August 3, 2012

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: REQUEST FOR CONFIDENTIAL TREATMENT

In the Matter of Wavecom Solutions Corporation, Transferor and Hawaiian Telcom, Inc., Transferee; Application for Consent to Transfer Control of Domestic Authorizations Under Section 214 of the Communications Act, as Amended, WC Docket No. 12-206

Dear Ms. Dortch:

Wavecom Solutions Corporation ("Wavecom") and Hawaiian Telcom, Inc. ("HTI") (jointly, "the Parties") hereby file the attached information as a supplement to their application in the above-captioned matter. The information, attached as charts in Appendix A, identifies the office buildings in the State of Hawaii where both HTI and Wavecom provide to customers analog or digital service at the equivalent of a DS-1 circuit or higher capacity. Chart 1 identifies buildings with facilities that are owned by HTI and leased by Wavecom; Chart 2 identifies buildings in which both HTI and Wavecom own facilities. Both charts also identify the buildings where other competitors either own or lease facilities.

The Parties respectfully request, pursuant to Sections 0.457 and 0.459 of the Commission's rules,[1] that the Commission keep these materials confidential and not release the information to the public if requested, except pursuant to a protective order of the type typically issued when comparable confidential information has been submitted to the Commission in the past. These materials contain confidential and commercially sensitive information that falls within Exemption 4 of the Freedom of Information Act ("FOIA").[2] Exemption 4 permits parties to withhold from public information "trade secrets and commercial or financial information obtained from a person and privileged or confidential."[3] Applying Exemption 4, the courts have stated that commercial or financial information is confidential if its disclosure will either (1) impair the government's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information

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[1] 47 C.F.R. §§ 0.457 & 0.459.

[2] *See* 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

[3] 5 U.S.C. § 552(b)(4).

was obtained.[4]

Statement pursuant to 47 C.F.R. § 0.459(b)

(1) Identification of the specific information for which confidential treatment is sought.

The Parties request that Appendix A be kept confidential in its entirety. Appendix A contains commercially sensitive information that falls within Exemption 4 of FOIA.

(2) Identification of the Commission proceedings in which the information was submitted or a description of the circumstances giving rise to the submission.

The Parties are providing the confidential information at the request of FCC staff to supplement the pending application for authority to transfer control of domestic Section 214 authority from Wavecom to HTI in WC Docket No. 12-206.

(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.

The information contained in Appendix A contains commercial information regarding the services to certain specific locations in the State of Hawaii provided by the Parties to their enterprise customers. The courts have given the term "commercial", as used in Section 552(b)(4), its ordinary meaning. *See Board of Trade v. Commodity Futures Trading Comm'n*, 627 F.2d 392, 403 & n.78 (D.C. Cir. 1980). The Commission has broadly defined commercial information, stating that "'[c]ommercial' is broader than information regarding basic commercial operations, such as sales and profits; it includes information about work performed for the purpose of conducting a business's commercial operations." *Southern Company Request for Waiver of Section 90.629 of the Commission's Rules*, Memorandum Opinion and Order, 14 FCC Rcd 1851, 1860 (1998) (*citing Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983)).

(4) Explanation of the degree to which the information concerns a service that is subject to competition.

There is significant competition among communications providers for enterprise customers in the State of Hawaii. Multiple carriers provide a variety of services that are capable of providing point-to-point services to retail and wholesale customers at the DS-1

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[4] *See National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974)(footnote omitted); *see also Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879-80 (D.C. Cir. 1992), *cert. denied*, 507 U.S. 984 (1993).

speed and higher, as well as the entire range of high-speed digital and IP-delivered services.

(5) Explanation of how disclosure of the information could result in substantial competitive harm.

The Parties' competitors could use the confidential customer service information in Appendix A to develop and adapt how they offer their services, including advertising therefor, thereby giving them an advantage in offering telecommunications services to the public. Competitors specifically would be able to use the location information, which is information that they would normally not possess in one centralized database as contained in Appendix A, to target specific competitive sales efforts to the detriment of the Parties.

(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure.

The information in Appendix A has been maintained on a confidential basis in the Parties' files and is not accessible by the public.

(7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.

The information has not been disclosed to the public outside the Parties' operations, except to the Parties' consultants and advisors, subject to confidentiality obligations.

(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure.

The material should be withheld from public disclosure as long as the data in question would provide a basis for competitors to gain insight into the business operations associated with the Parties' communications services.

(9) Any other information that the party seeking confidential treatment believes maybe useful in assessing whether its request for confidentiality should be granted.

Under applicable Commission and court rulings, the subject material must be kept free from public disclosure. Exemption 4 of the Freedom of Information Act shields information which is (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. *See Washington Post Co. v. U.S. Department of Health and Human Services*, 690 F.2d 252, 266 (D.C. Cir. 1982). The attached information clearly satisfies the first two elements of that test. With respect to the third element of the above test, information is considered to be "confidential" if disclosure is likely, *inter alia*, to harm substantially the competitive position of the person

from which the information was obtained. *National Park and Conservation Ass'n. v. Morton*, 498 F. 2d 765, 770 (D.C. Cir. 1974). As explained above, disclosure of the information in Appendix A would result in competitive harm because it would enable rivals to learn the business operations details associated with the Parties' communications offerings. Moreover, the data are "of a kind that the provider would not customarily release to the public." *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992).

Please contact the undersigned with any questions. Thank you for your assistance.

Sincerely,

/s/ Nancy J. Victory

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APPENDIX A

(contents redacted for public version)