

VIA ECFS and E-Mail

September 11, 2015

Ex Parte

Matthew DelNero (matthew.delnero@fcc.gov)
Chief, Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington D.C. 20554

Re: WC Docket No. 12-61, *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*

WC Docket No. 07-204, *Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Under 47 U.S.C. § 160(c); Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain of ARMIS Reporting Requirements, et al.*

WC Docket 07-21, *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain of the Commission's Cost Assignment Rules*

Dear Mr. DelNero:

Attached please find Hawaiian Telcom's Cost Assignment Forbearance Plan, pursuant to the requirements of the *USTelecom Forbearance Order*¹. Questions regarding this plan may be directed to me via e-mail at steven.golden@hawaiiantel.com, or by telephone at (808) 546-7730.

¹ *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations, et al.*, WC Docket No. 12-61, *et al.*, Memorandum Opinion and Order and Report and Order in WC Docket No. 10-132 and Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, 28 FCC Rcd 7627 (2013) (*USTelecom Forbearance Order*), *appeal pending sub nom. Verizon and AT&T v. FCC*, No. 13-1220 (pet. for rev. filed July 15, 2013).

Mr. Matthew DelNero
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Respectfully,



Steven P. Golden
Vice President, External Affairs

cc (via electronic email):

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HAWAIIAN TELCOM INC.

COST ASSIGNMENT FORBEARANCE COMPLIANCE PLAN

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HAWAIIAN TELCOM COST ASSIGNMENT FORBEARANCE COMPLIANCE PLAN

I. INTRODUCTION AND SUMMARY

Hawaiian Telcom, Inc., (hereinafter "HT"), a price-cap incumbent local exchange carrier ("ILEC"), files this Cost Assignment Forbearance Compliance Plan (hereinafter, "Compliance Plan" or "Plan") in order to take advantage of the relief granted to Independent LECs by the Commission in its *USTelecom Forbearance Order*.¹

This Compliance Plan describes how HT will comply with the continuing accounting requirements under the Act and the Commission's rules, and satisfies the conditions contained in the *US Telecom Forbearance Order*.² HT requests that the Wireline Competition Bureau ("Bureau") approve this Compliance Plan so that HT can avail itself of the relief from the cost assignment rules at the earliest possible date. HT's Plan resembles those previously submitted by Qwest Corporation, Verizon, CenturyLink, and Windstream (all of which have been approved).³

HT's Plan includes the following components:⁴

¹ *US Telecom Forbearance Order*, 28 FCC Rcd at 7627 (2013).

² *US Telecom Forbearance Order*, 28 FCC Rcd at 7651 53 ¶¶ 42-47.

³ See AT&T Compliance Plan, WC Docket nos. 07-21 and 05-342, filed July 24, 2008 ("AT&T Compliance Plan"); cost Assignment Forbearance Compliance Plan of Verizon, WC Docket Nos. 07-273 and 07-21, filed Sept. 19, 2008 ("Verizon Compliance Plan"); Memorandum Opinion and Order and Notice of Proposed Rulemaking, WC Docket Nos. 07-139, 07-204, FCC 08-203, 23 FCC Rcd 13647 (rel. Sep. 6, 2008) ("*ARMIS Forbearance Order*") recons. *Dismissed and denied*, 28 FCC Rcd 7627 (2013) (WC Docket Nos. 08-190, 07-139, 07-204, 07-273 and 07-21) and *appeal dismissed sub nom, NASUCA v. FCC*, No. 08-1353 (D.C. Cir. Aug. 23, 2013). CenturyLink Compliance Plan, WC Docket Nos. 07-21, 07-204 and 12-61, filed December 5, 2013.

⁴ HT has not determined whether it will seek to take advantage of the additional forbearance relief granted in the *USTelecom Forbearance Order* –i.e., forbearance from Commission Rule 64.1903 (separate affiliate requirement). *USTelecom Forbearance Order*, 28 FCC Rcd at 7691 ¶ 142. Should it decide to do so, HT will file a separate compliance plan addressing the conditions to the relief.

- A description of how HT will maintain its accounting procedures and accounting data so that it will be able to provide information in a timely manner, if requested by the Commission, to comply with the conditions of the *US Telecom Forbearance Order*.
- A description of HT procedures to ensure compliance with Section 254(k) of the Act, together with a certification executed by a HT executive, attesting that HT will comply with the requirements of Section 254(k) in the absence of the Commission's cost assignment rules and that HT will provide to the Commission information necessary to establish such compliance upon receipt of an appropriate request.⁵ HT will also designate a single point of contact for section 254(k) compliance.
- A description of the transition process that HT will undertake to implement the procedures in its Compliance Plan.

II. PLAN FOR MAINTENANCE OF ACCOUNTING PROCEDURES AND DATA FOR FUTURE COMMISSION USE UPON REQUEST

In the *US Telecom Forbearance Order* the Commission conditioned its cost assignment forbearance upon a requirement that price cap carriers “continue complying with the Part 32 Uniform System of Accounts rules...and...provide Part 32 data on request by the Commission for use in rulemakings, adjudications, or for other regulatory purposes.”⁶ In doing so, the Commission noted that the “Part 32 USOA data are the underlying raw data used in the Cost assignment Rules...”⁷ HT proposes a five-part plan for how it will continue to comply with the

⁵ 47 U.S.C. § 254(k).

⁶ *US Telecom Forbearance Order*, 28 FCC Rcd at 7651 ¶43 (footnote omitted).

⁷ *Id.*

remaining Part 32 Uniform System of Accounts rules and maintain its accounting procedures and data in a manner that will allow it to provide useable information on a timely basis in the event that the Commission determines in the future that it needs allocated accounting cost data to serve a regulatory purpose.

First, HT will continue to maintain USOA books of account for all of its regulated operating telephone companies that include account-specific investment, expense and revenue data for Part 32 accounts. Specifically, HT will continue to record ILEC investment, expense and revenue information into its general ledgers and other accounting records as necessary to create and prospectively maintain accounting data in conformance with the Part 32 account structure. All of these data will remain available for inspection by the Commission or for reporting to the Commission by HT for regulatory purposes.⁸

Second, HT will maintain its most recent cost allocation results, including a calculation of corresponding ratios by USOA account for non-regulated, state, interstate and each Part 69 rate element, using data from the calendar year immediately preceding the date that HT's Compliance Plan is approved by the Bureau. If the Commission were to request this cost allocation information or associated data in the future, HT would provide the information using these ratios, while reserving the right to update the ratios to track significant accounting or regulatory changes that might occur after HT's Compliance Plan is approved. In evaluating whether to undertake such an updating, HT would assess the reliability of the existing ratios and the relative burden of the updating process.

⁸ HT reserves its right to limit the retention of such information consistent with the Commission's policies on record retention.

Third, in the event the Commission appropriately seeks allocated cost information needed for a federal regulatory purpose beyond data that can be derived from the preserved information described above, HT can – to the extent not unreasonably burdensome – perform special economic cost studies to respond to such a request.

Fourth, in connection with the above commitments, HT will retain sufficient data and documentation of its present accounting methods and procedures that are used to allocate costs. This includes HT's training materials, guidelines and system documentation used to allocate costs as of the date of approval of this Plan. Such materials will be assembled and maintained by individuals who are familiar with the cost allocation subject matter. HT will likewise maintain in an electronic medium system, spreadsheets and software necessary for cost assignment purposes.

Finally, with respect to affiliate transactions per Commission Rule 47 C.F.R. §32.27, prospectively, HT will record and price such transactions in accordance with Generally Accepted Accounting Principles ("GAAP") or appropriate accounting standards that may modify or replace GAAP in the future. HT will also retain sufficient data and documentation of its present accounting methods and procedures used for affiliate transactions. This includes necessary training materials, guidelines, and system documentation existing as of the date of approval of this Plan. Such materials will be assembled and maintained by individuals who are familiar with the affiliate transaction subject matter.

III. ANNUAL CERTIFICATION AND COMPLIANCE WITH SECTION 254(k)

The *USTelecom Forbearance Order* also conditions its cost assignment forbearance upon a requirement that price cap carriers "certify, on an annual basis, that they have complied with Section 254(k) of the Act, and will maintain and provide any requested cost accounting

information necessary to prove such compliance in the event of an administrative action, investigation or audit⁹

As required, HT's first annual certification attesting to its compliance with section 254(k) of the Act in the absence of cost assignment rules is attached to this Compliance Plan. This certification is signed by Dan Bessey, Senior Vice President and CFO, who also attests that HT will provide Information to the Commission necessary to establish section 254(k) compliance upon an appropriate request.

The Commission has already determined that an annual certification is a suitable indicator of compliance for some carriers.¹⁰ As such, the attached certification itself largely satisfies HT's obligations under section 254(k) and the conditions of forbearance in the *USTelecom Forbearance Order*. Section 254(k) provides that "[a] telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition."¹¹ The Commission has previously indicated that this requirement is intended to prevent ILECs from gaining an unfair advantage in markets for services that are competitive by assigning excessive costs to non-competitive services.¹²

Moreover, the Commission's price cap regime reduces any incentive to assign excessive costs to non-competitive services since price caps "sever[ed] the direct link between regulated costs and prices."¹³ Thus, since HT is under the Commission's price cap regime, it already has

⁹ *USTelecom Forbearance Order*, 28 FCC Rcd at 7652 ¶45 (footnote omitted).

¹⁰ See 47 C.F.R. § 64.905

¹¹ See 47 U.S.C. § 254(k).

¹² *In the Matter of Implementation of Section 254(k) of the Communications Act of 1934*, Order, 12 FCC Rcd 6415 (1997).

¹³ *USTelecom Forbearance Order*, 28 FCC Rcd at 7649 ¶ 37 (stating "that, 'because price cap regulation severs the direct link between regulated costs and prices, a carrier is not able automatically to recoup misallocated non-regulated costs by raising basic service rates,' thus reducing incentives to shift non-

reduced incentives to shift excessive costs to services that might be considered to be non-competitive. Nevertheless, HT will continue to comply with its section 254(k) obligations and will not allocate excessive costs to non-competitive services, as verified by the attached certification. Furthermore, the Commission remains free to investigate HT's compliance with section 254(k).¹⁴ In addition, as of the date of approval of this Compliance Plan, HT will designate a single Point of contact to ensure that appropriate HT employees are aware of and adhere to HT's obligations under section 254(k).

IV. ARMIS 43-01 POLE ATTACHMENT DATA FILING

As a condition in The *USTelecom Forbearance Order* to obtain ARMIS Report 43-01 forbearance, HT will publicly file the pole attachment cost data that is currently submitted in ARMIS Report 43-01, on an annual basis, with the Commission, without any assertions of confidentiality.

V. FORBEARANCE TRANSITION

HT intends to implement the forbearance relief granted in the *USTelecom Forbearance Order* as soon as possible. The relief granted by this Order will help HT move toward accounting systems that are more in keeping with those used by competitive businesses. To that end, HT has already reviewed its accounting systems and cost assignment processes in light of forbearance from the cost assignment rules. HT has also reviewed and evaluated the *USTelecom Forbearance Order* with its subject matter experts and expects, for the most part, to begin implementing relief immediately upon the Bureau's approval of this Compliance Plan. Forbearance will allow HT to discontinue

regulated costs to regulated services.") (citing the *Wireline Broadband Order*, 20 FCC Rcd at 14925-26 ¶133.).

¹⁴See, e.g., 47 U.S.C § 220(c).

certain activities that have no place in today's telecommunications market under the Commission's price cap regime.

Regarding preservation of accounting materials and data for future use by the Commission, HT's subject matter experts from its finance, legal, compliance and information technology groups will implement measures described above upon approval of this Plan.

Except as otherwise described in this Plan or as may be required by state law, HT will: (a) no longer prepare cost allocation results under forbore rule sections 32.23 and 32.5280 and Parts 36, 64 and 69 of the Commission's rules, and will not perform attendant studies used to determine allocation ratios immediately upon the Bureau's approval of HT's Compliance Plan; (b) begin the transition away from the Commission's affiliate transaction rules under forbore rule section 32.27 in favor of GAAP (or its successor) accounting for such transactions immediately upon approval of this Plan; and (c) with the exception of pole attachment data, no longer file ARMIS Report 43-01.

Assuming timely evaluation and approval of this Compliance Plan, HT generally expects to implement the forbearance relief from the *USTelecom Forbearance Order* as soon as end of first quarter of 2016.

VI. CONCLUSION

HT's Compliance Plan as described herein satisfies the conditions that the Commission established in the *USTelecom Forbearance Order*. HT requests that the Bureau approve this Plan at the earliest possible date.

Annual Certification Pursuant To 47 C.F.R. SECTION 254(k)

I, Dan Bessey, certify to the best of my knowledge, information and belief, that Hawaiian Telcom will comply with its obligation under Section 254(k) of the Communications Act of 1934, as amended, and that Hawaiian Telcom will maintain and provide to the FCC any cost accounting information necessary to establish such compliance if appropriately requested to provide such information.

Signature: [Handwritten Signature]
Dan Bessey
Senior Vice-President and Chief Financial Officer
Hawaiian Telcom, Inc.
Date: 9.1.15



Subscribed and sworn to before me
This 1st day of September, 2015.
Elaine R. Perry ELAINE R. PERRY
Notary Public, State of Hawaiian Telcom

My commission expires: Sept. 5, 2015

Doc Date: 9/1/15 # Pages: 1
Name: ELAINE R. PERRY First Circuit
Doc. Description: Annual Certification Pursuant to 47 C.F.R. Section 254(k) - Dan Bessey
Elaine R. Perry 9/1/15
Signature Date
NOTARY CERTIFICATION