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TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE

TWENTY-SIXTH LEGISLATURE  
Regular Session of 2011

Date: February 2, 2011  
Time: 2:05 p.m.

**TESTIMONY ON H.B. No. 1272 - RELATING TO CABLE TELEVISION.**

TO THE HONORABLE ROBERT N. HERKES, CHAIR, AND MEMBERS OF THE  
COMMITTEE.

My name is Glen Chock, and I am the Acting Cable Television Administrator, Department of Commerce and Consumer Affairs (the "**Department**"). The Department takes no position on H.B. 1272.

This bill proposes to reduce the monetary amount disbursed to support public, educational, or governmental ("**PEG**") access facilities by an unspecified amount for the fiscal year 2011-2012 and to transfer the retained moneys to the general fund for necessary programs such as education, Medicaid, state hospitals and other core programs to meet the needs of the public.

As a point of clarification, the Department does not make any direct disbursements or payments to PEG access organizations. Rather, through franchise orders, the Department requires cable operators, which currently is Oceanic Time Warner Cable ("**Oceanic**") as the sole cable operator in the State, to pay access operating fees and capital fund payments directly to the PEG access organizations.<sup>1</sup> Oceanic generally pays 3% of its annual gross revenue as access operating fees to the PEG organizations, which is used for operational expenses.<sup>2</sup> The capital fund payments are used for facilities and equipment and are based on a set amount per subscriber or an annual flat amount.

<sup>1</sup> There are four PEG access organizations in Hawai'i: 'Ōlelo on Oahu, Akaku on Maui, Ho'ike on Kauai and Na Leo on the Big Island.

<sup>2</sup> 'Ōlelo's access operating fees are subject to a cap plus an inflationary differential each year.

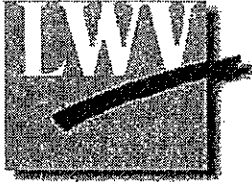
For calendar year 2010, Oceanic paid the PEG organizations the following amounts:

<u>Organization</u>	<u>Access Operating Fee</u>	<u>Capital Fund Payment</u>	<u>Total</u>
'Ōlelo	\$ 4,604,495.00	\$ 823,000.00	\$5,427,495.00
Akaku	1,162,575.00	163,341.00	1,325,916.00
Na Leo	1,052,125.00	125,000.00	1,177,125.00
Ho`ike	522,725.00	70,533.00	593,258.00
<b>Total</b>	<b>\$7,341,920.00</b>	<b>\$1,181,874.00</b>	<b>\$8,523,794.00</b>

While the Department is mindful of the looming fiscal deficit confronting the State and of the potential cuts to core programs and necessary services as Medicaid and education, even a small reduction in PEG access operating fees starting July 1, 2011 as proposed in H.B. 1272 would impact severely Ho`ike, the smallest PEG organization. The Department defers to the Legislature on balancing competing needs of the public for core services with the expression of free speech during these challenging economic times.

If, however, the Committee decides to pass out H.B. 1272, DCCA respectfully requests that the bill be amended to clarify that 1) the director does not make any budgetary disbursements to PEG organizations but directs cable operators to make franchise fee payments to support PEG access, and 2) the reduction in payments is for the PEG access operating fees only.

Thank you for the opportunity to testify on H.B. No. 1272. I will be happy to answer any questions that members of the Committee may have.



# THE LEAGUE OF WOMEN VOTERS OF HAWAII

## TESTIMONY ON HB 1272 RELATING TO CABLE TELEVISION

Committee on Consumer Protection & Commerce

Date: Wednesday, February 2, 2011

Time: 2:05 p.m.

Place: Conference Room 325

Testifier: Jean Aoki, LWV Legislative Committee

Chair Herkes, Vice Chair Yamane, members of the Committee on Consumer Protection & Commerce,

The League of Women Voters strongly opposes HB 1272 Relating to Cable Television.

We are aware of the financial dilemma that our state faces. However, unlike the taxes that we pay the state, the money that supports our PEG stations come from the State Franchise Fees members of the public pay our cable providers so that we may benefit from the services that our community access stations provides.

'Olelo provides high school students with the opportunity to use audio-visual communications technology to interact with the public and in the process to hone their communication and social skills as they work cooperatively on different projects. In cooperation with non-profit organizations like the League of Women Voters, it provides forums to inform the public on ballot issues and candidates and works with the Elections Office to give us information on the voting process – how to use the voting machines, and how to mark our ballots, etc. It also trains the members of the public to produce their own shows and provide the opportunity to air them. The access stations make it possible for educational institutions to provide courses through television and government to air their proceedings whether during the legislative sessions or special informational meetings.

Having become accustomed to all of these services which we think are very important in encouraging citizen participation in government, which in turn are essential for democracy to thrive, we cannot imagine life without this vital means of communication. We don't know how severe the cut will be, but we cannot understand how fees paid by citizens to a private company for a stated purpose can be diverted to the state treasury to be used for other purposes. Please hold this bill in committee. Thank you.

## COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Representative Robert N. Herkes, Chair

Representative Ryan L. Yamine, Vice Chair

Wednesday, February 2, 2011, 2:05 PM Conference Room 325

Testimony of Jay April **AGAINST** HB1272 – Relating to Cable Television Systems

My name is Jay April, I am a resident of Maui County, President and CEO of Akaku: Maui County Community Television and a member of the HCR 358 Legislative Task Force. I offer my testimony **STRONGLY AGAINST** HB 1272.

While the intent of this bill appears to divert cable television fees to help fund worthy programs such as "education, medicaid, state hospitals and other core programs" the bill robs Peter to pay Paul and, should it succeed, would harm our society by diminishing media literacy and curtailing public access to needed information. In addition, this bill is probably not legal as currently written. First of all, PEG Access services provided by Akaku in the County of Maui deliver a multitude of "core services" that fulfill needs the public has for public information, free expression, training, education and access to government. Akaku currently meets these needs across three Hawaiian islands and provides residents in rural areas such as Molokai with what our Council Chair, the Honorable Danny Mateo, has described as a genuine "lifeline" connection to the civic and cultural life of Maui Nui.

The nearly universal support Akaku receives from our Mayor, Council and Legislative delegation is shared by virtually all sectors of our community. Our non-profits use our facilities regularly to get out their messages as do hundreds of businesses and individuals. We carry programs about medical issues, cover gavel to gavel government meetings and ***already take 25% of our franchise fees, amounting to more than \$260,000 per year, to directly fund UH and the Maui Department of Education.*** This does not prevent us from offering lifelong education as well. Several programs produced by keiki and community members we have trained, address important health and safety issues like the prevention of drug abuse and the dangers of drunk and distracted driving. One such program, "***The Last Pa'ina,***" enacted entirely by residents of Molokai (including the police and fire departments and Molokai Hospital) is now being used by the state judiciary in it's DUI education classes statewide.

Furthermore, Akaku is known for comprehensive local election coverage and we are the place for innovation in media and broadband adoption by virtue of being chosen as one of only seven media organizations in six western states to receive federal broadband money for a special program supported by our congressional representatives, Governor Abercrombie, our Senate President, Shan Tsutsui, Senator Kalani English, Representative Mele Carroll and several of our esteemed Maui council members.

To borrow money from Peter (Akaku) to pay Paul (a host of worthy programs) as this bill contemplates, may not be a prudent thing to do in the big picture particularly since Akaku in a very real way is the "voice" of many of the people involved in the programs the bill purports to support. Akaku is under staffed and under funded as it is, compared to Oahu for instance, and there is at least one state study recommending that neighbor island PEGs receive more money, not less. We are not asking for that. We are asking to be left alone to do our work for the people of Maui Nui so we can continue to lend a helping hand to government agencies,

non profits, teachers, students, individuals and positive change agents whenever they walk in our door.

Finally, it is worth pointing out that the provision contained in HB 1272 directing the Director of DCCA to reduce funding to PEG Access facilities and transfer that money into the general fund may not be legal. As I recall, former DCCA Director, Lawrence Reifurth spoke to this issue in an informational hearing before the House Finance Committee prior to the opening of the 2010 Legislative session. What Director Reifurth was referring to is a Hawaii Supreme Court case in 2008, ***Hawaii Insurer's Council v. Lingle*** (No. 27840) where the court ruled that special purpose "fees" are not taxes and can only be used for their statutory purpose. In this case, the statutory purpose is Public Educational and Government Access services making these fees ineligible to be transferred into the general fund.

Putting the legal issue aside, since Akaku: Maui Community Television is such a valued community asset for our neighbor islands providing excellent bang for its buck and since we are Maui Nui's only TV station, it may be worth remembering that the present franchise fee disbursement is cable company "rent" for the use of our public rights of way. This is how we talk to one another and the electronic parkland known as Akaku is where our people flock to talk story. Should the state figure out a way to divert these funds, in my humble opinion, we will all be poorer as a result.

Thank you very much for the opportunity to testify before you today.



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Testimony Presented Before the  
House Committee on Consumer Protection & Commerce  
February 2, 2011 at 2:05 pm

By  
David Lassner  
Vice President for Information Technology/CIO, University of Hawai'i

HB 1272 – RELATING TO CABLE TELEVISION

*Comments*

Chair Herkes, Vice Chair Yamane and Members of the Committee:

The University of Hawai'i understands the fiscal constraints facing the entire State of Hawai'i.

However, in considering this measure we want to ensure that the Committee understands that, on O'ahu and in Maui County, 25% of the disbursement to support public, educational and governmental (PEG) access operations is allocated to support educational access activities by accredited educational institutions including the Department of Education, University of Hawai'i System and Hawai'i Association of Independent Schools.

Programming produced using this 25% of the overall PEG operational funding is made available on multiple islands and is an important tool for extending access to education at all levels throughout the State, including to many of our most underserved locations.

Reduction of the overall PEG allocation will also reduce funding for educational programming by accredited educational institutions and may impact the availability of educational services throughout the State of Hawai'i.

Thank you for the opportunity to provide testimony on this measure.

February 1, 2011

The Honorable Robert N. Herkes  
Hawaii State House of Representatives  
Chair, Committee of Consumer Protection & Commerce  
415 S. Beretania Street, Room 320  
Honolulu, HI 96813

Dear Chair Herkes and Members of the CPC Committee;

**Subject: Letter in Strong Opposition to HB 1272 Relating to Cable Television**

My name is Roy Amemiya, Chief Operating Officer and Interim President/CEO of 'Ōlelo Community Media, the PEG Access Provider for O'ahu. I am writing to strongly oppose HB 1272 Relating to Cable Television. This bill would direct the DCCA director to reduce moneys paid to support PEG during the upcoming fiscal year and transfer the retained moneys to the general fund. While we realize that the legislature is facing a serious budget challenge, we do not believe that using fees assessed to cable subscribers and intended for other purposes is an appropriate or legal solution. Most significantly, this Bill, if passed, would dramatically reduce, if not eliminate PEG services to the community.

PEG Access serves a tremendous and increasingly important role in our community of just one daily newspaper and consolidated mainstream television news coverage. The 1984 Cable Act ("the Cable Act") defines PEG access as advancing Congress' goal of providing a wide diversity of information and services by responding to the needs and interests of the local community. The right to free speech, the inclusion of diversity of thought, and the focus on community empowerment has been the hallmark of 'Ōlelo for over 20 years.

Unfortunately, PEG funding on O'ahu has been eroded by a funding cap imposed by our regulatory body and since 2004, over \$7 million in fees collected for PEG purposes has been earmarked for non-PEG uses. This bill would fatally reduce funding at a time when 'Ōlelo and our community can least afford it. Like other businesses our costs continually rise. We have had to reduce staff counts and forego raises for multiple years. Any public perception that our funding is excessive is simply not true. One only needs to look at our aging analog equipment in this digital age as proof.

'Ōlelo currently manages 4 cable channels and assists hundreds of community producers in generating over 4,800 hours of new, original LOCAL content annually. This amounts to 13 hours of new local programming each and every day. Moreover, with commercial media providing increasingly less time to issues of local concern, the role of PEG access grows more critical in preserving our freedom of expression and our unique island identities. Funding cuts would jeopardize the PEGs' ability to serve as stewards mandated to protect that fundamental right.

'Ōlelo has always maintained a strong vision that recognizes the importance of giving voice to the local community. We've shaped our services to not only empower individual and collective voice but to also positively influence lives and communities. The foresight of the DCCA in creating 'Ōlelo 21 years ago has provided our citizens access to thousands of hours of government hearings, community forums and expression of the many different cultures represented in our islands from Samoan news to Micronesian conferences, Tongan community networking to Vietnamese entertainment. Indeed, there

is no other place in the world where the Native Hawaiian community gains the level of exposure to issues that matter to them than on 'Ōlelo.

There is no more isolated land mass in the world than Hawai'i. Our local perspectives are unique and important and must continue to be documented and shared. Without PEG access in our communities, our people will lose access to self representation in the most dominant media there is...television. Clearly, this would be a huge step backwards from the promise of access envisioned by our leaders when the PEGs were created. Hawai'i's support for community access programming is considered a model program in our Nation and was so noted by former FCC Commissioner Jonathan Adelstein after a visit to 'Ōlelo. The State of Hawai'i has something to be proud of. Let's work together to build upon this model program rather than seek to dismantle it.

We encourage you to table HB 1272. Thank you for the opportunity to testify.

Aloha,

Roy K. Amemiya, Jr.  
Interim President and CEO





**Hawaii Educational Networking Consortium**

*East-West Center / Hawaii Association of Independent Schools  
Hawaii State Department of Education / University of Hawaii*

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Testimony Presented to the House of Representatives:  
**Consumer Protection and Commerce Committee**

February 2, 2011 - 2:05 P.M.

Conference Room 325

by

Marlon Wedemeyer, Program Director for the  
Hawaii Educational Networking Consortium

In objection to HB1272, Relating to Cable TV

Chairperson Herkes, Vice-Chair Yamane and all members of the Committee. This testimony is to express the viewpoint of the Hawaii Educational Networking Consortium. HENC is a collaborative relationship formed by a Memorandum of Understanding between the Hawaii State Department of Education, the University of Hawaii, the East-West Center, and the Hawaii Association of Independent Schools.

The consortium currently provides planning and oversight of two Educational Access PEG cable TV channels on Oahu for accredited education. The above member entities currently provide more than 16,000 hours of Educational Access (EA) cable programming each year. The reduction in fees that HB1272 would impose would adversely impact accredited education's ability to provide this video resource to cable subscribers.

In addition to the impact on the two accredited cable channel's video programming, a portion of these funds have also allowed us to make more than \$460,000 in classroom grants to public and private K-12 schools--to provide seed money to build digital media programs in more than 100 schools statewide.

In short, HENC cannot support HB1272 which would both reduce the funding that accredited education receives to program the cable channels and also adversely impact the fledgling K-12 classroom video programs that the digital media grants have provided.

HENC asks that you indefinitely postpone HB1272. Thank you for giving us the opportunity to testify.