

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

In re Petition of:)		
	)	MB Docket No. 12-208	
Time Warner Entertainment Company, L.P.)		
	)	CSR-8686-A	
For Modification of DMA)		
Station KLEI-TV	)	Honolulu	HI0005; HI0006
Mauna Kea Broadcasting Company	)	Kauai	HI0011
Kailua-Kona, Hawaii	)	Hickam AFB	HI0043
	)	Aliamanu	HI0058
	)	Kaneohe Marine Corps	HI0066
	)	Pearl Harbor	HI0070
	)	Barking Sands Naval	HI0098
	)	Kalaupapa	HI0107
	)	Maui	HI0113

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

OPPOSITION TO PETITION FOR SPECIAL RELIEF

MAUNA KEA BROADCASTING COMPANY, INC.

FLETCHER, HEALD & HILDRETH, PLC
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August 16, 2012

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SUMMARY

Mauna Kea Broadcasting Company, Inc. (“Mauna Kea”) hereby requests that the Commission deny the Petition for Special Relief filed by Time Warner Entertainment Company, L.P. (“TWC”) seeking to modify the Honolulu, Hawaii Designated Market Area (“DMA”) to exclude many communities in that market from KLEI-TV’s must-carry market. TWC’s Petition ignores the unique nature of the Hawaii market and the historical, cultural, social, and economic links that unite the Hawaiian Islands into a single market. TWC also mischaracterizes KLEI’s programming, ignoring the unique program service it delivers; a program service that responds to the needs of a number of underserved communities throughout the Hawaii market.

As demonstrated herein, KLEI’s lack of historical carriage and ratings must be discounted due to the unique circumstances presented by KLEI and the Hawaii market. Contrary to TWC’s assertions, the unique history and culture of the Hawaiian Islands has created a single, unified market consisting of the entire State of Hawaii. Communities throughout this market are closely connected economically, historically, and politically. KLEI delivers a unique programming service that serves residents throughout this market in a manner that no other station does.

Rather than carry the signal of the only full-power television station in the State of Hawaii to produce and broadcast programming off of the Island of Oahu, TWC instead would prefer that it have unfettered authority to determine the value of a truly local television station. Instead of allowing its subscribers to view KLEI’s programming, which serves the underserved Hispanic, Filipino, and Native Hawaiian populations, TWC would prefer to deliver programs only of its own choosing – including perhaps more programming like the many channels of adult entertainment it currently offers.

The Commission should refrain from enabling TWC’s domination of the Hawaii market and allowing TWC to deny its subscribers the ability to view KLEI’s programming. In furtherance of

the values embodied in the Communications Act and the must-carry regulations of protecting over-the-air television, promoting the dissemination of information from a wide variety of sources, and promoting fair competition, the Commission should deny TWC's Petition and require that TWC carry the signal of KLEI-TV throughout the Hawaii market.

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To: Office of the Secretary
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OPPOSITION TO PETITION FOR SPECIAL RELIEF

Mauna Kea Broadcasting Company, Inc. (“Mauna Kea”), licensee of television station KLEI-TV, Kailua-Kona, Hawaii (“KLEI”), hereby opposes the Petition for Special Relief (the “Petition”) filed by Time Warner Entertainment Company, L.P. (“TWC”) requesting modification of the Honolulu, Hawaii DMA to exclude certain communities (the “Cable Communities”) from KLEI’s must-carry market.¹ TWC ignores the unique nature of the Hawaii market and the historical, cultural, social, and economic links that unite the Hawaiian Islands into a single market.² TWC also mischaracterizes the Station’s programming, ignoring the

¹ The Petition was apparently filed in response to a must-carry complaint, CSR-08658-M, filed by Mauna Kea against TWC on June 13, 2012.

² As discussed further below, TWC’s effort to downplay the unique nature of the Hawaii market is hopelessly inconsistent not only with Hawaii’s own perception of itself – as reflected in its
(Footnote continued on next page)

unique program service it delivers and its responsiveness to unserved needs of viewers throughout the Cable Communities.

I. Historical Carriage Should be Discounted for a Station Such as KLEI-TV

TWC spends significant effort arguing that the Cable Communities should be removed from KLEI's must-carry market due to a lack of historical carriage and ratings.³ But those arguments fail to reflect the reality of the Station's history. Regarding carriage by satellite providers, the claims are simply incorrect, as both Dish and DirecTV, in letters delivered to Mauna Kea in February 2012, have agreed to carry KLEI throughout Hawaii.⁴ TWC's assertion that Hawaiian Telcom, the only other cable system serving Oahu (or any other part of the Hawaiian Islands, for that matter) does not carry the Station must be discounted: Hawaiian Telcom was granted an initial franchise in June 2011, barely a year ago.⁵ Mauna Kea has filed a complaint with the Commission to enforce its must-carry rights on Hawaiian Telcom's systems.⁶

As the Commission has held previously, the simple lack of historical carriage is not determinative; rather the Commission "must consider the circumstances contributing to this lack

(Footnote continued from preceding page)

governmental organization and responsibilities – but also with TWC's own representations to Hawaii officials.

³ TWC Petition at 4-5, 11-13.

⁴ See Declaration of Christopher Racine, at Exhibit A. Mauna Kea is currently arranging for delivery of the Station's signal to Dish and DirecTV's local receive facilities.

⁵ Hawaiian Telcom Services Company, Inc., Decision and Order No. 352 of the Cable Television Division of the Department of Commerce and Consumer Affairs, State of Hawaii, available at http://hawaii.gov/dcca/catv/decisions_orders/files/Hawaiian_Telcom_Services_Oahu_Franchise_D-O_6_24_11.pdf.

⁶ See Mauna Kea Broadcasting Company, MB Docket No. 12-197, CSR-8682-M.

of historical carriage.”⁷ Where there has been a fundamental change in a station’s identity, such as through a change in ownership or programming, a lack of historical carriage is afforded little significance.⁸ Indeed, the Commission has noted that “if [historical carriage] were found to be controlling that would, in effect, prevent newer or weaker stations from ever being entitled to carriage, contrary to the policy of the statute.”⁹ In this case, KLEI may be considered to be equivalent to a new station. It underwent a change in ownership in September, 2011¹⁰ and the new licensee has invested considerable resources to revamp the Station’s programming to include a daily local news program and unique programs specifically responsive to the native Hawaiian population and residents of all of the Hawaiian Islands, particularly members of significant underserved minority populations.

KLEI is now the **only** full-power television station licensed to **any** community off the Island of Oahu that produces and broadcasts **any** local programming, including a daily local news program. Unlike the network affiliate stations carried by TWC, KLEI’s programming is not carried on translator or satellite stations. As a “newer or weaker” station, KLEI’s lack of historical carriage must be discounted here.

Moreover, contrary to TWC’s claims, TWC’s refusal to carry KLEI would significantly undermine the Station’s ability to compete with other stations located in its area, a concern the

⁷ *CoxCom, Inc., Petition for Modification of the DMA Market of Television Broadcast Station KFPH(TV), Flagstaff, Arizona*, Memorandum Opinion and Order, 17 FCC Rcd 17192, 17195 at ¶ 6 (2002).

⁸ *See, e.g., Comcast Cablevision of Danbury, Inc., Petition For Modification of the DMA Market of Television Broadcast Station WFUT(TV), Newark, New Jersey*, Memorandum Opinion and Order, 18 FCC Rcd 274, 278 at ¶ 8 (2003).

⁹ *Paxson San Jose License, Inc.; For Modification of Station KLXV-TV's ADI*, Memorandum Opinion and Order, 12 FCC Rcd 17520, 17525 at ¶ 11 (1997).

¹⁰ *See* BALCDT-20110523ADH, granted September 28, 2011; consummated September 30, 2011.

Commission has recognized in the very case cited by TWC.¹¹ In *G-Force*, the Cable Services Bureau, after recognizing that the Hawaiian Islands were a “unique setting,” determined that stations licensed on Oahu could enforce must-carry rights on the island of Kauai in part due to the fact that the cable operator in question carried other stations serving Oahu.¹² The Bureau recognized that the “market core” for Hawaiian television stations is on Oahu, and due to the unique nature of the market, most stations on other islands are operated as satellites of Oahu stations.¹³ Indeed, this is still the case; all other full-power stations licensed on the island of Hawaii, except for the Station, are operated as satellites of Oahu-based stations.¹⁴ As a result, while TWC may avoid carrying the signals of those satellite stations, all of those stations continue to have their programming carried on TWC systems serving Oahu and, in almost all cases, all of the other Cable Communities.

As the only station outside of Oahu that originates its own local programming, KLEI provides programming that is unavailable from any other source. It thus clearly contributes to the “dissemination of information from a multiplicity of sources”. The must-carry requirements were designed to protect precisely such programming diversity.¹⁵ Forced to compete with

¹¹ *Petition of G-Force, L.L.C.*, 13 FCC Rcd 10386 (CSB 1998).

¹² *Id.*

¹³ *G-Force*, 13 FCC Rcd at ¶10. In fact, except for KLEI, *all* full power stations licensed to Hawaiian islands other than Oahu are operated as satellites of Oahu stations. Mauna Kea notes for clarification that although TWC appears to believe that the community of Kailua – as distinct from the altogether different community of Kailua-Kona, KLEI’s community of license – is located on the island of Hawaii (Petition at 2); in fact, Kailua is located on Oahu.

¹⁴ KHAW-TV, Hilo operates as a satellite of Fox affiliate KHON-TV, Honolulu; KGMD-TV, Hilo operates as a satellite of CBS affiliate KGMB, Honolulu; KHBC-TV, Hilo, operates as a satellite of NBC affiliate KHNL, Honolulu; KHVO, Hilo, operates as a satellite of ABC affiliate KITV, Honolulu; and KWHD, Hilo, operates as a satellite of World Harvest affiliate KWHE.

¹⁵ See *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 189 (1997), citing *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 662 (1994).

stations whose programming is carried throughout the islands on TWC's systems, KLEI could not possibly continue to produce such local programming – or, perhaps, even survive – absent carriage by TWC in the Cable Communities, in particular in Honolulu, which the Commission has recognized constitutes the “market core.”¹⁶ This is particularly true in a market such as Hawaii, where cable penetration approaches 90%, and where, until last year, TWC did not face any competition for cable customers.¹⁷

In this case, reliance on a lack of historical carriage or ratings to delete the Cable Communities from the Station's market would undermine the Station's ability to continue to develop and deliver the unique program service Mauna Kea has built, would threaten the Station's very survival, would disserve residents of those communities, and would contravene the purposes of the Cable Act.

II. Hawaii is Economically, Politically, and Socially a Single, Unified Market

While the Cable Communities may be beyond the 41 dBu contour of the Station, the unique nature of the Hawaiian Islands means that those communities are nonetheless part of a unified market that includes Kailua-Kona and all of the Hawaiian Islands.¹⁸ TWC is simply incorrect that KLEI has no “local nexus” to the Cable Communities, or that it serves a market separate from those communities.

¹⁶ *G-Force*, 13 FCC Rcd at ¶10

¹⁷ *See* Television and Cable Factbook 2012, at F-9.

¹⁸ Mauna Kea reaffirms its commitment to provide, at its own cost, a good quality signal at the “master headend” into which TWC has consolidated its Hawaii-wide operations. Mauna Kea expects to accomplish this via a fiber connection. Because TWC itself controls the fiber facilities on which Mauna Kea would need to contract for carriage, Mauna Kea has been understandably reluctant to enter into any agreement while TWC continues to refuse to carry the Station.

Hawaii is unique among American states. In 1810, the Hawaiian Islands were united into a single unified Kingdom under King Kamehameha I. This Kingdom survived until 1893, during which time the Islands, separated from any other major population centers by thousands of miles of ocean, developed a unified and unique culture. As the United States Congress has recognized, prior to European contact, native Hawaiians “lived in a highly organized, self-sufficient, subsistent social system based on communal land tenure with a sophisticated language, culture, and religion.”¹⁹ In 1959, Hawaii became the fiftieth state of the United States, and the only state to have previously been an independent Kingdom. Despite significant changes over the nineteenth and twentieth centuries, the Hawaiian people continue to retain a unique “cultural identity” that unites residents of all of the islands.²⁰

According to TWC, the Hawaiian Islands are separated by “vast ocean reaches” that “attenuate any meaningful ties” between and among the islands. TWC Petition at 7. Not so. In fact, travel between and among the islands is extremely easy, and popular. In 2010, almost 7 million passengers traveled between the islands of Hawaii, even during a major economic downturn.²¹ As recently as 2007, more than 9 million passengers traveled between the islands.²² At least five airlines offer daily inter-island service.²³ Island Air, for example, offers 352 weekly

¹⁹ Joint Resolution To Acknowledge the 100th Anniversary of the January 17, 1893 Overthrow of the Kingdom of Hawaii, and to Offer an Apology to Native Hawaiians on Behalf of the United States for the Overthrow of the Kingdom of Hawaii., P.L. 103-150, 107 Stat. 1510, S.J. Res. 19, enacted Nov. 23, 1993.

²⁰ *Id.*

²¹ State of Hawaii Department of Business, Economic Development & Tourism, 2010 State of Hawaii Data Book at Table 18.36, available at <http://hawaii.gov/dbedt/info/economic/databook/db2010/section18.pdf>

²² *Id.*

²³ See www.islandair.com; www.mokuleleairlines.com; www.pacificwings.com; www.iflygo.com; www.hawaiianair.com.

inter-island flights, and recently offered flights for as little as 62 dollars.²⁴ Hawaiian Airlines also recently lowered fares and increased capacity on its inter-island routes.²⁵

The unity that is Hawaii is also reflected in its political and governmental institutions. A single school district, administered by the State, covers all of the Hawaiian Islands.²⁶ Through the Hawaii Health Systems Corporation, the State of Hawaii serves as the principal provider of medical care in the state.²⁷ Most of the Cable Communities are also connected through their common inclusion in Hawaii's Second Congressional District of the United States House of Representatives.²⁸ This District includes all of the State of Hawaii except for the area immediately in and around the city of Honolulu.

Perhaps most importantly, the interconnectedness of the islands has been recognized specifically in the context of cable service. In Hawaii, unlike in most other areas of the United States, cable franchises are awarded not by individual communities, but by the state itself. The Cable Television Division of the State's Department of Commerce and Consumer Affairs ("DCCA") grants all cable franchises in the state and regulates franchised cable operators.²⁹ Even TWC itself has professed to the DCCA its own belief that the entire state constitutes a

²⁴ "Island Air Offers \$62 inter-island one-way tickets," available at <http://www.khon2.com/news/local/story/Island-Air-offers-62-inter-island-one-way-tickets/naeIyt0yVUq6yWqPkNMj7A.csp>.

²⁵ "Hawaiian Airlines lowers inter-island travel fares, adds new service to New Zealand," Hawaii'I Magazine.com, at http://www.hawaiimagazine.com/blogs/hawaii_today/2012/7/26/Hawaii_Honolulu_Maui_Kauai_airline_Auckland

²⁶ See, Hawaii Department of Education, About Us, at <http://doe.k12.hi.us/about/index.htm>.

²⁷ See Hawaii Health Systems Corporation – A Brief History, at <http://hawaii.gov/hhsc/about-our-organization>

²⁸ See http://nationalatlas.gov/printable/images/pdf/congdist/HI02_110.pdf.

²⁹ See <http://hawaii.gov/dcca/catv>.

single market. During a December 2011 hearing on the renewal of TWC's franchises for the island of Hawaii, Bob Barlow, President of Oceanic Time Warner, advised the DCCA's Cable Advisory Committee that "[TWC] views the whole state as one system and provides the exact same service throughout the state."³⁰ Having so stated to the DCCA, TWC cannot credibly take precisely the opposite position before the Commission here.

The design of TWC's Hawaii-wide system conclusively confirms Mr. Barlow's statement that TWC in fact considers the state to be a single market. Almost ten years ago, TWC consolidated its four separate headends into a "single, master headend" which allowed TWC to receive signals at any location on the islands, consolidate signal processing in one location and to "control, operate and monitor" all operations from one location.³¹ Apparently the "vast ocean reaches" have not prevented TWC from operating its own state-wide cable system from a single centralized location.

Where communities are part of a single market, as is the case here, the Cable Act recognizes that the value of localism is best served by requiring carriage throughout that market. Accordingly, the Cable Communities should remain a part of the Station's market, and TWC should be required to carry the Station in those communities.

³⁰ Cable Advisory Committee, Department of Commerce and Consumer Affairs, State of Hawaii, Minutes of December 12, 2011 Meeting at §II(B), p.2, available at http://hawaii.gov/dcca/catv/cable_advisory_committee/CAC-minutes-meeting-12-12-2011-final-01-11-2012.pdf.

³¹ See "Hawaii, Fiber-Optic Style," TVTechnology, available at <http://www.tvtechnology.com/news/0110/hawaii-fiber-optic-style/184853>.

III. KLEI Delivers a Unique, Local Programming Service

In its Petition, TWC claims that the Cable Communities should be deleted because the Station fails to deliver programming focused on the “specific local needs and interests of the Communities.” This is demonstrably wrong.

TWC asserts that the Station’s locally produced programming is “almost exclusively” targeted to the island of Hawaii, and has little nexus to the Cable Communities.³² But the very programs referenced by TWC in the Petition, as well as others broadcast on KLEI, not only address issues critical to residents of all the Hawaiian Islands, but in particular focus on issues of importance to underserved communities throughout the islands.

As shown on the attached program schedule, KLEI broadcasts more than 17 hours of locally-produced programming each week.³³ Due to the unique nature of the Hawaiian Islands, the issues addressed in those local programs are important to residents of all islands. That is particularly so in light of the fact that KLEI is the only television station in the state off of the island of Oahu that produces any local programming, including a locally produced daily news program, *KLEI 6 News*, which provides coverage of both local and statewide issues.³⁴ The importance of this programming was recently emphasized when irregularities occurred at polling places on the island of Hawaii during primary elections held August 11.³⁵ Although these events

³² Petition at 9.

³³ See KLEI-TV August Program Schedule at Exhibit B. Local programs are highlighted in yellow.

³⁴ See www.klei.tv for clips of recent *KLEI 6 News* episodes.

³⁵ See Derrick DePledge, “Snags Spur Review of Voting System: Unexplained delays in opening some Hawaii island precincts slow election results’ release,” *Honolulu Star-Advertiser*, August 13, 2012, available at <http://www.staradvertiser.com/s?action=login&f=y&id=165951686&id=165951686> (login required).

were clearly important to residents throughout the state, as shown by coverage in Honolulu print media, at the time the events were unfolding, KLEI was the only television station providing first-hand information using the cameras and reporters it had at various locations on Hawaii.

Moreover, KLEI also devotes significant coverage to issues and events arising on those other islands as well. The *O'ahu Mayor's Report*, for example, is a 30-minute weekly program in which Mayor Peter Carlisle of Honolulu discusses important issues in the City of Honolulu and on the island of O'ahu.³⁶ Viewers are encouraged to e-mail questions on issues they would like the Mayor to address. Similarly, the weekly program *City News* reports on news stories and events occurring in O'ahu, the state capital. *Eye on Hawaii* provides weekly reports not only on Hawaii, but also on Maui, Kauai'i, and O'ahu, covering issues important to residents of all of the Hawaiian islands.

Programs on KLEI also address issues of particular importance to Native Americans, including Native Hawaiians, living throughout the state. While TWC would dismiss the program *Native Ways*, see TWC Petition at 9, this program frequently addresses issues important to residents throughout the state. During the episode aired the week of June 2, 2012, for example, co-host (and KLEI General Manager) Chip Begay, a Native American, interviewed Native American artists from O'ahu, Maui, and Kauai'i. He discussed powwows on all Islands and comparisons of Native Hawaiian and other Native American cultures.³⁷ *Native Ways* also addresses issues of particular importance to Native Hawaiians, including health issues such as diabetes and obesity, both of which have very high incidences in Native American and Native Hawaiian populations. Similar health issues are covered in *Healthy Hawaii*, which is the only

³⁶ See KLEI-TV, About Our Local Shows, at <http://www.klei.tv/local-shows/>.

³⁷ See http://www.youtube.com/watch?v=SutW-GwQHqk&feature=player_embedded.

locally-produced program in Hawaii addressing medical issues peculiar to the state, such as tropical infections, the health effects of volcanic gas (VOG), and the high statewide rate of diabetes.³⁸ *Healthy Hawaii* recently featured an interview with the President and CEO of Hawaii Health Systems Corporation, the public benefit corporation of the State of Hawaii that serves as the largest health care provider in the Hawaiian Islands, operating facilities throughout the state.

KLEI also serves the broader Hawaiian culture by producing and broadcasting a local television program devoted to teaching the Hawaiian language, *Olelo Hawai'i*. *Olelo Hawai'i* reinforces Hawaiian culture by providing native language instruction, beginning with basic Hawaiian sounds and progressing to advanced sentence structure and basic conversational skills.³⁹ KLEI's dedication to educational coverage is also demonstrated by *Education Matters*, the only education program in the state hosted by a Hawaii State school psychologist, and *Keiki 808*, an educational/informational children's program designed to educate the children of Hawaii on different and interesting topics throughout the islands. All of these programs serve not just viewers on Hawaii, but viewers on all of the Hawaiian Islands, focusing on issues of unique importance to Hawaiians.⁴⁰

Two of KLEI's most important programs are those devoted to segments of the population of Hawaii that are not served by other programming in the market. *Latitudes*, hosted by Ramon Villasenor, is the only program produced by *any* Hawaii television station that focuses

³⁸ See KLEI-TV, About Our Local Shows, at <http://www.klei.tv/local-shows/>.

³⁹ See KLEI-TV, About Our Local Shows, at <http://www.klei.tv/local-shows/>.

⁴⁰ This is far more than can be said of the at least 28 channels of adult programming available on TWC's digital cable systems. See Digital-Oahu Channel Lineup at <http://www.timewarnercable.com/Hawaii/support/clu/clu.ashx?CLUID=1034&Image1=&Zip=96813>, showing adult programming on Channels 648-651, 715-718, 720-729, 731-732, 735, 740, and 1740. Interestingly, the channel lineup submitted with the Petition identified only 13 of these adult channels. See Petition at Exhibit A.

specifically on the Hispanic community, which comprises almost nine percent of the state's population.⁴¹ *Latitudes* covers issues of importance to Hispanic residents not only of the Island of Hawaii, but throughout the islands.⁴² In a recent episode, for example, Mr. Villasenor interviewed the Mexican Consulate from San Francisco regarding how Mexican citizens throughout Hawaii could renew their passports.⁴³

KLEI also broadcasts the *only* locally-produced program serving Hawaii's Filipino community, which now makes up 14.5% of the state's population.⁴⁴ *Truly Pinoy*, hosted by Jane Clement, focuses on issues relevant to this significant and underserved population throughout the islands.⁴⁵ Recent episodes of the program have included visits to the Filipino Community Center in Honolulu and to the Santo Nino Club of Maui.⁴⁶

TWC in its Petition struggles in an attempt to show that other stations licensed in Hawaii provide coverage of local issues. But the fact that other stations may provide local service to some Cable Communities does not mean that those Cable Communities should be excised from KLEI's market.⁴⁷ The Commission has determined that this factor "was intended to enhance a station's market modification claim where it could be shown that other stations did not serve the communities at issue," but was *not* intended to serve as a bar to carriage where other stations did

⁴¹ See Profile of General Population and Housing Characteristics: 2010; 2010 Demographic Profile Data, available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_DP_DPDP1&prodType=table

⁴² See KLEI-TV, *Latitudes*, at <http://www.klei.tv/local-shows/latitudes/>.

⁴³ See http://www.youtube.com/watch?v=jdtEJTvDeIU&feature=player_embedded.

⁴⁴ See Profile of General Population and Housing Characteristics: 2010; 2010 Demographic Profile Data.

⁴⁵ See KLEI-TV, *Truly Pinoy*, at <http://www.klei.tv/local-shows/truly-pinoy/>

⁴⁶ *Id.*

⁴⁷ See, e.g. *Paxson San Jose License*, 12 FCC Rcd at 17526, ¶ 13.

provide some service to those communities.⁴⁸ Rather, in the case of a station delivering unique targeted programming, such as KLEI, the unique nature of this programming and its coverage of issues important to underserved communities throughout the state, enhance the Station's claim for inclusion of the Cable Communities in its market in furtherance of the goals of the Cable Act.⁴⁹

The evidence submitted by TWC regarding audience viewing patterns and ratings for KLEI's programming must also be discounted in light of KLEI's history and the fact that Time Warner has refused to carry it in the Cable Communities. Recognizing the difficulty stations offering specialized programming have in establishing an audience, the Commission has historically discounted carriage and ratings information for such stations.⁵⁰ Similarly, the Bureau here should recognize the difficult situation facing KLEI-TV as a "new" station with specialized programming, particularly where all other stations licensed in the same market as KLEI-TV have their programming carried on TWC's systems.

Conclusion

As set forth herein TWC's Petition ignores the unique nature of the Hawaii market and the historical, cultural, social, and economic links that unite the Hawaiian Islands into a single market. TWC also mischaracterizes KLEI's programming, ignoring the unique program service it delivers and its responsiveness to unserved needs of viewers throughout the Cable Communities. Rather than carry the signal of the only full-power television station in the State of Hawaii to produce and broadcast programming, including local news, off of the Island of

⁴⁸ *Mountain Broadcasting Corporation*, 27 FCC Rcd 2231, ¶ 15 (2012).

⁴⁹ *Paxson San Jose License*, 12 FCC Rcd at 17526, ¶ 13.

⁵⁰ *See, e.g. Norwell Television, LLC; For Modification of the Boston, Massachusetts DMA*, Memorandum Opinion and Order, 16 FCC Rcd 21970 (2001).

Oahu, TWC instead would prefer that it have unfettered authority to determine the value of a truly local television station. Instead of allowing its subscribers to view KLEI's programming, which serves the underserved Hispanic, Filipino, and Native Hawaiian populations, TWC would prefer to deliver programs only of its own choosing – including perhaps more programming like the 28 channels of adult entertainment it currently offers.

Instead of enabling TWC's domination of the Hawaii market and allowing TWC to deny its subscribers the ability to view KLEI's programming, the Commission should uphold the values embodied in the Communications Act and the must-carry regulations of protecting over-the-air television, promoting the dissemination of information from a wide variety of sources, and promoting fair competition. For the foregoing reasons, Mauna Kea Broadcasting Company, Inc. respectfully requests that the Commission deny TWC's Petition and require TWC to carry the signal of KLEI-TV throughout the Hawaii market.

Respectfully submitted,

MAUNA KEA BROADCASTING COMPANY, INC.

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August 16, 2012

EXHIBIT A

DECLARATION OF DR. CHRISTOPHER RACINE

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

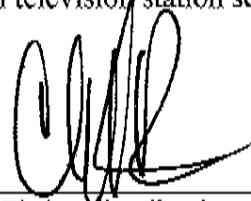
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To: Office of the Secretary
Attn: Chief, Media Bureau

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-TV.
2. I have reviewed the foregoing Opposition to Petition for Special Relief and all factual matters set forth therein are true to the best of my knowledge and belief.
3. Both Dish Network and DirecTV have confirmed by letter that they intend to begin carrying KLEI throughout the state of Hawaii. Mauna Kea is currently arranging for a fiber connection to deliver the station's signal to the Dish Network and DirecTV local receive facilities.
4. KLEI is the only local broadcast station in Hawaii producing and broadcasting local programming off of the island of Oahu. KLEI broadcasts the local programs *O'ahu Mayor's Report*, *City News*, *Eye on Hawaii*, *Native Ways*, *Healthy Hawaii*, *Olelo Hawaii*, *Education Matters*, *Keiki 808*, *Latitudes*, and *Truly Pinoy*.
5. KLEI was the only broadcast television station that provided immediate, first-hand coverage of irregularities that arose during Hawaii primary elections on August 11, 2012. KLEI reporters covered these events from local Hawaii locations.

6. *The O'ahu Mayor's Report* is hosted by Honolulu Mayor Peter Carlisle, and includes responses to viewer e-mails.
7. *City News* reports on news stories arising in Hawaii's state capital of Oahu.
8. *Eye on Hawaii* includes weekly reports from the islands of Hawaii, O'ahu, Maui, and Kauai'i.
9. *Native Ways* is hosted by Chip Begay, KLEI general manager and a Native American. The program addresses issues of particular importance to Native Americans, including Native Hawaiians.
10. *Healthy Hawaii* is the only locally-produced program that addresses medical issues peculiar to the Hawaiian Islands. A recent episode of *Healthy Hawaii* featured an interview with the President and CEO of Hawaii Health Systems Corporation.
11. *Olelo Hawai'i* is a locally produced television program devoted to teaching the Hawaiian language.
12. *Education Matters* is the only education program in Hawaii hosted by a Hawaii state school psychologist.
13. *Keiki 808* is a locally-produced children's educational-information program designed to educate the children of Hawaii on issues arising throughout the state.
14. *Latitudes* is the only program produced by any Hawaii television station focused specifically on the Hispanic community in Hawaii.
15. *Truly Pinoy* is the only program produced by any Hawaii television station serving the state's Filipino community.



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

EXHIBIT B

KLEI-TV PROGRAMMING SCHEDULE

KLEI-TV August Program Schedule									
Time	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Time	
12:00 AM	KLEI MOVIE							12:00 AM	
12:30 AM								12:30 AM	
1:00 AM								1:00 AM	
1:30 AM								1:30 AM	
2:00 AM	Paid Program	Paid Program	Paid Program	Paid Program	Paid Program	KLEI MOVIE		2:00 AM	
2:30 AM	Paid Program	Paid Program	Paid Program	Paid Program	Paid Program			2:30 AM	
3:00 AM	Paid Program	Paid Program	Paid Program	Paid Program	Paid Program			3:00 AM	
3:30 AM	Paid Program	Paid Program	Paid Program	Paid Program	Paid Program			3:30 AM	
4:00 AM	Doug Kaufmann					Paid Program		4:00 AM	
4:30 AM	Know The Cause							4:30 AM	
5:00 AM	Endless Pools Hawai'i							5:00 AM	
5:30 AM	Financial Solutions With Todd Coontz					Paid Program	Paid Program	5:30 AM	
6:00 AM	Lighthouse	Changing Lives	It's Supernatural with Sid Roth	Paid Program	Paid Program	Paid Program	Paid Program	6:00 AM	
6:30 AM	Davey & Goliath							6:30 AM	
7:00 AM	Native Ways	Latitudes	Healthy Hawai'i	Eye on Hawai'i	Mayor's Report with Billy Kenoi	Keiki 808 E/I		7:00 AM	
7:30 AM	Talk Story Hawai'i	Truly Pinoy	Keiki 808 E/I	Olelo Hawai'i	Education Matters	Kid Fitness	Hilo Family Worship Center	7:30 AM	
8:00 AM	Ariel & Zoey and Eli Too E/I	Curiosity Quest E/I	Real Life 101 E/I	Beta Records E/I	Passport to Explore E/I	New Zoo Review	Kailua-Kona Legacy Church	8:00 AM	
8:30 AM	Beta Records E/I	Mustard Pancakes E/I	Mustard Pancakes E/I	Ariel & Zoey and Eli Too E/I	Monsters and Pirates E/I	The Green Archer		8:30 AM	
9:00 AM	Taste of the Southwest					The Beverly Hillbillies	Maui Kumulani Chapel	9:00 AM	
9:30 AM	Distant Roads					Future Phenoms	New Hope	9:30 AM	
10:00 AM	The Adventures of Black Beauty					A Place In the Sun	Leeward Oahu	10:00 AM	
10:30 AM	The Campbells					News	Latitudes	10:30 AM	
11:00 AM	Daytime					Western Movie	Truly Pinoy	11:00 AM	
11:30 AM							Native Ways	11:30 AM	
12:00 PM	Crosswords						The Great Ride	Talk Story Hawai'i	12:00 PM
12:30 PM	A Place In The Sun							Eye on Hawai'i	12:30 PM
1:00 PM	Garden Travel	Designs For Living	For Your Home	Heart of Health	Laura McKinzie Traveler	The Great Ride	Healthy Hawai'i	1:00 PM	
1:30 PM	Celebrity Bowling						Education Matters	1:30 PM	
2:00 PM	Highway to Heaven					Insider Exclusive	Oahu Mayor's Report	2:00 PM	
2:30 PM						Box Office America	HNL City News	2:30 PM	
3:00 PM	Judge Roy Bean					Crook and Chase	Crook and Chase	3:00 PM	
3:30 PM	Shot Gun Slade							3:30 PM	
4:00 PM	I Married Joan					The Country Vibe	The Country Vibe	4:00 PM	
4:30 PM	Ozzie Harriet	My Little Margie	Trouble with Father	Mr. and Mrs. North	Robin Hood	Inside Music Row		4:30 PM	
5:00 PM	Route 66					Star Watch	Highway to Fame	5:00 PM	
5:30 PM						Outdoors	That's Boating	5:30 PM	
6:00 PM	KLEI Evening News					The Bill Cosby Show	Ravi Zacharias	6:00 PM	
6:10 PM	Latitudes	Talk Story Hawai'i	Healthy Hawai'i	Talk Story Hawai'i	Latitudes				6:30 PM
6:30 PM	Truly Pinoy	Native Ways	The Mayor's Report	Native Ways	Truly Pinoy		6:30 PM		
7:00 PM	Education Matters	Eye on Hawai'i	Olelo Hawai'i	Healthy Hawai'i	Education Matters	I Spy	Spy Games	7:00 PM	
7:30 PM	Life's Little Miracles						Crime Strike	7:30 PM	
8:00 PM	The New Zorro					Cold Squad		8:00 PM	
8:30 PM	The Bill Cosby Show							8:30 PM	
9:00 PM	Movin' On	Crook and Chase	Funny Business	The Worlds Funniest Moments	The Great Outdoorsman	D'aVinci's Inquest		9:00 PM	
9:30 PM				Treasure Hunters	9:30 PM				
10:00 PM	The Saint					Music Mix USA		10:00 PM	
10:30 PM								10:30 PM	
11:00 PM	Cisco Kid				Friday Night Drive-In	Cisco Kid	Cisco Kid	11:00 PM	
11:30 PM	The Adventures of Black Beauty					The Adventures of Black Beauty	The Adventures of Black Beauty	11:30 PM	

Legend		
Local Programs		
Children's	Educational	Programs

CERTIFICATE OF SERVICE

I, Michelle Brown Johnson, hereby certify that on this 16th day of August, 2012, I caused a copy of the foregoing "Opposition to Petition for Special Relief" to be served via U.S. mail, postage prepaid, upon the following:

Arthur H. Harding
Craig A. Gilley
Adam M. Copeland
Edwards Wildman Palmer LLP
1255 23rd Street, N.W. – Eighth Floor
Washington, DC 20037

Cable Television Administrator
State of Hawaii
Dept. of Commerce and Consumer Affairs
335 Merchant Street, Room 101
Honolulu, HI 96813

Bob Barlow, President
Time Warner Entertainment Co., L.P.
300 Akamainui Street
Mililani, HI 96789

DCCA-CATV
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Honolulu, HI 96809

KA AH-TV
Attn: General Manager
1152 Smith Street
Honolulu, HI 96817

KALO
Attn: General Manager
P.O. Box 283177
Honolulu, HI 96817

KBFD
Attn: General Manager
1188 Bishop Street
Honolulu, HI 96813

KFVE
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Suite 205
Honolulu, HI 96817

KGMB
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420 Waiakamillo Road
Suite 205
Honolulu, HI 96817

KHET
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P.O. Box 11673
Honolulu, HI 96828

KHNL
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150-B Puuhale Road
Honolulu, HI 96819

KHON-TV
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88 Piikoi Street
Honolulu, HI 96814

KIKU
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737 Bishop Street
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KITV
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KMEB
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875 Waimanu Street
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KAII-TV
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99 Piikoi Street
Honolulu, HI 96814

KMAU
Attn: General Manager
801 S. King Street
Honolulu, HI 96813

KWHM
Attn: General Manager
1188 Bishop Street
Suite 502
Honolulu, HI 96813

Hickham Air Force Base
Attn: Major Rick T. Pelzl, USAF
Commander, Det2, 18 FSS
Bellows Air Force Station
220 Tinker Road
Waimanalo, HI 96795

Navy Region Hawaii
COMNAVREG Hawaii N6 (IT)
850 Ticonderoga
Pearl Harbor, HI 96860

KPXO
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875 Waimanu Street
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KWHE
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1188 Bishop Street
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KGMV
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1534 Kapiolani Blvd
Honolulu, HI 96814

KOGG
Attn: General Manager
150-B Puuhale Road
Honolulu, HI 96819

Marine Corps Base (Kaneohe Bay)
Attn: Services Operations Division Director
Kaneohe Bay, HI 96863-3073

U.S. Army Garrison, Oahu
Army Contracting Agency
Regional Contracting Office – HI
Attn: SFCA-PRH-C, Bldg. 520 Pierce Street
Fort Shafter, HI 96858-5025


Michelle Brown Johnson