

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In re:)
)
Mauna Kea Broadcasting Company)
) CSR- _____
Must-Carry Complaint Regarding)
Television Station KLEI(DT),)
Kailua-Kona, Hawaii)

To: Office of the Secretary
Attn: Chief, Media Bureau

MUST-CARRY COMPLAINT

Mauna Kea Broadcasting Company (“Mauna Kea”), pursuant to Section 614 of the Communications Act of 1934, as amended, and Sections 76.7 and 76.61 of the Commission’s Rules, hereby files this Complaint requesting that the Commission order Hawaiian Telcom, Inc. dba Hawaiian Telcom TV (“HTTV”) to carry local commercial television station KLEI(DT), licensed to serve Kailua-Kona, Hawaii (the “Station”) in accordance with the Commission’s must carry rules and policies within the Honolulu, Hawaii designated market area (the “DMA”) for the remaining duration of the current must carry election cycle, expiring December 31, 2014.

I. MAUNA KEA’S COMPLAINT IS TIMELY FILED BASED ON HTTV’S DENIAL OF CARRIAGE

In a letter dated June 21 (the “Carriage Request”), Mauna Kea notified HTTV that its failure to carry the Station throughout the Honolulu DMA constituted a failure by HTTV to comply with the Commission’s must-carry rules. A copy of the Carriage Request is attached to this Petition at its Exhibit 1. The Carriage Request demanded that HTTV commence carriage of the Station on all of HTTV’s cable systems serving the DMA (the “Cable Systems”), and included the agreement of the Station to be responsible for the costs of delivering a good quality signal to the Cable System(s) via

alternative means in the event that the Station did not deliver a good quality over-the-air signal to the headend.

HTTV responded to Mauna Kea by letter dated June 25, 2012, a copy of which is attached to this Petition at Exhibit 2 (the “Carriage Denial”). As explained more fully below, HTTV’s Carriage Denial relies on irrelevant information and a misinterpretation of the Commission’s rules to deny carriage to the Station.

Section 76.61(a)(5) provides that any must-carry complaint must be filed within sixty days of either a cable operator’s denial of a carriage request or the expiration of the thirty-day response period set forth in Section 76.61(a)(2). HTTV’s Carriage Denial letter was dated June 25, 2012, and this Complaint, which is being filed on July 3, 2012, is therefore timely filed under Section 76.61(a)(5).

II. THE STATION IS ENTITLED TO MANDATORY CARRIAGE ON HTTV’S CABLE SYSTEMS IN THE HONOLULU, HAWAII DMA

Under the Communications Act and the Commission’s Rules, a station is entitled to mandatory carriage on cable systems if it is a “local commercial television station,” as defined in Section 76.55(c) of the Commission’s Rules. Section 76.55(c) defines a “local commercial television station” as any full power television broadcast station that is 1) licensed to a community within the same television market as the cable system, 2) not considered a distant signal pursuant to the cable compulsory copyright license, and 3) capable of delivering a good quality over-the-air signal or willing to agree to be responsible for the costs of delivering such a signal through alternative means. KLEI(DT) qualifies as a local commercial television station on the Cable Systems operated by HTTV and therefore is entitled to mandatory carriage.

Pursuant to Section 76.55(e) a station’s television market is defined as its designated market area (“DMA”) as assigned by Nielsen Media Research. The Station is licensed to serve the

community of Kailua-Kona, Hawaii and is in the Honolulu, Hawaii, DMA.¹ HTTPV's Cable System(s) also serve communities located within the Honolulu, Hawaii DMA, and are therefore within the same local market as KLEI(DT). For the same reasons, KLEI(DT) would not be considered a "distant signal" for copyright purposes.

In the Carriage Denial, HTTPV claims that it is not required to carry the signal of KLEI(DT) based on its determination that the Cable Systems are outside the broadcast coverage area of KLEI(DT). HTTPV concedes that the Station and the Cable Systems are assigned by Nielsen to the same DMA, but claims that this is somehow "irrelevant" to Mauna Kea's carriage request.² In fact, under the clear and unambiguous language of the Commission's Rules and the Communications Act, the DMA assignment of the Station and the Cable Systems is entirely relevant to the carriage request. As noted above, Section 76.55(c) defines a "local commercial television station" as one that is, among other things, assigned to the same television market as a cable system, and Section 76.55(e) provides that the market of a television station is defined as its DMA, as assigned by Nielsen.³ HTTPV does not dispute that KLEI(DT) and the Cable Systems are both assigned to the Honolulu, Hawaii DMA, nor does it provide any relevant evidence to suggest that the station's market, for purposes of mandatory carriage, is anything other than the entire DMA, including those communities served by HTTPV.

As noted above, Mauna Kea has confirmed to HTTPV, and reaffirms here, that it is willing to be responsible for delivery of the Station's signal to HTTPV's headend through alternative means in the event HTTPV is unable to receive a good quality over-the-air signal. Mauna Kea sent a letter to HTTPV dated September 30, 2011 properly electing mandatory carriage for the current election cycle

¹ See Television and Cable Factbook 2012 at A-393.

² Carriage Denial at 1.

³ 47 C.F.R. §76.55(c), (e); see also 47 U.S.C. §534(h)(1)(C).

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expiring on December 31, 2014. This Petition was preceded by a written request for carriage delivered to HTTV and HTTV has not identified any valid defense to the request for carriage.

III. CONCLUSION

Mauna Kea is clearly entitled to mandatory carriage of the signal of KLEI(DT) on cable systems operated by HTTV in the Honolulu DMA. Mauna Kea has properly elected mandatory carriage, has notified HTTV of its failure to comply with the Commission's mandatory carriage rules with respect to KLEI(DT), and has requested that HTTV commence carriage of the Station on all of its Cable Systems in the Honolulu DMA. HTTV has refused to carry the Station, but has not provided any valid basis for that refusal, forcing Mauna Kea to file this Complaint. For the reasons set forth herein, Mauna Kea hereby respectfully requests that the Commission order HTTV to carry the Station in accordance with the must carry rules and policies.

Respectfully submitted,

MAUNA KEA BROADCASTING COMPANY

By: 
Harry F. Cole
Daniel A. Kirkpatrick
Its Counsel

FLETCHER, HEALD & HILDRETH, PLC
1300 North 17th Street, Suite 1100
Arlington, VA 22209
(703) 812-0400

July 3, 2012

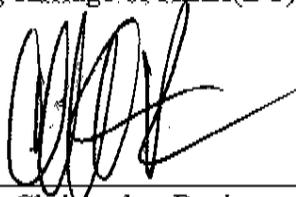
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In re:)
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Television Station KLEI(DT),)
Kailua Kona, Hawaii)

To: Office of the Secretary
Attn: Chief, Media Bureau

DECLARATION OF DR. CHRISTOPHER RACINE

1. My name is Dr. Christopher Racine. I am President of Mauna Kea Broadcasting Company, Inc. and involved in the day-to-day operations of KLEI(DT).
2. I have reviewed the foregoing Must-Carry Complaint and all factual matters set forth therein are true to the best of my knowledge and belief. To the best of my knowledge, information, and belief formed after reasonable inquiry, the foregoing Must-Carry Complaint is well grounded in fact; warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and is not interposed for any improper purpose.
3. On September 30, 2011, I sent a letter to Hawaiian Telcom, Inc. dba Hawaiian Telcom TV ("HTTV") electing mandatory carriage of the signal of KLEI(DT) on all cable systems operated by HTTV in the Honolulu DMA during the election cycle expiring December 31, 2014.
4. On June 21, 2012, I mailed a letter to HTTV notifying HTTV of its failure to retransmit the signal of KLEI(DT) on all of its cable systems in the Honolulu DMA and requesting that HTTV commence such carriage. That letter included a statement that Mauna Kea Broadcasting Company, Inc. would deliver a good quality over-the-air signal to HTTV's headend or that Mauna Kea would be responsible for the costs of delivering such a signal through alternative means.
5. HTTV responded by letter dated June 25, 2012 denying carriage of KLEI(DT) on HTTV's cable systems in the Honolulu DMA.



Dr. Christopher Racine
President
Mauna Kea Broadcasting Company, Inc.

EXHIBIT 1

MAUNA KEA BROADCASTING COMPANY, INC.
POST OFFICE BOX 143, HONOLULU, HI 96810
T: 808.591.1683 F: 808.356.0469 E: chris@klei.tv

June 21, 2012

Via Certified Mail, Return Receipt Requested (duplicates mailed)

Hawaiian Telcom, Inc.
dba Hawaiian Telcom TV
1177 Bishop Street
Honolulu, HI 96813
Attn: Eric K. Yeaman, President & CEO

Re: Carriage of KLEI (DT), Kailua-Kona, Hawaii

Dear Mr. Yeaman:

Mauna Kea Broadcasting Company (Mauna Kea) is the licensee of television station KLEI (DT). KLEI (DT) is licensed to Kailua-Kona, Hawaii, which is located within the Honolulu, Hawaii Designated Market Area (the "Honolulu DMA"). Hawaiian Telcom, Inc., dba Hawaiian Telcom TV ("HTTV") operates one or more cable television systems serving communities located within the Honolulu DMA (the "Cable System"). As more fully described herein, Mauna Kea is hereby demanding carriage of KLEI (DT) on the Cable System in accordance with Section 76.61 of the rules of the Federal Communications Commission (the "FCC").

Pursuant to Section 76.64 of the rules of the FCC, Mauna Kea sent an election notice to HTTV via Certified Mail on September 30, 2011 electing mandatory carriage on the Cable System for the election cycle beginning January 1, 2012. Because KLEI (DT) elected Must-Carry status on the Cable System and because KLEI (DT) is a local commercial broadcast television station with respect to the Cable System, KLEI (DT) is entitled to mandatory carriage on the Cable System. We further assert our right to be carried on our Virtual Channel; Channel 6.

Carriage of KLEI (DT) will not cause the Cable System to exceed the maximum number of signals a cable system is required to carry under the FCC's Must-Carry rules. KLEI (DT) does not and will not share a broadcast network affiliation with, or substantially duplicate the programming of, any other local commercial broadcast television station in the Honolulu DMA. If HTTV is unable to receive a "good-quality" over-the-air signal of KLEI (DT), Mauna Kea agrees, at its own cost, to ensure delivery of a good quality signal of KLEI (DT) through alternative means. There therefore is no lawful reason for HTTV to refuse to carry KLEI (DT) on any part of the Cable System.

Mauna Kea, however, is aware that HTTPV currently fails to carry the signal of KLEI (DT) in the communities served by the Cable System, in clear violation of the FCC's mandatory carriage rules. Thus pursuant to Section 76.61(a)(1) of the rules of the FCC, Mauna Kea hereby notifies you that we believe that HTTPV has failed to meet its carriage obligations and we demand mandatory carriage of KLEI (DT) in all communities served by the Cable System in the Honolulu DMA.

Based on the above facts, there is no lawful reason for HTTPV to deny this request for mandatory carriage. Indeed, although this notice letter is necessary to preserve Mauna Kea's rights under the FCC's rules, we hope that HTTPV's carriage of KLEI (DT) on the Cable System will commence without resort to the FCC's complaint procedures.

Thank you for your attention to this matter.

Sincerely yours,

Dr. Christopher J. Racine
President & CEO

EXHIBIT 2

June 25, 2012

Via Certified Mail

Dr. Christopher J. Racine
President and CEO
Mauna Kea Broadcasting Company, Inc.
Post Office Box 143
Honolulu, HI 96810

Re: Carriage of KLEI (DT), Kailua-Kona, Hawaii

Dear Dr. Racine:

This is in response to your letter to Hawaiian Telcom dated June 21, 2012.

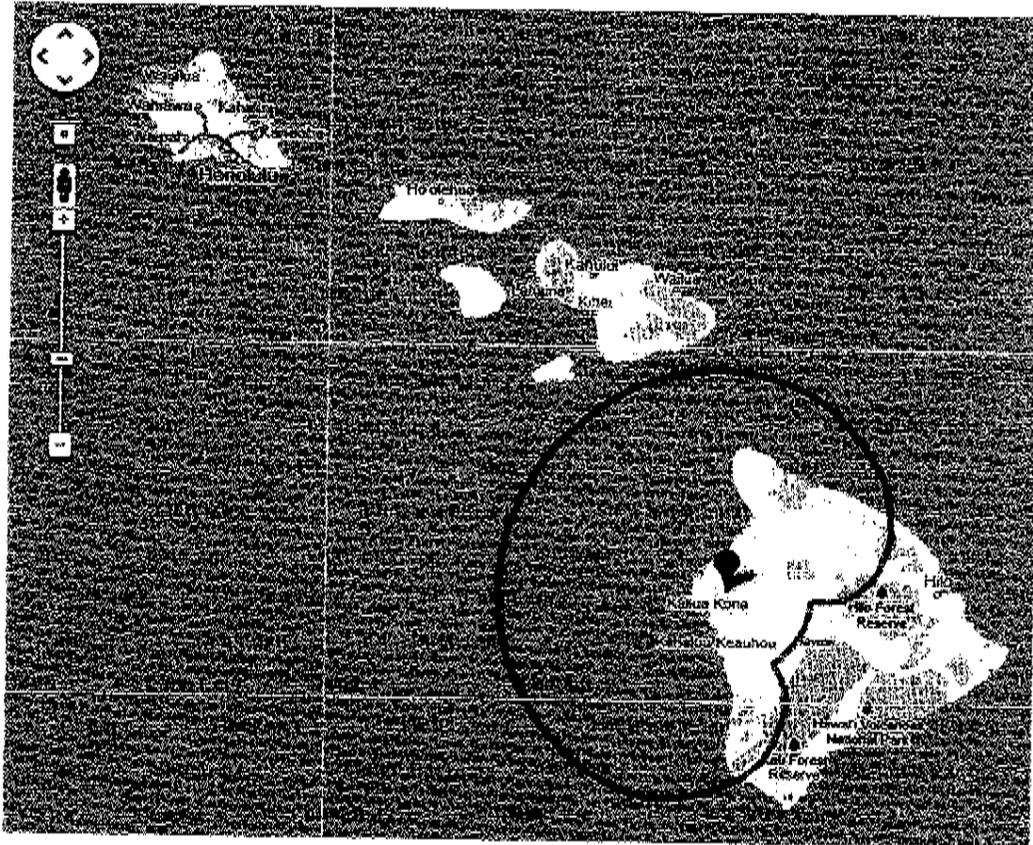
Hawaiian Telcom does not agree with the baseline premise of your letter which states that "KLEI (DT) is entitled to mandatory carriage on the Cable System" operated by Hawaiian Telcom.

Hawaiian Telcom cites the following:

- The State of Hawaii Department of Commerce and Consumer Affairs (DCCA) granted a video franchise to Hawaiian Telcom for the island of Oahu on June 24, 2011. Hawaiian Telcom has neither been granted, nor has the company applied for a video franchise for any of the other islands in the state of Hawaii.
- The term DMA or Designated Market Area is a set of geographic areas defined by Nielsen Media Research Company. While it is true that according to Nielsen Media Research, the Honolulu DMA covers the entire state of Hawaii, that term is not relevant to this request to provide carriage to KLEI (DT)-because the Hawaii State DCCA issued Hawaiian Telcom a video franchise only for the island of Oahu
- Hawaiian Telcom is not required to include video signals from stations which do not provide broadcast signals on the island of Oahu, Hawaiian Telcom's video franchise. For clarification, reference the statement below from the FCC's web site (<http://www.fcc.gov/guides/cable-carriage-broadcast-stations>)

Alternately, local commercial and noncommercial television broadcast stations may require a cable operator that serves the same market as the broadcaster to carry its signal. A demand for carriage is commonly referred to as "must-carry."

- The FCC's coverage map defines KLEI's coverage area as the western portion of the big island of Hawaii. Reference the FCC's KLEI <http://transition.fcc.gov/fcc-bin/tvq?call=KLEI>; "Map: Service Contour on Google map (41 dBu)"



- KLEI's broadcast coverage area which is limited to the western side of Hawaii island surrounding Kailua Kona was validated in a conversation between yourself and Brooke Won, Hawaiian Telcom Network Planner on June 22, 2012.

As with all requests from video content providers who are not broadcasting on Oahu, Hawaiian Telcom is open to reviewing proposals to potentially carry video channels that may prove to be valuable to our subscribers. As you note, the channel must meet HT's standard of video quality. But in the end, Hawaiian Telcom will decide at our sole discretion whether to include that proposed channel in our TV line-up or not.

Sincerely,

Ernest Villicana
Director Video Content Programming

CERTIFICATE OF SERVICE

I, Michelle Brown Johnson, hereby certify that on this 3rd day of July, 2012, I caused a copy of the foregoing "Must-Carry Complaint" to be served via U.S. mail, postage prepaid, upon the following:

Eric K. Yeaman, President & CEO
Hawaiian Telcom, Inc. dba Hawaiian Telcom TV
1177 Bishop Street
Honolulu, HI 96813

Ernest Villicana, Director Video Content Programming
Hawaiian Telcom, Inc. dba Hawaiian Telcom TV
1177 Bishop Street
Honolulu, HI 96813

DCCA-CATV
P.O. Box 541
Honolulu, HI 96809


Michelle Brown Johnson