

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

In re: )  
)  
Hawaii Catholic TV, Inc. )  
) MB Docket No. 13-277  
Must-Carry Complaint Regarding ) CSR-8852-M  
Television Station KUPU(DT), )  
Waimanalo, Hawaii )

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

**REPLY TO OPPOSITION TO MUST-CARRY COMPLAINT**

Hawaii Catholic TV, Inc. (“HCTV”), herby replies to the Opposition of Time Warner Entertainment Company, L.P., d/b/a Oceanic Time Warner Cable (“Oceanic”) filed in opposition to HCTV’s Complaint requesting that the Commission order Oceanic to carry local commercial television station KUPU(DT), Waimanalo, Hawaii (the “Station”) in accordance with the Commission’s must carry rules and policies throughout the Honolulu, Hawaii designated market area (the “DMA”).<sup>1</sup>

**I. HCTV REQUESTS ONLY THAT THE COMMISSION RECOGNIZE CHANGES OCEANIC HAS MADE TO ITS HAWAII SYSTEMS**

HCTV is not, as Oceanic claims, asking the Commission to force Oceanic to move its headends. HCTV is merely asking the Commission to recognize that Oceanic itself has already effectively moved the primary headend of all systems to Oahu, and is operating a unified system from this location.<sup>2</sup> Oceanic itself has expressly advised the State of Hawaii that “[Oceanic] views

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<sup>1</sup> This Reply is filed pursuant to a consent motion for extension of time submitted by HCTV on December 23, 2013.

<sup>2</sup> Oceanic’s specious claim that HCTV’s Complaint should be dismissed for failure to serve necessary parties fails for the same reason. It is based only on Oceanic’s flawed interpretation of  
*(Footnote continued on next page)*

the whole state [of Hawaii] as one system and provides the exact same service throughout the state.”<sup>3</sup> In other words, Oceanic appears to be speaking out of both sides of its corporate mouth: is Oceanic’s operation a collection of multiple separate systems each with its own headend, as it would have the Commission believe, or is it “one system”, as it would have Hawaii believe? The chameleon-like changeability of Oceanic’s headend designation affords Oceanic the opportunity to undermine or evade its must-carry obligations. Such evasion is prohibited by the Commission’s rules. *See* 47 C.F.R. §76.5(pp)(2).<sup>4</sup>

## **II. OCEANIC HAS FAILED TO COMPLY WITH THE COMMISSION’S VIEWABILITY REQUIREMENTS.**

In its Complaint, HCTV requested that Oceanic confirm to the Commission and to HCTV that it was complying with the Commission’s Viewability Order, which requires that video operators make available at “no cost or an affordable cost,” equipment sufficient to allow any legitimate analog subscribers to receive the signals of any digital station whose signal the operator refuses to downconvert for analog delivery.<sup>5</sup> Essentially, the Commission has directed that cable subscribers with analog-only receivers must be afforded access to the programming of all such stations at minimal additional cost.

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*(Footnote continued from preceding page)*

the requested relief that other television stations in the market would be “directly affected” by the requested relief.

<sup>3</sup> 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://files.hawaii.gov/dcca/catv/cable\\_advisory\\_committee/CAC-minutes-meeting-12-12-2011-final-01-11-2012.pdf](http://files.hawaii.gov/dcca/catv/cable_advisory_committee/CAC-minutes-meeting-12-12-2011-final-01-11-2012.pdf).

<sup>4</sup> At the very least, the design of Oceanic’s unified system should be considered to itself constitute an alternative means of delivery to the headends allegedly serving the Denied Systems. HCTV raised this point in its Complaint; Oceanic has not disputed it.

<sup>5</sup> *Carriage of Digital Television Broadcast Signals*, 27 FCC Rcd 6529 (2012) (the “Viewability Order”).

In its Opposition, Oceanic asserts that it has fully complied with the Commission's requirements. But its supporting showing consists only of two fine print legal notices published in the local Honolulu newspaper. The notices state only that some viewers will be required to obtain additional equipment to receive KUPU's signals on Oceanic's systems; they provide no indication that the required equipment is available at "no cost or an affordable cost." These announcements cannot reasonably be considered to provide the notice required by the Viewability Order. While the Commission in the Viewability Order did not require that any specific type of notice be provided, it did rely on cable operators' providing "effective consumer outreach" to reduce the impact of the sunset of the viewability rules.<sup>6</sup> Oceanic's meager legal notices, and lack of clarity as to the affordability of equipment, can hardly be considered "effective" consumer outreach.

Oceanic's reluctance to provide clear notice of the additional costs is not limited to its fine-print public notices. Review of Oceanic's website makes it impossible to determine the price of such equipment. At most, on the page accessed by clicking the "pricing" link, Oceanic states that "Special equipment may be required (at a reduced price) to receive our Digital Basic level of service on older analog television sets that are not already connected to a cable box or CableCARD device".<sup>7</sup> The "reduced price" is not disclosed.

Extensive exploration of Oceanic's website, however, reveals several things, none of them helpful to Oceanic here.

First, in what appears to be an effort to abuse the English language for its own benefit, Oceanic oddly offers both a "basic" and a "standard" service. "Basic" service costs a mere \$18.03 per month and provides 17 channels. By contrast, "Standard" service costs \$63.30 per month and

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<sup>6</sup> Viewability Order, 27 FCC Rcd at 6545.

<sup>7</sup> See [http://www.oceanic.com/products/television/basic\\_cable/pricing](http://www.oceanic.com/products/television/basic_cable/pricing). See also Attachment A for a screen grab of the relevant portion of this page.

provides the 17 “Basic” channels and 47 others.<sup>8</sup> The pricing chart does not indicate whether customers with analog-only receivers must sign up for “Basic” or “Standard”. Rather, it merely advises that “older analog television sets” not already connected to a cable box or CableCARD device may require “special equipment”.

Another page of the Oceanic website, however, poses the question “What is Analog Service” and answers that question as follows:

We interchangeably refer to our Standard Service as "Analog Service." Analog is the technology we have used for many years to provide cable-viewing services to Hawaii customers. Recent technology has brought about something far more superior - digital TV. This technology allows cable content to be delivered in digital format via a fiber-optic broadband infrastructure. This means crystal-clear pictures, CD-quality sound, greater choices and more control of how you watch television.<sup>9</sup>

In other words, “Analog Service” does *not* appear to be available on the least expensive “Basic” tier of programming. So in order to receive “analog service”, a customer must commit to paying \$63.30 per month instead of \$18.03 per month – and that’s before the cost of the necessary cable box enters into the equation. That alone appears to contravene both the letter and the spirit of the viewability rule, since it requires viewers with analog-only sets to spend more than three times the monthly cost of Oceanic’s least expensive service tier.

And then there’s the cost of the necessary “special equipment”. Oceanic’s website is noticeably silent about the precise cost of that equipment. According to the Time Warner Cable website (directed to a Honolulu Zip Code in the menu bar at the top of the site), though, only three types of cable box are available, the least expensive of which – dubbed the “Standard Box” – costs

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<sup>8</sup> See preceding footnote.

<sup>9</sup> See [http://www.oceanic.com/products/television/basic\\_cable](http://www.oceanic.com/products/television/basic_cable). See also Attachment B for a screen grab of the relevant portion of this page.

\$6.20 per month.<sup>10</sup> Since the Oceanic “pricing” page does not indicate otherwise, that additional \$6.20 monthly charge would presumably have to be added on to the \$63.30 monthly cost for “Standard Service” in order for a customer with an analog-only receiver to obtain cable service from Oceanic, bringing the monthly total to \$69.50, for an annual cost of \$834. By contrast, “Basic Service” is available at an annual rate of \$216.36. Analog-only viewers are thus expected to pay an annual premium of more than \$600 in order to receive cable service.<sup>11</sup> That is plainly contrary to the Commission’s viewability rule.

Station KUPU is a victim of this violation. An “Analog Channel Lineup” to which Oceanic’s website links confirms that Station KUPU is *not* carried on Oceanic’s “Basic Service” tier. Instead, it is included only in a list under the heading “Digital TVs Without a Cable Box”.<sup>12</sup> So KUPU is not being carried in conformity with the Commission’s rules.

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<sup>10</sup> See <http://www.timewarnercable.com/en/residential-home/tv/equipment.html>. See also Attachment C for a screen grab of the relevant portion of this page.

<sup>11</sup> To confirm that HCTV was not misreading the Oceanic website, on January 4, 2014, HCTV officer D. Francis Laidlaw called the number listed on the Oceanic website, informed the Oceanic service representative that he had an analog-only television and wanted to know how much it would cost for him to gain access to KUPU programming. He was initially advised that such access would not be available. He asked to speak with a manager, to whom he again stated his request. The manager advised that, in order to receive KUPU, a subscriber would have to sign up for the “Standard” service package – which he referred to as an “upgrade” – rather than the “Basic” service tier *and* would also have to lease a cable box for \$6.20 per month. In other words, Oceanic’s representatives confirmed to HCTV that, in order to view KUPU, a subscriber must commit to paying \$834 per year, even though “Basic” service subscribers are charged less than a third of that price. On the off-chance that the persons with whom he spoke may have been misinformed, Dr. Laidlaw made a second, essentially identical, inquiry on January 6, 2014, with the same results: he was advised that reception of KUPU requires an analog-only subscriber both to sign up for the upgraded “Standard” service package for \$63.30 per month *and* to lease a cable box for an additional \$6.20 per month. See Attachment D.

<sup>12</sup> See <http://www.timewarnercable.com/en/residential-home/tv/channels/channel-lineup.html>. See also Attachment E for a printed version of this page.

Indeed, elsewhere on Oceanic’s website, the “Must Carry Channel Listing” provided pursuant to Section 76.1709 of the Commission’s Rules does *not* include KUPU. Thus, not only is Oceanic in violation of the viewability rule, it appears also to be in violation of the fundamental must carry rule. As a local broadcast licensee which has provided timely notice of its must carry election to Oceanic and otherwise complied with the relevant Commission rules, HCTV is entitled to have the programming of Station KUPU delivered to *all* of Oceanic’s cable subscribers – and that programming must be available to any Oceanic subscribers with analog-only receivers at minimal additional expense to those subscribers. Oceanic does not deliver KUPU’s programming to all of its subscribers, and it imposes extravagant additional costs on subscribers with analog-only receivers who wish to receive that programming. Having been given an opportunity to demonstrate that its operation complies with the Commission’s rules, Oceanic has carefully avoided any such demonstration, and instead has pointed to a fine-print public notice that falls well short of exculpating Oceanic here. HCTV is entitled to any order compelling Oceanic to comply with the rules.

### **III. APPLICATION OF THE MUST-CARRY RULES TO OCEANIC IS CONSISTENT WITH THE FIRST AMENDMENT.**

Oceanic also argues that enforcing KUPU-DT’s must-carry rights would violate Oceanic’s First Amendment rights. Oceanic’s First Amendment claims are misplaced. Under the must-carry regime approved by the Supreme Court in *Turner I* and *Turner II*, television stations are entitled to carriage within their economic markets – presumptively, their entire DMAs.<sup>13</sup> By ordering Oceanic to abide by this requirement, and the requirements of the Viewability Order, the Bureau would impose no more burden on Oceanic than necessary to further the interests underlying the Cable Act.

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<sup>13</sup> *Turner Broadcasting Sys., Inc. v. FCC*, 512 U.S. 622 (1994) (“*Turner I*”); *Turner Broadcasting Sys., Inc., v. FCC*, 520 U.S. 180 (1997) (“*Turner II*”).

In upholding the must-carry provisions of the Cable Act of 1992, the Supreme Court in *Turner II* relied on three governmental interests: “preserving the benefits of free, over-the-air broadcast television, (2) promoting the widespread dissemination of information from a multiplicity of sources, and (3) promoting fair competition in the television programming market.”<sup>14</sup> To further these interests, the must-carry rules require cable television operators to carry broadcast television stations located within their local markets – presumptively their DMAs. While Oceanic argues that the Supreme Court would not now support a must-carry regime, the simple fact is that the must-carry rules have been approved by the Supreme Court and remain in force. HCTV asks only that the Bureau apply the must-carry rules here in recognition of the actual facts in the market and the manner in which Oceanic operates its Hawaii systems. Such an application would in no way violate Oceanic’s First Amendment rights.

## **CONCLUSION**

HCTV is clearly entitled to mandatory carriage of the signal of KUPU(DT) on all cable systems operated by Oceanic in the Honolulu DMA. KUPU(DT) has properly elected mandatory carriage, has notified Oceanic of its failure to comply with the Commission’s mandatory carriage rules with respect to KUPU(DT), and has requested that Oceanic commence carriage of the Station on all of its Cable Systems in the Honolulu DMA. Oceanic has refused in writing to carry KUPU(DT) on a number of systems in the Honolulu DMA. Moreover, as described above, to the extent that Oceanic has provided carriage to KUPU, it has done so in a way that plainly and unlawfully discriminates against KUPU viewers.<sup>15</sup> HCTV has thus been forced to file this

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<sup>14</sup> *Turner II*, 510 U.S. 180, 189.

<sup>15</sup> HCTV is constrained to observe that Oceanic has not taken an equivalent discriminatory approach with respect to the multiple non-Catholic religious television stations carried on its system. Oceanic’s apparent decision to make it more difficult, and considerably more expensive, for KUPU’s viewers to receive KUPU’s programming makes little economic sense, given the fact

*(Footnote continued on next page)*

Complaint. For the reasons set forth herein, HCTV hereby respectfully requests that the Commission order Oceanic to carry KUPU(DT) throughout the Honolulu, Hawaii DMA in accordance with the must carry rules and policies.

Respectfully submitted,

HAWAII CATHOLIC TV, INC.

By: 

Harry F. Cole  
Daniel A. Kirkpatrick  
Its Counsel

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

January 6, 2014

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*(Footnote continued from preceding page)*

that Catholics, i.e., persons likely to have more than a passing interest in much of KUPU's programming, comprise a very substantial proportion (possibly as much as 33%) of the Hawaii population.

## **Attachment A**

- Pay-Per-View
- PPV Sports
- UH PPV
- ESPN GamePlan
- ESPN Full Court
- NBA League Pass
- MLB Extra Innings
- UFC Video Content
- How To Order
- Pricing
- HDTV
- DVR
- DVR Manager
- Start Over
- Look Back
- Parental Controls
- SDV
- 3DTV
- OC 16
- Subscribe Online
- Subscribe via Chat
- Direct Connection

<b>Monthly Price:</b>	Basic Service: includes 17 channels Standard Service: includes <b>64 channels</b> (17 Basic and an additional 47 channels)	\$18.03 \$63.30
<b>Type of Box:</b>	None, if you have a "cable-ready" TV set. Addressable Box required for Optional Services Special equipment may be required (at a reduced price) to receive our Digital Basic level of service on older analog television sets that are not already connected to a cable box or CableCARD device. Such equipment is available for lease from Oceanic TWC. Please call 643-2100 for details.	
<b>Additional Monthly Fees:</b>	Franchise Fee**:	4% on all TV services plus an additional 1% on Basic/Standard & Installation Charges
	State Tax**:	4.712% (Oahu) 4.166% (Hilo, Kona, Kauai, Maui, Molokai and Lanai)
	**Applied to all charges	
<b>Installation Charges:</b>	Standard/Basic – up to 3 outlets: Each additional TV connection after first 3: Reconnection charge: Each additional TV connection: (separate trip)	\$29.99 \$19.99 each \$54.99 inside \$17.99 outside only \$29.99

**CONTACT US**



Have questions?  
[Click here to contact us.](#)

## **Attachment B**



[Digital TV](#)  
[Digital Variety Pak](#)

- [Music Choice](#)
- [Guide/Lineups](#)
- [The Guide](#)
- [Remote Control](#)
- [Pricing](#)
- [Bundling](#)

[Basic Cable](#)  
[Guide/Lineups](#)  
[Pricing](#)

- [Premium Channels](#)
- [Movies On Demand](#)
- [Sports on TV](#)
- [Pay-Per-View](#)
- [PPV Sports](#)
- [UH PPV](#)

- [ESPN GamePlan](#)
- [ESPN Full Court](#)
- [NBA League Pass](#)
- [MLB Extra Innings](#)

[UFC Video Content](#)  
[How To Order](#)  
[Pricing](#)

## Standard Cable & Basic Cable



Whether you subscribe to Oceanic's Standard or Basic television services, you can rely on quality programming and friendly service. Enjoy clear connection to network programming and channels that have become standards in cable television, such as CNN, MTV, E! Entertainment, Lifetime, and A&E.

### What is "Analog Service"?

We interchangeably refer to our Standard Service as "Analog Service." Analog is the technology we have used for many years to provide cable-viewing services to Hawaii customers. Recent technology has brought about something far more superior - digital TV. This technology allows cable content to be delivered in digital format via a fiber-optic broadband infrastructure. This means crystal-clear pictures, CD-quality sound, greater choices and more control of how you watch television.

### Your Best Entertainment Value

Get in on Oceanic's best television entertainment value. If you like our Standard Service, you'll love our **Digital TV** even better.



## **Attachment C**

# Cable TV Equipment TV Equipment

SHARE



PRINT

	<p><b>Whole House HD-DVR and Service</b> Great for busy families who have several TV sets and like to have lots of choices. Watch a show in one room. Pause it. Then go to a different room and pick up where you left off.</p> <p><b>DVR Box and Service</b> A great option for homes with fewer TV sets. Schedule your recordings ahead of time. So when work, events or travel gets in the way – your favorite shows are always available.</p> <p><b>Standard Box</b> Looking for something simpler and not worried about missing shows? Enjoy all your favorite sports, family, news and broadcast channels in standard or high definition.</p> <p><b>CableCARD™</b> A simpler option if you do not want On Demand programs or interactive features. No box is required. This small device fits into a special slot built into TVs, DVRs and PCs.</p>	<p><b>\$26<sup>15</sup></b> per Month</p> <p><b>\$19<sup>19</sup></b> per Month</p> <p><b>\$6<sup>20</sup></b> per Month</p> <p><b>\$2<sup>50</sup></b> per Month</p>	<p><b>Details</b> ▾</p> <p><b>Details</b> ▾</p> <p><b>Details</b> ▾</p> <p><b>Details</b> ▾</p>
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## Equipment Comparison

	<p>Whole House HD-DVR</p>	<p>HD-DVR Box and Service</p>	<p>HD Box</p>	<p>CableCARD™</p>
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## **Attachment D**

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

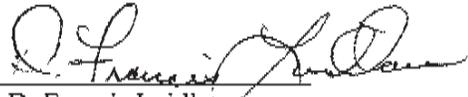
In re: )  
)  
Hawaii Catholic TV, Inc. ) MB Docket No. 13-277  
) CSR-8852-M  
Must-Carry Complaint Regarding )  
Television Station KUPU(DT), )  
Waimanalo, Hawaii )

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

**DECLARATION OF DR. D. FRANCIS LAIDLAW**

1. My name is D. Francis Laidlaw. I am Vice President and Director of Hawaii Catholic TV, Inc. and General Manager of KUPU(DT).
2. I have reviewed the foregoing Reply to Opposition to 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. I specifically confirm that, on January 4, 2014 I called the number listed on the Oceanic website, informed the Oceanic service representative that I have an analog-only television and inquired how much it would cost for me to gain access to KUPU programming. I was initially advised that such access would not be available. I asked to speak with a manager, to whom I again stated my request. The manager advised me that, in order to receive KUPU, a subscriber would have to sign up for the “Standard” service package – which he referred to

as an "upgrade" – rather than the "Basic" service tier *and* would also have to lease a cable box for \$6.20 per month. On the off-chance that the persons with whom I spoke may have been misinformed, I made a second, essentially identical, inquiry on January 6, 2014, with the same results: I was advised that reception of KUPU requires an analog-only subscriber both to sign up for the upgraded "Standard" service package for \$63.30 per month *and* to lease a cable box for an additional \$6.20 per month.



Dr. D. Francis Laidlaw  
Vice President and Director  
Hawaii Catholic TV, Inc.

Date: 1/6/2014

## **Attachment E**



## Oceanic Analog Channel Lineup - Oahu

### Standard Service (By Channel Number)

2	QVC ■	35	Cartoon Network ■
3	KHON-2 (FOX) •	36	TV Land ■
4	KBFD-32 •	37	Syfy ■
5	KFVE-5 (myNetwork TV) •	38	MSNBC ■
6	KITV-4 (ABC) •	39	Spike TV ■
7	KGMB-9 (CBS) •	40	Bravo ■
8	KHNL-13 (NBC) •	41	FX ■
9	KIKU-21 •	42	AMC ■
10	KHET-11 (PBS) •	43	TNT ■
11	KWHE •	44	Turner Classic Movies ■
12	OC16 •	53	'Olelo: NATV •
13	CNN Headline News ■	54	'Olelo: VIEWS •
14	CNN ■	55	'Olelo: OAHU •
15	Fox News Channel ■	56	Program Guide •
16	OCSports ■	57	Home Shopping Network ■
17	MTV ■	58	Travel Channel ■
18	VH1 ■	59	Home & Garden TV ■
19	NBC Sports Network ■	60	Food Network ■
20	Fox Sports West ■	61	E! Entertainment ■
21	ESPN2 ■	62	Comedy Central ■
22	ESPN ■	63	Hallmark Channel ■
23	Time Warner Cable SportsNet ■	64	LMN ■
25	KALO-38 •	65	Discovery Fit & Health ■
26	KAHH-26 (TBN) •	67	Oprah Winfrey Network ■
27	KPXO-66 (ION) •	68	Lifetime ■
28	TBS •	69	Discovery Channel ■
29	USA Network ■	70	Animal Planet ■
30	The Golf Channel ■	71	The Learning Channel ■
31	Fox Sports Prime Ticket ■	72	The History Channel ■
32	Nickelodeon ■	73	National Geographic Channel ■
33	Disney Channel ■	74	A&E ■
34	ABC Family ■		

### Digital TVs Without A Cable Box

46.3	KHON HD
46.55	UHTV-355
46.56	Teach-356
47.1	KHET
47.25	KALO
47.27	KXPO
47.3	KHON
47.5	KFVE
47.7	KGMB
47.8	KHNL
48.1	KGMB HD
48.4	KIKU
48.5	KBFD
48.6	KITV
48.9	KITV HD
49.1	KFVE HD
49.12	KHET HD
49.3	KHNL HD
51.1	OC Sports HD
51.3	CNBC
79.1	PBSK
82.1	OC Sports
122.8	CSPAN2
133.3	KLUPU
134.55	Focus-Olelo
134.8	CSPAN

• Basic Service ■ Value Service  
Channel lineup subject to change.

**CERTIFICATE OF SERVICE**

I, Daniel Kirkpatrick, hereby certify that on this 6th day of January, 2014, I caused a copy of the foregoing "Must Carry Complaint" to be served via U.S. mail, postage prepaid, upon the following:

Arthur H. Harding  
Edwards Wildman Palmer LLP  
1255 23<sup>rd</sup> Street, N.W.  
Eighth Floor  
Washington, DC 20037

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



A handwritten signature in black ink, appearing to read "Daniel Kirkpatrick", is written over a horizontal line.