

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re Petition of)	
)	
Mauna Kea Broadcasting Company,)	CSR-8658-M
Licensee of Television Station KLEI-DT,)	Docket No. 12-167
Kailua-Kona, Hawaii)	
)	CSR-8682-M
v.)	Docket No. 12-197
)	
Time Warner Entertainment Company, L.P.,)	CSR-8686-A
d/b/a Oceanic Time Warner Cable,)	Docket No. 12-208
and Hawaiian Telcom, Inc., d/b/a)	
Hawaiian Telcom Services Company, Inc.)	

**REPLY OF
HAWAIIAN TELCOM SERVICES COMPANY, INC.**

Pursuant to Section 405 of the Communications Act¹ and Section 1.106 of the Commission’s rules,² Hawaiian Telcom Services Company, Inc. (“HTSC”) hereby files this Reply to the Oppositions of the State of Hawaii’s Department of Commerce and Consumer Affairs (“DCCA”) and Mauna Kea Broadcasting Company (“Mauna Kea”) to the Petition for Reconsideration of Time Warner Entertainment Company, L.P. (“TW”). For the reasons set forth in our Petition for Reconsideration³ and that of Time Warner Entertainment Company, L.P.

¹ 47 U.S.C. § 405.

² 47 C.F.R. § 1.106.

³ Petition for Reconsideration of Hawaiian Telcom Services Company, Inc., Petition of Mauna Kea Broadcasting Company, Must-Carry Complaint Regarding Television Station KLEI(DT), Kailua-Kona, Hawaii, CSR-8682-M, MB Docket No. 12-197 (filed Nov. 19, 2012) (“HTSC Petition for Reconsideration”).

(“TW”),⁴ the Bureau Order should be reversed and the Petitions for Reconsideration should be granted.

As noted in our Petition for Reconsideration, the Bureau Order should be reversed for three primary reasons. First, the Bureau dismisses or inadequately addresses KLEI’s failure to meet any of the four statutory market modification factors. Second, HTSC already carries KBFD, a full-power commercial station licensed to Oahu and serving the Oahu communities on channel 6 and should not be forcibly displaced. Third, mandatory carriage of KLEI outside Hawaii County would violate the First Amendment.

With respect to HTSC’s First Amendment challenge, KLEI argues in its Reply that the Bureau’s decision does not run afoul of the First Amendment because the Supreme Court has upheld the constitutionality of the must carry rules for all cable operators regardless of market power. This assertion is incorrect. The Supreme Court upheld the must carry rules based on Congress’ and the FCC’s stated public interest of protecting broadcasters. This public interest was developed through an evaluation of the record in that specific proceeding, which was conducted when cable operators were overwhelmingly monopolists in their respective service territories. *Turner Broadcasting System, Inc. v. FCC*, 520 U.S. 180, 197 (1997) (“cable operators had considerable and growing market power over local video programming markets. Cable served at least 60 percent of American households in 1992” and “each system has a local monopoly over its subscribers”). Because HTSC is a new entrant, it is not a monopoly by definition, and cannot seriously jeopardize any broadcasting station by failing to carry that station on any specific channel on its cable system. Unlike the *Turner* case, government here

⁴ Petition for Reconsideration of Time Warner Entertainment Company, L.P., Petition of Mauna Kea Broadcasting Company, Must-Carry Complaint Regarding Television Station KLEI(DT), Kailua-Kona, Hawaii, CSR-8682-M, MB Docket No. 12-197 (filed Nov. 19, 2012) (“TW Petition for Reconsideration”).

cannot show that HTSC's failure to carry KLEI will threaten carriage of "significant numbers of broadcast stations" or that HTSC has the "incentive to drop local broadcasters in favor of another programmers less likely to compete" with it. *Id.* at 195, 200. Nor could the FCC demonstrate that applying must carry rules to new entrants is necessary to achieve its stated public interest. In short, the factual circumstances associated with KLEI's must carry demand, and mandated carriage on channel 6 of HTSC's IPTV system, cannot be supported by the same statement of government interest contained in the record before the Supreme Court when it upheld the must carry rules against a First Amendment challenge in 1997. The Division's ruling must be overruled because it is an unconstitutional application of the must carry statute and rules: their application to HTSC is not necessary to achieve an important public interest through means that burden no more speech than is necessary to achieve that interest.

Accordingly, the Division's order should be reversed and HTSC's Petition for Reconsideration should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gregory J. Vogt, do hereby certify that I have on this 14th day of January 2013 caused a copy of the foregoing "Reply of Hawaiian Telcom Services Company, Inc." to be served by U.S. Mail upon the following:

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