

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Petition of	)	MB Docket No. 12-208	
)		
Time Warner Entertainment Company, L.P.	)	Honolulu	HI0005; H10006
	)	Kauai	HI0011
	)	Hickam AFB	HI0043
	)	Aliamanu	HI0058
	)	Kaneohe Marine Corps	HI0066
For Modification of DMA	)	Pearl Harbor	HI0070
Station KLEI-TV	)	Barking Sands Naval	HI0098
Mauna Kea Broadcasting Company	)	Kalaupapa	HI0107
Kailua-Kona, Hawaii	)	Maui	HI0113

**To: The Secretary
For: Chief, Media Bureau**

**OPPOSITION OF THE STATE OF HAWAII
TO PETITION FOR SPECIAL RELIEF**

The State of Hawaii Department of Commerce and Consumer Affairs (“DCCA”)¹ writes to express its concerns about the petition filed by Time Warner Entertainment Company L.P. (“TWE”) seeking modification of station KLEI’s Designated Market Area (“DMA”) to exclude Honolulu and the surrounding communities.² DCCA believes that such modifications reduce diversity in broadcast programming, and may limit future opportunities for Oahu and other islands to benefit from a broadcaster that is not affiliated with a major network. DCCA therefore urges the Commission to deny TWE’s petition and leave KLEI’s DMA unchanged.

¹ These Comments are submitted by the State of Hawaii acting through its Department of Commerce and Consumer Affairs, Cable Television Division which represents the State in these matters. The DCCA is the cable franchise authority for the State of Hawaii.

² Petition of Time Warner Entertainment Company, L.P., for Modification of DMA Station KLEI-TV Mauna Kea Broadcasting Company Kailua-Kona, Hawaii, HI0005, HI0006, HI0011, HI0043, HI0058, HI0066, HI0070, HI0098, HI0107, HI0113, Docket No. 12-208, CSR No. CSR-8686A (July 13, 2012) (“*TWE Petition*”).

As the Commission is well aware, Hawaii's location in the middle of the Pacific Ocean poses many telecommunications challenges, including making it a uniquely isolated broadcast market. At the same time, it is also among the largest DMAs in terms of distance between regions within the same DMA. These factors together make it both isolated and potentially fragmented.

DCCA therefore believes that broadcasting between islands provides not only relevant news and programming, but also a valuable unifying factor within islands that share a cultural heritage despite distinct identities. DCCA opposes efforts that would reduce either Hawaii viewers' access to diversity in content or to the cultural value of local programming from across the islands.

Although much of the State's population is concentrated in Oahu, the amount and diversity of local television content in this central location remains regrettably low.³ The 2009 merger of the newsrooms of the local CBS and NBC affiliates has further contracted the opportunities for diversity in local news and programming, as stations KFVE, KHNL, and KGMB now share a merged newsroom and simulcast a single news program on all three channels.⁴ The Media Bureau at the time permitted the merger over the objection of Media Council Hawai'i, but reserved judgment on whether such transactions, and the resulting

³ Honolulu is home to 15 television channels, but they provide only limited original programming beyond news. *See Station Index for Honolulu, HI*, <http://www.stationindex.com/tv/markets/Honolulu>.

⁴ Rick Daysog, *New era in Hawaii TV news broadcasting begins*, THE HONOLULU ADVERTISER, Oct. 26, 2009; *see also* Erika Engle, *Joint newscasts launch with technical glitches*, THE HONOLULU STAR BULLETIN, Oct. 27, 2009.

reduction in programming variety, were consistent with the public interest.⁵ In addition to the merger of KFVE, KHNL, and KGMB, the State's only two statewide newspapers, the Honolulu Star-Bulletin and the Honolulu Advertiser merged in 2010 to form the Honolulu Star-Advertiser.⁶ DCCA is concerned that these consolidations have greatly diminished the diversity of news sources available to Hawaii residents and, consequently, DCCA believes it is important to preserve and promote opportunities for increased diversity in news and programming to all residents of Hawaii.

By the terms of their license, broadcasters have obligations to serve the public interest.⁷ Among other benefits, the Commission's must-carry rules ensure that the benefits of broadcaster's public interest obligations reach local cable audiences. DCCA acknowledges that cable Public, Educational, and Government ("PEG") channels are one way in which programming that serves the public interest is provided over cable networks.⁸ The mission of PEG channels, however, is different from that of commercial broadcast stations and does not supplant the broadcaster's longstanding obligation of "diligent, positive, and continuing effort...to discover and fulfill the problems, needs and interests of the public within the station's

⁵ *KHNL/KGMB License Subsidiary, LLC, Licensee of Stations KHNL(TV) and KGMB(TV), Honolulu, Hawaii, Fac. ID Nos 34867 and 34445, and HITV License Subsidiary, Inc., Licensee of Station KFVE(TV), Honolulu, Hawaii, Fac. ID No. 36917, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 11-1938, ¶ 23 (rel. Nov. 25, 2011).*

⁶ Keoki Kerr, *Merged Honolulu Star-Advertiser Begins June 7*, KITV News, <http://www.kitv.com/Merged-Honolulu-Star-Advertiser-Begins-June-7/-/8906042/5369760/-/item/1/-/fcjfyfz/-/index.html>.

⁷ 47 U.S.C. § 303.

⁸ *See* 47 U.S.C. § 534.

service area.”⁹ The inclusion of professionally produced local programming from inter-island broadcast stations would represent a beneficial increase in the amount and diversity of local content available to Oahu viewers. DCCA urges the Commission to conclude that the removal of the States’ most populous areas from the DMA of KLEI could impair the breadth or diversity of local programming and will ultimately not serve the public interest.

With regard to the statutory factors for analyzing market modification petitions, we agree with the Commission that the presence of open water between market areas should not preclude a unified market, particularly in the case of island markets.¹⁰ Likewise, a strict application of coverage or grade B contours is inconsistent with the reality of Hawaii’s expansive DMA.¹¹ Instead, DCCA’s policy is to treat the State as a unified whole and promote local programming from all parts of the State, recognizing a common Hawaiian experience that overarches the State’s many cultural and language groups. Additionally, KLEI provides among the only locally-produced programming in Tagalog (“Truly Pinoy”) and Spanish (“Latitudes”).¹² DCCA

⁹ *Ascertainment of Community Problems by Broadcast Applicants*, Dock. No. 19715, First Report and Order, 57 F.C.C.2d 418, 441 (rel. Jan. 7, 1976); *see also Broadcast Localism, MB Docket No. 04-233*, Notice of Inquiry, FCC 04-129, ¶ 1 (rel. Jul. 1, 2004) (citing *Deregulation of Radio*, 84 F.C.C.2d 968, 994, ¶ 58 (1981) (“The concept of localism was part and parcel of broadcast regulation virtually from its inception.”)).

¹⁰ *Petition for Modification of the Designated Market Area of Television Broadcast Station WVXF, Charlotte Amalie, Virgin Islands, CSR-8133-A*, Memorandum Opinion and Order, DA 09-1374, ¶ 11 (rel. Jun. 19, 2009).

¹¹ *Id.*, ¶ 12 (“The Bureau has explicitly stated that grade B contours...are not to be used as an absolute measure of the scope of the station’s market.”) (Internal quotations omitted).

¹² KLEI TV August Program Schedule, available at <http://www.klei.tv/docs/KLEISchedule1.pdf>. A low power TV affiliate of Univision, KHLU, broadcasts on Oahu, but is not carried on TWE.

agrees with the Commission that such specialty language programs not only provide a valuable service to speakers of these languages, but also offers “a desirable diversity of programming.”¹³

DCCA emphasizes to the Commission that local broadcasting is relevant not just to the island of its origin but also to the State as a whole.¹⁴ The Commission has acknowledged such a nexus when it denied an earlier market modification request by cable operator G Force to exclude Kauai from the DMA of a Honolulu broadcaster.¹⁵ In the *G Force* case, the Commission acknowledged the inherent distance between stations on different islands, but nonetheless found audience interest and a market nexus between the market core on Oahu and the outlying communities on the other islands.¹⁶ The Commission also noted that, in 1998, television service for Hawaii was provided exclusively by stations on the island of Oahu.¹⁷ Fourteen years later, options for broadcast television have expanded beyond the island of Oahu, and DCCA urges the Commission to recognize the statewide value of broadcasts originating from these other islands.

DCCA is committed to promoting Hawaii viewers’ access to diverse and locally-produced programming. The petition of TWE acts to contract rather than expand local program offerings available to Honolulu audiences, and could set an undesirable precedent for future

¹³ *Complaint of Fouce Amusement Enterprises, Inc. for Carriage on Paragon Cable System, and Petition of Paragon Cable for Modification of KRCA ADI Market for Must Carry Purposes*, Memorandum Opinion and Order, 10 FCC Rcd 668, 671, ¶ 17 (rel. Jan. 19, 1995) (quoting *First Report and Order in Docket No. 20553*, 58 FCC 2nd 442, 452 (1976)).

¹⁴ *See, e.g.* Letter from Joshua Booth Green, Senator, 3rd District, Hawaii State Senate, to Marlene Dortch, Secretary, Federal Communications Commission, Docket No. 12-208, Aug. 1, 2012.

¹⁵ *G Force, L.L.C. Petition For Modification of Television Markets of Stations KWHE-TV and KIKU-TV, Honolulu, Hawaii, CSR 5232-A*, Memorandum Opinion and Order, DA 98-1023, ¶ 11 (rel. Jun. 3, 1998) (“G Force”).

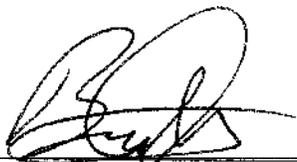
¹⁶ *Id.*, ¶ 8, 10.

¹⁷ *Id.*, ¶ 9.

modifications. DCCA therefore urges the Commission to deny the petition for special relief and to leave the DMA of station KLEI-TV unmodified.

Respectfully submitted,

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