

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

Applications Filed for the Transfer of
Control of Wavecom Solutions Corp.
to Hawaiian Telcom, Inc.

WC Docket No. 12-206

COMMENTS IN SUPPORT OF CONDITIONAL APPROVAL

L'Office des postes et télécommunications de Polynésie française ("OPT") supports a grant of Commission consent to the acquisition by Hawaiian Telcom, Inc. ("HT") of Wavecom Solutions Corporation ("Wavecom") (the "Proposed Transaction"), subject to a condition that would preclude Wavecom from engaging in further discriminatory and anticompetitive behavior of the sort suffered to date by OPT. OPT's Honotua Cable System lands at Wavecom's Kawaihae cable station on the Big Island of Hawaii. Since 2010, Wavecom has engaged in a series of discriminatory and anticompetitive actions that have impaired OPT's operation of its Honotua Cable System by preventing OPT from obtaining competitive backhaul and interconnection arrangements. Wavecom has leveraged its cable station as a bottleneck facility in order to favor Wavecom's own backhaul services on the Big Island-Oahu route in violation of its obligations under Sections 201, 202, and 251 of the Communications Act of 1934, as amended (the "Act"). The combined HT-Wavecom would have an economic incentive to continue such actions, as consummation of the Proposed Transaction would give HT considerable market power in the inter-island connectivity and backhaul market, with control of

75 percent of available fiber capacity on the Big Island-Oahu route. The Commission has often conditioned transaction approvals on compliance with competitive safeguards, and OPT requests that the Commission impose such a remedy here.

I. BACKGROUND ON OPT’S HAWAII LANDING ARRANGEMENTS WITH WAVECOM

OPT owns and operates the Honotua Cable System, the international segment of which connects Tahiti to Hawaii.¹ Before Honotua entered into commercial service in 2010, French Polynesia relied entirely on satellites for international connectivity.² Since that time, French Polynesia has come to depend critically on Honotua for high-speed Internet connectivity, high-quality voice and data communications, transmission of television programming, telemedicine, and a host of economic activities.³ Through its operating divisions and subsidiaries, OPT French Polynesia is the incumbent provider of fixed and mobile telecommunications, Internet access, video programming, and postal services in French Polynesia and is wholly owned by the French Polynesia Government. Although government-owned, OPT is financially autonomous from the French Polynesia Government. Its telecommunications activities are subject to regulation by the Digital Regulatory Agency (Agence de Réglementation Numérique (“ARN”)).⁴

¹ *Actions Taken Under the Cable Landing License Act*, Public Notice, File No. SCL-LIC-20081008-00017, 25 FCC Rcd. 17,049 (Int’l Bur. 2010) (granting a cable landing license for the Honotua Cable System) (“*Honotua Cable Landing License*”); *International Authorizations Granted*, Public Notice, File No. ITC-214-20081008-00453, 25 FCC Rcd. 17,052 (Int’l Bur. 2010) (granting an international Section 214 authorization for the Honotua Cable System) (“*Honotua 214*”).

² Declaration of Patrick Ellacott at ¶ 3 (“Ellacott Decl.”).

³ *Id.* ¶ 3.

⁴ Until September 2011, ARN’s functions were handled by a predecessor agency, the Service de postes et télécommunications (“SPT”).

In Hawaii, Honotua lands at Spencer Beach and a cable station at Kawaihae owned by Wavecom (“Wavecom Kawaihae Cable Station”), a facility licensed by the Commission on a common-carrier basis as part of the Hawaii-Fiber Network (“HIFN”).⁵ Honotua interconnects in Hawaii with other providers for onward connectivity and Internet backbone connectivity.⁶ The legal relationship between OPT and Wavecom is governed by a 2008 Landing Party Agreement (“LPA”), later amended in 2009.⁷

Pursuant to the LPA, OPT retains operational authority over Honotua system facilities and provides direction to Wavecom in matters relating to Honotua.⁸ Wavecom provides certain services that do not affect the operations of the system. OPT maintains certain Honotua terminal equipment in physical collocation space in the Wavecom Kawaihae Cable Station.⁹ Wavecom’s obligations as a common carrier under Section 214 of the Act, and the Commission’s specific regulation of HIFN (and Wavecom’s interest therein) as a common-carrier facility,¹⁰ obligate

⁵ *Honotua Cable Landing License*, 25 FCC Rcd. at 17,049; *GST Pacwest Telecom Hawaii, Inc.*, Cable Landing License, File No. 95-003 (New File No. SCL-LIC-19950627-00024), 11 FCC Rcd. 3024 (Int’l Bur. 1996) (“*HIFN Cable Landing License*”).

⁶ Ellacott Decl. at ¶ 6.

⁷ *Id.* ¶ 4; Landing Party Agreement Between OPT and Pacific LightNet, Inc. (Sept. 5, 2008), as amended by Amendment No. 1 to the Landing Party Agreement between Office des Postes et Télécommunications de Polynésie française and Pacific LightNet, Inc., Cl. 3 (Sept. 16, 2009) (together, “Landing Party Agreement” or “LPA”). Pacific LightNet, Inc. began doing business as Wavecom in 2009 and legally changed its name in 2011. *Pacific Lightnet Changes Its Name to Wavecom Solutions*, Press Release (Jan. 14, 2011), www.wavecomsolutions.com/index.php/news/54-2011-01-14-wavecom-solutions-new-name.

⁸ See OPT Consolidated Amendments to Applications for a Cable Landing License and International Section 214 Authority, File Nos. SCL-LIC-20081008-00017 and ITC-214-20081008-00453, at 12 (filed May 18, 2009).

⁹ *Id.*

¹⁰ See *HIFN Cable Landing License*, 11 FCC Rcd. at 3024 ¶ 1, 3024-25 ¶ 7.

Wavecom generally to offer OPT reasonable and non-discriminatory access to its services, including backhaul and interconnection.

In an effort to increase connection diversity and achieve better pricing for onward connectivity, OPT has twice sought bids for connectivity between the Wavecom Kawaihae Cable Station and Oahu, so as to allow OPT to deliver traffic from Honotua throughout Hawaii and beyond.¹¹ As described below, however, Wavecom has acted unreasonably and discriminatorily to frustrate OPT's efforts and to ensure that such services will be procured at a premium from Wavecom or at a premium via Wavecom.¹²

II. WAVECOM'S CONDUCT TOWARDS OPT HAS VIOLATED TITLE II OF THE COMMUNICATIONS ACT

Section 201(b) of the Act provides that “[a]ll charges, practices, classifications, and regulations” by common carriers engaged in interstate or foreign communication “shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.”¹³ Section 202 of the Act provides that “[i]t shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services.”¹⁴ Section 251 of the Act provides that telecommunications carriers have a “duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.”¹⁵

¹¹ Ellacott Decl. at ¶ 7.

¹² Declaration of Steve Brock at ¶¶ 6-9 (“Brock Decl.”); Ellacott Decl. at ¶ 9-12.

¹³ 47 U.S.C. § 201(b).

¹⁴ *Id.* § 202(a).

¹⁵ *Id.* § 251(a).

Wavecom has consistently acted to frustrate OPT’s solicitation of contracts with third parties for onward connectivity from Kawaihae.¹⁶ In particular, Wavecom, which itself submitted bids to provide such connectivity, has taken the position that any party connecting to Honotua must also purchase physical collocation from Wavecom, and that parties must do so even if Wavecom were to provide the cross-connect between OPT and the connecting party.¹⁷ This demand alone could make backhaul and interconnection economically infeasible. But Wavecom also has told connecting parties that its charge for physical collocation is approximately \$125,000, with an additional monthly recurring charge of \$28,000, and that it would take approximately 42 weeks to deliver service.¹⁸ In what appears to be an effort to keep OPT—or regulators—from learning of its anticompetitive conduct, Wavecom also told third-party bidders that it would sue them if they were to disclose the prices Wavecom quoted.¹⁹ In May 2011, Wavecom refused to disclose to OPT the price list and terms it had proposed to potential third-party bidders, contending that this constituted “proprietary” information,²⁰ notwithstanding the fact that it holds itself out as, and is regulated as, a common carrier.

Wavecom’s actions—charging unreasonably high, discriminatory rates in an effort to preclude OPT from contracting with third parties and to force OPT to purchase connectivity from Wavecom, as well as imposing an unreasonably lengthy service delivery date—violate its core common carrier obligations under Sections 201, 202, and 251 of the Act and the conditions of its cable landing license. Based on Wavecom’s past pattern of behavior, OPT therefore has

¹⁶ Brock Decl. at ¶¶ 6-9; Ellacott Decl. at ¶¶ 7-12.

¹⁷ Brock Decl. at ¶¶ 6, 8.

¹⁸ *Id.* ¶ 6.

¹⁹ *Id.* ¶ 7.

²⁰ *Id.* ¶ 7; Ellacott Decl. at ¶ 10.

substantial reason to be concerned that such conduct will continue unless the Commission conditions its consent for the Proposed Transaction by imposing competitive safeguards.

III. CONSUMMATION OF THE PROPOSED TRANSACTION WOULD INCREASE THE MARKET POWER OF THE COMBINED HT-WAVECOM

Consummation of the Proposed Transaction would, necessarily, 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. Although HT and Wavecom assert that there are currently five competing providers using four undersea cable systems, only three providers/systems offer economic substitutes for each other's interisland backhaul services. The Proposed Transaction would reduce that number of substitute providers/systems to two, with the post-transaction HT controlling three-fourths of the available capacity on the Big Island-Oahu route.

HT provides inter-island connectivity on its Hawaii Inter-Island Cable System ("HICS"), which connects the islands of Kauai, Maui, Oahu, and Hawaii, and is operated on a common carrier basis.²¹ According to available public records, HICS has a capacity of 2.5 Gbps.²² On the Big Island, HICS also lands at Spencer Beach and terminates at HT's own cable station in Kawaihae.

²¹ See *GTE Hawaiian Telephone Co.*, Cable Landing License, File No. SCL-93-003 (New File No. SCL-LIC-19921015-00008), 8 FCC Rcd. 7605, 7605-06 ¶ 6 (Com. Car. Bur. 1993); *Actions Taken Under the Cable Landing License Act*, Public Notice, File Nos. SCL-ASG-20110112-00002 and -00003, 26 FCC Rcd. 4923 (Int'l Bur. 2011) (consenting retroactively to the assignment of the HICS cable landing license from GTE Hawaiian Telephone Co. to Hawaiian Telcom, Inc., and consenting to the transfer of control of the HICS cable landing license from the Carlyle Group entities to new shareholders of HT's parent).

²² See *Cable Data, Eastern Pacific Region*, International Cable Protection Committee, www.iscpc.org/cabledb/Eastern_Pacific_Cable_db.htm (last updated Nov. 12, 2009).

Wavecom and tw telecom jointly own and operate HIFN, formerly known as the GST Interisland Cable, a system providing connectivity among six of the Hawaiian Islands.²³ According to available public records, HIFN has capacity of 2.5 Gbps, essentially split evenly between Wavecom and tw telecom.²⁴ HIFN, like HICS, is licensed to operate on a common carrier basis.²⁵ Although HIFN is a jointly-owned system, Wavecom and tw telecom largely operate the portions they own as independent networks.²⁶ HIFN lands on the island of Hawaii at

²³ See *HIFN Cable Landing License*, 11 FCC Rcd. at 3024; *GST Telecom Hawaii, Inc. and Time Warner Telecom of Hawaii, L.P.*, Modification of Cable Landing License, File No. SCL-MOD-20001025-00036, 16 FCC Rcd. 869 (Int'l Bur. 2001) (modifying the submarine cable landing license to add Time Warner Telecom of Hawaii, L.P. as joint licensee); *Actions Taken Under the Cable Landing License Act*, Public Notice, File No. SCL-T/C-20080219-00002, 23 FCC Rcd. 5775, 5776 (Int'l Bur. 2008) (granting consent to transfer control of Pacific Lightnet, Inc.'s interest in the GST Interisland Cable System to SK Telecom Holdings, L.P.). tw telecom owns the sheath and 50 percent of the fibers within the sheath for all of the segments except for the segments to Lanai and Molokai. Wavecom owns the remaining 50 percent of the fibers within the interisland segments other than to Lanai and Molokai. Wavecom owns the sheath and 100 percent of the fibers for the Lanai and Molokai interisland segments. See Application of Hawaiian Telecom, Inc. and Wavecom Solutions Corp., File No. SCL-T/C-2012-0716-00009, WC Docket No. 12-206, Exh. 2 at 10 (filed July 16, 2012) ("Wavecom-HT SCL Transfer Application").

²⁴ See International Cable Protection Committee, Cable Data, Eastern Pacific Region, www.iscpc.org/cabledb/Eastern_Pacific_Cable_db.htm; Wavecom-HT SCL Transfer Application, Exh. 2 at 10 (noting joint ownership of HIFN).

²⁵ *HIFN Cable Landing License*, 11 FCC Rcd. at 3024-25 ¶ 7 (granting license for proposed submarine cable system on a common carrier basis and noting "that the service provided on a common carrier basis is limited to domestic service"). Unlike other submarine cable systems that have been expressly authorized to provide international services, the HIFN system has been authorized to provide domestic services only and therefore is covered by the blanket domestic 214 authorization. See 47 C.F.R. § 63.07(a) (1996) (granting blanket Section 214 authority to nondominant domestic interstate common carriers for the provision of domestic, interstate services and construction, acquisition, and operation of transmission lines); 47 C.F.R. § 63.01 (1999) (extending blanket Section 214 authority to all domestic interstate common carriers).

²⁶ While Wavecom and tw telecom compete with each other in many respects on the Big Island-Oahu route, the fact they share a common facility means that they do not compete on facility/route diversity. When the cable is damaged, both operators' services are impaired. See Gene Park and Gregg Kakesako, *Severed deep-sea cable disrupts service*,

the Wavecom Cable Station at Spencer Beach, Kawaihae. Honotua also lands at Spencer Beach at the Wavecom Kawaihae Cable Station. The Wavecom and HT Kawaihae Cable Stations are situated in very close proximity to one another at Spencer Beach in Kawaihae.

Although Segment I of the Southern Cross Cable Network (“SCCN”)—which connects Australia, New Zealand, Fiji, Hawaii, Oregon, and California—connects the Big Island (Spencer Beach/Kawaihae) and Oahu (Kahe Point),²⁷ it does not really compete in the interisland backhaul market. Based on a declaratory ruling issued by the Hawaii Public Utilities Commission (“PUC”), Pacific Carriage Limited (“PCL”)—the licensee for SCCN facilities in Hawaii—is authorized to provide capacity on Segment I so long as the customer holds its own intrastate authority; has filed its own intrastate tariff; and makes its own arrangements to access, pick up, and deliver traffic at Kawaihae and Spencer Beach.²⁸ Prospective customers must either establish their own operations and authorizations or contract with another third-party provider to make use of Segment I. Intra-Hawaii capacity services are not a regular part of SCCN’s service offerings, as evidenced by Southern Cross sales and marketing materials, which direct potential

HONOLULU STAR ADVERTISER (Jul. 28, 2010), www.staradvertiser.com/news/20100728_Severed_deep-sea_cable_disrupts_service.html?id=99449454.

²⁷ See *MFS International, Inc.*, Memorandum Opinion, Order and Authorization, File No. ITC-97-622 (New File No. ITC-214-19971014-00621), 13 FCC Rcd. 2939 (Int’l Bur. 1998); *MFS International, Inc.*, Cable Landing License, File No. SCL-97-005 (New File No. SCL-LIC-19971014-00009), 13 FCC Rcd. 2932 (Int’l Bur. 1997); Wavecom-HT SCL Transfer Application, Exh. 2 at 10 (asserting that the SCCN “has interisland capacity between Hawaii and Oahu”).

²⁸ See Hawaii Public Utilities Commission of the State of Hawaii, Docket No. 04-0172, Decision and Order No. 21405, at 8-12 (filed Oct. 7, 2004) (finding that PCL’s provision of such capacity would not render PCL a public utility under Hawaii law).

customers to third-party backhaul providers in Hawaii for this purpose.²⁹ Consequently, SCCN Segment I is not a substitute for HICS or HIFN capacity on the Big Island-Oahu route.

A fourth system, the Paniolo Fiber-Optic Cable (“PFOC”) system, does not appear to compete much, if at all, with HICS and HIFN. The FCC has licensed PFOC to provide inter-island connectivity on a non-common-carrier basis.³⁰ Though HT and Wavecom cite competition from PFOC as grounds for the Commission to find the interisland transport market competitive,³¹ it remains unclear whether the sole lessee of the PFOC system even re-sells capacity to third parties as a regular part of its business.³² Moreover, unlike HICS and HIFN, PFOC’s connectivity between the Big Island and Oahu includes transit of terrestrial facilities

²⁹ *Backhaul: Hawaii*, Southern Cross Cable Network, www.southerncrosscables.com/public/Backhaul/default.cfm?PageID=88 (listing 6 cable and satellite backhaul providers serving Hawaii, including HT and Wavecom, but not including Southern Cross itself).

³⁰ *Actions Taken Under the Cable Landing License Act*, Public Notice, File No. SCL-LIC-20070223-00003, 22 FCC Rcd. 13,169 (Int’l Bur. 2007). According to its application for a cable landing license, PFOC would provide 2.5 Gigabit/second capacity. Paniolo Cable, Inc. Application for License to Land and Operate a High Capacity Fiber Optic Cable System Extending Among the Hawaiian Islands of Kauai, Oahu, Molokai, Maui and Hawaii, File No. SCL-LIC-20070223-00003, at 3 (filed Feb. 23, 2007) (“Paniolo SCL Application”).

³¹ See Wavecom-HT SCL Transfer Application, Exh. 2 at 10 (asserting that “Paniolo Cable (PFOC-Paniolo Fiber-Optic Cable) owns and operates an undersea submarine cable system among five of the Hawaiian Islands that is available for other communications providers to use to provide services.”).

³² See also Paniolo SCL Application at 6-9 (stating that Sandwich Isles Communications, Inc. (“SIC”) will lease all PFOC capacity). A review of public information and marketing materials available from SIC and its affiliates (the interrelationships of which remain disputed--see WC Docket Nos. 10-90 and 10-208) and the Hawaii Public Utilities Commission (including tariff filings) makes no mention of wholesale capacity sales to unaffiliated third parties. See, e.g., Sandwich Isles Communications web site, www.sandwichisles.com. Tellingly, Southern Cross does not list PFOC as a backhaul option. See Southern Cross Cable Network, *Backhaul: Hawaii*, www.southerncrosscables.com/public/Backhaul/default.cfm?PageID=88. At most, SIC appears to have provided some emergency restoration services following damage to HIFN in 2010. See Letter from Dana Frix, Chadbourne & Parke LLP, Counsel for SIC, to FCC Secretary Marlene H. Dortch, WC Docket No. 09-133, at 2 (filed July 30, 2010).

between Makena and Lahaina on Maui, making it at best a poor alternative from the perspective of network performance.³³

The assertion by HT and Wavecom that they are constrained by competition from satellite, microwave, and facilities-based terrestrial wireless facilities³⁴ is simply not credible. *First*, such facilities, where they exist, are imperfect substitutes for fiber connectivity, particularly with respect to interconnection and backhaul for an incoming international undersea cable system such as the Honotua Cable System.³⁵ *Second*, as HT and Wavecom admitted in responding to information requests of the Hawaii PUC's Consumer Advocate, there is only one such facility, and HT owns it:

[QUESTION] CA-IR 32(a): Besides submarine fiber optic network capacity, if not already provided elsewhere, such as in the response to CA-IR-8, please identify the existing and potential capacity of other alternatives for transporting telecommunications services between the islands (e.g., microwave, satellite, etc.). . . .

RESPONSE: Hawaiian Telcom also has an Interisland Microwave Network which serves as an alternative for transporting telecommunications services between the islands. ***Neither Hawaiian Telcom nor Wavecom is aware of any other alternatives for transporting telecommunications services between the islands.***³⁶

³³ See Paniolo SCL Application at Figure S-1.

³⁴ See HT-Wavecom SCL Transfer Application, Exh. 2 at 11.

³⁵ See, e.g., *Submarine Cables and the Oceans – Connecting the World*, UNEP-WCMC Biodiversity Series No. 31 (UNEP-WCMC and ICPC, 2009) at 16, http://www.iscpc.org/publications/ICPC-UNEP_Report.pdf; *Connect America Fund; A Nat'l Broadband Plan for Our Future; Establishing Just & Reasonable Rates for Local Exch. Carriers; High-Cost Universal Serv. Support; Developing an Unified Intercarrier Comp. Regime; Fed.-State Joint Bd. on Universal Serv.; Lifeline & Link-Up; Universal Serv. Reform -- Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17,663, 17,699 ¶ 101 (2011) (noting that “satellite backhaul may limit the performance of broadband networks as compared to terrestrial backhaul”).

³⁶ Hawaiian Telcom, Inc. and Wavecom Solutions Corporation's Responses to the Division of Consumer Advocacy's Second Submission of Information Requests, Hawaii PUC Docket No. 2012-0174, Response to CA-IR 32(a) (filed Aug. 28, 2012) (emphasis added),

Upon consummation of the Proposed Transaction, HT would control 3.75 Gigabits of inter-island capacity, or 75 percent of the available fiber capacity on the Big Island-Oahu route. Including the imperfect alternative of the Interisland Microwave Network, the percentage of available capacity would be even higher.

IV. TO PROTECT THE PUBLIC INTEREST, THE COMMISSION SHOULD IMPOSE COMPETITIVE SAFEGUARDS

Even the existing competition on the Big Island-Oahu route matters little for OPT so long as Wavecom precludes OPT from contracting with providers other than Wavecom to take its traffic beyond Wavecom's cable station, to Oahu. As noted in part II above, Wavecom has sought to charge OPT and its potential suppliers a premium for doing so, in the event OPT were not to contract directly with Wavecom.

By itself, the imposition of common-carrier regulation on Wavecom and HIFN has failed to prevent the anticompetitive harms suffered by OPT. Consequently, OPT believes that the mere continuation of such regulation—as suggested by HT and Wavecom³⁷—would, absent other remedies and greater Commission oversight, fail to protect the public interest and that transaction-specific conditions are warranted, consistent with longstanding Commission practice.³⁸

http://dms.puc.hawaii.gov/dms/OpenDocServlet?RT=&document_id=91+3+ICM4+LSDB15+PC_DocketReport59+26+A1001001A12H29B13821C9981118+A12H29B13821C998111+14+1960.

³⁷ See Wavecom-HT SCL Transfer Application, Exh. 2 at 11 (stating that “because the [HT] and Wavecom cables are both common carrier cable systems, they are under a statutory duty to provide service to customers on reasonable request and at reasonable prices pursuant to 47 U.S.C. § 201(b), and are prohibited from engaging in unreasonable discrimination pursuant to 47 U.S.C. § 202(a).”).

³⁸ See, e.g., *Application of Cellco P'tnrshp d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent To Assign AWS-1 Licenses*, Memorandum Opinion and Order

OPT has no reason to believe that HT is aware of Wavecom's anticompetitive or discriminatory actions, much less condones them. In fact, OPT already has a productive working relationship with HT. Nevertheless, given that the Wavecom Kawaihae Cable Station functions as a bottleneck facility, a post-transaction HT could have an economic incentive to continue Wavecom's practices. This risk is particularly acute because the combined HT-Wavecom entity would have significantly greater market power in the market for inter-island connectivity. As a result, OPT would no longer have the option of building facilities to connect to other inter-island facilities (an option it has today), because the post-acquisition combined HT-Wavecom would have full or significant ownership interests in all such facilities.

OPT therefore requests that the Commission condition its consent for the Proposed Transaction as follows:

- (1) Wavecom must permit other telecommunications providers to:
 - (a) Use Wavecom's cross-connect links in the Wavecom Kawaihae Cable Station to connect their equipment to backhaul links and undersea cable capacity of any supplier of telecommunications, including OPT; and
 - (b) Collocate their transmission and routing equipment used for accessing submarine cable capacity and backhaul links at the Wavecom Kawaihae

and Declaratory Ruling, WT Docket No. 12-4, FCC 12-95 (rel. Aug. 23, 2012) (granting conditional approval to transfer of AWS-1 licenses from cable providers to Verizon Wireless); *Applications filed by Qwest Commc'ns Int'l Inc. and CenturyTel, Inc., d/b/a CenturyLink for Consent to Transfer Control*, Memorandum Order and Opinion, 26 FCC Rcd. 4194 (2011) (conditionally approving acquisition of Qwest by CenturyLink); *Applications for Consent to Transfer Control of SkyTerra Subsidiary, LLC*, Memorandum Opinion and Order and Declaratory Ruling, 24 FCC Rcd. 3059 (2010) (providing conditional approval to Harbinger acquisition of SkyTerra Subsidiary, LLC); *Application for Consent to the Transfer of Control of Licenses XM Satellite Radio Holdings, Inc. & Sirius Satellite Radio Inc.*, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd. 12,348 (2008) (granting conditional approval to merger of satellite radio services competitors).

Cable Station at terms, conditions, and cost-oriented rates that are reasonable and non-discriminatory; and

- (2) Wavecom must provide undersea submarine cable capacity, backhaul links, and cross-connect links in the Wavecom Kawaihae Cable Station at terms, conditions, and rates that are reasonable and non-discriminatory.³⁹

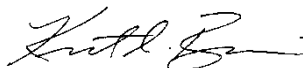
OPT believes these very targeted conditions would serve to safeguard against future violations of Wavecom's obligations under Sections 201, 202, and 251.

³⁹ The United States has agreed to similar safeguards in bilateral free-trade agreements. *See, e.g.,* United States-Singapore Free Trade Agreement, art. 9.5, http://www.ustr.gov/sites/default/files/uploads/agreements/fta/singapore/asset_upload_file708_4036.pdf.

CONCLUSION

For the reasons described above, OPT respectfully requests that the Commission grant consent for the Proposed Transaction subject to competitive safeguards.

Respectfully submitted,



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4 September 2012

LIST OF ATTACHMENTS

Attachment A: Declaration of Patrick Ellacott

Attachment B: Declaration of Steve Brock

Attachment A



DECLARATION OF PATRICK ELLACOTT

I, Patrick Ellacott, declare under penalty of perjury as follows:

1. I am currently employed as Directeur, Pôle production des infrastructures de télécommunications, for l'Office des postes et télécommunications de Polynésie française ("OPT"). In my position, I manage and oversee the telecommunications infrastructure division of OPT, including the Honotua Cable System.
2. OPT French Polynesia is the incumbent provider of fixed and mobile telecommunications, Internet access, video programming, and postal services in French Polynesia and is wholly owned by the French Polynesia Government.
3. Before Honotua entered into commercial service in 2010, French Polynesia relied entirely on satellites for international connectivity. Since that time, the Honotua Cable System has become critically important for providing French Polynesia with high-speed Internet connectivity, high-quality voice and data communications, transmission of television programming, telemedicine, and a host of economic activities.
4. In 2008, as part of the Honotua Cable System permitting and construction process, OPT entered a Landing Party Agreement ("LPA") with Wavecom Solutions Corporation ("Wavecom," then known as Pacific LightNet, Inc., or PLNI). The LPA permits OPT to land Honotua Cable System at Wavecom facilities located near Spencer Beach on the Big Island of Hawaii, including Wavecom's Kawaihae cable station ("Wavecom Kawaihae Cable Station").
5. OPT retains operational authority over Honotua system facilities and provides direction to Wavecom in matters relating to Honotua. Wavecom provides certain services that do not affect the operations of the system. OPT maintains certain Honotua terminal equipment in physical collocation space in the Wavecom Kawaihae Cable Station.
6. I was part of the OPT evaluation team overseeing the OPT tender solicitation processes in 2010 and 2011 wherein OPT sought agreements with third-party carriers at the Kawaihae Cable Station in Hawaii for onward connectivity for traffic carried from French Polynesia to Hawaii on the Honotua Cable System.
7. In 2010 and again in 2011, OPT issued a tender for onward connectivity agreements with third parties at Wavecom's facilities at the Kawaihae Cable Station, so as to allow OPT to deliver traffic from Honotua throughout Hawaii and beyond. These tenders reflected OPT's desire to increase connection diversity and achieve better pricing for connectivity.
8. The 2010 tender directed interested bidders to submit bids on three lots, including inter-Hawaii connectivity, connectivity from Hawaii to the continental United States, and

capacity between the Wavecom Kawaihae Cable Station and the continental United States. After OPT issued the tender, Wavecom responded with very high prices and burdensome terms. OPT could not accept these prices and terms. Therefore, OPT decided to declare the first tender “unsuccessful” and was forced to enter into alternative arrangements for onward connectivity via Los Angeles rather than Honolulu.

9. The 2011 OPT tender directed interested bidders to contact Wavecom for additional information regarding certain information including demarcation points and cross-connects. Wavecom informed interested potential third-party bidders that any party connecting to Honotua must also purchase physical collocation from Wavecom, and that parties must do so even if Wavecom were to provide the cross-connect between OPT and the connecting party. Wavecom also told potential connecting parties that its charge for physical collocation would be approximately \$125,000, with an additional monthly recurring charge of \$28,000, and that it would take approximately 42 weeks to deliver service.

10. On May 18, 2011, OPT’s consultant, Steve Brock of Hui’A’a LLC, contacted Yoko Uyehara and Jim Sturges of Wavecom by email, copying myself and several other OPT personnel, and requested the price list and terms that Wavecom was proposing to those seeking access to and from Honotua at the Kawaihae Cable Station. Heimana Raoulx of OPT emailed Mr. Sturges, copying myself and the other recipients of Mr. Brock’s message, asking Wavecom to respond to Mr. Brock’s inquiry. Jim Sturges, Head of Carrier Business for Wavecom replied by email on May 19, 2011, stating that “the information requested by Steve Brock, about our pricing to third parties ... is considered proprietary and will not be released by Wavecom.” Wavecom has also told third-party bidders that they cannot disclose the prices Wavecom proposed to charge under penalty of potential lawsuit.

11. Wavecom submitted bids on its own behalf to provide onward connectivity in response to OPT’s tenders in both 2010 and 2011.

12. In both 2010 and 2011, OPT did not receive multiple competitive bids in response to its tender for onward connectivity arrangements. As a result, the tenders were unsuccessful. As a result, OPT has been frustrated for over two years in its efforts to achieve the diversity in connectivity it sought, leading to diminished network security options, continuing inflated connectivity costs because of the continuing need to rely on Wavecom’s high prices, and consequently, fewer resources available for creating innovating new services and applications to encourage broadband use among consumers

I declare under penalty of perjury that the foregoing is true and correct.



Patrick Ellacott
Directeur du Pôle production des
infrastructures de télécommunications
Office des postes et télécommunications
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98701 Arue – Tahiti
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Executed on September 4th, 2012

Attachment B

DECLARATION OF STEVE BROCK

I, Steve Brock, declare under penalty of perjury as follows:

1. I am the founder and Managing Member of Hui'A'a, LLC, a company providing consulting and project management services related to submarine cable landing locations and facilities, fiber optic network design & deployment, and certain network operations. I currently serve as a consultant to l'Office des postes et télécommunications de Polynésie française ("OPT"). In this position, I provide advice and project management services relating to the Honotua Cable System.
2. I previously served as a consultant to OPT from August 2010- September 2011. During that time, I provided project management services and advice relating to Honotua, including the 2011 tender for onward connectivity services.
3. I was employed by Pacific Lightnet, Inc. ("PLNI," now known as Wavecom Solutions Corp.) from January 2008 until May 2010. My last position with PLNI was as a Vice President for Network Operations; under Wavecom, my position became Head of Network Construction.
4. I am familiar with the Honotua Cable System and the Landing Party Agreement ("LPA") governing the legal relationship between OPT and Wavecom. The LPA permits OPT to land Honotua at the Kawaihae Cable Station located near Spencer Beach on the Big Island of Hawaii.
5. In my role as a consultant to OPT, I am familiar with the OPT tender solicitation issued in April 2011, for connectivity with third parties at Wavecom's facilities at the Kawaihae Cable Station and at a Point of Presence in Oahu, so as to allow OPT to deliver traffic from Honotua throughout Hawaii and beyond. This tender reflected OPT's desire to increase connection diversity and achieve better pricing for connectivity.
6. The 2011 OPT tender directed interested bidders to contact Wavecom for additional information regarding certain information including demarcation points and cross-connects. Wavecom informed interested potential third-party bidders that any party connecting to Honotua must also purchase physical collocation from Wavecom, and that parties must do so even if Wavecom were to provide the cross-connect between OPT and the connecting party. One bidder notified me that it was withdrawing from the tender, apparently after contacting Wavecom. A second bidder notified me that it was withdrawing from the tender on the grounds that Wavecom had declined to provide it with a price for physical collocation, and that litigation to force Wavecom to offer such information would not be concluded in a timely manner to allow the bidder to bid. A third bidder reported to me that it would be calling out in its bid Wavecom's pricing and timing for physical collocation—approximately \$125,000 for physical collocation and an additional monthly recurring charge of \$28,000, with Wavecom needing 42 weeks to deliver—in order to explain the high price and significant delay included in that third bidder's bid. No bid ultimately included such detailed information about inputs from Wavecom. I was told by at least one bidder that on or around June 3, 2011, that it had been notified by Wavecom


that it (the bidder) was not authorized to share with OPT any information about the pricing for collocation and cross-connects in the Wavecom Kawaihae Cable Station.

7. On May 18, 2011, in my capacity as OPT's consultant, I contacted Yoko Uyehara and Jim Sturges of Wavecom by email, copying Patrick Ellacott and several other OPT personnel, and requested the price list and terms that Wavecom was proposing to those seeking access to and from Honotua at the Kawaihae Cable Station. Heimana Raoulx of OPT emailed Mr. Sturges, copying myself and the other recipients of my initial message, asking Wavecom to respond to my inquiry. Jim Sturges, Head of Carrier Business for Wavecom replied by email to Mr. Raoulx, copying myself and the other recipients of my initial message, on May 19, 2011, stating that "[t]he information requested by Steve Brock, about our pricing to third parties ... is considered proprietary and will not be released by Wavecom." Wavecom has also told third-party bidders that they cannot disclose the prices Wavecom proposed to charge under penalty of potential lawsuit.

8. Wavecom submitted a bid on its own behalf to provide connectivity in response to OPT's tender in 2011.

9. In 2011, OPT did not receive multiple competitive bids in response to its tender for connectivity arrangements. As a result, the tender was unsuccessful.

I declare under penalty of perjury that the foregoing is true and correct.



Steve Brock
Managing Member
Hui'A'a LLC
99-671 Halawa Heights Road
Aiea, Hawaii 96701

Executed on September 4, 2012.