accommodates approximately three high definition channels or twelve standard definition digital channels, and the amount of bandwidth recovered on Kauai and the Big Island as a result of the digital migration of the TEC and TEACH educational channels is approximately 12 MHz. On Maui, the bandwidth recovery from the transition of the TEACH channel is one half of the amount of the other islands, or approximately 6 MHz. Oceanic, consistent with consumer demand, has and will be using the recovered bandwidth on the neighbor islands to increase its broadband speeds, add additional video on demand channels, and increase the number of its high definition channels, among other improvements.<sup>2</sup>

In order to provide services on the neighbor islands consistent with those offered on Oahu, for example, Oceanic increased the standard speed for its Road Runner High Speed Online service on the neighbor islands to 10 Mbps in early 2011, and launched Road Runner Extreme (30 Mbps) and Road Runner Wideband (50 Mbps) in late Summer, 2011. Launching these services on the neighbor islands required channel bonding (linking analog channels together), which required a total of four equivalent analog channels on each of the islands, and which Oceanic accomplished through temporarily managing the limited spectrum available. The migration of the TEC and TEACH channels permits Oceanic to continue to provide these services on the neighbor islands while also making it possible to launch the statewide education and government channels required by the Oahu franchise agreement. As noted above, digital migration on

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<sup>1</sup> Oceanic notes that its competitors, including the telephone company and satellite companies, deliver all of their signals in digital format only and require converter boxes for the delivery of all of their programming. Satellite providers are not required to carry public access channels at all.

<sup>2</sup> Oceanic notes that PEG channels are not the only analog channels that Oceanic is in the process of realigning. Oceanic also regularly evaluates realigning analog commercial channels to the digital spectrum.



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February 14, 2012  
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As such, while Oceanic reserves all of its rights with respect to the migration of the TEC and TEACH channels on the neighbor islands and the interpretation of the neighbor island franchises, Oceanic believes it is important to ensure that all neighbor island residents benefit from the digital migration and spectrum recovery without delay and without continued disputes regarding the migration. Accordingly, pursuant to the terms and conditions of Decision and Order Nos. 173 (§12.8), 174 (§12.8), 185 (§12.8), 241 (§12.8), and 291 (§11.8) and Hawaii Revised Statutes § 440G-8.1(c)<sup>3</sup>, Oceanic, in the interests of resolving these issues and without prejudice to its positions herein, respectfully requests a waiver of the applicable provisions of the foregoing decisions and orders defining a "Channel" as a "minimum of six megahertz (6 MHz) in the electromagnetic spectrum which is capable of carrying any type of transmission which TWE is authorized to provide to subscribers" for the purpose of migrating the TEC and TEACH channels on the neighbor islands to the digital spectrum and recovering the attendant bandwidth for the purposes noted herein.<sup>4</sup>

Oceanic believes that good cause exists for the waiver as described in detail above. In summary, the migration of the TEC and TEACH channels on the neighbor islands will: 1) enable Oceanic to continue to provide higher quality and enhanced services to neighbor island residents that Oahu residents have received as a result of the digital migration and on a similar timetable as the Oahu upgrades; 2) enable Oceanic to upgrade its broadband services consistent with the State's policy to promote and encourage broadband development; 3) provide enhanced flexibility to the neighbor island education partners and enhanced video on demand services for the Maui education partners; and 4) more efficiently utilize the available bandwidth for the benefit of all customers on the neighbor islands.

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<sup>3</sup> "The director shall ensure that the terms and conditions upon which cable service is provided are fair both to the public and to the cable operator, taking into account the geographic, topographic, and economic characteristics of the service area and the economics of providing cable service to subscribers in the service area." Haw. Rev. Stat. § 440G-8.1(c) (1993).

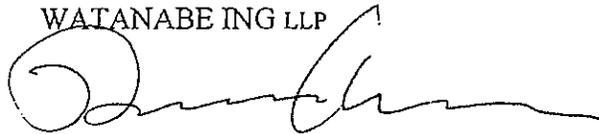
<sup>4</sup> Oceanic reserves all rights with respect to these issues in connection with negotiations for the renewal of the neighbor island franchises, as well as all rights in connection with the migration of other channels on Oceanic's system.

Ms. Keali'i S. Lopez  
February 14, 2012  
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Please contact us with any questions regarding the foregoing. Thank you  
for your consideration of the foregoing.

Very truly yours,

WATANABE ING LLP

A handwritten signature in black ink, appearing to read "Brian A. Kang", written over the printed name below.

BRIAN A. KANG

cc: Mr. Donn Yabusaki  
Oceanic Time Warner Cable

April 4, 2012

A E P S

FILE

**VIA HAND DELIVERY**

Ms. Keali'i S. Lopez  
Director  
Department of Commerce & Consumer Affairs  
King Kalakaua Building  
335 Merchant Street, Room 101  
Honolulu, Hawaii 96813

**Re: Notice of Intent to Issue Decision and Orders on  
Digital Migration of TEC and TEACH Channels on Neighbor Islands**

Dear Ms. Lopez:

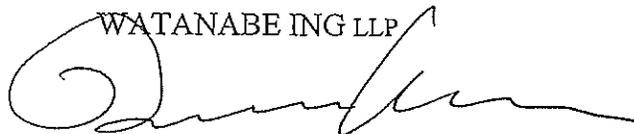
Time Warner Entertainment Company, L.P. through its Hawaii Division, Oceanic Time Warner Cable, supports the intent to issue decisions and orders regarding the digital migration of the TEC and TEACH channels on the neighbor islands as described in DCCA Notice Nos. CATV-12-01; CATV-12-02; CATV-12-03; CATV-12-04; and CATV-12-05 (March 5, 2012) for the reasons stated in Oceanic's letter to the DCCA dated February 14, 2012.

Upon review of the notices, Oceanic respectfully requests that the final decisions and orders also include Oceanic's position, as stated in its February 14 letter, that while Oceanic requested a waiver with respect to certain provisions of the neighbor island franchises, Oceanic also reserved all of its rights with respect to the migration of the TEC and TEACH channels on the neighbor islands and the interpretation of the neighbor island franchises. For the reasons stated in Oceanic's February 14 letter, Oceanic requests that the final decision and orders be entered as soon as possible.

Thank you for the opportunity to review and comment upon the notices, and for your consideration of the foregoing. If you have any questions, please do not hesitate to contact us.

Very truly yours,

WATANABE ING LLP



BRIAN A. KANG

Ms. Keali'i S. Lopez  
April 4, 2012  
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cc: Mr. Donn Yabusaki  
Oceanic Time Warner Cable

BEFORE THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

CABLE DIVISION  
COMMERCE AND  
CONSUMER AFFAIRS

2012 APR -4 P 2: 05

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WRITTEN COMMENTS of:

Jay April, President and CEO  
Maui County Community Television, Inc. dba Akaku: Maui Community Television

In the Matter of:

Notice of Findings of Fact and Intent to Issue a Decision and Order  
CATV-12-04 and CATV-12-05

In the Matter of: Time Warner Entertainment Company, L.P.  
Migration of Analog Education Channels to Digital Format for its  
Lahaina and County of Maui (respectively) Cable Television Franchise

OVERVIEW:

Akaku: Maui Community Television, on behalf of it's neighbor island producers, online viewers and cable television subscribers, would like to thank the Department for the opportunity to comment on the DCCA Notice of Findings of Fact and Intent to Issue a Decision and Order(s) in the above mentioned proceedings.

If you look at the long tradition of U.S Telecommunications Law, time and time again you will come across references to the fundamental principles of "localism" and "diversity of viewpoint." These foundational principles are essential in helping local individuals and communities communicate with one another in order to to maintain an informed electorate and a healthy democracy. This is precisely the reason why uniquely local Public, Educational and Government (PEG) access channels have always been included along with local broadcast channels in the definition of "basic cable service." These local broadcast and PEG access channels have everywhere and always been intended to be made available to all subscribers at the most affordable, most widely available tier. What appears to be self evident, as a matter of policy, is that PEG channels have a right to the same treatment as every other local "must carry" broadcast channel on every cable subscriber's most basic tier of service. This Intent to Issue a Decision an Order will have, perhaps, the unintended consequence of making certain that this does not happen now or in the future. It will fragment and devalue local PEG channel electronic real estate, have a negative impact on audience share, require special equipment to view, inhibit channel branding and marketing efforts, allow for signal degradation below that of existing analog broadcast channels, weaken PEG community partnerships and create considerable barriers for viewers.

Monica Shah Desai, former Chief of the FCC Media Bureau, put it this way:

*"It has come to our attention that some programmers are moving PEG channels to a digital tier, or are treating them as on-demand channels. We are concerned by these practices. We believe that placing PEG channels on any tier other than the basic service tier may be a violation of the statute, which requires that PEG access programming be placed on the basic service tier. Subjecting consumers to additional burdens to watch their PEG channels defeats the purpose of the basic service tier. We believe it is important to ensure that consumers are able to get access equally to all channels belonging on the basic service tier, and that this should be the case regardless of what type of system the channels are being carried on."*

The main point we wish to emphasize is, technologically speaking, while we recognize that the eventual transition from analog to digital is inevitable and even desirable in the future, the devil is in the details. All we are asking, ultimately, is that PEG migration follow the same timetable as our local broadcast channels, that there be no diminishment of existing analog spectrum available to PEG access in the migration from analog to digital, and that the PEG access transition from analog to digital not result in reduced bandwidth, reduced accessibility, reduced quality or reduced features during or after transition relative to any other previously broadcast analog cable channels. We are asking DCCA to modify its D&O to direct Oceanic Time Warner to deliver all existing PEG channels in analog format on the basic service tier until the entire tier is digital and (unless the parties agree otherwise) that PEG channels be part of basic when digital.

At the heart of the matter before us is whether or not the definition of "Channel" as a minimum of six megahertz (6 MHz) in the electromagnetic spectrum should still apply to PEG channels in a rapidly changing technological migration of analog to digital. Also in question is whether or not an equivalent amount of PEG bandwidth set aside for noncommercial use under federal law in the analog environment should be retained by the LFA in the digital environment for use by the public benefit sector.

There is also a significant legal question as to whether, as a result of issuing the intended order, the DCCA is properly exercising its authority by, in effect, allowing the "renter" of our public rights of way (Oceanic Time Warner Cable) to reclaim extremely valuable public property in the form of noncommercial electromagnetic spectrum for commercial use without due process, just compensation or quid pro quo.

Consumers and users of monopoly cable television and wireline broadband services on neighbor islands have not had the benefit of the comprehensive analysis required in the franchise renewal process that took place in Oahu. We believe that one size does not fit all and that neighbor islands have a right to expect that DCCA would conduct economic analyses, engineering studies and public hearings in affected franchise areas prior to approving any migration of Analog PEG channels to Digital format.

Akaku has also informed the Department that it is our belief that the Digital Migration of Educational Access Channels is in violation of the Cable Telecommunications Act of 1984 and of DCCA Decision and Order 241 and related D&O's (see Addendum A attached) The Department disagrees with our analysis.

Regardless of the long standing federal and state regulatory history discussed in previous correspondence with the Department, a history that appears to discourage and prohibit analog to digital migration without representation or prior LFA approval (citations of which are included here in Addendum A) the DCCA Notice of Findings of Fact raise several political, economic, technological and philosophical questions some of which are not easy to answer. A few to consider include:

1. The State of Hawaii is striving to fulfill the laudable goals of the Governor's Hawaii Broadband Initiative to attain symmetrical Gigabit connectivity to all residents by 2018. I will take him at his word that he means *all* residents, not just a few privileged institutions. What this means is that we will need a firm quid pro quo from Oceanic Time Warner in exchange for the surrender of public bandwidth to private enterprise. In lieu of that, what measurable guarantees can be realized to ensure that public agencies such as DCCA, The University of Hawaii, the Department of Education and others do not prematurely succumb to a "siren song" of wireline incumbent promises for affordable, ubiquitous broadband for all at the expense of PEG access and Community Broadband development?
2. As telecommunications technologies like cable, voice, wireline and wireless broadband converge and cable TV transforms itself into an Internet Protocol Television (IPTV) delivery service with unregulated and highly lucrative broadband components, what is the proper role, responsibility and scope of the Local Franchise Authority (LFA) in protecting fully local public interest community communications. How will DCCA provide local stakeholders, NGOs, NPOs and the public maximum input into the decision making process?
3. To what extent do the provisions of the DCCA's Franchise Renewal for the Island of Oahu granted to Oceanic Time Warner in 2010 - that allowed for the digital migration of PEG access channels - influence the current DCCA's inclination to vacate existing neighbor island franchise orders by fiat? Why does DCCA appear to champion the same goals demanded by Oceanic Time Warner without careful review by neighbor island PEGs or public input from the neighbor island public?
4. Oceanic Time Warner continues to apply considerable political pressure at the Legislature and at DCCA by dictating how its cable franchise fee and capital contribution or "rent" money is spent for use of public rights of way (PROW) while enjoying record profits from its cable, telephone and unregulated broadband businesses. The company has also been moderately effective in mounting a sophisticated campaign to pit PEG access beneficiaries and communities against one another. It has hired at least one state representative and offered State /County Government and Educational partners "digital" incentives and/or channels to persuade these agencies and individuals to advocate abandoning a successful integrated PEG funding model in favor of a funding scheme that will split the resource. The company has aggressively questioned the suitability of at least one PEG Access provider to manage stewardship of the E and G sectors, misled legislative committees and other government agencies regarding a true calculation of its

actual cash contribution in exchange for use of PROW, and severely questioned the appropriateness and expenditures of Olelo related to PEG technology, innovation and IT. How will DCCA respond to this ongoing industry challenge and will DCCA continue to support robust funding of public sector community communications?

Finally, before we present ARGUMENTS IN FAVOR and ARGUMENTS AGAINST *Notice of Findings of Fact and Intent to Issue a Decision and Order /CATV-12-04 and CATV-12-05, In the Matter of: TWE, L.P. Migration of Analog Education Channels to Digital Format for its Lahaina and County of Maui (respectively) Cable Television Franchise*, we need to point out that since December 19, 2011, Oceanic Time Warner successfully migrated PEG channel 56 on Maui from the lowest cost, most widely available analog service tier to a digital tier vacating that analog channel slot which requires subscribers to acquire special equipment to view. What this means is that Oceanic Time Warner made PEG channel 56 disappear from nearly 40% of cable subscriber homes without adequate notice or prior consultation with Akaku and PEG entities in each neighbor island county and without DCCA approval as required by law.

**ARGUMENTS IN FAVOR and ARGUMENTS AGAINST Notice of Findings of Fact and Intent to Issue a Decision and Order /CATV-12-04 and CATV-12-05, In the Matter of: TWE, L.P. Migration of Analog Education Channels to Digital Format for its Lahaina and County of Maui (respectively) Cable Television Franchise.**

#### ARGUMENTS IN FAVOR OF ISSUING A D&O

##### 1. DCCA UNAWARE OF DIGITAL TECHNOLOGY UPON DRAFTING OF ORIGINAL D&O

Akaku agrees that to the best of its knowledge with a few minor exceptions, the DCCA is essentially correct in its FINDINGS OF FACT enumerated in Sections I. A, B, C, D, F, H, I, N, R, S, and T, in Notice CATV-12-04 and Section I. A, B, C, D, E, F, G, H, I, J, O, S, T, and U of Notice CATV-12-05. Akaku also agrees with DCCA that when the definition of Channel was written in D&O 174 and 241 in 1995 and 1999 respectively, that DCCA may have only been aware of analog technology as a delivery mechanism for the distribution of cable television and had not properly or diligently investigated the technological integration of digital and IPTV technology with cable.

##### 2. TWE CAN OFFER MORE ENHANCED SERVICES

Akaku agrees that in theory and aided by the absence of regulatory oversight, economic, engineering or audience analysis - migration of cable spectrum currently used for analog transmission to digital could enable TWE to offer enhanced services; including greater choices in high definition, more efficient means of viewing programs and substantial increases in broadband speeds.

### 3. ELECTROMAGNETIC SPECTRUM RECOVERED FOR COMMERCIAL USE

Although there is no guarantee, quid pro quo or tangible benefit to the state, PEG providers or cable consumers, Oceanic Time Warner has reclaimed 12MHz of analog spectrum from PEG for use in providing what many hope will be faster broadband speeds at affordable rates.

### 4. DIGITAL TRANSITION IS THE FUTURE

Akaku notes that although the FCC has suggested extending its cable analog carriage mandate for three years and its waiver of HD carriage mandate for an additional three years, and although some industry analysts are predicting that a total cable analog to digital transition may not be complete for 7-10 more years, the transition from analog to digital is inevitable.

### 5. PEG BANDWIDTH IS PROFITABLE

Operators have new and profitable bandwidth intensive uses such as HD channels, Internet speeds, VoIP, etc. In a bandwidth hungry world, PEG channel capacity is valuable.

### 6. THERE ARE LOOPHOLES IN THE LAW

Current law is not as clear as needed to protect PEG in a digital world. This ambiguity makes it easier for the phenomenon known as regulatory capture to occur.

## ARGUMENTS AGAINST ISSUING A D&O

### 1. POSSIBLE VIOLATION OF FEDERAL STATUTE

Oceanic Time Warner has already effected the digital migration of PEG channels in violation of existing neighbor island Decision and Orders that govern their franchise agreements. In a similar case in Michigan (Dearborn v. Comcast) a TRO was granted by the 6th Circuit against the cable operator for possible violation of Federal Law for doing almost exactly the same thing. In that case, because the LFA chose to enforce, rather than waive, its franchise agreement, the City of Dearborn obtained a settlement that restored the channels to the analog tier, guaranteed the channels on digital and HD tiers, and received \$250,000 in compensation.

### 2. INTENT TO ISSUE D&O CONTRADICTS DCCA SENATE TESTIMONY

My colleagues and myself greatly appreciate the ongoing conversations we have had with the Department regarding this issue going back as far as September of 2011. We are concerned, however that apparently very little has been done to stop the erosion of PEG

channels. The Maui DOE channel 56 is already gone to Digital 356 and Akaku is concerned about a similar event taking place with Channel 55 on Maui's cable systems to go along with Oceanic's recent rate hike.

It was encouraging to hear Cable Television Administrator, Donn Yabusaki, not rule out some sort of "legal action" in his recent testimony before the Senate Committee on Commerce and Consumer Protection at the onset of this Legislative session - but as defenders of the little that is left of public benefit electronic real estate, we are deeply troubled by the apparent about face the Department has taken regarding the implications of this Intent to Issue a D&O.

### 3. 40% OF SUBSCRIBERS DISENFRANCHISED

As a result of this PEG analog to digital migration, 40% of cable subscribers on neighbor islands cannot view educational PEG channels without first obtaining special equipment. Not only that, advertised QAM and Digital channel designations are confusing and may not be available on all television sets. This creates a serious barrier to PEG marketing and audience building and diminishes public access to state education and lifelong learning opportunities.

### 4. MIGRATION PREMATURE AT THIS TIME

We fully appreciate that digital and IPTV is the inevitable future of cable technology and we support efforts by our educational partners to add learning on demand services. We need to point out, however, that this particular piecemeal digital migration at this time is premature. Since DCCA's own Findings of Fact has determined that Akaku was not informed or included in Oceanic Time Warner discussions and ex-parte negotiations with our client educational partners, we are concerned that misinformation put forth to our educational partners linking their digital success to abandonment of analog spectrum now may not reveal the whole picture. There is no reason why education cannot move forward with digital improvements while simultaneously remaining on the analog tier until this issue is resolved.

### 5. DCCA ACTION MAY JEOPARDIZE FRANCHISE RENEWAL

Since Maui County will be entering into a franchise renewal negotiation in the near future, the failure of the Department to enforce its Maui contract cannot help but send the wrong signal to Oceanic that may impair Maui County's ability to achieve a fair franchise agreement in 2013.

### 6. D&O WILL SEVERLY WEAKEN COMMUNITY TELEVISION PARADIGM

Apart from a major channel branding and marketing disruption, the loss and dissolution of public benefit bandwidth as a result of this move costs us money and audience we will never get back; diminishes the ability to be treated on a par with commercial services.

such as local broadcast channels; and inhibits community broadband efforts by usurping electronic spectrum from the public sphere. It creates significant barriers to viewership; blurs the distinction, definition, placement and jurisdiction of PEG channels; and due to the significant barrier of finding out about and acquiring special equipment, reduces DOE and UH stations to what amounts to dedicated institutional channels with limited viewership. This ignores the general wider public audiences who can still benefit from educational programming and pay their taxes to be able to have free and open access to it.

#### 7. PUBLIC BANDWIDTH TAKEN FOR COMMERCIAL USE WITHOUT COMPENSATION OR DUE PROCESS.

What this migration does to put it simply is to allow the cable operator to appropriate 40% of public electronic parkland for its own commercial use. The math to support this metaphor is as follows: 2 analog channels (55 and 56) equal a minimum of 8 digital channels and the 2 digital channels that supposedly replace them (355 and 356) do not amount to enough bandwidth to even compensate for 1 analog channel. So if analog channels were acres of parkland, you are down sizing 5 contiguous acres of parkland to 3 acres and, in return for those two lost prime acres, you get 1/2 an acre located way out in the boondocks where you need a special key (digital cable box) to get in. It is difficult to see how a deal like that is in the public interest.

#### 8. DIGITAL PEG CHANNELS CAN RESULT IN LOWER QUALITY SIGNAL

The Cable Act requires non-discriminatory treatment of PEG channels yet a digital channel is an application, not a channel. Consequently, digital "channels" are encoded and decoded differently which can result in a significant loss of quality. Without written assurances of minimum technical standards from the cable operator, such as upgrades to HD, services such as secondary audio, closed captioning capability, or ability to record may be adversely affected.

#### 9. TIME WARNER BROADBAND PLANS MAY BE ANTITHETICAL TO HAWAII BROADBAND INITIATIVE GOALS

A major factor in the DCCA Findings of Fact appears to be a decision on the part of DCCA to allow Oceanic Time Warner to immediately reclaim as much as 12 MHz of what was once dedicated PEG bandwidth to free up spectrum for the company to provide "ubiquitous and affordable" broadband speeds to consumers. There is evidence from other markets that Time Warner is dramatically reducing analog cable line-ups across the nation to make additional room for new digital HD channels and faster broadband speeds. Nowhere in the DCCA Findings however is there a quid pro quo from Time Warner to make these services "affordable" or "ubiquitous" particularly in rural areas which are characteristic of neighbor islands. Nor do any such enhancements accrue to PEG channels. Even though Hawaii ranks among the most highly penetrated and profitable cable systems in the nation, the DCCA has not undertaken any cost benefit analysis or engineering studies to determine whether or not Time Warner is under invested in its

current monopoly network or whether an upgrade to increase bandwidth would be an appropriate alternative. Cable operators who do not constantly manage their own network capacity can experience traffic clogs by overselling service without upgrading capacity to sustain user demand. Wall Street analysts at Sanford Bernstein are reporting that Time Warner has recently announced that they will be applying overcharging schemes to broadband customers charging all customers usage fees to boost revenues and profits. The street predicts that these charges will become the rule and not the exception in the near future. This calls into question the prevailing wisdom that permeates many of the conclusions drawn by DCCA in the Findings of Fact. Relying on commercial providers to build 21<sup>st</sup> Century broadband as a platform for economic transformation may be problematic particularly in a non-competitive, essentially de-regulated wireline market like Hawaii with chronically underserved remote rural areas.

#### 10. NETWORK ARCHITECTURE MAY RELEASE MORE BANDWIDTH

Netflix General Counsel, David Hyman, has blasted user caps and consumption billing practices as anti-competitive. Putting aside legitimate concerns regarding conflicts of interest companies like Time Warner have by owning content as well as the main competing delivery systems like cable and Internet, Mr. Hyman recently was quoted in [overthecap.com](http://overthecap.com) as follows:

“ wireline bandwidth is almost an unlimited resource due to advances in internet architecture. The marginal costs of providing an extra gigabit of data – one episode of 30 Rock - from Netflix is one cent and falling” and Phillip Dampier has reported that Time Warner has recently implemented a “optional” usage pricing package for consumers who use less than 5GB per month charging over limit fees of \$1 per GB which is an enormous mark up.

#### 11. DCCA ASSUMPTIONS IN FINDINGS OF FACT in CATV-12-04 and CATV 12-05 ARE NOT SUPPORTABLE OR REQUIRE CLARIFICATION

There are a number of assumptions made in DCCA Notice of Finding of Fact under Section I in both documents that are not entirely supportable or require clarification. They include but are not limited to the following:

CATV-12-04 / E,G,H,I and CATV-12-05 / F,H,I,J:

These sections refer to actions and Decisions and Orders that apply specifically to the cable franchise for the island of Oahu as a result of franchise renewal proceedings and should not apply to neighbor islands without public hearings.

CATV-12-04 / J and CATV-12-05 / K

TWE and the State were remiss in that they did not notify or consult with Akaku, the PEG parent of UHMC and MDOE regarding its concerns regarding the digital migration

of PEG client channels.

CATV-12-04 / K,L and CATV-12-05 / L,M

The Department did not inform Akaku of these ongoing developments.

CATV-12-04 / M and CATV-12-05 / N

These notices, if they were provided at all, were cryptic, in fine print, incomplete and confusing to subscribers.

CATV-12-04 / O and CATV-12-05 / P

The Department has not provided any record of these discussions, conclusions or agreements with TWE, nor has Oceanic Time Warner provided "sufficient notification" to its analog subscribers and Akaku about its proposal to move the TEC and TEACH channels. It also remains unclear as to how long a customer may retain a digital box at no additional cost should he or she request one. Time Warner has made no written digital migration plan available to Akaku for Educational Channels or for set top box distribution.

CATV-12-04 / Q and CATV-12-05 / R

Akaku received a phone call from Time Warner Representative, Mr. Norman Santos on December 21, 2011 and received a verbal explanation of the intended migration. There was no follow up call as requested.

CATV-12-04 / W and CATV-12-05 / X

There is no evidence to support the claims made by TWE under this item. In addition, Maui subscribers did not have an opportunity to provide input into decision making regarding D&O 346 which was part of Oahu's franchise renewal proceeding.

CATV-12-04 / X and CATV-12-05 / Y

Given the many arguments against granting this waiver contained in these comments, the DCCA assumptions under this item appear to be based on the unexamined claims of TWE. These assumptions do not afford neighbor island constituents the benefit of an economic, engineering or performance analysis to determine a deliberative process with regard to whether granting this waiver is the correct or even prudent course of action. It forecloses the possibility of considering comparative and alternative best practice models in other jurisdictions such as Portland, Boston and New York where public bandwidth is preserved and protected by the LFA.

CATV-12-04 / Y and CATV-12-05 / Z

This item states that on or about February 17, 2012, TWE reported that a TWE representative had contacted Hoike and Na Leo to explain TWE digital migration plans and policies. Item CATV-12-04 / Z and CATV-12-05 / AA goes on to state that based on the above (Y and Z) that the Department finds that TWE has given reasonable notice to its Kahului and Lahaina cable subscribers regarding its planned migration. We fail to see the logic of how contacting Hoike and Na Leo justify reasonable notice to subscribers in Kahului and Lahaina.

CATV-12-04 / AA and CATV-12-05 / BB

Akaku completely disagrees with the DCCA conclusion that TWE has “remedied the situation” under this item. This is obviously an opinion and not a Finding of Fact.

CATV-12-04 / CC and CATV-12-05 / DD

This finding completely chooses to ignore the indisputable fact pointed out by the FCC and the 6<sup>th</sup> Circuit Federal Court proceedings in Dearborn v. Comcast that requiring subscribers to obtain special equipment to view PEG channels is a significant barrier to consumers under any circumstances even if set top boxes are provided at no cost. This finding represents a lack of understanding of how television channels are identified and branded. It ignores the fact that this migration which was conducted in a cavalier and haphazard manner by TWE, has ensured that nearly 40% of potential cable audience will likely be permanently lost by our educational partners in the absence of an extraordinary and expensive public relations campaign to recapture and retain them.

CATV-12-04 / DD and CATV-12-05 / EE

Without a firm quid pro quo in writing from Time Warner, the lofty words in this finding about recovery of bandwidth and how residents will benefit bear little weight and veracity. This flawed finding tends to tip the balance of benefit toward the E faction of PEG at the expense of the public and G sectors. This is ironic, since due to the set box requirement and aforementioned audience drop off, what it really does is reduce the number of consumers of the E sector to a institutional club of tuition paying with members-only access to state sponsored education and video on demand.

CATV-12-04 / EE, FF and CATV-12-05 / FF, GG

For the many reasons articulated in these comments, Akaku cannot agree that the migration of TEC and TEACH channels constitute “good cause” under Section 12.8 of D&O 174 and 241 to waive the six megahertz (6 MHz) requirement in the definition until and unless the D&O is amended.

## CONCLUSION:

Akaku would like to respectfully request that the Director of DCCA reconsider her Intent to Issue a Decision and Order as described. In the alternative, if the Director does choose to issue such an order, that she do so including the following amendments:

In exchange for permitting the Oceanic migration of PEG Channels 55 and 56 from the analog to the digital tier, Akaku would like to obtain a written commitment from Oceanic including but not limited to the following:

1. Oceanic will agree that all future ex-parte communications with PEG entity and PEG entity client E and G recipients/providers regarding cable access services, channels and equipment that affect PEG subscribers require written permission from affected PEG entities and the full participation of the PEG entity from each franchise area. Oceanic will also agree not to dispute, advocate or seek to change the apportionment or allocation of current PEG funding.
2. A binding agreement on the part of Oceanic to treat all PEG channels and PBS Hawaii on a par with commercial broadcast channels including all local broadcast channels. This may include installation of digital broadcast and/or high definition transmission equipment and capability at no cost at the cable headend, PEG studios and/or at designated origination sites such as County Council chambers according to a reasonable time frame.
3. Guaranteed analog PEG channel designation and placement repeated on all digital tiers upon every digital migration of each analog channel.
4. The equivalent of 6 digital channels and/or equivalent bandwidth on digital tier reserved for PEG for expansion for each analog PEG channel vacated.
5. In addition to digital basic, the placement of (2) 1080p resolution PEG Hi Definition Channels on the Hi Definition tier in exchange for each analog PEG channel within 24 months of initial analog to digital migration.
6. \$100,000 annual financial compensation to Akaku for 3 years to assist in marketing channel changes in service, rebuild lost audience, promote digital equipment availability to subscribers and establish, market and promote new channel identities.
7. Agreement to provide free digital box distribution to all analog subscribers for a minimum of 5 years and the establishment of rural digital box distribution outlets in Molokai, Lana'i, East and West Maui.
8. 1 Gigabit, symmetrical Internet installed and maintained free of charge to Akaku offices in Kahukui, Molokai and Lana'i.

Mahalo for the opportunity provide comments regarding this very important matter.

## ADDENDUM A

### ANALYSIS OF HOW THE OCEANIC TIME WARNER CABLE PENDING DIGITAL MIGRATION OF EDUCATIONAL ACCESS CHANNELS IS IN VIOLATION OF THE CABLE TELECOMMUNICATIONS ACT OF 1984 AND DCCA DECISION AND ORDER 241

Oceanic Time Warner Cable markets cable programming on a number of service tiers including analog service, standard service, basic service and digital basic service. Regardless of what terms they use, the intended digital migration of Educational access programming from the lowest and most widely available tier to a digital tier that requires special equipment to view is in violation of The Cable Telecommunications Act of 1984 and of Sections IV, VI, and VII of DCCA Decision and Order 241.

Accordingly, The Cable Communications Act of 1984 clearly states in SEC.602 (2) that: *the term "basic cable service" means any service tier which includes the transmission of local broadcast signals.*

Under that definition, Oceanic is offering a confusing number of what may be described as "basic services". *"Any service tier" in the context of SEC.602 means Oceanic' is required to carry all PEG channels on their lowest, most widely available analog and/or standard, basic tier.*

DCCA Decision and Order No. 241, Section IV. FRANCHISE AMENDMENTS: OTHER MATTERS states in the last paragraph on page 11, the following:

*"The Director notes that cable operators are required to place, among other programming, PEG access channels within the cable operators' lowest tier of service or basic service tier for purposes of rate regulation."*

TERMS AND CONDITIONS OF ORDER 241, Section One, Definitions, goes on to further define "Basic Service" and "Channel" as follows:

*"Basic Service" means the lowest cost tier of cable service offered to TWE to all of its Subscribers which includes, at a minimum, the delivery of local television broadcast signals, access channels, and local origination programming.*

*"Channel" means a minimum of six megahertz (6 MHz) in the electromagnetic spectrum, which is capable of carrying any type of transmission, which TWE is authorized to provide to Subscribers.*

According to the language in Decision and Order 241 cited above, In addition to placing PEG access channels on their analog or basic tier, Oceanic Time Warner could conceivably be required by the DCCA to repeat PEG carriage on their digital basic tier and high definition tier as well or wherever *local television broadcast signals* appear. Currently, this is not the case.

Since under the proposed Oceanic digital migration plan, **all** subscribers will no longer be able to receive the E channels on the lowest, most available tiers, D&O 241 would appear to prohibit segregation or splitting of the E component of PEG and assigning it to digital Siberia (Channels 355 and 356) as Oceanic purports to do.

D&O 241 also appears to prohibit, by definition of the word 'channel', the replacement of two (6 MHz) analog channels with two digital channels, which are not equivalent in terms of bandwidth. If permission for such a replacement were granted by DCCA (and it is difficult to see how it could) an equitable number of digital channels required to compensate for the net loss of bandwidth would be in the neighborhood of 8-12 digital channels or a minimum of 2-4 high definition channels.

Notwithstanding Oceanic's broad claim that these services will remain on the Basic Service Tier, when in fact they mean Digital Basic, or that students and/ or subscribers will be allowed to request special equipment to view these channels, translates into the reality that digital migration as currently planned presents significant barriers to all subscribers ability to view Akaku's Educational Access channels as required by law. For these reasons and others enumerated herein Akaku believes it is in the best interest of the Maui Nui and Hawaii public that this request be denied.

Furthermore, Oceanic appears to be in violation of several other sections of D&O 241. for instance:

1. Section Four / Public, Educational and Government Access 4.1 Access Plan and Implementation states:

*TWE will work cooperatively with the access entity or entities, which shall be designated by the Director for the management, operation and use of public; educational and governmental access facilities and equipment for the County of Maui.*

Although we have received a letter as a courtesy (attached) Oceanic appears to have made this decision on their own without prior consultation with Akaku or any of the other PEGs that we are aware of. Oceanic has made no effort to *work cooperatively* or to discuss the intended digital migration even though Oceanic

Time Warner is aware that Akaku administers the Educational access channels.

2. In Section Six / Programming Services 6.1 Mix, Quality, and Level of Service states as follows:

*TWE shall not alter its current mix, quality, and level of programming service for its System basic service tier or most widely available service tier without first obtaining the prior approval of the Director, which approval shall not be unreasonably withheld.*

Akaku is not aware of any notification or prior approval granted by the Director.

3. Section 6.2. Broad Categories of Programming reads as follows:

*(a) Subject to availability, TWE shall carry programming in each of the following broad categories on its basic service or most widely available service tier:*

- 1. Public access programming*
- 2. Educational access programming*
- 3. Governmental access programming*
- 4. Local origination programming*
- 5. Public nonprofit stations with national programming; and*
- 6. Broadcast television stations as required by the Federal Communications Commission or applicable law.*

Should this digital migration be permitted as planned, it appears that Educational access programming will no longer be carried on Oceanic's *basic service or most widely available service tier* in violation of Section 6.2 of the Order.

4. Section 6.2 continues to state that:

*(b) No changes may be made by TWE in broad categories of video programming without the prior approval of the Director*

And

*(c) TWE shall provide notice to the Director of at least thirty (30) days in advance of any changes in its channel line up*

Akaku has no information to determine whether or not these requirements have been observed.

Finally, SEC.612(6) of the Cable Act states that "Any channel capacity which has been designated for public, educational or governmental use may not be considered as designated under this section for commercial use for purpose of this section"

What this means is that the analog bandwidth designated for PEG use is not intended to be available for commercial use. Time Warner is clearly trying to circumvent federal law by reassigning two analog PEG channels as digital channels. Since each analog channel is the equivalent of a minimum of 4-6 digital channels, this is not a fair trade. The net effect of this action will constitute a taking of public sector bandwidth by Time Warner for commercial use without compensation or LFA approval and will reduce Time Warner Cables "rent" for use of Public Rights of Way without due process.



CABLE DIVISION  
COMMERCE AND  
CONSUMER AFFAIRS

**Hawaii Educational Networking Consortium**

East-West Center / Hawaii Association of Independent Schools  
Hawaii State Department of Education / University of Hawaii

APR 11 12: 56

FILE

April 4, 2012

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

Dear Director Lopez:

The following message relates to the Department of Commerce and Consumer Affairs notices: CATV 12-01; CATV 12-02; CATV 12-03; CATV 12-04; and, CATV 12-05--as they relate to the respective Decision and Order numbers 291; 185; 173; 174; and, 241.

The Hawaii Educational Networking Consortium (HENC) would like to submit its supportive comments relating to the above notices to the Department of Commerce and Consumer Affairs (DCCA).

During 2011 HENC has been active on Oahu overseeing the two Educational Access (EA) channel migrations of the analog video cable TV channels to the digital spectrum. Overall HENC has been impressed with Oceanic Time Warner's commitment, foresight and responsiveness relating to the move of the two Oahu channels.

HENC also recognizes that the relocation of the Educational Access channels are important to the future of education and fully backs the reallocation of Oceanic's cable bandwidth to support improved broadband capability for students and subscribers statewide.

We would also like to make note of some of the things we learned during the Oahu transition. We believe the following items are important to the neighbor island communities and to a successful migration:

- It is essential to provide enough time and to expend the energy necessary to sufficiently notify all subscribers, both students and viewers, to prepare for the transition.
- It is crucial that all students and subscribers have convenient access to a free digital cable box if they need one to receive the educational offerings.

*DCCA Notices, Page 2.*

- That direct connectivity to educational sites for digital origination of the programming be engineered and installed at Oceanic's expense to support the new digital carriage for all educational channels.
- The Educational Access channel location (numbering) be consistent on all islands.
- That digital transmission assignments support school and campus carriage on the existing legacy coax systems.
- That both an additional statewide digital channel be provided for Educational Access and well as a statewide educational video-on-demand channel to support course offerings.

HENC feels that the Oahu transition of the two Educational Access channels has been successfully completed with little to no disruptions in service. We commend the DCCA in its efforts to digitize the EA channels statewide. We feel it is essential that all of the neighbor islands should receive the same benefits as outlined in the new Oahu franchise.

Thank you for allowing us to provide this input. If you have questions or require additional information, feel free to contact me.

Sincerely,



Marlon J. Wedemeyer  
Education Program Manager  
Hawaii Educational Networking Consortium



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CABLE DIVISION  
COMMERCE AND  
CONSUMER AFFAIRS

2012 APR -4 P 2: 05

A  E  P  S

FILE \_\_\_\_\_

April 04, 2012

Department of Commerce & Consumer Affairs  
Cable Television Division  
335 Merchant Street, Room 101  
Honolulu, Hawaii, 96813

Attn: Cable Advisory Commission

RE: Notice of finding of Fact and Intent to issue a Decision and Order CATV-12-01

Thank you for this opportunity to address you in regards to the Intent to issue a Decision and Order related to the migration of channels or the alteration of the PEG channel lineup for the residents, community and island of Kauai.

The intent of this action is to provide up to one gigabit-per-second broadband service at affordable prices throughout Hawaii and to increase the use of high-speed broadband services.

You have found that Time Warner has been in negotiations and agreements with both the University of Hawaii and the Department of Education, both are State Agencies or arms of our government. This is tantamount to sub letting to a third party without the consent of the original landlord. Those educational access channels are assigned and managed by the non-profit PEG organizations. Those two entities are content providers and not the managers. To go behind the PEG's backs and create a separate agreement that diminishes our role and effectiveness is quite harmful to the people of Hawaii. This action cannot be considered an act of good conscience. It is unfortunate that the DCCA is complaint with the abrogation of the public property.

You have found that on or about December 16, 2011 Time Warner informed the Department that a representative had contacted Ho'ike and provided information on the proposed migration. It wasn't "proposed" rather it had already been pre-determined and the change was going to happen regardless. And at no time was Ho'ike ever made aware of it. No communication in any form came to Ho'ike from Time Warner – not in December, not in January nor in February. It was not until last month that someone actually reached out to us to talk about this situation and by that time the channels had already been moved. The assertion on page 5 –R #2 is completely false and not a fact.

I want to address the value and service that the basic cable tier provides. It is extremely important and valuable as demonstrated by the decisions of Time Warner. Originally Ho'ike occupied channels 10, 11, and 12. We were forced to move to 52 through 56. In our place you'll now find PBS Hawaii, OC Sports and CNN's Headline News. We got kicked to an undefined area and at that time unused. Time Warner



will show you how important the basic service tier is by their alignments and what actually got moved. They kicked the Public Access channels, property of Kauai into the digital no-man's land and made sure that the local Visitor Information channel remained the same, the local origination channel remains the same, QVC remains the same, OC16 did not move, the MTV and VH1 channels were not affected despite their repetition on other parts of the spectrum. Our channel 56 was actually replaced with C-SPAN, they needed our channel location for another channel. The question is, if they are looking for bandwidth why is it that the people of Kauai are charged with paying for it with diminished rent for rights of way payment?

The PEG provisions of the franchise agreement are compensation for the residents of the County of Kauai and nowhere else. It is written and suggested that all neighbor islands must agree to this move because Oahu already agreed. Kauai was not part of that negotiation, Kauai had no voice at that table, and Kauai should not have to be part of the payment structure for a franchise negotiation on Oahu. It truly seems that the needs of the people of Kauai are ignored and we are to assume the status of kauwa.

Since the taking of our channels without our knowledge, consent or agreement the Department indicated that the benefits would be:

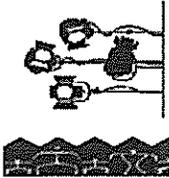
- 1) Increased internet speeds – yet those speeds are not available right now and they will come at some point in the future with an increased cost to the consumer. We are currently paying \$289 per month for a two by two megabyte connection which has never provided the two megabyte upload speed. If and when the internet speeds are increased it will mean a significant increase in the revenue flow for Time Warner at the expense of the public.
- 2) Road Runner Extreme and Road Runner Wideband will be implemented meaning another profit margin for Time Warner.
- 3) Additional benefits for a proposed statewide education and government channels. However at this time there is no action plan or even a suggestion on the table. So we are paying up front for something not even on the drawing board.
- 4) Plus an increase of video on demand channels. Now this is something that took immediate effect.

What has happened is not the increase of broadband capacity or services to the community. In fact what has happened is the addition of no less than 58 on demand channels and a much larger revenue stream for the cable operator (much of this has been added since January of this year). The people's education channels must be moved in order to add channels like Hustler on Demand, Playboy on Demand, Penthouse on Demand, Manhandler on Demand, Howard Stern on Demand and more. That is the fact, those are additions to the cable operations not the listed improvements and benefits as described in the proposed Decision and Order.

No other local channels have been affected. Why is it that the people and the PEG must pay the way for the increased profit margins of the cable operator? The fact remains that the basic tier of service is the most valuable in terms of service to the



**Ho'ike: Kaua'i Community Television, Inc.**  
*"Building Community Through Television"*



broadest number of subscribers and Kauai's PEG deserves to be there. That is part of the original agreement and should not be changed. Education channels must be made available to all of our residents, not just those currently enrolled in State Institutions. All the people of Kauai deserve access to these channels regardless of the reasoning. I am sad to see the interest of the people is tossed aside in the efforts to preserve the profits of the corporations.

It would be my recommendation that we remain with our original order and agreement, that the cable operator find a more satisfactory solution that is fair to the residents of Kauai and not diminish the minimal "rent" structure that exists. You can easily see how valuable the basic tier is in the channel allocations that have been made.

The cable operator would like to continue to use the public rights of way in generating tremendous revenue for cable, internet and telephone services yet they want to cut the rightful rent payment to the people. That is unacceptable and the people of Kauai deserve the full measure of reciprocation for the use of our valuable rights of way.

In a perfect world Time Warner would have kept our channels as designated, duplicated our channels on the digital tier and created a process where we can easily transition the entire network into the less valuable real estate for their continued growth and financial development. It seems the people have no voice. When will the rights of the people be protected?

Sincerely,



J S Robertson  
Managing Director, Ho'ike: Kauai Community Television.



PROMOTING CHOICE AND PRESERVING INDEPENDENCE SINCE 1970

2012 APR -4 A 11: 04

RECEIVED

2012 APR -3 A 9: 40

A / E P / S

FILE

DIRECTOR'S OFFICE  
COMMERCE AND  
CONSUMER AFFAIRS

C: GC  
LW

March 30, 2012

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

RE: DCCA Notices: CATV 12-01, CATV 12-02, CATV 12-03, CATV 12-04 and CATV 12-05 as they relate to respective Decision and Order numbers 291, 185, 173, 174 and 241.

Dear Director Lopez,

The Hawaii Association of Independent Schools (HAIS) is providing comments in support of the findings of the above notices of the Department of Commerce and Consumer Affairs (DCCA).

HAIS is a statewide organization representing more than 100 educational institutions and has been party to the discussions in recent years related to planning and implementation of the migration of analog video cable TV channels to the digital spectrum. HAIS feels that the Oahu transition of the two Educational Access (EA) channels has been successfully completed with little to no disruptions in service.

HAIS also recognizes why the relocation of these channels is important to the future of education and fully supports the reallocation of Oceanic's cable bandwidth to support improved broadband capability for Oahu's students and subscribers.

As a statewide organization HAIS believes that, through standardized digitization of the EA channels, the neighbor islands should and would receive the same benefits as outlined in the Oahu franchise including:

Provision of an additional statewide digital Educational Access channel;

Provision of a new statewide educational video-on-demand channel to support asynchronous learning and course offerings; and

Access for all students and subscribers to a free digital cable box if they need one to receive the new digital educational offerings.

Thus, HAIS fully supports the findings described in the above notices and supports your recommendation of a decision and order as outlined in the notices. Thank you for allowing us to submit these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert M. Witt". The signature is written in a cursive style with a large initial "R" and "W".

Robert M. Witt  
Executive Director



UNIVERSITY  
of HAWAII®  
SYSTEM

Vice President for Information Technology  
and Chief Information Officer

CABLE DIVISION  
COMMERCE AND  
CONSUMER AFFAIRS

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A. E. P. S.

FILE

March 30, 2012

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

REGARDING DCCA NOTICES: CATV 12-01, CATV 12-02, CATV 12-03, CATV 12-04  
and CATV 12-05

These comments are provided by the University of Hawai'i (UH) System pursuant to the DCCA Notices of Findings of Fact and Intent to Issue Decision and Orders regarding the Migration of Analog Education Channels to Digital Format for the Island of Kauai, East Hawai'i (Hilo), West Hawai'i (Kona), Lahaina and Maui County (excluding Lahaina) Cable Television Franchises.

The University of Hawai'i System supports the migration of analog education channels to digital format as described in the subject notices for all Hawai'i cable television franchises.

It is obvious that video services must migrate from analog to digital. This is already occurring for the fastest growing segment of video, Internet-based services, and the FCC has driven migration to digital video over the broadcast spectrum. Efficient use of spectrum, over both airwaves and wires, is an important element of advancing broadband services in Hawai'i and the nation.

Just as importantly, the digital migration is enabling us to provide additional educational resources to the people of Hawai'i. This migration plan, which is supported by accredited education in Hawai'i, provides additional linear channel capacity as well as digital video-on-demand capacity, which will provide increased access to education for citizens on all islands.

Beginning with the renewal of the Oahu cable television franchise, accredited education (UH, along with the Hawai'i Department of Education and Hawai'i Association of Independent Schools) has been working with Oceanic / Time Warner Entertainment (TWE) to pioneer digital migration in Hawai'i. We clearly understood that there would be issues, and we believed then as we believe now that part of our role as accredited educators is to help create Hawai'i's future. In that spirit we have worked through the digital migration issues in partnership with TWE in order to achieve benefits for the communities we serve.

2444 Dole Street, Bachman Hall  
Honolulu, Hawai'i 96822  
Telephone: (808) 956-3501  
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Cable Television Division  
March 30, 2012  
Page 2 of 2

Following the Oahu migration, and with our understanding of the implementation issues, we have worked actively with TWE and our neighbor island campuses and viewers on a similar digital migration for the neighbor islands. As issues have arisen, we have found TWE to be open to our concerns and willing to work with us to ensure that our students and viewers have the support they need.

Thank you for this opportunity to provide comments in support of your intent to issue the decision and orders as described.

Sincerely,

A handwritten signature in black ink that reads "David Lassner". The signature is written in a cursive style with a long horizontal stroke at the end.

David Lassner  
Vice President for IT and CIO



Michelle Lau  
<laumiche@hawaii.edu>  
03/30/2012 08:52 AM

To DCCA Cable Television <cabletv@dcca.hawaii.gov>,  
cc  
bcc  
Subject Comments on Olelo Application to Provide PEG Access  
Services

1 attachment



DCCA-PEGAccessOleloAppComments.pdf

Transmitting subject comments. Please let me know if you're unable to open the pdf file. Thank you.

=====  
Michelle Lau  
University of Hawaii System  
Office of Vice President for Information  
Technology and Chief Information Officer  
2444 Dole Street, Bachman Hall 204  
Honolulu, Hawaii 96822  
Phone: 808-956-2717 / 808-956-3501  
Fax: 808-956-5025



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Vice President for Information Technology  
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March 30, 2012

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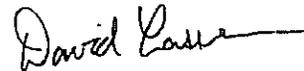
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Sincerely,



David Lassner  
Vice President for IT and CIO