

December 8, 2006

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, DC 20554

Re: Permitted Oral *Ex Parte* Presentation
MB Docket No. 05-311

Dear Secretary Dortch:

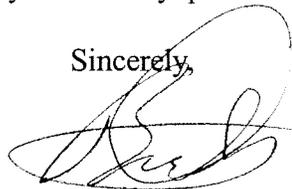
On Friday, December 8, 2006, Herbert E. Marks and Bruce A. Olcott of Squire Sanders & Dempsey, L.L.P., as counsel for the State of Hawaii ("the State"), met with Commissioner Michael J. Copps, and his Legal Advisor, Bruce L. Gottlieb.

Marks and Olcott conveyed the State's concern about a draft order that is reportedly being circulated within the Commission that would infringe on the authority of state and local governments to issue cable television franchises to provide service in their communities. The State is particularly concerned about any regulation that the Commission might adopt that could inhibit the ability of state and local governments to exercise their statutory authority to require new franchisees to make contributions to Institutional Networks ("INETS") that are comparable with the contribution obligations of incumbent cable franchisees.

The State's position is summarized in the attached talking points, which were distributed during the meeting. The State also reiterated other points that are summarized in the talking points and were addressed in detail in the State's Reply Comments, dated March 28, 2006, in this docket.

Please contact the undersigned if you have any questions.

Sincerely,



Bruce A. Olcott

Copy: Commissioner Michael J. Copps
Bruce L. Gottlieb, Legal Advisor
Clyde Sonobe, Director, Cable Television Division,
State Department of Commerce and Consumer Affairs

State of Hawaii

Cable Franchise Regulation MB Docket 05-311

- Hawaii strongly supports the rapid introduction of new competition in the retail market for multichannel video programming services.
- The State is prepared to grant a franchise to Hawaiian Telecom Communications if it agrees to contribute sufficient capacity to the State's Institutional Network ("INET").

Institutional Networks

- Hawaii maintains an extensive INET, which uses fiber optics and submarine cables to connect State and county government offices and accredited public learning institutions throughout all of the major islands.
 - The State's INET delivers irreplaceable, mission-critical telecommunications capabilities and benefits, enabling statewide videoconferencing, distance learning, and statewide data management.
 - Most of the capacity for the INET is provided by the incumbent cable television operator, Time Warner, pursuant to its franchise agreement.
 - If comparable INET contribution requirements are not imposed on new entrants, the incumbent may seek removal of its requirement, likely resulting in an INET shutdown.
- The Commission should conclude that a franchising authority (particularly a State authority) is acting reasonably in requiring new franchisees to make INET contributions that are comparable to the incumbent's requirements.
 - Congress specifically reserved for local authorities the right to impose INET requirements. *See* § 541(b)(3)(D).
 - Congress reaffirmed the need to preserve the rights of local authorities to require INET commitments when both houses considered H.R. 5252 this year.
- The Commission should exclude in-kind services, such as INET capacity contributions, from the definition of franchise fees.
 - The 1984 Cable Act excludes in-kind contributions from franchise fees.
 - If franchise fees included INET contributions, lengthy litigation would result regarding the appropriate value that should be credited for contributions.
 - Cable operators can provide infrastructure and bandwidth capacity for INET systems and other services at a nominal increase in cost.
 - If the State were forced to purchase INET capacity at retail rates, the costs would greatly exceed what the State would be able to pay.

Exemption for State Authorities

- An increasing number of States are joining Hawaii in maintaining statewide franchise authorities.
- The FCC should refrain from imposing any restrictions on state franchise authorities.

Deadlines for Grant

- Hawaii's Administrative Rules require State action on a franchise application within 120 days after it has been accepted for filing, unless applicant requests an extension.
 - A shorter deadline would not allow for public comment, negotiation or adequate deliberation.
 - Franchise applicants should be permitted to extend any deadline that is imposed by the Commission to avoid a possible denial of its application.

Buildout Requirements

- Hawaii is home to many low income and minority residents, many of whom reside in geographically insular communities.
- It is critically important to make available to as many people as possible the benefits of this country's modern telecommunications infrastructure.
- The Commission should permit the State to impose reasonable build out requirements recognizing the technical limits of IP-based video services and also recognizing the Hawaiian Telecom has already deployed wireline infrastructure throughout the State.