



AKAKU: MAUI COMMUNITY MEDIA  
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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**In the Matter of** )  
 )  
**Promoting the Availability of Diverse and ) MB Docket No. 16-41**  
**Independent Programming** )

**COMMENTS OF MAUI COUNTY COMMUNITY TELEVISION  
dba AKAKU MAUI COMMUNITY MEDIA**

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Maui County Community Television hereby files these comments in response to the Notice of Inquiry ("NOI") in this proceeding.

Akaku Maui Community Media through its three public, education and government TV channels that reach 53,000 cable homes on three Hawaiian islands supports the mission of Maui County's schools, non-profit agencies, NGO's, government agencies and residents by providing media literacy education and training as well as facilities, equipment and technical support to empower their messages. Examples include: video to promote marketing of Maui space assets on Haleakala; media campaigns to prevent teenage drinking and driving; coverage of local elections; coverage of county council and live coverage of community events. Akaku provides production and programming advice to IMUA Family Services, Women Helping Women, Maui Economic Opportunity, Maui Veterans Council, University of Hawaii Maui College, Maui schools, Maui Arts and Cultural Center, Maui Economic Development Board, Native Hawaiian groups and many more. Akaku is there to cover arts and cultural events such as the Hana Taro Fest, Maui Charity Walk, Na Mele O Maui, Kaanapali Festival of the Arts, the Molokai Makahiki as well as giving air time to a variety of diverse viewpoints at no cost. Akaku provides free new media education to our youth through its nationally renowned new media mentoring program and pays kids stipends to produce quality mobile journalism using iDevices. Any resident can submit programs to air on any topic at no charge. The PEG center is like an electronic park with easy access to the latest technology and internet. It also promotes civic engagement by bringing government meetings and democracy into peoples' homes daily.

The Commission's NOI seeks comments on the issues facing independent programmers in order to assist the agency in helping to foster greater consumer choice and enhance diversity of opinion in the evolving video marketplace. Our testimony will focus on significant and ongoing barriers created by MVPD's, specifically big cable MSO's, to diminish and frustrate consumer access to diverse opinions and non-commercial local programming by restraining or diminishing the reach, availability and impact of Public, Educational and Government Access channels such as Akaku Maui Community Media, the only local television resource providing essential information to communities across three rural islands separated by water.

Although Justice Byron White's majority opinion in the landmark 1969 Red Lion Broadcasting v. FCC ruling pertained to broadcasting alone, its words could serve as a much needed blueprint for best practice regulation of the cable/broadband convergence in a free society.

*"It is the right of the viewers and listeners not the right of the broadcasters which is paramount.....it is the purpose of the First Amendment to preserve the uninhibited marketplace of ideas in which truth will ultimately prevail, rather than countenance monopolization of that market, whether it be by the government itself.....or a private licensee.....it is the right of the public to receive suitable access to social, political, esthetic, moral and other ideas and experiences which is crucial here. That right may not constitutionally be abridged either by Congress or the FCC.*

Shouldn't there be someplace where everyone can speak out and be heard? A place, that is fully local where diversity of viewpoint and opinion are the only thing that matters,

where your voice counts? A place where you can learn new ways to communicate, where you don't have to log in, where you don't need any money? A place that does not try to sell you soap? Those places exist. They are called PEG Access centers and they are currently being harmed by routine cable industry practices such as:

### 1. PEG CHANNELS EXCLUDED FROM ELECTRONIC PROGRAMMING GUIDES, HD AND DVR RECORDING CAPABILITIES MAKE IT DIFFICULT FOR SUBSCRIBERS TO FIND AND RECORD LOCAL PROGRAMS.

Most PEG Access stations are excluded from cable MSO electronic programming guides due to procedural barriers set up by cable operators or third party EPG vendors. As a result, viewers are frustrated in trying to find out channel offerings and since most DVR technology is linked to meta data on the EPG, viewers are unable to record PEG access programs even if they are able to find the program offerings. In addition PEG channels are not available on HD tiers and commercial channels are. As a result PEG channels are not in the traffic pattern when consumers use remote control devices to surf through available offerings.

### 2. BIG CABLE MSO's ROUTINELY DISCRIMINATE AGAINST PEG CHANNELS REGARDING SIGNAL QUALITY, CHANNEL PLACEMENT AND PROGRAM TIERS

In most markets including Hawaii, cable companies routinely discriminate against PEG by: outright refusing to transmit PEG channels in industry standard HD; not repeating them on digital and HD tiers as they do with local broadcast; arbitrarily moving PEG channels to inaccessible tiers; changing channel numbers and moving them to undesirable locations; appropriating valuable analog spectrum from PEG without compensation; requiring subscribers to purchase or obtain special set top equipment to view; and in many cases, delivering sub-standard signal quality to subscribers.

The solution is simple. The FCC needs to require MVPD's to provide signal quality and accessibility equivalent to local broadcast channels in analog, digital and HD, on every tier and on-demand on every device. MVPD's 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 by mutual agreement with the PEG provider prior to transition. MVPD's should be required to meet minimum technical requirements regarding signal quality, accessibility and placement of channels on every platform and every device.

### 3. MVPD's DISCRIMINATE AGAINST PEG BY REQUIRING SET TOP DEVICES TO VIEW AND BY PROVIDING THEM ONLY BY REQUEST

In the confusing analog to digital transition many cable operators require subscribers to rent or obtain set top boxes "by request" in order to view required "basic services"

including PEG access channels. Surveys have indicated that more than 70%, of subscribers may not know how to do this or despite notification may not be aware of how to "request" a device or travel to a cable company office to obtain one. Some fear paying additional fees and others simply do not know how to connect the device requiring technical assistance to do so. The proof is in the pudding. In Maui, when Oceanic Time Warner migrated two PEG Educational channels from the analog tier to digital in 2012, more than 40% of viewers, those who did not make a special pro active effort to obtain set top boxes, lost the ability to view the channels

#### 4. "BASIC SERVICE" RATE DE-REGULATION HARMS PEG IN HAWAII

Unilateral action on the part of the FCC to presume effective competition and shift the burden on LFA's away from cable operators to prove it harms PEG in Hawaii. The conclusions drawn by the FCC in Report and Order in MB Docket No. 15-53. that basic service rates generally do not increase as a result of the order or that there is not *"a single instance of in which cable operators have even attempted to move broadcast stations or PEG channels off the basic tier"* are both inconsistent with what has happened in Hawaii Nei.

As of April 1, 2016, in Hawaii. Basic Service rates were increased by more than \$20.00 per annum. In 2012, Oceanic Time Warner Cable unilaterally moved PEG Educational Access channels off the basic tier on to more expensive digital tiers requiring a set top box to view. This action made making lifeline educational services inaccessible to up to 40% of subscribers who do not wish to rent special equipment. These actions increase the coffers of an industry that already enjoys a 95% profit margin at the expense of consumers by adding financial burden to low income subscribers. More expensive basic service adversely effects the stability of PEG by making the lifeline services and unique community communications services we offer less affordable with pricing subject to the whim of the cable operator with little or no effective oversight.

#### CONCLUSION

The elephant in the room is that ***cable companies are rapidly morphing into powerful telecommunications utilities.*** In order for the promise of non-commercial, diverse and uniquely local community communications to survive in America as represented by more than forty years of PEG Access experience, the FCC will need to carefully consider how changes in technology will affect the ability of MVPD's to evade or erode payment of rent for use of Public Rights of Way.

The writing is on the wall as we are now seeing a concerted effort by cable companies (even though they are using the exact same telephone poles, wires and conduits,) to try and get out of paying for use of Public Rights of Way. They do this by declaring that they are unregulated Internet Protocol (IP) and IPTV delivery systems and no longer 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.

Will the FCC act to preserve and protect the funding for PEG access channels and the integrity of community broadband and public, non commercial media in a rapidly changing technological landscape. If the FCC will not, who will?