

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

In the Matter of)	
)	
Petition of Hawaiian Telcom, Inc. and Cincinnati Bell Inc. for Expedited Waiver of)	AU Docket No. 17-182
Section 1.21001(d)(4) and 54.315(b)(6)(iv))	WC Docket 10-90
of the Commission's Rules)	
)	WC Docket No. 17-207

PETITION FOR EXPEDITED WAIVER

Hawaiian Telcom, Inc. (“HTI”) and Cincinnati Bell Inc. (“Cincinnati Bell”) (together, “Petitioners”), by the undersigned counsel, hereby petition the Wireline Competition Bureau pursuant to 47 CFR § 1.3 to waive Sections 1.21001(d)(4) and 54.315(b)(6)(iv) of the Commission’s rules regarding the prohibition on major modifications to FCC Form 183 to enable them to participate in the Auction 903 upon consummation of their pending combination as described below. Petitioners respectfully request that the Bureau grant this waiver on an expedited basis, as closing of the transaction is scheduled to occur on or about July 1, 2018, subject to receipt of certain regulatory approvals.

I. BACKGROUND

Hawaiian Telcom Holdco, Inc. (“Holdco”), a Delaware corporation, is a widely held publicly traded company (NASDAQ: HCOM) that, along with its subsidiaries, is headquartered in Honolulu, Hawai‘i. Holdco is the indirect parent company of Hawaiian Telcom, Inc. (“HTI”), a Hawai‘i corporation; Hawaiian Telcom Services Company, Inc. (“HTSC”), a Delaware corporation; and Wavecom Solutions Corporation (“Wavecom”) (formerly known as Pacific Lightnet, Inc.). HTI and HTSC are direct, wholly owned subsidiaries of Hawaiian Telcom Communications, Inc. (“HTCI”), a Delaware holding company.

As the largest full service provider of telecommunications services and products in the state of Hawai‘i, HTI is the incumbent local exchange carrier, serving Hawai‘i for over 133 years. HTI provides voice and data network solutions supported by the reach and reliability of its next generation fiber network and a 24/7 state-of-the-art network operations center. HTI owns Wavecom (formerly known as Pacific Lightnet, Inc.), which operates as a CLEC providing regulated and unregulated telecommunications services and products to customers in the state of Hawai‘i. Holdco also indirectly owns HTSC, which provides interstate and intrastate long distance, high speed Internet, video, managed services, advanced communications and network services, data center services including colocation and virtual private clouds, cloud-based services, and wireless service.

Cincinnati Bell is a widely held, publicly traded Ohio corporation (NYSE: CBB). Among other services, Cincinnati Bell and its subsidiaries provide high-speed data, video and voice solutions to consumers and businesses over an expanding fiber network and legacy copper network.¹ Cincinnati Bell operates as an independent local exchange carrier (“ILEC”) through its subsidiary Cincinnati Bell Telephone Company LLC (“CBT”). Beyond CBT’s ILEC territory, Cincinnati Bell provides competitive local exchange carrier (“CLEC”) services through its indirect subsidiary Cincinnati Bell Extended Territories LLC (“CBET”) and provides nationwide long distance, voice over Internet protocol (“VoIP”) and CLEC service through its indirect subsidiary CBTS Technology Solutions LLC (“CBTS”). Solely for the purposes of implementing the Transaction described below, Cincinnati Bell formed Twin Acquisition Corp. (“Merger Sub”), a wholly owned Delaware subsidiary.

¹ Through Cincinnati Bell Technology Solutions Inc. (“CBTS”), a Delaware corporation, 100% owned by Cincinnati Bell, Cincinnati Bell also provides enterprise customers across the United States efficient, scalable office communications systems and end-to-end IT solutions.

On August 11, 2017, Cincinnati Bell, Holdco, HTI, HTSC, and Wavecom (collectively, “Joint Applicants”), requested Commission consent to transfer indirect control of HTI, HTSC and Wavecom, each of which holds domestic and/or international Section 214 authorization(s), to Cincinnati Bell, whereby Cincinnati Bell will become the parent company of Holdco and the indirect parent of HTI, HTSC and Wavecom (the “Transaction”).² As described further in the Joint 214 Application, and pursuant to the Agreement and Plan of Merger (the “Merger Agreement”) dated as of July 9, 2017, by and among Cincinnati Bell, Merger Sub, and Holdco, Merger Sub will merge with and into Holdco whereupon the separate existence of Merger Sub will cease and Holdco will be the surviving corporation. Cincinnati Bell will acquire all of the stock of Holdco and assume Holdco’s debt, in exchange for cash and Cincinnati Bell common stock worth approximately \$650 million. As a result of this Transaction, Holdco (*i.e.*, the ultimate indirect parent company of HTI) will become a direct, wholly owned subsidiary of Cincinnati Bell, and Cincinnati Bell will become the ultimate owner of HTI. Cincinnati Bell does not expect any new person or entity to own or control 10% or more of its stock as a result of the Transaction.³ Although the Commission’s review remains pending, Petitioners expect that the Transaction resulting in the change of control of HTI may be completed prior to the conclusion of Auction 903.

² Joint Application of Cincinnati Bell Inc. and Hawaiian Telcom Holdco, Inc. and Hawaiian Telcom, Inc., Hawaiian Telcom Services Company, Inc., and Wavecom Solutions Corporation for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Transfer Indirect Control of Domestic and International Section 214 Authorization Holders to Cincinnati Bell, Inc., WC Docket No. 17-207, File Nos. ITC-T/C-20170811-00138 and ITC-T/C-20170811-00139 (filed Aug. 11, 2017) (Joint Application). *See also* Letter from Catherine Wang, Counsel to Cincinnati Bell Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket 17-207 (filed Aug. 23, 2017) (Supplement Letter).

³ Holdco shareholders will be entitled to receive shares representing no more than 15% of Cincinnati Bell’s common stock. However, there are many Holdco shareholders, and no single shareholder will receive as much as 10% of Cincinnati Bell’s stock as a result of the Transaction.

Cincinnati Bell submitted an FCC Form 183 on behalf of itself and its subsidiaries to participate in the Phase II reverse auction. HTI submitted a separate FCC Form 183 to participate in the Phase II reverse auction. There is no overlap in the states for which the two applications requested authority to bid.

The Commission's rules permit only minor changes to auction applications after the initial FCC Form 183 filing deadline. More specifically, such minor modifications include changes such as correcting typographical errors, adding or deleting authorized bidders, revisions of contact information, and/or supplying or correcting information to support the certifications made in the application.⁴ Certain modifications, such as changes in ownership that would constitute the transfer of control of the applicant, are not permitted after the initial FCC Form 183 filing deadline.⁵ If an amendment to the initial Form 183 constitutes a "major amendment" as described in Section 1.21001(d)(4),⁶ the change may result in the dismissal of the application. The Auction 903 Procedures Public Notice is clear that "[a]ny change in control of an applicant—resulting from a merger, for example—will be considered a major modification, and the application will consequently be dismissed."⁷ Additionally, the Commission recently reminded applicants that have transactions

⁴ See *Connect America Fund Phase II Auction Scheduled for July 24, 2018; Notice and Filing Requirements and Other Procedures for Auction 903*, Public Notice, 33 FCC Rcd 1428, 1478, ¶ 171, n. 352 (2018) ("*Auction 903 Procedures Public Notice*").

⁵ *Auction 903 Procedures Public Notice*, ¶ 171.

⁶ 47 C.F.R. § 1.21001(4) (defining major modification to include "any changes in the ownership of the applicant that constitute an assignment or transfer of control, or any changes in the identity of the applicant, or any changes in the required certifications").

⁷ *Auction 903 Procedures Public Notice*, n. 354. See also *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5981, n. 189 (2016) ("*Phase II Auction Order and FNPRM*") (noting that applications to which major modifications are made after the deadline for submitting applications shall be dismissed).

pending that consummation of such transactions would constitute a major amendment of the application and disqualify any affected applicant from participation in bidding, absent a waiver of Section 1.21001(d)(4) of the Commission's rules.⁸

II. ARGUMENT

A. The Requested Waiver is Consistent With the Public Interest and With the Commission's Waiver Standard

The Commission's rules may be waived under section 1.3 of the rules for "good cause shown."⁹ The Commission may exercise its discretion to waive a rule where: (a) the particular facts make strict compliance inconsistent with the public interest; (b) special circumstances warrant a deviation from the general rule; and (c) such deviation will serve the public interest.¹⁰ In making these determinations, the Commission may consider evidence of hardship, equity, and more effective implementation of overall policy on an individual basis.¹¹ In this case, the standard for a waiver is amply satisfied.

The Commission previously waived on its own motion the prohibition on the transfer of control of an applicant under certain conditions in the context of the Incentive Auction for broadcast station licensees interested in participating in the reverse auction.¹² The Commission limited its *sua sponte* waiver to circumstances in which (1) a transfer application has been accepted for filing with the Commission as of the deadline to submit an application to participate in the auction

⁸ *Connect America Fund Phase II Auction, Status of Short-Form Applications to Participate in Auction 903; Corrections Due June 5, 2018*, Public Notice, AU Docket No. 17-182, WC Docket 10-90, DA 18-484 (rel. May 14, 2018).

⁹ 47 CFR § 1.3; *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁰ *Ne. Cellular*, 897 F.2d at 1166.

¹¹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Ne. Cellular*, 897 F.2d at 1166.

¹² *See Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, Public Notice, 30 FCC Rcd 10794 (rel. Oct. 6, 2015) ("*Incentive Auction PN*").

and (2) the application includes the express representation that the party that will hold the license(s) upon consummation of the transaction agrees to be bound by the original applicant's action in the auction with respect to the license(s).¹³ The Commission justified its waiver, in part, because "application of the bar on ... the transfer of control of its licensee, might discourage broadcasters from participating in the auction, contrary to the Commission's policy of facilitating such participation in order to promote its goals for the incentive auction."¹⁴

Similar to the circumstances in the Incentive Auction, Petitioners' circumstances make strict compliance inconsistent with the public interest. Indeed, under strict compliance with Section 54.315(b)(6)(iv), HTI's FCC Form 183 would very likely be dismissed upon consummation of the transaction. Without a waiver, HTI would be disqualified from participating in the Auction simply as a result of the consummation of a long-planned merger that was filed with the Commission in August 2017 and is currently pending before the Commission. Such an outcome would result in fewer qualified participants in Auction 903, and, since it would outright prohibit participation by Hawai'i's longest serving ILEC, could potentially result in some rural areas in that state having no bidders at all, depriving the residents of these areas of the opportunity to receive broadband service.

Petitioners filed their Joint 214 Application in August 2017, before the Commission adopted final procedures for Auction 903 and long before the deadline for submitting Auction 903 applications on March 30, 2018.¹⁵ Additionally, all relevant parties have previously been disclosed to the Commission both in the Joint 214 Application seeking approval of the Transaction and as disclosable interest holders in Petitioners' respective FCC Forms 183, including explanation of a

¹³ *Incentive Auction PN*, 30 FCC Rcd at 10803, ¶ 23.

¹⁴ *Incentive Auction PN*, 30 FCC Rcd at 10803, ¶ 23.

¹⁵ *Incentive Auction PN*, 30 FCC Rcd at 10803, ¶ 24 (limiting waiver to those instances in which the transaction resulting in the transfer of control has been accepted for filing with the Commission at the deadline for submitting reverse auction applications).

joint bidding arrangement in contemplation of consummating the Transaction. Accordingly, all relevant parties prior to and post-merger have been identified to the Commission prior to the Auction and there is no risk of an unknown and/or unqualified party participating in the auction without sufficient vetting by the Commission.¹⁶

Additionally, unlike the blanket *sua sponte* waiver which applied to all broadcast applicants in the Incentive Auction, Petitioners seek a waiver that is limited to their particular special circumstances as opposed to a blanket waiver for all similarly situated applicants. Finally, upon consummation of the Transaction, Cincinnati Bell, as ultimate owner of HTI, will be bound by HTI's actions in Auction 903 and all attendant representations and certifications will remain effective and enforceable notwithstanding the Transaction.

Deviating from the general rule here will serve the public interest by ensuring that experienced carriers such as Petitioners are able to participate in Auction 903 notwithstanding otherwise well-intended procedural rules. Furthermore, waiver in the special circumstances present here will better ensure effective implementation of overall policy by promoting broad participation in Auction 903 by parties committed to advancing rural broadband deployment through the Universal Service Fund.

¹⁶ *Incentive Auction PN*, 30 FCC Rcd at 10803, ¶ 24 (stating that assuring that all relevant parties are identified to the Commission prior to the auction is a safeguard of the underlying rule against major modifications).

III. CONCLUSION

For the foregoing reasons, the Bureau should expeditiously grant this Petition and waive Sections 1.21001(b)(4) and 54.315(b)(6)(iv) as they relate to the Transaction and Petitioners' participation in Auction 903.

Respectfully submitted,

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