REDACTED FOR PUBLIC INSPECTION

September 19, 2012

ORIGINAL

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

FILED/ACCEPTED

SEP 19 2012

Federal Communications Commission
Office of the Secretary

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 Joint Reply in the above-captioned matter. Some of the information contained in that Reply identifies details of the confidential business relationship and contract between Wavecom and L'Office des postes et télécommunicaitons de Polynésie française ("OPT") ("Wavecom-OPT facilities contract information") and details of HTI's network facilities contract information ("HTI facilities contract information", and together with the Wavecom-OPT facilities contract information, the "facilities contract information"). This confidential facilities contract information is contained in portions of the Declarations of Jeremy Amen and Daniel Masutomi attached to the Reply.

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

---

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).

0+2

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 the confidential Wavecom-OPT facilities contract information in the Jeremy Amen Declaration and the HTI facilities contract information contained in the Masutomi Declaration be kept confidential. The facilities contract information in these two declarations is 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 in support of their Joint Reply filed in the above-captioned proceeding concerning the pending application for authority to transfer of control to HTI of various radio station authorizations, a submarine cable landing license, and domestic and international Section 214 authority held by Wavecom 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 facilities contract information contains commercial information regarding the prices, terms and conditions of private contractual arrangements for non-tariffed services and facilities in the State of Hawaii. 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] *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).

(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 customers in the State of Hawaii. Multiple carriers operating in Hawaii are capable of providing facilities in circumstances that are similar to the Wavecom-OPT and HT facilities contracts.

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

The Parties' competitors could use the confidential facilities contract information to develop and adapt how they offer their services, including advertising therefor, thereby giving them an advantage in offering telecommunications services to the public and to other carriers. Competitors specifically would be able to use the pricing, terms, and conditions included in the facilities contract information to identify the Parties' costs to provide services, which is information that they normally would not possess 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 facilities contract information 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 facilities contract 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 facilities contract information 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

Nancy J. Victory
Wiley Rein LLP
1776 K Street, N.W.
Washington, D.C. 20036
(202) 719-7344
nvictory@wileyrein.com

Counsel for Wavecom Solutions Corporation

/s/ Gregory J. Vogt

Gregory J. Vogt
Law Offices of Gregory J. Vogt, PLLC
2121 Eisenhower Ave.
Suite 200
Alexandria, Virginia 22314
(703) 838-0115
gvogt@vogtlawfirm.com

Counsel for Hawaiian Telcom, Inc.

REDACTED FOR PUBLIC INSPECTION

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

In the Matter of	)	
	)	
WAVECOM SOLUTIONS CORPORATION, Transferor,	)	
	)	
and	)	WC Docket No. 12-206
	)	
HAWAIIAN TELCOM, INC., Transferee	)	
	)	
Applications for Consent to Transfer Control.	)	

JOINT REPLY COMMENTS OF APPLICANTS

Nancy J. Victory
Wiley Rein LLP
1776 K Street, N.W.
Washington, DC 20036
(202) 719-7344
nvictory@wileyrein.com

Counsel for Wavecom Solutions Corporation

Gregory J. Vogt
Law Offices of Gregory J. Vogt, PLLC
2121 Eisenhower Ave.
Suite 200
Alexandria, VA 22314
(703) 838-0115
gvogt@vogtlawfirm.com

Counsel for Hawaiian Telcom, Inc.

September 19, 2012

Table of Contents

I. INTRODUCTION 1

II. THE INSTANT TRANSACTION DOES NOT JUSTIFY IMPOSITION OF ANY CONDITION BECAUSE COMPETITION FOR INTERNATIONAL AND INTERSTATE TRANSPORT IN THE PACIFIC WILL NOT BE HARMED. 3

A. Competition for Pacific International and Interstate Telecommunications Is Rampant and Growing. 4

B. Wavecom's Submarine Cable Capacity Is Not a Bottleneck Facility. 10

C. Conditions Are Not Appropriate for a Transaction of Its Nature and Size. 12

III. OPT'S ALLEGATIONS REGARDING ITS DEALINGS WITH WAVECOM ARE WITHOUT MERIT AND IRRELEVANT TO CONSIDERATION OF THE INSTANT TRANSACTION. 12

A. OPT's Allegations Concerning the Landing Party Agreement Are Unrelated to the Instant Transaction. 13

B. OPT's Allegations Concerning Wavecom's Implementation of the Landing Party Agreement Lack Merit. 15

IV. THE FCC SHOULD REJECT DCA'S REQUEST THAT UNBUNDLING OBLIGATIONS BE IMPOSED ON THE RETAIL USE OF WAVECOM FACILITIES BECAUSE IT IS UNRELATED TO THE TRANSACTION AND UNWARRANTED. 16

V. CONCLUSION 18

SUMMARY

The proposed transaction will promote the public interest by permitting a better capitalized company to acquire and operate international and domestic facilities in the State of Hawaii. The combined company will have an improved ability to provide Wavecom's customers with quality services, while HTI's customers will benefit from enhanced network capabilities. No commenter disputes these transaction benefits.

The instant transaction will not cause any competitive harms. FCC precedent is clear that the relevant product market is international transport, which includes submarine cable, satellite and terrestrial links. The relevant geographic market is the trans-Pacific region. Post-transaction, there will be no reduction in this market because HTI does not currently compete in that market: the combined entity will own or control only one international cable landing license, and HTI will continue to own its domestic-only interisland transport facilities, including an undersea cable system in the State of Hawaii. Currently, there are 16 licensed undersea cable systems in the trans-Pacific region that land in the United States. Trans-Pacific cable capacity has increased almost four-fold between 2002 and 2011 and the number of providers has doubled between 2007 and 2012. Plainly, Wavecom does not possess a bottleneck facility.

Even if only submarine cable facilities in the State of Hawaii are examined, three other independent undersea cable providers will exist post-transaction. These cable providers are currently operating at only a fraction of their potential capacity, and increased capacity in any of these cable systems can be quickly and efficiently brought on line by installing new optical equipment as demand dictates. Thus, on the only route identified as a potential concern by commenters, there is clearly no risk of competitive harm. Inasmuch as the FCC has previously

refused to impose conditions on a much larger undersea cable combination, no conditions are appropriate for a transaction of this nature.

The specific competitive concern raised by L'Office des postes et télécommunications de Polynésie française ("OPT") involves a Landing Party Agreement with Wavecom that predated the proposed transaction. FCC precedent is unambiguous that the Commission will not impose conditions to remedy pre-existing or unrelated harms. Furthermore, OPT's allegations that Wavecom has violated the Communications Act in its dealings with OPT are without merit. Wavecom is not acting in a discriminatory manner and is not pricing its services unreasonably. To the extent that OPT is aggrieved by Wavecom's alleged violations of the Act, the Commission has stated that the Section 208 complaint process is the appropriate mechanism to address such concerns, not a license transfer proceeding.

The Commission should also reject the Hawaii Division of Consumer Advocacy's ("DCA's") requested condition that would extend the unbundling and wholesale access obligations of Section 251(c) of the Communications Act whenever HTI utilizes Wavecom facilities to provide retail services. The FCC has never imposed such a condition when an ILEC purchases a CLEC, a commonplace occurrence in today's environment. DCA's only cited case does not apply to this transaction because Wavecom facilities will be used to market the same services to the same customers as Wavecom currently serves. The proposed condition should also be rejected because it is unrelated to the transaction, common carrier obligations can rectify any alleged discriminatory treatment, and existing interconnection obligations applicable to all carriers should govern any access to the facilities.

Accordingly, the FCC should promptly grant the Applications without conditions, in accordance with Commission precedent.

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

In the Matter of	)	
	)	
WAVECOM SOLUTIONS CORPORATION, Transferor,	)	
	)	
and	)	WC Docket No. 12-206
	)	
HAWAIIAN TELCOM, INC., Transferee	)	
	)	
Applications for Consent to Transfer Control.	)	

JOINT REPLY COMMENTS OF APPLICANTS

Wavecom Solutions Corporation ("Wavecom") and Hawaiian Telcom, Inc. ("HTI" and, together, "Applicants") hereby reply to the comments filed in the above-captioned proceeding. Based on the applications filed in this proceeding, the Commission should conclude that the transaction will promote the public interest by permitting a better capitalized company to acquire and operate international and domestic facilities in the State of Hawaii. The enhanced capabilities will better position the combined company to deliver next generation, end-to-end solutions for customers statewide, without creating competitive harm. Because commenters' claims concerning undersea cable competition and the alleged actions of Wavecom are without merit and otherwise unrelated to the transaction, commenters' requests for conditions on the transaction should be rejected in accordance with Commission precedent.

I. INTRODUCTION

The rapidly evolving communications industry requires companies to stay nimble in order to leverage the use of newer technology to serve ever-changing customer needs. These technological developments include the adoption of Internet protocol ("IP") services and

platforms. Successful adaptation to this evolution is critical to providing high quality, advanced communications services to consumers at affordable rates.

Hawaii consumers and carriers enjoy a vast array of choices in telecommunications, broadband, and related services and facilities, and the marketplace in Hawaii is vibrantly competitive.[1] As a smaller market participant with less financial stability than others in the market, Wavecom lacks the resources to compete effectively by itself.[2] The combined company will have an improved ability to provide Wavecom's customers with a full complement of quality, advanced communications services.[3] HTI's customers will benefit from enhanced network capabilities post-transaction because the combined company will be better able to deliver next generation, end-to-end solutions for customers in Hawaii.[4] The combined company also will be able to realize greater "transport" economies of scale and increase network capacity, which will improve its ability to provide customers with access to high quality, next-generation broadband services as a result of this transaction.[5] No commenter disputes these transaction benefits.

L'Office des postes et télécommunications de Polynésie française ("OPT") says it is encouraged by the instant transaction because it "already has a productive working relationship

---

1 Wavecom Solutions Corporation, Transferor, and Hawaiian Telcom, Inc., Transferee, Application for Consent to Transfer of Control Domestic 214 Authorization, WC Docket No. 12-206, Exhibit 1, at 3, 7-11 (filed July 18, 2012) ("Domestic 214 Application", and together with the applications filed for the transfer of control from Wavecom to HTI of undersea cable, international 214 and wireless authorizations and licenses, referred to as the "Applications"). Because the public interest statement in each of the Applications is identical, all citations in this pleading to the Applications will be based on the Domestic 214 Application for simplicity's sake.

2 Domestic 214 Application, Exhibit 1 at 3-4.

3 *Id.* at 4-5.

4 *Id.* at 5.

5 *Id.* at 5-6.

with HT."[6] Nonetheless, it makes certain allegations concerning the market for international transport services, asserting that the combined entity will possess greater market power "for inter-island connectivity."[7] OPT also seeks conditions based on allegations concerning its past and current business dealings with Wavecom, asking that conditions be imposed on the transaction that would specifically alter the current Landing Party Agreement between Wavecom and OPT.[8] The Hawaii Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("DCA") repeats these same arguments, and additionally seeks to require that Section 251(c) obligations be placed on Wavecom facilities to the extent they are utilized by HTI to provide retail services to customers.[9] Commenters' arguments are without merit and those concerning OPT's interactions with Wavecom are wholly irrelevant to the FCC's consideration of the proposed transaction. The requested conditions should thus be rejected.

II. THE INSTANT TRANSACTION DOES NOT JUSTIFY IMPOSITION OF ANY CONDITION BECAUSE COMPETITION FOR INTERNATIONAL AND INTERSTATE TRANSPORT IN THE PACIFIC WILL NOT BE HARMED.

Commenter OPT is the monopoly communications provider in French Polynesia, offering voice, data, Internet access, and video services in French Polynesia.[10] Through its Honotua Undersea Cable System, it delivers international voice, data, and Internet traffic that transits the State of Hawaii.[11] OPT indicates that it lands its Honotua cable system at Wavecom's Kawaihae

---

6 Comments in Support of Conditional Approval of L'Office des postes et télécommunications de Polynésie française, WC Docket No. 12-206, at 12 (dated Sept. 4, 2012) ("OPT Comments").

7 *Id.*

8 *Id.*

9 Comments of the State of Hawaii, Department of Commerce and Consumer Affairs, WC Docket No. 12-206 (dated Sept. 14, 2012) ("DCA Comments"). The DCA is separate from the Hawaii Public Utilities Commission, where the Applicants have an application pending to approve the transfer of control of Wavecom to HTI.

10 *See* OPT Comments at 2.

11 *Id.*

cable station located at Spencer Beach on the island of Hawaii.[12] OPT's sole allegation concerning potential competitive harm stemming from the proposed transaction is with respect to the submarine cable route between the islands of Oahu and Hawaii and how it might be impacted by the combination of Wavecom's and HTI's submarine cable facilities.[13] However, as explained in the Applications and detailed further below, there will remain ample competition for Pacific international and Hawaii interstate transport post-transaction.

A. Competition for Pacific International and Interstate Telecommunications Is Rampant and Growing.

In examining the potential competitive effects of transactions involving telecommunications facilities, the FCC first defines the relevant product and geographic markets for examining the effect on competition.[14] In transactions like this one involving submarine cable facilities the FCC has been clear that the relevant product market is international transport, which includes submarine cable, satellite, and terrestrial links, and that the relevant geographic market is the applicable global region.[15] As the FCC has previously explained:

> Typically, we evaluate submarine cable capacity in the Atlantic, Pacific, and the Americas regions. Our concern is whether the proposed merger could increase ownership concentration to such an extent that the combined entity would have the ability to exercise market power through unilateral or coordinated action. We examine existing submarine cable capacity and take into account future capacity

---

[12] *Id.* at 3.

[13] *Id.* at 6. DCA's comments are not separately referenced in this section because they simply repeat what OPT argues.

[14] *AT&T Inc. and BellSouth Corporation, Application for Transfer of Control*, Mem. Opin. & Order, 22 FCC Rcd 5662, ¶ 24 (2007) ("*AT&T/BellSouth Order*"); *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Mem. Opin. & Order, 20 FCC Rcd 18433, ¶ 21 (2005) ("*Verizon/MCI Order*").

[15] *AT&T/BellSouth Order*, ¶ 159; *Verizon/MCI Order*, ¶ 158; *Applications filed by Global Crossing Limited and Level 3 Communications, Inc. for Consent to Transfer Control*, Mem. Opin. & Order & Declaratory Ruling, 26 FCC Rcd 14056, ¶¶ 30-31 (Wir. Comp. & Int'l. Burs., 2011) ("*Level3/Global Crossing Order*"). Because Wavecom and HTI both own only undersea cable systems, the potential market power of the combined entity over only undersea cable facilities should be considered. *Id.*, ¶ 30.

> that may be achieved through the use of new technology and upgrades to the submarine cables within the next two years.[16]

Based on this established precedent, the FCC should conduct its competitive analysis here with respect to the international transport market in the trans-Pacific region.[17] This is appropriate inasmuch as carriers, such as OPT, are not required to route traffic through the island of Hawaii, but rather have a number of available alternative landing locations both in the United States, such as American Samoa or other sites in the State of Hawaii or on the mainland, as well as through countries such as Australia or New Zealand. Thus, there is no valid reason for the competitive analysis to be focused exclusively on existing undersea cable systems landing in a particular place. And, indeed, the FCC has not done so.[18]

Post-transaction, there will be no reduction in competition in the international transport market because HTI does not currently compete in this market, but rather operates a domestic-only facility. The combined entity will own or control only one international cable landing license[19] post-closing, and the proposed transaction will have no impact on the international

---

[16] *Level3/Global Crossing Order*, ¶ 31.

[17] OPT also mentions the need for backhaul facilities, apparently between the Wavecom landing station on Hawaii and an unspecified gateway on Oahu. OPT Comments at 4. However, as discussed below, there is also ample competition for backhaul.

[18] The modern trend of FCC international transport merger analysis has been to concentrate on regional capacity rather than capacity terminating in a single country or place because of the increasing international trend of cable systems that are willing to route traffic through a third country. *AT&T/BellSouth Order*, ¶ 159; *Verizon/MCI Order*, ¶ 158; *Level3/Global Crossing Order*, ¶ 31. Even older precedent focused on the U.S./U.K. route which was unique in the amount of traffic at that time, and the dominant position in that market of BT. *See, e.g., Matter of AT&T Corp., British Telecommunications, plc, VLT Co. L.L.C., Violet License Co. LLC, and TNV [Bahamas] Limited Applications, For Grant of Section 214 Authority, Modification of Authorizations and Assignment of Licenses in Connection With the Proposed Joint Venture Between AT&T Corp. and British Telecommunications, plc,*, 14 FCC Rcd 19140, ¶¶ 62-70 (1999) ("*AT&T/BTI Order*"); *Merger of MCI Communications Corporation and British Telecommunications plc,*, 12 FCC Rcd 15351, ¶¶ 94-101, 134-41 (1997) ("*MCI/BTI Order*").

[19] HTI will continue to own one domestic cable landing license. Domestic 214 Application, Exhibit 1 at 10.

transport market.[20] What's more, the international transport market has numerous competitive alternatives. Currently, there are 16 licensed undersea cable systems in the trans-Pacific region that land in the United States.[21] The Commission itself has recognized that the market for telecommunications and traffic capacity has been growing exponentially in the Pacific. In its latest international traffic report the Commission discloses that trans-Pacific cable capacity has increased almost four-fold between 2007 and 2011, from 3,805.0 to 14,371.1 Gbps.[22] That capacity is expected to double again to over 24,811.1 Gbps by the end of 2013.[23] Similarly, the number of independent undersea cable systems have doubled from 8 to 16 between 2007 and 2012.[24] Moreover, these figures represent only activated capacity and do not take into account potential additional capacity that could be brought on line, either from making equipment upgrades to existing fiber strands or technological advancements that continually increase capacity potential.[25] Further, the combined entity is not affiliated with any foreign carrier that would cause the combined entity to be classified as dominant.[26]

OPT claims that the transaction will "reduce the number of independent providers of inter-island fiber-optic connectivity between the Big Island and Oahu, thereby giving the combined HT-Wavecom greater market power on that route."[27] As indicated previously in this subsection, focusing entirely on a single interisland route is inconsistent with the FCC's

---

[20] *Id.* 9-12.

[21] Federal Communications Commission, International Bureau Report, 2010 Section 43.82 Circuit Status Data, Table 7-B (Mar. 2012) ("2012 International Cable Report"), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-313337A2.pdf.

[22] 2012 International Cable Report, Table 7-A.

[23] *Id.*

[24] *Id.*

[25] *Id.* at 3.

[26] 47 C.F.R. §§ 63.09 & 63.10.

[27] OPT Comments at 6.

approach to evaluating competition for international transport.[28] Yet, even if the specific route for backhaul services were analyzed independently, there are multiple competitive alternatives available between these two islands within the State of Hawaii. Indeed, this route is the most competitive of the interisland routes in the State of Hawaii.

As an initial matter, the Paniolo Fiber-Optic Cable ("Paniolo") is an undersea cable system connecting five of the islands in Hawaii, including the interisland route between the islands of Oahu and Hawaii, that is available to other end user customers and communications providers.[29] OPT questions whether Paniolo resells capacity to third parties.[30] However, OPT admits that Paniolo previously has provided transport services to tw telecom of Hawaii, LLC ("tw telecom"),[31] and HTI is aware that the cable has been used by other entities to provide carrier services.[32] The Commission itself has recognized that the Paniolo capacity is available for others to use.[33] Even if Paniolo does not actively market carrier services at present, however,

---

[28] *See supra* note 18.

[29] Domestic 214 Application, Exhibit 1 at 9-12. Cable systems landing in the State of Hawaii and their capacity for competitive communications are described in further detail in Declaration of Daniel Masutomi, ¶¶ 3-7, Attachment 2 ("Masutomi Declaration").

[30] OPT Comments at 9. Notwithstanding OPT's assertions, it is irrelevant that the Paniolo cable is operated on a non-common carrier basis. The FCC has recognized that the availability of common carrier and non-common carrier capacity promotes competition that benefits customers and carriers alike. *Cable & Wireless, PLC Application for a License to Land and Operate in the United States a Private Submarine Fiber Optic Cable Extending Between the United States and the United Kingdom*, Cable Landing License, 12 FCC Rcd 8516, ¶ 16 (1997). Indeed, Commission competitive analysis of undersea cable systems ignores the regulatory status of competing cable systems for purposes of its market analysis. *See, e.g., Level 3/Global Crossing Order*, ¶ 33 n.105.

[31] OPT Comments at 9 n.32.

[32] Masutomi Declaration, ¶ 3.

[33] *Sandwich Isles Communications, Inc., Petition for Declaratory Ruling,* WC Docket No. 09-133, 25 FCC Rcd 13647, ¶ 9 n.30 (Com. Car. Bur., 2009). Moreover, Paniolo has publicly announced that capacity on its system is virtually unlimited as currently configured. Testimony of Albert S.N. Hee to The House of Representatives Committee on Finance on February 23, 2012, HB 2267, HD 1 Relating to the Issuance of Special Purpose Revenue Bonds to assist ClearCom, Inc., in the Development of Broadband Infrastructure in Hawaii at 1-2 (delivered Feb. 23, 2012) (Attachment 3).

nothing prevents it from doing so, including filing for whatever regulatory authorizations are required to provide the desired capacity.[34]

Southern Cross Cable Network ("SCCN"), a large international cable owner with a major system operating in the trans-Pacific region, also has interisland capacity between the islands of Hawaii and Oahu that is used for interisland communications, international telecommunications, and non-communications services such as Internet access services.[35] OPT argues that SCCN facilities are not competing for backhaul services in the State of Hawaii.[36] However, OPT admits that it could obtain backhaul from SCCN's landing station through an unaffiliated backhaul provider, and it states that SCCN identified four potential backhaul providers in the State of Hawaii in addition to either HTI or Wavecom.[37] Furthermore, SCCN itself has announced that it is expanding capacity in the State of Hawaii that will support international traffic.[38] Moreover, if OPT or another carrier were interested in obtaining capacity on the SCCN system, such carriers could themselves seek carrier status from the Hawaii Public Utilities Commission to use the cable system for transport services, including associated backhaul services.

OPT also never indicates whether it has attempted to obtain services or capacity from tw telecom, which owns the HiFN sheath and 50 percent of the fiber strands for all the segments

---

[34] Such authorizations could theoretically be obtained in a matter of months.

[35] Wavecom leases less than five percent of the capacity on this segment. Domestic 214 Application, Exhibit 1 at 10 & n.11.

[36] OPT Comments at 8.

[37] *Id.* at 9 n.29 (*see* http://www.southerncrosscables.com/public/Backhaul/default.cfm?PageID=88, identifying Hawaii Pacific Teleport, IP Access International, tw telecom, and Mabuhay as backhaul providers in addition to HTI and Wavecom).

[38] Southern Cross Capacity Up and Price Down – Again (Jan. 15, 2012), reprinted at http://www.southerncrosscables.com/public/News/newsdetail.cfm?StoryID=188 (last viewed on Sept. 7, 2012).

except for the route between the islands of Lanai and Molokai, and whose ownership interest will continue after the proposed acquisition.[39] tw telecom provides carrier services that are available for international transport and associated backhaul. Although OPT discounts the usefulness of tw telecom's capacity because it is on the same cable as HiFN,[40] the existence of its independent system would nonetheless constrain prices and access policies that provide competition in the area sought by OPT.

Accordingly, post-transaction, there will be four separate owners of undersea cable systems within the State of Hawaii, every one of which operates on the route between the islands of Hawaii and Oahu. What is more, even if there were currently capacity constraints on these systems – which does not appear to be the case – each of these cable systems is operating at only a fraction of its potential capacity. Dramatically expanded capacity in any of these cable systems can be brought on line quickly and economically by installing upgraded optical equipment as demand dictates. HTI believes that, if any one of the competing interisland networks upgraded to the maximum design capacity, that carrier could carry many times the existing traffic volumes for the entire State of Hawaii.[41] HTI is not aware of any current limitations or constraints on interisland capacity that would prevent any of its competitors from rapidly moving to capture business, including through an upgrade in capacity, in the event of a hypothetical anticompetitive price increase post-closing. When the proper analysis of the available alternatives on the route between the islands of Hawaii and Oahu are considered, the combined entity will control only a

---

[39] Domestic 214 Application, Exhibit 1 at 9, n.9.

[40] OPT Comments at 7 n.26.

[41] Masutomi Declaration, ¶ 10.

small portion of the available capacity on that route, and have no ability to impose anticompetitive price increases or service reductions.[42]

Thus, under the FCC's established regional analysis of the international transport market, it is clear that Wavecom is a minor participant in this market in the trans-Pacific region and that there is no change in this market as a result of the transaction.[43] Further, even if one were to analyze separately the associated backhaul services on the route between the islands of Oahu and Hawaii, there is plainly no competitive harm because there will continue to be three other independent carriers that provide competition to the combined entity. Finally, there is no barrier to competitive entry to provide transport in the trans-Pacific region, as demonstrated by the fact that international cable capacity has been growing exponentially.[44] For these reasons, the combined entity does not pose a competitive threat in any relevant market that would justify placing conditions on the instant transaction.

B. Wavecom's Submarine Cable Capacity Is Not a Bottleneck Facility.

OPT's assertion that Wavecom's submarine cable is a bottleneck facility is simply not borne out by the facts.[45] FCC precedent is clear that a company will be found to be in control of a bottleneck facility only if it has sufficient market power to impede new entrants' access.[46] In making this determination, regulators evaluate whether pricing and access terms and conditions are constrained by competition if competitors are actually operating, as well as whether potential

---

[42] Therefore, OPT's claim that the combined entity will control 75 percent of the capacity on the route between the islands of Oahu and Hawaii is inaccurate. OPT Comments at 1-2.

[43] Indeed, the Commission has approved a transaction that would consolidate much larger market participants in the backbone and transport markets. *See, e.g., Level 3/Global Crossing Order*.

[44] *See* page 6, *supra*. *See also* Masutomi Declaration, ¶¶ 3-7 & Exhibit 1.

[45] OPT Comments at 12.

[46] *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, 85 FCC 2d 1, ¶ 59 (1980).

future competitive capacity will be brought on line relatively soon.[47] It is ridiculous to suggest that Wavecom, a minor provider of telecommunications capacity internationally in the trans-Pacific region, could be so critical that no alternatives are available to constrain its pricing and access. OPT's argument becomes even more suspect when OPT states it is pleased with its relationship to date with HTI, Wavecom's proposed merger partner here.[48]

Given the enormous expansion in available submarine cable choices and capacity, and the ability to use alternative technologies,[49] there is simply no economic basis to conclude that Wavecom's current fiber capacity is a bottleneck facility. Thus, the instant transaction does not justify the imposition of conditions sought by OPT.[50] It appears that OPT is simply trying to gain leverage to change its existing cable landing contract, a result not countenanced by Commission policies.[51]

---

[47] *Level3/General Crossing Order*, ¶ 31.

[48] OPT Comments at 12.

[49] Contrary to OPT's assertions, point-to-point microwave facilities, satellite services, and facilities-based terrestrial wireless services are abundantly available in Hawaii, which will serve as a competitive deterrent to any entity seeking to charge unreasonable prices for capacity on submarine cables. Although these alternative facilities have some limitations and have been used largely for voice services in the past, they have been moving toward higher broadband capacity. *See, e.g.*, Comments of ViaSat, Inc. and WildBlue Communications, Inc., WC Docket No. 10-90 at 1 (filed Jul. 12, 2010) (satellite broadband); Federal Communications Commission, Connecting America: The National Broadband Plan, GN Docket No. 09-51, at 22 (rel. Mar. 16, 2010) ("National Broadband Plan") (LTE broadband). The demand for wireless backhaul facilities throughout the nation, including in Hawaii, has increased competition for backhaul services that serve as a constraint on backhaul facility pricing. Letter from Kathleen Grillo, Verizon to Marlene H. Dortch, FCC, WC Docket No. 05-25 (dated Sept. 12, 2012); Masutomi Declaration, ¶ 11. While OPT argues that these technologies do not represent adequate alternatives for its use, the FCC has found such technologies to also be part of the transport market and thus to constitute adequate alternatives. *Level3/Global Crossing Order*, at ¶ 30 ("International traffic can be transmitted via submarine cable, satellite, or terrestrial links.").

[50] This is particularly true where, as here, OPT has not indicated that it was unable to obtain capacity from a provider other than Wavecom. Rather, OPT states only that, when it sought bids from providers, Wavecom did not offer prices that OPT found satisfactory. OPT Comments at 4.

[51] *See* Section III, *infra*.

C. Conditions Are Not Appropriate for a Transaction of Its Nature and Size.

The FCC has reviewed transactions in the past for their potential impact on the international transport market, in particular where undersea cable providers merged. Even when Level 3 purchased Global Crossing, a transaction much larger than the one at hand, the FCC approved the deal without conditions.[52] In that case, the combined entity had five international and one domestic-only undersea cable systems, with six other international cable systems operating in the Atlantic.[53] The instant transaction is on a much smaller scale, with only one international and one domestic cable system being combined, and there are 16 other international cable systems serving the trans-Pacific region.[54] Given the much smaller size of the instant transaction and the absence of competitive implications, the Commission should reject the request for conditions in accordance with its precedent.

III. OPT'S ALLEGATIONS REGARDING ITS DEALINGS WITH WAVECOM ARE WITHOUT MERIT AND IRRELEVANT TO CONSIDERATION OF THE INSTANT TRANSACTION.

OPT also requests that the FCC impose various other conditions on its grant of the Applications – all ostensibly related to addressing alleged conduct by Wavecom that, according to OPT, violates the Communications Act.[55] But it is well established that "merger review is limited to consideration of merger-specific effects."[56] OPT's allegations plainly do not qualify and thus must be disregarded. They are also unfounded.

---

[52] *Level 3/Global Crossing Order*, ¶ 33.

[53] *Id. See also Applications for the Assignment of License from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C. and the Transfer of Control of Interests in Alaska DigiTel, L.L.C. to General Communication, Inc.*, Mem. Opin. & Order, 21 FCC Rcd 14863, ¶ 104 (2006) ("*Denali/GCI Order*") (merger approved without competitive conditions when GCI controlled two out of three undersea cables between Alaska and domestic United States).

[54] *See* page 6, *supra.*

[55] OPT Comments at 12-13.

[56] *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee, Order*, 17 FCC

A. OPT's Allegations Concerning the Landing Party Agreement Are Unrelated to the Instant Transaction.

Precedent is clear that the Commission "will not impose conditions to remedy *pre-existing* harms or harms that are unrelated to the transaction."[57] Nor will it "single Applicants out for special treatment unwarranted by any likely adverse consequences of the transaction."[58] Further, as the Commission has recognized, adopting non-transaction-specific conditions "could distort competitive market conditions, resulting in favoring some providers over others unjustly and unreasonably."[59] As such, the Commission routinely rejects attempts to raise issues that are not specific to the transaction under review.[60]

Rcd 22633, ¶ 11 (2002). *See also Joint Applications of Global Crossing Ltd. and Citizens Communications Co. for Authority to Transfer Control of Corporations Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 20, 22, 63, 78, 90, and 101 of the Commission's Rules*, Mem. Opin. & Order, 16 FCC Rcd 8507, ¶ 10 (CCB, IB, CSB, WTB 2001) (rejecting suggested conditions because commenters "failed to show that the harms they allege are sufficiently merger-specific or come within the scope of harms [the Commission] consider[s] in dealing with license transfer applications").

[57] *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC; For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, Mem. Opin. & Order & Declaratory Ruling, 23 FCC Rcd 17444, ¶ 29 (2008) (emphasis added). *See also id.*, ¶¶ 188, 207; *Verizon/MCI Order*, ¶ 19 (to be a proper subject of consideration on review of a transaction, an alleged harm must directly "arise from the transaction"); *Adelphia Communications Corporation-Time Warner Cable Inc. Transfer*, Mem. Opin. & Order, 21 FCC Rcd 8203, ¶ 240 (2006) (noting that "commenters have other, more appropriate, avenues for obtaining relief regarding these non-transaction specific issues.").

[58] *General Motors Corporation and Hughes Electronics Corporation, Transferors and The News Corporation Limited, Transferee, for Authority to Transfer Control*, Mem. Opin. & Order, 19 FCC Rcd 473, ¶ 131 (2004).

[59] *Applications of AT&T Inc. & Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, Mem. Opin. & Order, 25 FCC Rcd 8704, ¶ 99 (2010).

[60] *See, e.g., Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation; For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases & Petitions for Declaratory Ruling that the Transaction Is Consistent with Section 310(b)(4) of the Communications Act*, Mem. Opin. & Order & Declaratory Ruling, 23 FCC Rcd 12463, ¶ 128 (2008); *Verizon/MCI Order*, ¶ 55 & n.157.

OPT's allegations are just such non-transaction-specific allegations and must be rejected. As OPT's pleading makes clear, its concerns relate to a Landing Party Agreement between OPT and Wavecom entered into in 2008 as well as requests for proposals for additional connectivity arrangements in 2010 and 2011.[61] The Landing Party Agreement plainly pre-dates the proposed transaction, and the transaction will not impact that arrangement. OPT currently has rights under the Landing Party Agreement that will continue unaffected post-transaction. Similarly, the requests for proposals for additional connectivity arrangements about which OPT complains are wholly unrelated to the proposed transaction. The merger will have no effect on these past proposals, nor will it impact any future proposals OPT may pursue. OPT's allegations and request for conditions are thus patently not specific to the transaction and are outside the scope of this proceeding. Accordingly, Commission precedent and sound public policy require that they be rejected.

Further, OPT has existing remedies under the Landing Party Agreement in the event of any dispute,[62] the availability of which also will be unaffected by the transaction. Significantly, OPT has only recently sought to invoke the dispute resolution procedures in the Landing Party Agreement, sending Wavecom a letter on August 31, 2012 – a few days before filing its comments in this proceeding – requesting to escalate with Wavecom the same issues OPT raises here. This letter is the first time since the Landing Party Agreement was executed five years ago that OPT has raised any concerns with Wavecom about the manner in which Wavecom has performed its contractual obligations or otherwise provided services to OPT.[63] That OPT only raised the issues about which it is complaining after the parties requested regulatory approval of

---

[61] OPT Comments at 3-4.

[62] *See* Declaration of Jeremy Amen, ¶ 6-8, (Attachment 1) ("Amen Declaration").

[63] *Id.*, ¶ 3.

the proposed transaction strongly suggests that OPT is attempting to use this transaction as leverage to obtain a better deal than it otherwise is entitled to.

B. OPT's Allegations Concerning Wavecom's Implementation of the Landing Party Agreement Lack Merit.

In addition to being irrelevant to the FCC's consideration of the proposed transaction, OPT's allegations that Wavecom has violated the Communications Act in its dealings with OPT are without merit. As a competitive local exchange carrier ("CLEC"), Wavecom is not obligated to make available collocation, notwithstanding OPT's claims to the contrary.[64] Thus, OPT's assertion that Wavecom violated the Act in providing a service the Act does not legally require Wavecom to provide cannot withstand scrutiny. Furthermore, OPT's complaints that the rates quoted by Wavecom for collocation are "unreasonably high" and "discriminatory" ignores that these rates are comparable to those offered by other similarly situated providers in Hawaii.[65]

Finally, to the extent OPT is aggrieved by Wavecom's alleged violations of the Act, its recourse is to file a complaint under Section 208 of the Act. To date, OPT has not filed any informal or formal complaint with the Commission regarding any alleged violations of federal telecommunications law by Wavecom. Nonetheless, as the Commission has recognized previously, the Section 208 complaint process is the appropriate mechanism to resolve alleged violations of the Act, rather than conditions imposed in connection with unrelated transfer of control applications.[66]

---

[64] *See Bell Atlantic Tel. Cos. v. FCC,* 24 F.3d 1441, 1446-47 (D.C. Cir. 1994) (vacating order requiring LECs to make available physical and virtual collocation, finding that section 201 "does not expressly authorize" such an order); 47 U.S.C. § 251(c)(6) (requiring only incumbent LECs to make available collocation to requesting carriers).

[65] Amen Declaration, ¶ 4.

[66] *See, e.g., IT&E Overseas, Inc., Transferor, and PTI Pacifica Inc., Transferee*, Mem. Opin. & Order & Declaratory Ruling, 24 FCC Rcd 5466, ¶ 54 (2009) (declining to impose conditions on rates as part of merger order because "Petitioners can raise a claim that the rates for DS3 capacity are unjust and unreasonable through a section 208 complaint alleging a violation of

IV. THE FCC SHOULD REJECT DCA'S REQUEST THAT UNBUNDLING OBLIGATIONS BE IMPOSED ON THE RETAIL USE OF WAVECOM FACILITIES BECAUSE IT IS UNRELATED TO THE TRANSACTION AND UNWARRANTED.

Based solely on OPT's allegations described previously, the DCA argues that a condition should be placed on any approval of the transaction that would extend the unbundling and wholesale access obligations of Section 251(c) of the Communications Act to Wavecom facilities used by HTI to provide retail services.[67] DCA concludes that, to prevent "transferring specific assets" in an anti-competitive fashion, it would be

> appropriate for the Commission to conclude that, to the extent that Hawaiian Telcom employs any portion of Wavecom's telecommunications facilities to support Hawaiian Telcom's retail telecommunications service offerings, Hawaiian Telcom should be required to make capacity on all of Wavecom's telecommunications facilities available to competitors pursuant to the requirements of Section 251(c).[68]

The Commission should reject DCA's argument and decline to adopt the proposed condition.

As a threshold matter, Commission precedent does not support the proposition that an acquired CLEC should be forced to have ILEC statutory obligations when the acquired company was never previously regulated as an ILEC. The Commission has never imposed Section 251(c) obligations on an ILEC's purchase of a separate CLEC affiliate, even though these types of acquisitions are now commonplace in the industry.[69] There is no reason – and DCA offers none – for the Commission to adopt a different approach here.

---

section 201(b) of the Act."); *Denali/GCI Order,* ¶ 94 (declining to impose roaming conditions because "if a roaming partner believes that Alaska DigiTel is charging unreasonable roaming rates, it can file a complaint with the Commission under section 208 of the Communications Act.").

[67] DCA Comments at 5.

[68] *Id.*

[69] *See, e.g., Applications Granted for the Transfer of Control of Paetec Holding Corporation to Windstream Corporation,* Public Notice, 26 FCC Rcd 16078 (Wir. Comp. Bur. 2011); *Applications Granted for the Transfer of Control of Q-Comm Corporation to Windstream*

In addition to being unsupported by Commission precedent, the proposed condition is unnecessary and inappropriate for four additional reasons. First, the allegations concerning the Landing Party Agreement, which forms the basis of DCA's argument, are unrelated to the instant transaction and thus should be disregarded.[70] Second, existing common carrier obligations with respect to Wavecom's undersea cable should be sufficient to address any discrimination claim that arises.[71] Third, the *Ascent* case cited by DCA does not support its request.[72] That case involved the transfer of a regional Bell Operating Company's ("RBOC's") operations to a separate affiliate to market services to the same customers as the RBOC had previously served.[73] In this case, no regulatory evasion is attempted or intended. Rather Wavecom will continue to offer its current customers the same services using the same facilities. Wavecom facilities are not bottleneck facilities either at the carrier or retail level,[74] and have never been used to provide services subject to ILEC obligations. Therefore, the transaction will not result in an evasion of Section 251(c)'s requirements.[75] Finally, if existing law would impose Section 251(c) obligations on HTI's use of Wavecom facilities for HTI's retail services, there is no need to

---

Corporation, Public Notice, 25 FCC Rcd 16099 (Wir. Comp. Bur. 2010); *Application for Transfer of Control of Madison River Communications Corp. and Madison River Telephone Company, LLC to CenturyTel, Inc.*, Public Notice, 22 FCC Rcd 3584 (Wir. Comp. Bur. 2007).

70 *See* Section III *supra*.

71 The only apparent basis for DCA's opinion that Title II obligations are insufficient to address the Cable Landing Contract Party Agreement is that OPT has not previously raised the issue with Wavecom or filed a complaint to enforce its Title II claims. However, OPT's failure to seek redress does not support the conclusion that Title II is an insufficient to remedy any potentially discriminatory conduct, especially where, as here, OPT's claims are without merit. *See* Section III *supra*.

72 DCA Comments at 5.

73 *Association of Commn's Enterprises v. FCC*, 235 F.3d 662, 666-67 (D.C. Cir. 2001) ("*Ascent v. FCC*").

74 *See* Section II.B., *supra*.

75 If assets and operations are transferred to HTI, the ILEC, they will be subject to Section 251(c) obligations to the same extent that existing HTI facilities would be in accordance with existing law.

impose a condition that merely repeats existing law.[76] DCA's request for a condition is therefore inconsistent with FCC precedent and should be rejected.

V. CONCLUSION

No party disputes that the instant transaction will produce many benefits for consumers in the State of Hawaii, including putting Wavecom on a more substantial financial footing, achieving economies of scope and scale, and creating a more diverse network for the combined entity. It is also clear that the transaction will result in no competitive harm given the substantial competition for international transport in the trans-Pacific region as well as the four independent submarine cable systems operating in the State of Hawaii post-transaction. Moreover, there is no risk of competitive harm even in the narrower backhaul sub-segment of international transport services due to the availability of competitive alternatives and effectively unlimited capacity that deter competitive threats. OPT's specific allegations concerning the Landing Party Agreement with Wavecom are inaccurate, and should otherwise be disregarded because the issue is unrelated to the instant transaction and is outside the scope of this proceeding. Plainly, none of

[76] *See, e.g., Verizon Communications, Inc., Transferor, and América Móvil, S.A. De C. V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI)*, Mem. Opin. & Declaratory Ruling, 22 FCC Rcd 6195, at ¶ 25 (2007).

these allegations justify the imposition of conditions on the grant of the Applications. Accordingly, the FCC should promptly grant the Applications without conditions, in accordance with Commission precedent.

Respectfully submitted,

/s/ Nancy J. Victory

Nancy J. Victory
Wiley Rein LLP
1776 K Street, N.W.
Washington, DC 20036
(202) 719-7344
nvictory@wileyrein.com

Counsel for Wavecom Solutions Corporation

/s/ Gregory J. Vogt

Gregory J. Vogt
Law Offices of Gregory J. Vogt, PLLC
2121 Eisenhower Ave.
Suite 200
Alexandria, Virginia 22314
(703) 838-0115
gvogt@vogtlawfirm.com

Counsel for Hawaiian Telcom, Inc.

September 19, 2012

ATTACHMENT 1

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications Filed for the Transfer of Control of WaveCom Solutions Corp. to Hawaiian Telcom, Inc.	)	WC Docket No. 12-206
	)	
	)	
	)	
	)	

DECLARATION OF JEREMY AMEN

I, Jeremy Amen, hereby declare the following:

1. I am the Chief Executive Officer of Wavecom Solutions Corporation ("Wavecom"). In that position, I am responsible for all business, operational, and financial matters involving Wavecom. I have been in my current position for three years and have worked in the communications sector for more than a decade. I hold a Bachelor of Arts degree from Harvard University, a Juris Doctor degree from the University of Pennsylvania, and a Masters in Business Administration from the University of California Los Angeles. I am submitting this Declaration in response to the comments filed by L'Office des postes et télécommunications de Polynésie française ("OPT") in support of the applications seeking approval by the Federal Communications Commission ("Commission") for the transfer of control of Wavecom to Hawaiian Telcom, Inc. ("HT").

2. OPT and Wavecom are parties to a Landing Party Agreement that was executed in September 2008 ("Agreement") that provides OPT with access to Wavecom's Kawaihae Cable Landing Station and related facilities and services on the

Big Island. [redacted]

3. Even though the Agreement has been in place for more than four years, OPT only recently raised concerns about Wavecom's performance of its contractual obligations when the Acting General Manager of OPT sent me a letter dated August 31, 2012, a copy of which is attached to my Declaration as Exhibit 1. In this letter, OPT raised the same issues asserted by OPT in its comments filed in this proceeding. To my knowledge, OPT's August 31, 2012 letter – which was only sent after Wavecom and HT sought regulatory approval of their proposed transaction – is the first time that OPT has raised any concerns with Wavecom about the manner in which Wavecom has performed its contractual obligations or otherwise provided services to OPT.

4. OPT's comments focus on Wavecom's Kawaihae Cable Landing Station, on which Wavecom spent more than $4.0 million to retrofit specifically in order to accommodate OPT's facilities. Wavecom's Kawaihae Cable Landing Station was not constructed and is not operated to facilitate collocation by other carriers. Nonetheless, Wavecom has agreed to allow third parties to collocate at the Kawaihae Cable Landing

Station under rates, terms and conditions that are reasonable and are comparable to those offered by other similarly situated providers in Hawaii (i.e., carrier-operated cable landing stations). Specifically, the nonrecurring and recurring collocation charges quoted by Wavecom about which OPT complains are substantially similar to those quoted to Wavecom for collocation at a competitor's cable landing station in Oahu. Thus, there is no merit to OPT's claim that Wavecom's rates for collocation are "unreasonably high" or "discriminatory."

5. Equally without merit is OPT's allegation that Wavecom is "forc[ing] OPT to purchase connectivity from Wavecom" at "unreasonably high" rates. In addition to the IRU arrangements to which OPT voluntarily agreed in executing the Agreement, OPT also purchases dark fiber facilities from Wavecom that connect its Kawaihae Cable Landing Station to HT's cable landing station on the Big Island, which allows OPT to utilize a segment of the Southern Cross Cable Network to obtain Internet capacity from carriers in Los Angeles. The price charged by Wavecom for these dark fiber facilities provided to OPT are below market rates. In addition, in an effort to increase the volume of backhaul services it provides to OPT, Wavecom has offered OPT competitive rates for facilities from Wavecom's Bishop Street central office to the primary "carrier neutral" facility in Hawaii where OPT can obtain third-party collocation – offers that OPT has not accepted.

6. In the event OPT truly believes Wavecom has violated the Agreement, it must utilize the dispute resolution procedures to which the Parties agreed. [redacted]

7.

8.

To date, OPT has not filed any informal or formal complaint with the Commission regarding any alleged violations of federal telecommunications law by Wavecom, even though OPT now insists that the issues about which it is complaining "have remained unresolved for too long." Exhibit 1, at 3. In my opinion, OPT is attempting to use this transaction as leverage to obtain a better deal than it otherwise is entitled to under the 15-year Agreement it voluntarily signed.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Jeremy Amen

Dated: September 15, 2012

ATTACHMENT 2

Attachment 2

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
WAVECOM SOLUTIONS CORPORATION, Transferor,	)	
	)	
and	)	WC Docket No. 12-206
	)	
HAWAIIAN TELCOM, INC., Transferee	)	
	)	
Applications for Consent to Transfer Control.	)	

DECLARATION OF DANIEL MASUTOMI

I, Daniel Masutomi, hereby declare the following:

1. I am the Network Planning Director of Hawaiian Telcom, Inc ("HTI"). In that position, I am responsible for developing the short and long term network designs and capital investments involving HTI's network expansion and upgrade plans. I have been in my current position for three years and have worked in the Hawaii communications sector for over 25 years. During this tenure, I have actively been involved in the evolving Hawaii telecommunication network from electromechanical switching being replaced with digital switches, the placement of the first interisland fiber cable, and the growth of broadband services in Hawaii. Part of my responsibilities includes evaluating different backhaul alternatives available to HTI to meet our network needs. I hold a Bachelor of Science degree in Electrical Engineering from Santa Clara

University. I am submitting this Declaration in response to the comments filed by L'Office des postes et télécommunications de Polynésie française ("OPT") and the Hawaii Division of Consumer Advocacy ("DCCA") with respect to the applications seeking approval by the Federal Communications Commission ("Commission") for the transfer of control of Wavecom to HTI. Except where otherwise specifically indicated, the information in this declaration is based upon my personal knowledge, and I could testify to these facts if necessary.

2. The State of Hawaii is currently served by four independent interisland fiber-optic networks: (i) the Hawaiian Inter-Island Cable System or "HICS", owned and operated by HTI; (ii) the Hawaiian Island Fiber Network or "HIFN", jointly owned and operated by time warner telecom and Wavecom; (iii) the Paniolo Fiber-Optic Cable or "PFOC", owned and operated by Blue Ivory, LLC, and leased by Sandwich Isles Communications, Inc.; and (iv) the Southern Cross Cable Network or "SCCN", owned and operated by Southern Cross Cable.

3. HTI's HICS interisland and terrestrial network was substantially complete and operating as of 1994, and continues to operate to this day. HTI uses the HICS network to provide interisland transport of voice, video, and data services to customers and carriers in the State of Hawaii. The HICS network is made up of 12 fiber strands using Dense Wave Division Multiplexing ("DWDM") technology, and has a current capacity of 70 Gbps. Replacing the DWDM technology with newer packet optical platform electronics would increase the HICS network capacity to a maximum of 19,500 Gbps. *See* Exhibit 1. These newer electronics are much more cost-effective, and upgrading to a [redacted] is economically feasible where there is demand to

support it. HTI's [redacted] plans were already in motion starting in [redacted]. HTI's own broadband traffic grows approximately [redacted] each month which [redacted] our requirements every [redacted], and combined with the dramatic forecasted increase in [redacted], make these network changes inevitable.

4. The 24 fiber strands of the HIFN undersea cable system are owned and operated 50% by Wavecom and 50% by time warner telecom of Hawaii, LLC ("tw telecom"). tw telecom owns the cable sheath on this network. It was complete and operating as of 1997 and continues to operate to this day. Based on publicly available documents, the HIFN has a current capacity of approximately 80 Gbps: 10 Gbps on the Wavecom strands, and 70 Gbps on the tw telecom strands. I estimate that deploying all available strands and replacing the current HIFN technology with newer packet optical platform electronics would increase total network capacity to a maximum of approximately 48,000 Gbps, or 24,000 Gbps each for Wavecom and tw telecom. *See* Exhibit 1.

5. I am aware that the HIFN cable is used by Wavecom and tw telecom for the provision of voice, data and Internet access services to their customers in the State of Hawaii. In addition, Wavecom and tw telecom have each made capacity available on the HIFN cable to other companies, including HTI.

6. The SSCN undersea cable system is owned and operated by Southern Cross Cable. It was complete and operating as of 2000 and continues to operate to this day. Segment I of this network provides interisland transport services between the

islands of Oahu and Hawaii over 6 strands of fiber cable. Based on publicly available documents, Segment 1 has a current capacity of approximately 480 Gbps. This same public information identified plans for SCCN to increase this capacity to approximately 6,000 Gbps. This latest upgrade is their fifth major capacity upgrade since 2001 and began in October 2011 and will be complete by the end of 2012. *See also* Exhibit 1.

7. The Paniolo undersea cable system was substantially complete and operating as of 2010, and continues to operate to this day. Based on publicly available documents, the Paniolo cable is made up of 48 fiber strands using packet optical technology and has a installed capacity of approximately 70 Gbps. I estimate that deploying all available strands and replacing or maximizing the current technology with newer packet optical platform electronics would increase the Paniolo cable capacity to a maximum of approximately 96,000 Gbps. *See* Exhibit 1.

8. I am aware that the Paniolo cable is used by Sandwich Isles Communications, Inc., a local exchange carrier operating in the State of Hawaii, for the provision of voice, data, and Internet access services to its customers. In addition, Sandwich Isles or its affiliates have made capacity available on the cable for other companies, in particular carriers operating in the State of Hawaii.

9. HTI has leased capacity on the Paniolo system in 2012 in order to provide [redacted] that are carried on HTI existing facilities, including undersea cable facilities. Attached to this declaration is a copy of the executed contract for the leased capacity. [redacted]. *See* Exhibit 2.

10. Each of these undersea cable systems are operating at only a fraction of their potential capacity. Dramatically expanded capacity in any of these cable systems can be brought on line on an economic basis by installing additional optical equipment as demand dictates. HTI is not aware of any current limitations or constraints on interisland capacity that would prevent any of its competitors from rapidly moving to capture business using existing capacity in the event of a hypothetical attempt to impose an anticompetitive increase in price post-closing. Moreover, given current technology, the interisland fiber optic strands currently in place are capable of carrying literally thousands of times more capacity through the upgrade of equipment. This allows each interisland submarine cable owner (HTI, tw telecom, Wavecom, PFOC, and SCCN) the ability to efficiently and economically upgrade their networks, if necessary. If any one of the competing interisland networks upgraded to the maximum design capacity, that carrier could carry many times the existing traffic volumes for the entire State of Hawaii.

11. I am also aware that wireless carriers in the State of Hawaii have sought bids for backhaul facilities between their cell site towers and their switching centers as they undergo major network upgrades. HTI has responded to Request For Proposals ("RFPs") from [redacted] major wireless carriers covering over [redacted] cell sites throughout the State [redacted]. I am also aware that [redacted] whose bandwidth requirements are being carried on their or competing fiber networks both terrestrially and on the interisland fiber networks.

12. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Daniel Masutomi

Dated: September 19, 2012

EXHIBIT 1

Exhibit 1

Hawaiian Telcom, Inc. Estimate of the Potential Capacity of All Interisland Submarine Networks

Interisland Fiber Optic Network	Current Capacity (Gbps)	# of Fiber Strands	Max # of Systems supported (Protected)	Maximum Capacity (Gbps)	Percent of Maximum Capacity
HICS (HawaiianTelcom)	70	12	3	19,500	11.5%
Paniolo (Sandwich Isles Communications)	70	48	12	96,000	56.6%
HIFN Wavecom	10	12	3	24,000	14.2%
HIFN tw telecom	70	12	3	24,000	14.2%
Southern Cross Cable Network (SCCN)	480	6	3 (unprotected)	6,000	3.5%
TOTAL	700	90		169,500	100%

Assumptions:

- 4 fiber strands used per system (1 protected system)
- Upgrade capacity assumes 100G/channel
- Assumes 80 channels per system on HIFN, Paniolo, and SCCN
- Assume 65 channels per system on HICS
- Current capacity figures for Paniolo, HIFN, and SCCN are estimates based on public documents

EXHIBIT 2

Exhibit 2 **REDACTED FOR PUBLIC INSPECTION**

Sandwich Isles Communications, Inc.
A Waimana Company

Service Quotation

Customer Name: Hawaiian Telcom, Inc.

Quote Issue Date:	4/30/2012
Quote Expiration Date: [90 days]	7/30/2012

Service Address: _____

Billing Address: _____ Email: _____

Contact Person: _____ Contact Number: _____

[redacted]

Location	Address	Notes:
"A"	[redacted]	SIC CO
"Z"	[redacted]	SIC CO

Description	Term	Total MRC	Total NRC
[redacted]			

Sandwich Isles Communications, Inc.

Signature: [signature]

Print Name: Robert K.H. Kihune

Title: CEO

Date: 7/9/12

Customer: Hawaiian Telcom, Inc.

Signature: Daniel Masutomi

Print Name: DANIEL MASUTOMI

Title: DIRECTOR - NETWORK PLANNING

Date: 7/6/12

Quote Terms and Conditions:

[redacted]

Quotation Prepared by: Judi Ushio
Phone: 808-540-5780
Email: jushio@sandwichisles.com

Sandwich Isles Communications, Inc
1003 Bishop Street
Suite 2700
Honolulu, HI 96813
Phone: 808-524-8400

Sandwich Isles Communications, Inc.
A Waimana Company

SERVICE LEVEL AGREEMENT

1. [redacted]

2. [redacted]

3. [redacted]

4. [redacted]

5. [redacted]

6. [redacted]

7. [redacted]

Sandwich Isles Communications

Escalation List

[redacted]

ATTACHMENT 3

REDACTED FOR PUBLIC INSPECTION

ClearCom, Inc.
A WAIMANA COMPANY

1003 Bishop Street, Suite 2750
Honolulu, HI 96813
Ph: 808-599-4441 Fax: 808-599-4653

Testimony of Albert S.N. Hee to
The House of Representatives
Committee on Finance on
February 23, 2012

HB 2267, HD 1 Relating to the Issuance of Special Purpose Revenue Bonds to assist ClearCom, Inc., in the Development of Broadband Infrastructure in Hawaii

Chair Oshiro; Vice Chair Lee and members, thank you for the opportunity to appear before you today.

My name is Al Hee. I am President of ClearCom, Inc. We are in strong support of HB2267, HD 1, which would provide Special Purpose Revenue Bond funds to develop critical broadband infrastructure in Hawaii.

Established in 1997, ClearCom is a Competitive Local Exchange Carrier licensed to provide telecommunication and broadband services throughout the state of Hawaii. As a local, native Hawaiian company, ClearCom has access to its sister company, Sandwich Isles Communications', 348 miles of undersea and 138 miles of terrestrial fiber optic cable that connects and serves the islands of Kauai, Oahu, Molokai, Maui, and Hawaii. Installed in 2009, the pure silica fiber offers virtually

unlimited capacity to meet all bandwidth requirements now and into the future. ClearCom has operated in the islands for more than a decade, gaining valuable experience in utility operations and infrastructure installations. As the general contractor, ClearCom completed the largest undersea fiber optic project in the State, managing complex environmental and cultural challenges. ClearCom led a team of local, national and international companies to successfully complete the historic project under budget and ahead of schedule.

Furthermore, ClearCom has exclusive access to all abandoned water mains on Oahu. Development of buried fiber optic facilities utilizing ClearCom's abandoned water mains would help achieve the State's broadband goals quickly and economically. Compared to aerial cables, underground cables are protected from weather related risks, accidental damage, and are aesthetically pleasing, eliminating unsightly overhead wires. The use of abandoned water mains is a proven way to facilitate cost-efficient and rapid deployment of buried fiber optic infrastructure, while minimizing the unavoidable traffic impacts that plague traditional underground construction methods, especially in the urban core. Moreover, pursuant to Act 151, effective January 1, 2012, actions relating to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology, including the interconnection of telecommunications cables, shall be exempt from county permitting requirements, state permitting and approval requirements.

ClearCom embarked on this ambitious project by working collaboratively with Hawaii's other telecommunications carriers, namely, Hawaiian Telcom (HT), Oceanic Time Warner Cable, and TW Telecom. The idea was to come together as a consortium and build shared infrastructure that would bring much needed

capacity into Honolulu's urban core. The project would have been an underground fiber optic loop from Pearl Harbor to Waikiki and back. Building this network as a consortium would have meant cost savings for each carrier, resulting in cost savings for consumers. All parties agreed it was a worthwhile project to pursue, however, due to corporate restrictions the other carriers, were unable to commit at this time. Meanwhile, HT and Oceanic remains interested in redirecting some funds for an aerial fiber optic segment between Volcano and Pahala on the Big Island of Hawaii. ClearCom decided to move forward and remains open to working with the other carriers, at any time. To ensure the network would be financially viable, after the other carriers bowed out, ClearCom changed the scope of the project to ensure Honolulu's business district; military installations; medical facilities; federal, state, and county government offices; and schools could benefit from the broadband network. Our revised route takes state-of-the-art fiber optic infrastructure past Pearl Harbor, Schofield Barracks, Fort Shafter, Camp Smith, Wheeler, Kaneohe Marine Corps Air Station, National Guard and state civil defense facilities, as well as more than 60 schools, and right through the heart of downtown Honolulu.

The approval of this legislation will allow ClearCom adequate time to fulfill all the requirements necessary prior to issuance of the bond and secure sufficient commitments to make this broadband infrastructure a reality. I believe that this broadband project will enable access to affordable ultra high-speed Internet which is essential to build a vibrant and sustainable economy and workforce in Hawaii and improve the quality of life for residents. I urge your support of this bill.

At this time, I would be happy to answer any questions the Committee may have.

REDACTED FOR PUBLIC INSPECTION

CONTROLPOINT
Surveying, Inc.

February 21, 2012

Before the House of Representatives
Committee on Finance

Subject: Testimony in Support of HB 2267 HD1 (HSCR279-12)
Relating to the Issuance of Special Purpose Revenue Bonds to Assist Clearcom, Inc. in the Development of Broadband Infrastructure in Hawaii

Hearing: Feb 23, 2012, 12:00 pm, Conference Room 308

Dear Representatives:

I am Ed Yeh, owner of ControlPoint Surveying, Inc. I wish to testify in support for H.B. 2267, Relating to the Issuance of Special Purpose Revenue Bonds to Assist Clearcom, Inc. in the Development of Broadband Infrastructure in Hawaii.

Clearcom is an affiliate of Sandwich Isles Communications. ControlPoint Surveying, Inc. provides land surveying services for Sandwich Isles Communications ("SIC") and we know first-hand that SIC's state-of-the-art all-fiber optic infrastructure is the best in the state. SIC is equipped and staffed to successfully build out telecomm infrastructure to provide modern and reliable services. If the HB 2267 is passed, a project like this would have a big job impact on ControlPoint Surveying, Inc. and the industry.

We respectfully request that you consider and approve HB 2267. Thank you for letting me submit my testimony in favor of HB 2267.

Thank you for your time.

Very truly yours,

Yue-Hong "Ed" Yeh
PRESIDENT
Tel: 808.591.2022, Ext 110

P:\Admin\Campaign Contribution\HB 2267 Clear Com.doc

Oahu: 1150 South King Street, Suite 1200
Honolulu, Hawaii 96814
Ph. (808) 591-2022 / Fax (808) 591-8333

Maui: 1129 Lower Main Street, Suite 102
Wailuku, Maui, Hawaii 96793
Ph. (808) 242-9641 / Fax (808) 244-9220

Aloha,

My name is Ed Pukini and I am the Area Manager of Mid-State Consultants, Inc. I am writing to express my support of HB 2267.

For the past 13 years, Mid-State Consultants, Inc. has been actively involved with innovative infrastructure projects for Sandwich Isles Communications, Inc. and its affiliate Clearcom Inc., in which they have designed, engineered and built more than 100 miles of broadband infrastructure. We have provided both engineering support as well as construction management of their projects which included telecommunications equipment installations on every major island and fiber optic network installations on both land and sea. We were also involved in the design and use of abandoned water mains for fiber optic network installations. This resulted in significant construction cost savings and minimized impact to daily traffic.

Mid-State Consultants, Inc. firmly believes that HB 2267 will help increase the amount of jobs in engineering as well as construction industries. And it will help create a more robust statewide broadband network capable of improving and extending services such as high speed data, cell phone service, IPTV service and cellular backhaul. Mid-State Consultants, Inc. is proud to serve Hawaii through Clearcom, Inc.'s and its continued expansion of their broadband network.

For these reasons, Mid-State Consultants, Inc. supports HB 2267.Thank you very much for your time, and please feel to contact me at 808-585-6188 or via e-mail at epukini@mscon.com.

Mahalo,

Ed Pukini
Area Manager
Mid State Consultants, Inc.
1003 Bishop St., Suite 750
Honolulu, HI 96813

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 22, 2012 11:19 AM
To: FINTestimony
Cc: soor001@hawaii.rr.com
Subject: Testimony for HB2267 on 2/23/2012 12:00:00 PM

Testimony for FIN 2/23/2012 12:00:00 PM HB2267

Conference room: 308
Testifier position: Support
Testifier will be present: No
Submitted by: Richard Soo
Organization: Kalawahine Streamside Association
E-mail: soor001@hawaii.rr.com
Submitted on: 2/22/2012

Comments:

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 22, 2012 3:33 PM
To: FINTestimony
Cc: punikekauoha@gmail.com
Subject: Testimony for HB2267 on 2/23/2012 12:00:00 PM

Testimony for FIN 2/23/2012 12:00:00 PM HB2267

Conference room: 308
Testifier position: Support
Testifier will be present: No
Submitted by: Puni Kekauoha
Organization: Individual
E-mail: punikekauoha@gmail.com
Submitted on: 2/22/2012

Comments:

REDACTED FOR PUBLIC INSPECTION

HB 2267 HD1

RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS TOASSIST CLEARCOM, INC.

KEN HIRAKI
VICE PRESIDENT-GOVERNMENT AND COMMUNITY AFFAIRS

HAWAIIAN TELCOM

February 23, 2012
Agenda #3

Chair Oshiro and members of the House Finance Committee:

I am Ken Hiraki, providing comments on behalf of Hawaiian Telcom on HB 2267 HD1, Relating to the Issuance of Special Purpose Revenue Bonds to Assist Clearcom, Inc. in the Development of Broadband Infrastructure in Hawaii.

While we support the overall objective of improving Hawaii's broadband infrastructure, we are unable to provide detailed comments at this time because the bill's language is vague and does not disclose specific material information that should be made public such as the location, cost and the type of broadband projects envisioned by Clearcom, Inc. As currently drafted, this bill provides a virtual "blank check" to Clearcom, Inc. without a showing of a clear public benefit.

If it is the intent of this measure is to merely fund duplicative broadband improvements in urban areas that are already more than adequately served by multiple service providers then we would question whether there is a need for governmental support for such a project. Conversely, if the intent of this bill is to provide improved broadband services to areas currently underserved (especially on the neighbor islands) then we would agree there exists a greater public purpose and greater need for governmental support. Unless additional information is provided, our company cannot make a determination whether or not to support this measure at this time so we will limit our testimony except to alert the committee of the noted "red flags".

Thank you for the opportunity to provide some comments.