

# Morgan Lewis

**Catherine Wang**

Partner  
+1.202.373.6037  
catherine.wang@morganlewis.com

January 2, 2018

**Via ECFS & IBFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Supplement to Joint Application of Cincinnati Bell Inc. and  
Hawaiian Telcom Holdco, Inc. for Authority to Transfer Indirect  
Control of Domestic and International Section 214 Authorization  
Holders to Cincinnati Bell Inc., WC Docket No. 17-207, IB File Nos.  
ITC-T/C-20170811-00138, ITC-T/C-20170811-00139

Dear Ms. Dortch:

At the request of the Wireline Competition Bureau staff, Cincinnati Bell Inc. ("Cincinnati Bell") and Hawaiian Telcom Holdco, Inc. ("Holdco") (collectively, "Applicants") hereby supplement the pending Joint Applications for authority to transfer indirect control of domestic and international authorization holders in the above-captioned proceedings (the "Applications").

On December 8, 2017, the State of Hawaii's Department of Commerce and Consumer Affairs ("DCCA") issued a Decision and Order approving the transfer of control of Hawaiian Telcom Services Company, Inc.'s Cable Franchise to Cincinnati Bell Inc.<sup>1</sup> The DCCA Order contained a number of conditions on Cincinnati Bell and HTSC regarding

---

<sup>1</sup> See In the Matter of the Joint Application of Cincinnati Bell Inc., Hawaiian Telcom Holdco, Inc., and Hawaiian Telcom Services Company, Inc. for Approval of the Transfer of Control of Hawaiian Telcom Services Company, Inc.'s Cable Television Franchise for the Island of O'ahu from Hawaiian Telcom Holdco, Inc. to Cincinnati Bell Inc., and Related Matters, DCCA Decision and Order No. 370 (rel. Dec. 8, 2017) ("DCCA Order"), available at [https://cca.hawaii.gov/catv/files/2017/12/Decision-and-Order-370-Cincinnati-Bell-HT-Merger\\_Final\\_2017-Dec-08.pdf](https://cca.hawaii.gov/catv/files/2017/12/Decision-and-Order-370-Cincinnati-Bell-HT-Merger_Final_2017-Dec-08.pdf). A copy is attached for inclusion in the record of this proceeding.

**Morgan, Lewis & Bockius LLP**

1111 Pennsylvania Avenue, NW  
Washington, DC 20004  
United States

**T** +1.202.739.3000  
**F** +1.202.739.3001

Ms. Marlene H. Dortch  
January 2, 2018  
Page 2

HTSC's video services following the closing of the transaction. One of the conditions requires that "within four (4) years after the close of the Proposed Transaction, Cincinnati Bell/HTSC shall invest at least TWENTY MILLION AND NO/100 DOLLARS (\$20,000,000) throughout the state [of Hawaii], including areas outside of HTSC's current franchise area, to improve and build out its network and infrastructure."<sup>2</sup> In addition, the DCCA Order states that Cincinnati Bell/HTSC commits to provide, within four (4) years of the close of the Proposed Transaction, at minimum, "15,000 new or upgraded connections or extensions of its current network to homes."<sup>3</sup>

Please do not hesitate to contact the undersigned should you have further questions.

Sincerely,

/s/  
Catherine Wang  
Counsel to Cincinnati Bell Inc.

cc: Jim Bird  
Dennis Johnson  
Jodie May  
David Krech  
Sumita Mukhoty  
Jodi Cooper  
Linda Ray  
Jeff Tobias

Attachment

---

<sup>2</sup> DCCA Order at 15.

<sup>3</sup> *Id.*

CABLE TELEVISION DIVISION  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

In the Matter of the Joint Application of )  
CINCINNATI BELL INC., HAWAIIAN ) **DECISION AND ORDER NO. 370**  
TELCOM HOLDCO, INC., and HAWAIIAN )  
TELCOM SERVICES COMPANY, INC. )  
For Approval of the Transfer of Control of )  
Hawaiian Telcom Services Company, Inc.'s )  
Cable Television Franchise for the Island of )  
O`ahu from Hawaiian Telcom Holdco, Inc. to )  
Cincinnati Bell Inc., and Related Matters. )

---

**DECISION AND ORDER NO. 370**

**I. INTRODUCTION**

On August 11, 2017, Hawaiian Telcom Holdco, Inc. ("**Holdco**"), Hawaiian Telcom Services Company, Inc. ("**HTSC**"), and Cincinnati Bell Inc. ("**Cincinnati Bell**")<sup>1</sup> jointly filed a "State of Hawaii Application for Transfer of Cable Television Franchise" ("**State Transfer Application**") with the Department of Commerce and Consumer Affairs ("**DCCA**") for approval of the transfer of control of HTSC's Cable Franchise<sup>2</sup> on the island of O`ahu from HTSC to Cincinnati Bell, and related matters. Pursuant to HRS § 440G-10.1 and Hawaii Administrative Rules ("**HAR**") chapter 16-133, DCCA hereby approves Applicants' requests subject to the terms, conditions, and requirements provided in this D&O.

**II. BACKGROUND**

On August 11, 2017, Applicants submitted their State Transfer Application with DCCA and concurrently provided their Federal Communications Commission ("**FCC**") Form 394 – Application for Franchise Authority Consent to Assignment or Transfer Control of Cable Television Franchise, dated August 11, 2017 ("**FCC Form 394**") and

---

<sup>1</sup> Cincinnati Bell, Holdco, and HTSC shall collectively be referred to as the "**Applicants**."

<sup>2</sup> "**Cable Franchise**" means the authority issued by DCCA through a Decision and Order ("**D&O**") to operate a Cable System and provide Cable Service in a geographic region in the State of Hawaii ("**State**"). See also Hawaii Revised Statutes ("**HRS**") § 440G-3.

certain other information.<sup>3</sup> The Application requested the Director of DCCA (“**Director**”) to approve the following: (1) the proposed indirect transfer of control<sup>4</sup> of HTSC’s Cable Franchise on the island of O`ahu from HTSC to Cincinnati Bell pursuant to and consistent with the July 9, 2017 Agreement and Plan of Merger (“**Merger Agreement**”) that was entered into by HTSC, Cincinnati Bell, and a number of other entities<sup>5</sup>; (2) for a pro forma transfer of control; and (3) for HTSC to participate in certain financing arrangements<sup>6</sup> (collectively, the “**Proposed Transaction**”). The Application was submitted pursuant to the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992 (the “**Cable Act**”), 47 United States Code (“**U.S.C.**”) § 521 *et seq.*, 47 Code of Federal Regulations (“**C.F.R.**”) § 76.502, and applicable laws and rules of the State.

A. Description of the Proposed Transaction

In their submittals with DCCA, Applicants represent that Twin Acquisition Corp. (“**TAC**”), a wholly owned subsidiary of Cincinnati Bell, will merge into Holdco. The separate corporate existence of TAC shall thereupon cease, and Holdco shall be the surviving corporation under the Proposed Transaction.<sup>7</sup> The directors of TAC will continue as the directors of Holdco until their respective successors have been duly elected and qualified.<sup>8</sup> Applicants represent that the board of directors of Holdco shall include individuals who are domiciled in Hawai`i.<sup>9</sup>

At the completion of the Proposed Transaction, each issued and outstanding share of TAC capital stock shall be converted into one (1) fully paid and non-assessable share of Holdco Common Stock.<sup>10</sup> All shares of Holdco Common Stock that are owned by Holdco as treasury stock immediately prior to the merger becoming effective shall be canceled and shall cease to exist and no consideration shall be delivered in exchange

---

<sup>3</sup> Applicants’ State Transfer Application and FCC Form 394 shall collectively be referred to as the “**Application**.”

<sup>4</sup> In the Application, Applicants characterize the transfer of control as being an “indirect” transfer of control. However, for purposes of D&Os, DCCA does not distinguish between “direct” and “indirect” transfers of control.

<sup>5</sup> See FCC Form 394, Exhibit 1, Merger Agreement.

<sup>6</sup> The financing arrangements under the Proposed Transaction is described below in Section IV.B.

<sup>7</sup> See Merger Agreement at 1.

<sup>8</sup> Id. at 2.

<sup>9</sup> Id.

<sup>10</sup> Id. at 3.

therefor.<sup>11</sup> All shares of Holdco Common Stock held by Cincinnati Bell or TAC immediately prior to the merger becoming effective shall be canceled and shall cease to exist and no consideration shall be delivered in exchange therefor.<sup>12</sup> Each share of Holdco Common Stock that is owned by any direct or indirect wholly owned subsidiary of Holdco or Cincinnati Bell (other than TAC) shall not represent the right to receive the MERGER CONSIDERATION and shall be, at the election of Cincinnati Bell, either converted into shares of common stock of Holdco or canceled.<sup>13</sup>

The Proposed Transaction is valued at approximately \$650 million. Under the Merger Agreement, for each share of Holdco, shareholders will have the option to elect either \$30.75 in cash, 1.6305 shares of Cincinnati Bell common stock, or a mix of \$18.45 in cash and 0.6522 shares of Cincinnati Bell common stock, subject to proration such that the aggregate consideration Cincinnati Bell will pay to Holdco shareholders will be sixty percent (60%) cash and forty percent (40%) Cincinnati Bell common stock.<sup>14</sup>

The Proposed Transaction will occur entirely at the holding company level and Applicants state that it will not affect day-to-day operations, billing systems, or operational support systems of HTSC. According to Applicants, under the Proposed Transaction, Cincinnati Bell and Holdco and its subsidiaries will retain their separate names and brand identities while sharing best practices and resources as needed to help each other successfully compete. Further, Applicants represent that Holdco and its subsidiaries will continue to be locally managed in Hawai`i and its union labor agreements will be honored. In addition, customers will continue to have local customer support and the ability to interact with local support personnel as well as obtain support over the telephone and the Internet. Hawai`i will also gain representation at the Cincinnati Bell level, with two (2) Hawai`i residents joining its Board of Directors to ensure Hawai`i has a voice when strategic decisions are made.<sup>15</sup>

According to Applicants, the Proposed Transaction is in the public interest and their Application demonstrates that Cincinnati Bell "is managerially, technically, and financially well-qualified to complete the Transaction and assume indirect ownership control of the Licensees."<sup>16</sup> They assert that the Proposed Transaction will enhance

---

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> See Application at 3. See also Merger Agreement at 3-4.

<sup>15</sup> See Application at 3.

<sup>16</sup> Applicants' Response to Information Requests Issued on September 12, 2017, Exhibit B, Public Interest Statement at 1, filed on September 22, 2017 ("**Public Interest Statement**").

HTSC's operations and not harm HTSC's Cable System<sup>17</sup> in the State, and except as provided for in this D&O, Applicants assert that "customers will not experience any immediate changes in services or rates, terms, and conditions of service."<sup>18</sup> Applicants further state that they have "no current plans to request any changes to the current cable franchise order."<sup>19</sup>

Among other things, Applicants assert that the Proposed Transaction will allow HTSC to "deliver a broader suite of products and services . . . including expanded broadband and entertainment products available over an enhanced fiber network."<sup>20</sup> Applicants represent that they will do so by: (1) giving HTSC access to Cincinnati Bell's full suite of services, facilities, and vendor relationships; (2) benefiting from increased content-buying power; (3) delivering increased efficiencies and enhanced offerings due to increased scale; and (4) benefiting from the financial support of the combined enterprise.<sup>21</sup>

Applicants are also requesting approval of a possible "pro forma transfer of direct stock ownership of HTSC to Cincinnati Bell" through a merging of Holdco and/or Hawaiian Telcom Communications, Inc. ("HTCI") into Cincinnati Bell (the "**Pro Forma Merger**").<sup>22</sup> Applicants state that such a restructuring would simplify the corporate structure and have no impact on the operations of HTSC or HTI. According to Applicants "[r]egardless of whether one or both of these changes are implemented, it would have no impact on the operations and obligations of HTSC. At most, eliminating the intermediate holding companies would result in a modest reduction in overhead and administrative costs for the parent company."<sup>23</sup>

---

<sup>17</sup> "Cable System" shall have the meaning set forth in HRS § 440G-3 and applicable law, as amended.

<sup>18</sup> See Public Interest Statement at 4.

<sup>19</sup> Application at 4.

<sup>20</sup> Public Interest Statement at 3.

<sup>21</sup> See *id.* at 3-4.

<sup>22</sup> Application at 2-3. Under the pre-Proposed Transaction structure, Holdco is the direct parent company of HTCI with HTSC and its affiliate Hawaiian Telcom, Inc. ("HTI") as subsidiaries of HTCI. See Application, Exhibit A. The completion of the Pro Forma Merger shall not affect, alter, or impact the closing and/or completion of the Proposed Transaction and the triggering of the requirements, conditions, and obligations of this D&O. Accordingly, the closing of the Proposed Transaction is not impacted or affected by Applicants' decision regarding the Pro Forma Merger.

<sup>23</sup> Responses to Second Set of IRs at 11. See definition of Responses to Second Set of IRs on page 7 of this D&O.

B. Applicants Cincinnati Bell and Holdco

Cincinnati Bell, an Ohio corporation headquartered in Cincinnati, Ohio, is a provider of voice, broadband internet, video, and business services with networks and facilities located in Indiana, Kentucky, and Ohio.<sup>24</sup> Cincinnati Bell serves over 142,800 customers throughout its franchise areas and its video revenues for 2016 exceeded \$125 million. Cincinnati Bell views the expansions of its fiber network as its key initiative and asserts that it is focused on “transforming its legacy copper-based telecommunications company into a technology company with state of the art fiber assets servicing customers with data, video, voice and IT solutions to meet their evolving needs.”<sup>25</sup>

Holdco is a Delaware corporation that indirectly wholly owns HTSC.<sup>26</sup> Holdco oversees the Hawaiian Telcom family of companies, which collectively offer telecommunications and information services to residential and business customers throughout Hawai‘i.<sup>27</sup>

C. HTSC and Its Cable Franchise

HTSC, a Delaware corporation authorized to do business in Hawai‘i, is an indirect, wholly owned subsidiary of Holdco.<sup>28</sup> HTSC and its affiliates have served the communication needs of the State for over one hundred years.<sup>29</sup> HTSC was formed in 2004 in connection with the Carlyle Group’s acquisition of Verizon’s Hawai‘i businesses in order to provide non-regulated services such as high-speed Internet and wireless business.<sup>30</sup> HTSC is a provider of video, high-speed data, and voice services to residential and business class customers throughout the State.<sup>31</sup> In 2011, pursuant to D&O No. 352, DCCA granted HTSC a non-exclusive cable franchise for the island of O‘ahu (“**Franchise D&O**”). HTSC’s O‘ahu Cable Franchise is scheduled to expire on June 24, 2026.

---

<sup>24</sup> See Application at 7.

<sup>25</sup> Application at 7.

<sup>26</sup> See D&O No. 352, issued June 24, 2011, at 5.

<sup>27</sup> See id. at 7.

<sup>28</sup> See Application at 7. See also Merger Agreement at 1.

<sup>29</sup> See Application at 7.

<sup>30</sup> Id.

<sup>31</sup> See Application at 7.

HTSC delivers digital Cable Service<sup>32</sup> on the island of O`ahu via Internet Protocol TV (“IPTV”) technology. The IP-based network utilized by HTSC is designed to deliver multiple services over a common network platform.<sup>33</sup> HTSC offers a full suite of services and equipment through its IPTV system design that brings advanced digital video quality and flexibility in the services and applications in interactive television.<sup>34</sup>

D. Public Hearing and Other Procedural Matters

Pursuant to HRS §§ 440G-10.1 and 440G-7, DCCA conducted a public hearing regarding the Proposed Transaction in an effort to obtain written or oral comments, views, and/or arguments from HTSC’s customers, interested persons, and the general public. Consistent with State laws and rules, the public hearing was held in HTSC’s Cable Franchise area on O`ahu on October 5, 2017, in the King Kalakaua Building (335 Merchant Street), in Honolulu.

Notices of the public hearing were published on September 12 and September 19, 2017, in the Honolulu Star-Advertiser. Copies of the Application, all supporting documents, and any submitted supplemental information were made available for review during normal business hours at HTSC’s office in its Cable Franchise area and at DCCA’s Cable Television Division (“CATV”) office. This information was also posted on CATV’s website. DCCA established October 12, 2017, 4:30 p.m., as the deadline for the receipt of public comments concerning the Proposed Transaction. Comments received during the public hearing were generally positive. Most participants expressed support for the proposed transfer. A particular commenter, while not opposing the Proposed Transaction, asked for comparable requirements and restrictions that have been applied to other cable franchises during a transfer also be imposed on Applicants for the Proposed Transaction. All written testimonies and comments filed by HTSC’s customers, interested persons, institutional organizations, and community leaders regarding the Proposed Transaction can be viewed at the CATV website.

The Proposed Transaction was placed on the agenda of the October 19, 2017, meeting of the Cable Advisory Committee (“CAC”).<sup>35</sup> At the meeting, CAC members expressed a few concerns and asked for clarification on various issues, but were generally positive regarding the Proposed Transaction.

---

<sup>32</sup> “Cable Service” shall have the meaning set forth in HRS § 440G-3 and applicable law, as amended, and includes the video programming service provided HTSC.

<sup>33</sup> HTSC delivers its TV service over the fiber and copper network infrastructure of its sister company, HTI. HTI is the incumbent local exchange carrier and was formed in 1883 to provide telephone service for the State. Application at 7.

<sup>34</sup> See D&O No. 352, issued June 24, 2011, at 7-8.

<sup>35</sup> The CAC advises “[t]he director, cable operators, and access organizations on matters within the jurisdiction of this chapter at the request of the director, any cable operator, or access organization. . . .” HRS § 440G-13.



As part of DCCA's review and for purposes of clarification, DCCA issued two (2) sets of information requests ("IRs") to Applicants. DCCA issued its first set of IRs on September 12, 2017, and Applicants filed their responses on September 22, 2017 ("**Responses to First Set of IRs**"). DCCA issued a second set of IRs on October 27, 2017, to which Applicants filed their responses on November 7, 2017 ("**Responses to Second Set of IRs**"). In addition, DCCA had discussions with Applicants regarding the Proposed Transaction. Applicants responses to the filed IRs can be viewed at the CATV website.

### III. APPLICABLE LAW

#### A. Federal Law

Federal laws and regulations authorize local franchising authorities ("**LFAs**"), including the State, to act on an application to transfer control of a Cable System.<sup>36</sup> As such, the transfer of a Cable Franchise is made under the authority of State law, which is detailed in the section below, and is consistent with the federal Cable Act.

Among other things, § 624 of the Cable Act authorizes LFAs to impose certain requirements on cable-related facilities and equipment, including but not limited to channel capacity, system configuration, and institutional and Subscriber networks. Section 611 of the Cable Act permits LFAs to require channel capacity be designated for Public, Educational, or Governmental ("**PEG**") access use. In addition, § 622 of the Cable Act allows LFAs to assess franchise fees up to five percent (5%) of the cable operator's annual gross revenues, any portion of which may be used for PEG access or any other purpose.

Federal regulations require LFAs to act within one hundred twenty (120) days of the submittal of the FCC's Form 394, various exhibits, and any additional information required by the terms of the franchise agreement and state laws; and if an LFA fails to act within that prescribed time, the transfer is deemed approved.<sup>37</sup> Because the Application was submitted on August 11, 2017, the one hundred twenty (120) day review period ends on December 9, 2017, unless otherwise extended by mutual agreement.

---

<sup>36</sup> See § 617 of the Cable Act. See also 47 U.S.C. § 537, and 47 C.F.R. § 76.502(a). Pursuant to HRS § 440G-4, the Director of DCCA is authorized to issue Cable Franchises, and administer and enforce HRS chapter 440G.

<sup>37</sup> See § 617 of the Cable Act. See also 47 U.S.C. § 537, and 47 C.F.R. § 76.502(a) and (c).

B. State Law

The regulatory powers of the Director regarding the transfer of a Cable Franchise are set forth in HRS §§ 440G-7, 440G-8, 440G-10.1, and 440G-12. In particular, HRS § 440G-10.1(a) states that:

No cable franchise, including the rights, privileges, and obligations thereof, may be assigned . . . or otherwise transferred, voluntarily or involuntarily, directly or indirectly, including the transfer of control of any cable system, whether by change in ownership or otherwise, except upon written application to and approval by the director. (Emphasis added).

HRS § 440G-10.1(b) further states that the provisions of HRS §§ 440G-7 and 440G-8 also apply to the transfer of Cable Franchises. HRS § 440G-8(b) establishes the criteria to be considered by the Director prior to issuing a Cable Franchise, and states in pertinent part:

The director, after a public hearing as provided in this chapter, shall issue a cable franchise to the applicant when the director is convinced that it is in the public interest to do so. In determining whether a cable franchise shall be issued, the director shall take into consideration, among other things, the content of the application or proposal, the public need for the proposed service, the ability of the applicant to offer safe, adequate, and reliable service at a reasonable cost to the subscribers, the suitability of the applicant, the financial responsibility of the applicant, the technical and operational ability of the applicant to perform efficiently the service for which authority is requested, any objections arising from the public hearing, the cable advisory committee established by this chapter, or elsewhere, and any other matters as the director deems appropriate in the circumstances. (Emphasis added).

Based on the above, Applicants are required to satisfactorily demonstrate to the Director that the transfer of control of HTSC's Cable Franchise to Cincinnati Bell is in the public interest.

C. The Privilege of a Franchise

The grant of a Cable Franchise gives the recipient a non-exclusive right to use and occupy certain limited and scarce public places, public highways, and rights-of-way for the construction, use, operation, and maintenance of a Cable System for a fixed period. Substantial economic benefits may flow to the recipient as a consequence of

this privilege; however, the franchise confers no right, title, or interest in any public places, public highways, and rights-of-way beyond those expressly conferred herein and in the applicable Cable Franchise orders.

The privilege of a Cable Franchise also carries with it associated obligations. The franchisee (and Applicants) should recognize that there are certain responsibilities assumed when issued or transferred a Cable Franchise(s). These include operating Cable Systems that are reliable, responsive, and responsible to the public that the franchisee serves. In addition, the franchisee is responsible for providing broad categories of video programming or other services to Subscribers<sup>38</sup> at reasonable costs and enhancing communications capabilities to the communities it serves by supporting institutional network ("INET") connections, public television, and PEG access programming.

#### IV. DISCUSSION

##### A. Introduction

DCCA has thoroughly reviewed and considered Applicants' representations in the filed State Transfer Application, FCC Form 394, various exhibits and documents, and subsequently submitted supporting materials, including their responses to the issued IRs. DCCA has also considered Applicants' representations at the public hearing and the CAC meeting, and the comments received from the general public, government agencies, community organizations and leaders, and CAC members.

After reviewing the information provided, DCCA determines that Cincinnati Bell has demonstrated the requisite financial, operational, legal, and technical ability to operate and maintain the Cable System and to provide the services, facilities, and equipment as required in HTSC's Cable Franchise agreement.

Cincinnati Bell is a telecommunications company founded and incorporated in 1873 in Cincinnati, Ohio. Originally a provider of telegraph services, the company became a member of the Bell System in the late nineteenth century. Cincinnati Bell now provides an array of integrated communications solutions-including local and long-distance voice, data, high-speed Internet, and video entertainment services. Cincinnati Bell's network covers more than 2,400 square miles and, through its cable franchises, serves over 142,800 residential and business customers in Ohio, Kentucky, and Indiana. Upon completion of the Proposed Transaction, HTSC will be an indirect subsidiary of Cincinnati Bell through two (2) intermediate holding companies, Holdco and HTCI. HTSC will continue to be the franchisee and cable operator in the Cable Franchise area on O`ahu.

---

<sup>38</sup> "Subscriber" or "Subscribers" means any individual, association, firm, partnership, joint venture, corporation, or other legally recognized entity lawfully receiving any Cable Service.

Based on the material representations made by Applicants,<sup>39</sup> DCCA reasonably concludes that Cincinnati Bell appears to be able to continue operations and maintenance of HTSC's Cable System at the same levels of service to Subscribers in HTSC's franchise area, and that the management, operations, systems, and financial obligations of Cincinnati Bell/HTSC,<sup>40</sup> at least in the short-term, should remain materially unchanged. However, DCCA is cognizant of various concerns and issues expressed during the course of this transfer proceeding.<sup>41</sup> DCCA raised many of the concerns in discussions with Cincinnati Bell during the federally mandated review period and attempted to obtain Cincinnati Bell's commitments on certain significant issues.

In addition, Cincinnati Bell made various representations with respect to investments in infrastructure and deployment of innovative and advanced technologies and services; however, Cincinnati Bell initially provided few details and was unable to give any specific commitments regarding some of these purported public benefits. Later, Cincinnati Bell provided some additional information and commitments, a few of which are described below.

Accordingly, DCCA has determined that the following terms, conditions, and requirements shall be imposed on Cincinnati Bell and/or Cincinnati Bell/HTSC, as applicable, to ensure that the Proposed Transaction is in the public interest.

#### B. Financial Ability of Applicants

The establishment of HTSC's Cable System and services was funded using cash on hand, cash flow from operations, and the revolving credit facility (up to \$30 million) of HTSC's parent company, HTCI.<sup>42</sup> The revolving credit facility was used to provide funding for both HTSC and its affiliate HTI.<sup>43</sup> The revolving credit facility was guaranteed jointly and severally by HTSC and HTI, as well as by HTCI's parent company, Holdco.<sup>44</sup> In addition, the revolving credit facility was collateralized by, among other things, the assets and stock of HTSC and HTI, on which the revolving credit facility has a first priority lien.<sup>45</sup>

---

<sup>39</sup> DCCA notes that all representations made by Applicants regarding the Proposed Transfer and State Transfer Application are considered to be material representations.

<sup>40</sup> "**Cincinnati Bell/HTSC**" refers to HTSC under Cincinnati Bell's control.

<sup>41</sup> See [http://cca.hawaii.gov/catv/cable\\_operators/cincinnati-bell-hawaiian-telcom-merger/](http://cca.hawaii.gov/catv/cable_operators/cincinnati-bell-hawaiian-telcom-merger/) which is the link to the written comments submitted on the Application.

<sup>42</sup> See D&O No. 352, issued June 24, 2011, at 10.

<sup>43</sup> Id.

<sup>44</sup> Id. at 10-11.

<sup>45</sup> Id. at 11. In 2010, Holdco, HTCI, HTI, HTSC and other entities were restructured and emerged from Chapter 11 Bankruptcy with a \$300 million dollar senior secured loan.

Cincinnati Bell has completed new debt financing (“**Debt Financing**”), the proceeds from which will be used to: (1) amend and restate portions of Cincinnati Bell’s existing debt programs; (2) finance the Proposed Transaction with Holdco; (3) permanently retire Holdco’s existing debt<sup>46</sup>; and (4) fund working capital and other general corporate purposes.<sup>47</sup>

On July 9, 2017, Cincinnati Bell entered into a commitment letter with Morgan Stanley Senior Funding, Inc. (“**MSSF**”) for the refinancing of existing indebtedness and additional funds needed for the purposes listed above. On July 24, 2017, Cincinnati Bell and MSSF, together with PNC Bank, National Association, PNC Capital Markets LLC, Regions Bank, Barclays Bank PLC, Citigroup Global Markets Inc. and Citizens Bank, N.A., entered into an amended commitment letter that provides \$1.13 billion in senior secured credit facilities, consisting of (i) a \$180 million revolving credit facility with a maturity of five (5) years, and (ii) term loan facilities in an aggregate amount equal to \$950 million with a maturity of seven (7) years.<sup>48</sup> Cincinnati Bell closed the Debt Financing on October 6, 2017.<sup>49</sup>

Upon completion of the Proposed Transaction, on an aggregate basis, Cincinnati Bell will have approximately: (1) \$805 million in general secured debt consisting of: (a) \$600 million term loan debt with a maturity in 2024, (b) \$110 million in secured notes with varying maturities in 2023 and 2028, (c) \$74 million in accounts receivable financing, and (d) \$21 million in secured capital leases; and (2) unsecured indebtedness of \$1.026 billion consisting of: (a) \$625 million in senior notes maturing in 2024, (b) \$350 million in new senior notes maturing in 2025, and (c) \$51 million in unsecured capital leases.<sup>50</sup> Cincinnati Bell will have \$180 million in availability under its secured revolving credit facility, and another \$40 million of availability under its Accounts Receivable Facility.<sup>51</sup>

Subsequent to the completion of the Proposed Transaction, HTSC will participate in Cincinnati Bell’s existing financing arrangements as described above.<sup>52</sup> In participating in Cincinnati Bell’s established financing mechanisms, HTSC will have the

---

<sup>46</sup> Holdco’s existing debt is estimated at \$320 million which includes the remaining debt from the \$300 million senior secured loan. See Application at 21.

<sup>47</sup> See Application at 21.

<sup>48</sup> Id. at 21-22.

<sup>49</sup> See Cincinnati Bell, Inc. Form 8-K (Oct. 6, 2017), as filed with the Securities and Exchange Commission.

<sup>50</sup> See Application at 22.

<sup>51</sup> Id.

<sup>52</sup> Id. at 23.

capability through intercompany arrangements to address any capital needs in excess of their operation cash flow.<sup>53</sup> This arrangement provides for stability and predictability in raising capital, and by leveraging the larger scale, multiple revenue streams, product diversity, and wider geographical reach of multiple subsidiaries, Cincinnati Bell is able to access the capital markets on terms more favorable than could be obtained by any individual subsidiary such as HTSC.<sup>54</sup>

### C. Franchise Obligations

In addition to State statutory and administrative requirements, upon completion of the Proposed Transaction, Cincinnati Bell/HTSC shall continue to fully adhere to and comply with the franchise obligations set forth in the Franchise D&O.

Consistent with the provisions of the Franchise D&O, federal and State law, Cincinnati Bell/HTSC agrees to assume and be bound by all the terms, conditions, and requirements of the various D&Os, Orders, Letter Orders, and any other directives that have been issued by the Director to address specific needs and requirements by amending certain obligations.

Cincinnati Bell/HTSC also agrees to assume and be bound by all the terms, conditions, and requirements of all agreements of any type entered into between HTSC and the State (including but not limited to educational and/or governmental agencies of the State), in connection with and arising out of HTSC's franchise obligations for its Cable Franchise area. Cincinnati Bell/HTSC voluntarily agrees to assume and be bound by all terms, conditions, and requirements in this D&O, recognizing that such commitments benefit Cincinnati Bell/HTSC by fostering goodwill and enhancing the public interest.

Franchise obligations related to system upgrades, INET connections, franchise fee contributions, PEG access, Hawai'i Public Television Foundation, and other franchise related matters are set forth in the Franchise D&O, and these obligations remain and shall continue to be binding on Cincinnati Bell/HTSC.

In addition, HTSC (and, later Cincinnati Bell/HTSC), consistent with the provisions of the Franchise D&O, federal and State law, shall fully adhere to and comply with all the D&Os, Orders, Letter Orders, and any other directives that have been issued by DCCA regarding HTSC's Hawai'i Cable Franchise during the interim period between the issuance of this D&O and the completion of the Proposed Transaction.

### D. Material Representations and Commitments Made by Cincinnati Bell

During this transfer proceeding, Cincinnati Bell made certain representations and commitments in its Application and other filings regarding the Cable Franchise

---

<sup>53</sup> Id.

<sup>54</sup> Id. at 24.

obligations and the operation and management of Cincinnati Bell/HTSC's Cable System and the public benefits related to the Proposed Transaction including, among other things, that:

1. HTSC will continue to operate pursuant to its existing franchise agreement and "has no current plans to request any changes to the current cable franchise order."<sup>55</sup>
2. Customers of HTSC will remain with HTSC and will continue to be served under its existing authorization.<sup>56</sup>
3. The change in indirect ownership "will not result in service disruption, termination or customer confusion . . . [and] does not involve a change in any customer's existing service provider."<sup>57</sup>
4. The transfer of indirect control of HTSC to Cincinnati Bell will be "completely seamless to customers of HTSC"<sup>58</sup> and "not affect the day-to-day operations, billing systems, or operational support systems of HTSC."<sup>59</sup>
5. Cincinnati Bell commits that the Proposed Transaction will not affect its PEG obligations under HTSC's current Franchise D&O and that Cincinnati Bell/HTSC has no plans to make any changes to its support of PEG services in its O`ahu cable franchise area.<sup>60</sup>
6. Cincinnati Bell/HTSC intends to keep customer-facing employee operations local, and has no current plans to change this structure.
7. "Holdco and its subsidiaries will continue to be locally managed from Hawai'i and its union labor agreements will be honored."<sup>61</sup>

---

<sup>55</sup> Id. at 3-4.

<sup>56</sup> Id. at 3.

<sup>57</sup> Id. at 3.

<sup>58</sup> Id. at 34.

<sup>59</sup> Responses to First Set of IRs at 4.

<sup>60</sup> Application at 31. See also Responses to First Set of IRs at 13.

<sup>61</sup> Application at 3.

8. The Proposed Transaction “will provide HTSC with additional scale, technical resources, and financial support to enable it to maintain and improve its services.”<sup>62</sup>
9. Cincinnati Bell’s “experience and resources developing fiber networks in both urban and non-urban areas will enable infrastructure improvements across Hawai`i, strengthening expansion of broadband and cable TV service.”<sup>63</sup>
10. Applicants commit to adhering to the principles of the 2015 FCC’s *Open Internet Order* (of no blocking, throttling (slowing down) or paid prioritization of Internet service) in the State for at least three (3) years after the closing of the Proposed Transaction; provided, however, that Applicants shall have the right to seek relief from this commitment by submitting evidence to DCCA that, due to a change in the law, continued adherence to the principles of the 2015 *Open Internet Order* would result in a competitive disadvantage or harm to Applicants.
11. Cincinnati Bell/HTSC intends to extend HTSC’s current policy of no early termination fees for services other than international and premium packages, and has no current plans to change such policy.
12. Cincinnati Bell/HTSC intends to extend HTSC’s current policy of no plan switching fees, and has no current plans to change such policy.
13. Cincinnati Bell/HTSC intends to extend HTSC’s current promotion of offering Internet service at speeds of up to seven (7) Megabits per second (“Mbps”) download and up to one (1) Mbps upload for NINE AND 95/100 DOLLARS (\$9.95) per month and has no current intention to change this plan.<sup>64</sup>

Since DCCA considers all representations and commitments made by Cincinnati Bell in its Application and other filings for this Proposed Transaction, including but not limited to those enumerated above, to be material representations, it is appropriate, reasonable, and in the public interest to hold Cincinnati Bell and/or HTSC, as applicable, to all of the representations and commitments made in this proceeding.

---

<sup>62</sup> Id.

<sup>63</sup> Id.

<sup>64</sup> See Responses to First Set of IRs at 11.



E. Infrastructure Commitments and Expansion of Existing Service

Federal law and DCCA supports an environment of healthy competition in the areas of communication and Cable Services in the State.<sup>65</sup> Competition in these areas benefit Hawaii consumers by providing greater customer choice for different services; diversity in programming content; pricing options; and encouraging the development and deployment of innovative technology, products, and services. According to Applicants, approval of the Proposed Transaction would,

provide HTSC with additional scale, technical resources, and financial support to enable it to maintain and improve its services. [Cincinnati Bell's] experience and resources developing fiber networks in both urban and non-urban areas will enable infrastructure improvements across Hawaii, strengthening expansion of broadband and cable TV service in the region. As a result, HTSC and its affiliates will be better positioned to deliver a broader suite of services to customers and businesses in Hawai'i, strengthening competition in terms of pricing, content, value, customer service and innovative products and offerings.<sup>66</sup>

Cincinnati Bell and HTSC have expressed their commitment to enhancing services and reach, and thereby their competitive presence, by pledging significant investments into expanding and improving its network throughout the State. Specifically, within four (4) years after the close of the Proposed Transaction, Cincinnati Bell/HTSC shall invest at least TWENTY MILLION AND NO/100 DOLLARS (\$20,000,000.00) throughout the State, including areas outside of HTSC's current franchise area, to improve and build out its network and infrastructure. None of the funds applied to this infrastructure commitment shall include federal Connect America Fund moneys allocated to HTSC through the federal program or any other public funds.

In addition, and related to the financial commitment discussed above, Cincinnati Bell/HTSC expressly commits and shall provide, within four (4) years of the close of the Proposed Transaction, at minimum, 15,000 new or upgraded connections or extensions of its current network to homes. In meeting this commitment, Cincinnati Bell/HTSC may choose to extend its existing networks in its franchise area or other areas of the State; provided that none of the new connections or buildout to homes related to this commitment shall include connections or buildouts related to HTSC's obligations under the federal Connect America Fund program. DCCA finds that these financial investment and buildout requirements constitute significant, real, and tangible public benefits for the State and its residents resulting from the Proposed Transaction. These requirements also result in actual investment in the State's local economy, and represents Cincinnati Bell's commitment to the State and HTSC's Subscribers.

---

<sup>65</sup> See 47 U.S.C. § 521(6) and D&O No. 352 at 17-18.

<sup>66</sup> Application at 34.

Moreover, within six (6) months of the close of the Proposed Transaction, Cincinnati Bell/HTSC shall submit a written report to DCCA on the progress of its infrastructure plans, consistent with the financial and connections/buildout requirements set forth in this D&O. Thereafter, the report will be updated annually and submitted on March 31<sup>st</sup> of each year. The report, at the request of the Director, may be presented to the CAC and be subject to further requirements and refinements in the future.

F. Low-Cost Internet Service for Consumers

Access to the Internet and broadband service has increasingly become important in the lives of Americans and has been viewed as an essential service. Many people rely on and use the Internet for work, education, family, and entertainment. The importance of Internet/broadband to the State, its residents, visitors, and businesses is captured in the following quote:

Like electricity a century ago, broadband is a foundation for economic growth, job creation, global competitiveness and a better way of life. It is enabling entire new industries and unlocking vast new possibilities for existing ones. It is changing how we educate children, deliver health care, manage energy, ensure public safety, engage government, and access, organize and disseminate knowledge.<sup>67</sup>

The State has long since recognized the importance of broadband service. In December 2012, the State issued the "Hawaii Broadband Strategic Plan" setting forth goals and specific objectives, and work plans to increase broadband adoption and use of the Internet with the ultimate purpose of ensuring that all Hawai'i citizens have access to high-speed broadband service at affordable rates.

As part of the Proposed Transaction, Cincinnati Bell states that it intends to continue offering low cost Internet service to consumers, in all areas where HTSC infrastructure is enabled after the Proposed Transaction is completed/closed. Specifically, the Cincinnati Bell/HTSC low-cost Internet service shall be offered to all Hawai'i consumers throughout all areas where HTSC infrastructure is enabled, at speeds of up to seven (7) Mbps downstream and up to one (1) Mbps upstream, with in-home WiFi and McAfee Antivirus; at a maximum cost of NINE AND 95/100 DOLLARS (\$9.95) per month.

DCCA finds Cincinnati Bell/HTSC's commitment to continue offering low-cost Internet service in the State to be a public benefit. The service will benefit low-income individuals and families, senior citizens, and any persons looking for a low-cost Internet option. DCCA views Cincinnati Bell's commitment and the resulting benefits in a

---

<sup>67</sup> See Hawaii Broadband Strategic Plan, issued on December 2012 at 1 (quoting from the Omnibus Broadband Initiative (OBI), FCC, Connecting America: The National Broadband Plan, GN Docket No. 09-51 at 3-5, 129 (2010) at xi).

positive manner, and finds this commitment to be consistent with the State's objectives of increasing broadband adoption and use of the Internet. Cincinnati Bell's commitment to low-cost Internet service, among other things, has no eligibility requirements and creates greater access and availability to affordable Internet service throughout the State.

G. Customer Privacy Requirements

With the vast amount of consumer information collected by companies, DCCA understands the importance of privacy and safeguarding sensitive consumer information. Currently, the State consistent with federal law requires that telecommunication carriers protect the confidentiality of proprietary information, which includes information regarding location and use of telecommunication services and information contained in bills. Recognizing these requirements, Cincinnati Bell/HTSC commits and shall adhere to the customer privacy requirements and standards set forth in 47 U.S.C. § 222 and HAR § 6-80-115, as amended, with respect to all of its services throughout the State, including its customers for cable and broadband services.

H. Sales and Customer Service Centers

Local sales and customer service centers play a key role in addressing customer concerns and technical issues. DCCA is aware that the closure of any of HTSC's local sales and customer service centers would not only directly impact Cincinnati Bell/HTSC's employees, but would have an economic and customer service impact on their communities.

Under the federal Worker Adjustment and Retraining Notification ("**WARN**") Act, Cincinnati Bell/HTSC is required to provide sixty (60) calendar days' advance notice regarding the closure of any call center impacting fifty (50) or more employees. In general, the WARN Act offers protection to workers, their families, and communities by requiring employers to provide sixty (60) calendar days' notice in advance of covered plant closings and covered mass layoffs. Under this law, notice must be provided to either the affected workers or their representatives (e.g., a labor union), to the State dislocated worker unit, and to the appropriate unit of local government.

Cincinnati Bell has expressed that it does not have any plans to close local sales or customer service centers in Hawai'i. However, upon the closing of the Proposed Transaction, Cincinnati Bell/HTSC shall be required to apply the notification requirements under the WARN Act to all sales and customer services centers, including call centers, regarding closures and/or relocations in the State regardless of the size of the center or the number of employees affected.

I. Customer Service Assurances

Given that the Proposed Transaction involves the transfer of control of HTSC's Cable System, although indirectly, DCCA has some concern about how the transition

may impact customer service. Although Applicants assured DCCA that the Proposed Transaction will not adversely impact customers and the services they are provided, to alleviate DCCA's concerns, Cincinnati Bell commits that Cincinnati Bell/HTSC's Customer Satisfaction Survey, conducted annually, shall produce results consistent with results obtained in prior survey years. In the event, however, that there is a ten percent (10%) or more decline in a specific measurement of the survey, after the close of the Proposed Transaction, Cincinnati Bell/HTSC shall submit a written explanation to DCCA as to the reasons for the decline within thirty (30) calendar days of the submittal of the survey. In addition, Cincinnati Bell/HTSC shall provide a detailed plan (including timeframes and specific actions) to remedy and correct any decline in the customer service measurement.

J. Rate Transparency and Customer Notification

DCCA has a history of fielding customer complaints from cable television Subscribers regarding billing issues and billing practices. As this is a recurring issue, DCCA is concerned about full disclosure and better rate transparency regarding billing statements. With these concerns in mind, upon closing of the Proposed Transaction, Cincinnati Bell/HTSC shall, to the extent required by law, provide full disclosure and rate transparency through itemization and explanation of all charges for customers so that customers are not surprised by the inclusion of any add-on charges and fees, including but not limited to taxes, broadcast fees, franchise fees, PEG access fees, and capital funding amounts. In addition, Cincinnati Bell/HTSC shall be held to all federal and State requirements regarding pricing and billing practices.

Cincinnati Bell/HTSC shall also commit to providing full disclosure and rate transparency through itemization and explanation of all charges before customers sign up for service so that customers are not surprised by the inclusion of any add-on charges and fees (i.e., taxes, broadcast fees, capital funding amounts, franchise fees, etc.) and will know the total bill before committing to service. In addition, all cost information upon the expiration of any promotional offerings shall be provided prior to customers initially signing up for service or changing service plans. Further, Cincinnati Bell commits to and shall provide, at minimum, thirty (30) days advance written notice to Subscribers of the expiration of any promotional rates.

K. Exploring Ways to Help Hawai'i's Senior Citizens

Senior citizens hold a special place in Hawai'i. Culturally, senior citizens are revered for their knowledge and experience and we recognize the efforts that previous generations have undertaken to shape Hawai'i and its people. However, with age comes certain issues, challenges, and concerns that can weigh heavily on the lives of Hawai'i's senior citizens. As Hawai'i's aging population continues to increase, the effects of these issues and concerns are touching more lives than ever before.

DCCA is aware that for many of Hawai'i's senior citizens cable television plays a vital role in their everyday lives. Cable television not only provides entertainment, but it

delivers senior citizens important news and information that they might not be able to otherwise access. Cable television can also provide an important means of contact with the world to those whose mobility may be limited. During the CAC meeting held on October 19, 2017, concerns were raised about the ability of fixed-income senior citizens to access much relied upon cable television services.

In line with finding appropriate solutions for senior citizens, Cincinnati Bell/HTSC commits to exploring all avenues to provide more customers, including senior citizens, with competitive options for video and broadband service.<sup>68</sup> HTSC states that it currently serves many multi-dwelling units and senior citizen communities under its bulk pricing and preferred pricing programs.<sup>69</sup> Cincinnati Bell state that it has no current plan to disrupt these offerings and will strive to make its bulk offerings more competitive with the incumbent cable service provider.<sup>70</sup> In addition, Applicants commit to fully studying the challenges of Hawai`i's fixed-income senior citizens and propose reasonable options to assist them afford their cable service needs. Applicants shall include such findings and proposals, to the extent available, in Cincinnati Bell/HTSC's annual report due on March 31<sup>st</sup> of each year.

L. Public WiFi Partnership

Public WiFi can provide free, untethered Internet service in today's world of mobile connectivity. Public hotspots benefit individuals in multiple ways by, among other things, providing seamless access to Internet services that do not impact the monthly data quotas for their mobile devices and providing access where they may not have access to their mobile provider's service. In addition, public WiFi is especially important to provide Internet access and the socioeconomic benefits that flow from that access to residents who lack any access in their homes because they live in an unserved area or because of economic or other barriers. For these individuals who often live in rural areas, public WiFi may provide essential Internet connectivity allowing them to access public services as well as educational, health, and other online services. Public WiFi is also important to businesses in Hawai`i by allowing them to market their business products and services, and to support the State's primary economic driver of tourism by providing the connectivity expected by these travelers and generally available in most of the desirable travel destinations around the world. Thus, DCCA recognizes that increasing the availability of public WiFi will provide a public benefit for the State as a whole.

In the interest of offering public benefits to the State, within two (2) years of the close of the Proposed Transaction, Cincinnati Bell commits to and shall provide and

---

<sup>68</sup> Under 47 U.S.C § 543(e)(1), Cable System operators may offer discounts for Cable Service to senior citizens.

<sup>69</sup> See Responses to Second Set of IRs at 6.

<sup>70</sup> Id.

deploy a mobile application (“app”) that facilitates out-of-home “public” WiFi throughout the State. This app will be similar to and mirror, as applicable, the “Connect Cincinnati” app/program that Cincinnati Bell has rolled out in Cincinnati, Ohio. Through partnerships between Cincinnati Bell/HTSC and local businesses, this app will give consumers access to free WiFi at certain commercial venues throughout the State which is a public benefit resulting from this Proposed Transaction. Prior to the launch of the mobile app in Hawai`i, Cincinnati Bell/HTSC shall verbally brief DCCA regarding their plans and the specific parameters of the program, and will fully consider and incorporate, as applicable, any DCCA requests. In addition, Cincinnati Bell/HTSC shall provide DCCA updates in its annual report due on March 31<sup>st</sup> of each year regarding the “public” WiFi program and Cincinnati Bell/HTSC’s progress of deploying the mobile app throughout the State.

M. Franchise and Related Matters

Although with the approval and closing of the Proposed Transaction, Cincinnati Bell/HTSC, as the cable operator, is bound by the Franchise D&O and must also comply with all applicable State laws and rules regarding the provision of Cable Service. DCCA also reminds Cincinnati Bell of its certification to the State that it would comply with the Franchise D&O and all applicable State laws and rules, and that it shall work in good faith to cure any outstanding Cable Franchise issues.<sup>71</sup>

DCCA notes that approval of the Proposed Transaction does not and shall not constitute a waiver or release of any of DCCA’s rights under the Franchise D&O or applicable laws and rules, D&Os, Orders, Letter Orders, and other directives that have been issued by the Director to address specific needs and requirements by amending certain obligations consistent with the provisions of the Franchise D&O and State law. DCCA, Cincinnati Bell, and HTSC do not waive any and reserve all of their rights with respect to Cincinnati Bell’s and HTSC’s compliance with the terms, conditions, and requirements in the Franchise D&O, and all applicable laws and rules, D&Os, Orders, Letter Orders, and other directives that have been issued by the Director to address specific needs and requirements by amending certain obligations consistent with the provisions of the Franchise D&O and State law.

The Director’s approval of the Proposed Transaction shall not in any way be deemed to be a representation by DCCA that HTSC is in compliance with all of its obligations and responsibilities under the Franchise D&O and all applicable laws and rules, D&Os, Orders, Letter Orders, and other directives that have been issued by the Director to address specific needs and requirements by amending certain obligations consistent with the provisions of the Franchise D&O and State law.

---

<sup>71</sup> Specifically, Cincinnati Bell has certified that “it will use its best efforts to comply with the terms of the franchise and applicable state laws or local ordinances and related regulations, and to effect changes, as promptly as practicable, in the operation of the systems, if any changes are necessary to cure any violations thereof or defaults presently in effect or ongoing.” Application at 4. See Form 394, Section V, Part II (c).

After the close of the Proposed Transaction, Cincinnati Bell/HTSC shall continue to be responsible for any and all past Cable Franchise issues, acts, and omissions, known and unknown, of HTSC under the Franchise D&O and all applicable laws and rules, D&Os, Orders, Letter Orders, and other directives that have been issued by the Director to address specific needs and requirements by amending certain obligations consistent with the provisions of the Franchise D&O and State law.

N. Other Areas of Discussion

Applicants made representations in this transfer proceeding regarding the proposed public benefits of the Proposed Transaction, including Cincinnati Bell's investment in infrastructure, broadband options, and deployment of innovative and advanced technologies and services, many of which are enumerated above in Section IV. of this D&O. During the course of this proceeding, DCCA made attempts to solicit additional information and clarifications regarding the purported public benefits including expansion of its fiber infrastructure in other areas of the State, rates and services impacting Subscribers, and deployment of broadband and advance services.

In general, while Cincinnati Bell provided some details and a number of commitments, it often asserted that the requested information was not within DCCA's scope of review related to the Application or that the information sought was beyond Cincinnati Bell's forecasting. Nonetheless, Cincinnati Bell made assurances (and DCCA relies on these representations in issuing this D&O) that it would cause Cincinnati Bell/HTSC to satisfy and adhere to all Cable Franchise requirements, and that there were no current plans to change any rates and services.<sup>72</sup>

During discussions, DCCA further attempted to obtain Cincinnati Bell's commitments regarding the issues mentioned above. However, DCCA was hindered during the discussions given that: (1) the FCC prohibits LFAs from regulating rates and conditioning Cable System transfers on them<sup>73</sup>; and (2) broadband and broadband-related issues (including, but not limited to, broadband deployment, how broadband is provided including upload and download speeds, broadband prices, and Net Neutrality), are beyond DCCA's statutory jurisdiction, given that broadband is not a regulated service, unless agreed to by the cable operator.

---

<sup>72</sup> See Generally, Application, Responses to First Set of IRs, and Responses to Second Set of IRs.

<sup>73</sup> See Implementation of Sections 11 and 13 of the Cable Television and Competition Act of 1992, Report and Order, 8 FCC Rcd 6828 ¶ 39, n. 38 (1993) (In exercising their transfer jurisdiction, franchising authorities may not seek to circumvent federal regulatory authority, including federal rate regulations in particular.).

O. Post-Transaction Progress Report and Briefing

Under State law, the Director has the power and jurisdiction to supervise and regulate every cable operator in the State and is empowered to do all things which are necessary or convenient in the exercise of the Director's power and jurisdiction.<sup>74</sup> Accordingly, unless otherwise agreed to by DCCA and Cincinnati Bell/HTSC, within six (6) months after the date of the close of the Proposed Transaction, Cincinnati Bell/HTSC shall provide a written report to DCCA and orally brief the Director on the impacts of the completed transaction. At a minimum, the written report and briefing shall address the following:

1. How the indirect transfer of control of HTSC's Cable System from Holdco to Cincinnati Bell is progressing;
2. How the transaction has impacted the operations and organization of HTSC's Cable System on O`ahu;
3. Any future plans regarding services and operation of HTSC's Cable System on O`ahu or in the State; and
4. Cincinnati Bell/HTSC's progress towards fulfilling and satisfying all the purported public benefits related to the Proposed Transaction as represented by Cincinnati Bell and HTSC in this transfer proceeding, including those enumerated in Section IV. of this D&O and its progress for compliance with the other terms, conditions, and requirements of this D&O.

During the briefing, Cincinnati Bell/HTSC shall be prepared to respond to any questions posed by the Director and DCCA staff, and provide any follow-up discussions and documentation after the briefing, as warranted and appropriate.<sup>75</sup>

---

<sup>74</sup> See HRS § 440G-12(a).

<sup>75</sup> HRS § 440G-14 requires that:

Each cable operator shall file with the director reports of its financial, technical, and operational condition and its ownership. The reports shall be made in a form and on the time schedule prescribed by the director and shall be kept on file open to the public.

See also HAR §§16-131-43 through 16-131-50.



## V. CONCLUSION

Based on the foregoing, the Director finds that Cincinnati Bell is legally, operationally, financially, and technically qualified to acquire control of HTSC and to provide the services required for HTSC's O'ahu Cable Franchise, and that the Proposed Transaction is in the public interest with the terms, conditions, and requirements described above, and should therefore be approved. Accordingly, DCCA hereby approves the Proposed Transaction based on the information provided in the Application, and the supporting and supplemental filings and commitments provided by Applicants.<sup>76</sup>

## VI. ORDER

NOW, THEREFORE, the request to transfer control of HTSC's O'ahu Cable Franchise from Holdco to Cincinnati Bell, the proposed Pro Forma Merger, and certain financing arrangements as described in the Application, are hereby APPROVED, subject to the following:

- A. Following the close of the Proposed Transaction, Cincinnati Bell shall adhere and comply, or shall cause Cincinnati Bell/HTSC to comply, with all terms, requirements, conditions and obligations set forth in the Franchise D&O, and any other D&Os, Orders, Letter Orders, and other directives that have been issued periodically to address specific needs and requirements consistent with the provisions of the Franchise D&O, and federal and State laws.

Moreover, in connection with its Cable Franchise obligations, HTSC entered into various agreements with the State and other educational and governmental agencies related to and impacting its services in the Cable Franchise area. Cincinnati Bell/HTSC shall fully comply with the various agreements HTSC had entered into related to its franchise obligations that are in effect as of the date the Proposed Transaction is completed.

- B. The approval of the Proposed Transaction by the Director does not and shall not amend nor alter the Franchise D&O, or any D&Os, Orders, Letter Orders, and other directives that have been issued periodically to address specific needs and requirements consistent with the provisions of the Franchise D&O and federal and State laws in any way, except as expressly provided otherwise in this D&O. The Franchise D&O, and any D&Os, Orders, Letter Orders, and other directives that have been issued periodically to address specific needs and requirements consistent with the provisions of the Franchise D&O and State law shall continue to remain in full force and effect, and enforceable in accordance with their terms and conditions and applicable law.

---

<sup>76</sup> See n. 22.

- C. HTSC (and, later Cincinnati Bell/HTSC) shall fully adhere to and comply with all of the D&Os, Orders, Letter Orders, and any other directives as provided by HTSC's O'ahu Cable Franchise issued by DCCA during the interim period between the issuance of this D&O and the close of the Proposed Transaction.
- D. HTSC, Cincinnati Bell, and Cincinnati Bell/HTSC, as applicable, shall adhere to and comply with all of the terms, conditions, and requirements provided in this D&O, including but not limited to Section IV. of this D&O.
- E. The closing of the Merger Agreement is completed without any materially adverse changes to the Merger Agreement that was provided to DCCA and last reviewed by DCCA in connection with the Proposed Transaction. Applicants and/or HTSC shall promptly notify the Director in writing of the closing of the Merger Agreement and also upon the completion of the Proposed Transaction, provide the exact dates when the Merger Agreement closed and the Proposed Transaction is completed (as applicable) and whether any material changes to the Merger Agreement were made prior to or shortly after the close of the Proposed Transaction.
1. Notification shall be provided to DCCA within seven (7) calendar days after the closing of the Merger Agreement and seven (7) calendar days after completion of the Proposed Transaction.
  2. In the event there are any materially adverse changes to the Merger Agreement or to the structure or operation of HTSC's Cable System in the State as a result thereof, the Director reserves the right to review such changes and take any and all necessary and appropriate actions to protect the public interest, including but not limited to modifying or rescinding this D&O.
- F. The approval of the Merger Agreement (and/or Proposed Transaction, as applicable) by the FCC, the United States Department of Justice ("DOJ"), and other applicable federal agencies shall be required, and Cincinnati Bell, HTSC, Holdco, and/or Cincinnati Bell/HTSC shall comply with any conditions, obligations, and requirements imposed by the FCC, DOJ, or any other federal agency in connection with the Merger Agreement or Proposed Transaction, as applicable. In addition, the Merger Agreement and Proposed Transaction shall be in compliance with all State laws, rules, and requirements, including any and all State anti-trust statutes and requirements.
- G. Except as otherwise specifically provided in this D&O, the terms, conditions, requirements, and obligations of HTSC's Cable Franchise in the State (i.e., the Franchise D&O, and D&Os, Orders, Letter Orders, and other directives that have been issued periodically to address specific

needs and requirements consistent with the provisions of the Franchise D&O and State law) and franchise-related agreements shall continue to be in full force and effect.

- H. Notwithstanding any provision to the contrary in this D&O, if the Merger Agreement fails to close or is not completed, for whatever reason, within twelve (12) months from the date of this D&O, unless otherwise ordered by the Director, this D&O shall be automatically rescinded and shall be deemed null and void, and all prior D&Os issued to HTSC, shall continue to remain in full force and effect. In such an event, HTSC shall immediately provide prompt written notification to the Director, and the Director shall have the right to act in accordance with applicable federal and State laws and rules.

Dated: Honolulu, Hawai'i, December 8, 2017



CATHERINE AWAKUNI COLÓN  
Director of Commerce and Consumer Affairs

**CERTIFICATE OF SERVICE**

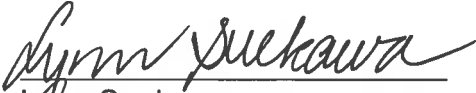
I hereby certify that a copy of the foregoing **DECISION AND ORDER NO. 370** was served upon the following parties at the address shown below by mail, postage prepaid, on this 8<sup>th</sup> day of December, 2017.

J. DOUGLAS ING, ESQ.  
JEFFEY T. ONO, ESQ.  
DAVID Y. NAKASHIMA, ESQ.  
WATANABE ING LLP  
999 Bishop Street, Suite 1250  
Honolulu, Hawai'i 96813

Counsel for CINCINNATI BELL INC.

JOHN T. KOMEIJI, ESQ.  
CHIEF ADMINISTRATIVE OFFICER AND GENERAL COUNSEL  
HAWAIIAN TELCOM SERVICES COMPANY, INC.  
1177 Bishop Street  
Honolulu, Hawai'i 96813

STEVEN P. GOLDEN  
VP-EXTERNAL AFFAIRS  
HAWAIIAN TELCOM SERVICES COMPANY, INC.  
1177 Bishop Street  
Honolulu, Hawai'i 96813

  
Lynn Suekawa  
Secretary