

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Paniolo Cable Company, LLC,	)	File No. SCL-ASG-20210122-00006
and Hawaiian Telcom, Inc.	)	
	)	
Application for Consent to Assign	)	
A Cable Landing License Held by Paniolo	)	
Cable Company, LLC, Connecting the	)	
Islands of Kauai, Oahu, Molokai, Maui,	)	
And Hawai'i in the State of Hawaii, to	)	
Hawaiian Telcom Inc.	)	
	)	
The Paniolo Cable System	)	

**PETITION TO ADOPT CONDITIONS TO AUTHORIZATION AND LICENSE**

Pursuant to Executive Order 13913, the National Telecommunications and Information Administration (NTIA) submits this Petition to Adopt Conditions to Authorization and License (Petition) on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee).<sup>1</sup> Through this Petition, and pursuant to section 1.41 of the Commission's Rules, the Committee advises the Commission that it has no objection to the Commission approving the above-captioned application, provided that the Commission conditions its approval on the assurances of Hawaiian Telcom, Inc., ("HTI") to abide by the commitments and undertakings set forth in the July 23, 2021, Letter of Agreement (LOA), a copy of which is attached hereto.<sup>2</sup>

Section 2 of the Cable Landing License Act authorizes the President to withhold, revoke, or condition a submarine cable landing license if the President determines that such action

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<sup>1</sup> Exec. Order No. 13913, § 9(h), 85 Fed. Reg. 19643, 19647-48 (2020). The Executive Order directs the Committee to "assist the [Commission] in its public interest review of national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector." Id. § 3(a), 85 Fed. Reg. at 19643.

<sup>2</sup> 47 C.F.R. § 1.41.

would, among other things, “promote the security of the United States.”<sup>3</sup> In 1954, the President delegated that authority to the Commission, subject to a requirement that it not act on an application without first obtaining “such advice from any executive department or establishment of the Government as the Commission deems necessary.”<sup>4</sup> The Commission has long sought the expertise of the relevant Executive Branch agencies and has routinely granted agencies’ requests to impose conditions on cable landing licenses to address national security, law enforcement, and other concerns raised by particular applications.<sup>5</sup>

After discussions with representatives of the parties in connection with the above-captioned application, the Committee has concluded that the additional commitments and undertakings set forth in the LOA will help ensure that those agencies with responsibility for protecting national security, enforcing the law, and preserving public safety can proceed appropriately to satisfy those responsibilities.

Accordingly, NTIA on behalf of the Committee advises the Commission that the Committee has no objection to the Commission granting the above-captioned application, provided that the Commission conditions its consent on compliance with the July 23, 2021, LOA attached to this filing.

Respectfully submitted,



Kathy Smith  
Chief Counsel

National Telecommunications and  
Information Administration  
U.S. Department of Commerce  
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August 3, 2021

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<sup>3</sup> 47 U.S.C. § 35.

<sup>4</sup> Exec. Order No. 10530, § 5(a), 19 Fed. Reg. 2709, 2711 (1954). See also 47 C.F.R. § 1.767(b).

<sup>5</sup> See, e.g., Actions Taken Under Cable Landing License Act, 34 FCC Rcd 8628 (2019), 32 FCC Rcd 3791, 3792-93 (2017), 28 FCC Rcd 1323, 1324 (2013), 24 FCC Rcd 2219, 2220 (2009), 23 FCC Rcd 13149, 13420 (2008).

July 23, 2021

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Dear Madam/Sir:

This Letter of Agreement (“LOA”) outlines the commitments made by Hawaiian Telcom, Inc. (“HT” or “Licensee”) to the U.S. Department of Homeland Security, the U.S. Department of Justice, and the U.S. Department of Defense (collectively, the “Compliance Monitoring Agencies” or “CMAs”) to address national security and law enforcement risks raised with regard to an application filed by Paniolo Cable Company (“PCC”) and HT with the Federal Communications Commission (“FCC”) requesting consent to assign the cable landing license for the Paniolo Cable System (“Paniolo”) from PCC to HT.<sup>1</sup> Paniolo is a submarine cable system that connects five of the Hawaiian Islands: Kauai, Oahu, Molokai, Maui, and Hawai’i.

HT certifies as true and correct, under penalties outlined in 18 U.S.C. § 1001, all statements HT or its representatives have made to the CMAs and the FCC in the course of the review of the above-referenced application that the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (“Committee”) conducted pursuant to Executive Order 13913. HT hereby adopts those statements as the basis for this LOA.

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<sup>1</sup> FCC File No. SCL-ASG-20210122-00006.

HT has agreed to provide this LOA to the CMAs, and understands that upon execution of this LOA, the FCC will be petitioned to condition the cable landing license for Paniolo on compliance with this LOA.

For purposes of this LOA:

- A. “Access” means the ability to physically or logically undertake any of the following actions: (a) read, divert, or otherwise obtain non-public information or technology from or about software, hardware, a system or a network; (b) add, edit or alter information or technology stored on or by software, hardware, a system or a network; and (c) alter the physical or logical state of software, hardware, a system or a network (*e.g.*, turning it on or off, changing configuration, removing or adding components or connections).
- B. “Cybersecurity Incident Response Plan” means a plan or processes put in place to develop and implement the appropriate activities to take action regarding a detected cybersecurity event that has been determined to have an impact on HT prompting the need for response and recovery.
- C. “Domestic Communications” means: (a) Wire Communications or Electronic Communications (whether stored or not) between one location within in the United States, including its territories, to another location within the United States, including its territories; or (b) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates or terminates in the United States or its territories.
- D. “Domestic Communications Infrastructure” or “DCI” means: (a) any portion of Paniolo that physically is located in the United States, up to and including the submarine line terminating equipment, including (if any) transmission, switching, bridging, and routing equipment, and any associated software (with the exception of commercial-off-the-shelf (“COTS”) software used for common business functions, *e.g.*, Microsoft Office) used by or on behalf of HT for Paniolo to provide, process, direct, control, supervise, or manage Domestic Communications; and (b) Network Operations Center (“NOC”) facilities, as defined in Section F below.
- E. “Electronic Communication” has the meaning given it in 18 U.S.C. § 2510(12).
- F. “Network Operations Center” or “NOC” means the locations and facilities designated as such by HT for purposes of performing network management, monitoring, maintenance, or other operational functions for Paniolo.
- G. “Principal Equipment” means the primary electronic components of Paniolo, which comprises the DCI and Wet Infrastructure. Principal Equipment consists of: network element servers; routers; switches; repeaters; submarine line terminal equipment (“SLTE”); system supervisory equipment (“SSE”); signal modulators and amplifiers; power feed equipment (“PFE”); tilt and shape equalizer units (“TEQ/SEQ”); optical distribution frames (“ODF”); branching units (“BU”); synchronous optical network (“SONET”); synchronous digital hierarchy (“SDH”); interface equipment; wavelength selective switch (“WSS”) technology; wave division multiplexing (“WDM”); dense wave division multiplexing (“DWDM”); coarse wave division

multiplexing (“CWDM”); optical carrier network (“OCx”) equipment, as applicable; all embedded software for the equipment; any non-embedded software used for monitoring, administration, or provisioning Paniolo (with the exception of COTS software used for common business functions, *e.g.*, Microsoft Office); and any other such equipment, whether physical or logical, that performs the functions of the equipment described in this definition that HT may use in the normal course of business.

- H. “Screened Personnel” has the meaning given it in Section 10 below.
- I. “Security” means a condition that results from the establishment and maintenance of protective measures that enable an organization to perform its mission or critical functions despite risks posed by threats to its use of systems. Protective measures may involve a combination of deterrence, avoidance, prevention, detection, recovery, and correction that should form part of the organization’s risk management approach.
- J. “Wet Infrastructure” means hardware components installed and residing on the undersea portion of Paniolo, including fiber optic cables, repeaters, branching units, and routers (if any). Wet Infrastructure includes all the components used to define the topology of the undersea portion of Paniolo.
- K. “Wire Communication” has the meaning given it in 18 U.S.C. § 2510(1).

HT undertakes to comply with the following commitments:

## **1. Security Point of Contact**

HT agrees to maintain a Security Point of Contact (“POC”) for purposes of this LOA. The POC will possess the appropriate authority, reporting lines, independence, skills and resources to ensure compliance with the terms of this LOA. The POC will be a U.S. citizen and, to the knowledge of HT, will be eligible to hold an active U.S. Government security clearance at the “Secret” level or higher. HT agrees to nominate its proposed POC within **30 days** of the execution of this LOA. HT understands that the POC nomination will be subject to CMA review and approval and may be subject to a background check at the sole discretion of the CMAs. In order to facilitate this, HT will provide the name, date of birth, place of birth, social security number, and passport number of the nominee, and will subsequently provide any other information requested by the CMAs.

The POC will be available twenty-four (24) hours per day, seven (7) days per week, regarding any national security or law enforcement risks that the CMAs may identify with respect to Paniolo. Upon CMA request, the POC will make himself/herself available in person within the United States within **72 hours** at a date and location as deemed necessary by the CMAs. The POC will be responsible for receiving and promptly effectuating any lawful inquiries or requests for information, and HT will ensure that the POC has sufficient authority to effectuate compliance with obligations set forth in this LOA.

HT agrees to notify the CMAs of any proposed change to the POC at least **15 days** in advance (except in the case of the unexpected firing, resignation or death of a POC in which case such written notice must be provided within **5 days** of such event) of such proposed change. HT understands that any proposed POC will be subject to CMA review and approval pursuant to this Section as outlined above.

## **2. Cable System Information**

Within **90 days** of the execution of this LOA, and, thereafter, within **30 days** upon CMA request, HT agrees to make available the following Paniolo information:

- (a) network management information, including: (1) a network map that includes physical and logical topology, including any terrestrial backhaul from the cable landing stations to SLTE locations or other facilities housing Paniolo Principal Equipment; (2) network and telecommunications architecture descriptions and associated descriptions of interconnection points and controlled gateways to the DCI and Wet Infrastructure; (3) network operational plans, processes, and procedures; (4) locations and functions of any NOCs, data centers, and main distribution facilities; (5) an organizational chart, to include specific reference to the names and positions of senior HT officials responsible for operations of Paniolo, and/or senior officials of any third parties performing such duties on behalf of HT; and (6) descriptions of interfaces and connections to Paniolo for service offload, disaster recovery, or administrative functions;
- (b) a complete and current list of all contracts held by HT or its designee(s) for the maintenance, repair and security of Paniolo; and
- (c) a restoration plan for the Principal Equipment and the Wet Infrastructure for Paniolo.

Within **45 days** of the execution of this LOA, HT agrees to confirm to the CMAs in writing the location of the Paniolo NOC(s), and other facilities with NOC functionality, and the controller, operator, or manager for, the Paniolo NOC(s). HT understands the CMAs will approve or disapprove the locations within **45 days** of acknowledgement of receipt or as otherwise agreed to by HT and the CMAs, with the right of approval not waived unless provided in writing by the CMAs. HT agrees to notify the CMAs of any proposed change to the NOC locations, or operators, to include the addition of new NOC locations, at least **45 days** in advance of such proposed change. HT understands the CMAs will approve or disapprove the new operator, location or locations within **45 days** of acknowledgement of receipt or as otherwise agreed to by HT and the CMAs, with the right of approval not waived unless provided in writing by the CMAs.

### 3. Principal Equipment List

Within **90 days** of the execution of this LOA, HT agrees to provide the CMAs with a list to include:

- (a) a complete and current list of all Principal Equipment, including:
  - (1) a description of each item and the functions supported;
  - (2) each item's manufacturer; and
  - (3) the model and/or version number of any hardware or software; and
- (b) any vendors, contractors, or subcontractors involved in providing, installing, operating, managing, repairing, or maintaining the Principal Equipment.

Objections to the Principal Equipment List will be handled pursuant to Section 7.

At the sole discretion of the CMAs, HT agrees to supplement in writing the foregoing definition of Principal Equipment to address subsequent technological developments with submarine systems.

### 4. Modifications to Existing Principal Equipment

HT agrees to provide the CMAs at least **30 days'** advance notice prior to any maintenance, repair, or replacement that would result in any modification to the quantum, function, configuration, operation, or location of existing Principal Equipment for Paniolo. With any such notice, HT may request that the CMAs waive the notice obligation of this Paragraph 5 for substantially similar modifications in the future. For the avoidance of doubt, modifications requiring notice to the CMAs do not include routine software updates pushed through by approved vendors.

The 30 days' advance notice requirement is waived for any maintenance, repair, or replacement that is undertaken in response to an unforeseen or uncontrollable event and that is necessary to ensure the continued operability of Paniolo; however, in such circumstances, HT agrees to provide advance notice to the CMAs of the modification, if practicable, and, if impracticable, HT agrees to provide notice within **10 days** after the maintenance, repair, or replacement. This notice will include a detailed description of the equipment replaced and the circumstances surrounding the need to replace the Principal Equipment without 30 days' advance notice.

HT may continue to utilize any Principal Equipment maintained, repaired, or replaced pursuant to the process outlined in this Section, provided that the CMAs do not object pursuant to Section 7. In the event of such an objection, HT will not begin reliance upon, expand existing deployment, or enhance the capabilities of any Principal Equipment to which the CMAs have

objected, and HT agrees to meet, confer, and otherwise attempt in good faith to resolve the CMAs' objection. Until the objection is resolved, HT will not upgrade, install, replace, or service any objectionable Principal Equipment without written authorization from the CMAs.

## **5. Change in Vendors, Contractors, or Subcontractors for Principal Equipment**

HT agrees to provide at least **30 days'** advance notice prior to any change to the list of vendors, contractors, or subcontractors involved in providing, installing, operating, managing, repairing, or maintaining the Principal Equipment.

In addition, HT agrees to provide at least **30 days'** advance notice prior to changing the service offerings or support from a previously-listed vendor, contractor, or subcontractor (*i.e.*, where a previously-listed provider will be offering support in a previously unidentified way).

Objections to any new vendor, contractor, or subcontractor for the Principal Equipment or the proposed service offerings thereof will be handled pursuant to Section 7.

## **6. Equipment Testing**

HT agrees to provide at least **30 days'** advance notice prior to initiating the testing of any new Principal Equipment connected to Paniolo by any vendor not already on the approved Principal Equipment List. Objections to any testing proposed pursuant to this Section will be handled pursuant to Section 7.

Prior to deployment of any distributed acoustic sensing technology onto the marine portion of this cable, HT agrees to receive the approval of the United States Navy.

HT will provide notice to [osd.pentagon.ousd-a-s.list.team-telecom@mail.mil](mailto:osd.pentagon.ousd-a-s.list.team-telecom@mail.mil) prior to the deployment, with a courtesy copy to the CMAs.

## **7. Objection Resolution**

Within **90 days** of receipt of any notice provided by HT pursuant to Sections 3, 4, 5, or 6, the CMAs shall either provide written approval or disapproval to HT of the action described in such notice. If within the 90-days approval/disapproval period the CMAs seek additional information from HT, the approval/disapproval period shall be extended by the number of days the CMAs awaited the requested information. In the event of a disapproval, HT will not expand the existing deployment or enhance the capabilities of any Principal Equipment of which the CMAs have disapproved, and HT agrees to meet, confer and resolve the CMAs' objection. Until the CMAs' disapproval is resolved, HT will not upgrade, install, replace, or service any disapproved Principal Equipment without written authorization from the CMAs.



## **8. Measures to Prevent Improper Use and Unauthorized Logical Access**

HT agrees to take practicable measures to prevent unauthorized logical Access to Paniolo and to prevent any unlawful use or disclosure of information carried on the same, and HT will include these measures in the policies that HT will develop and implement pursuant to this LOA. For purposes of this Section, such “practicable measures,” at a minimum, include effectuating compliance with all applicable U.S. laws and regulations governing cybersecurity, information security, and privacy and will be measures consistent with best practices and guidelines, such as but not limited to the Cybersecurity Framework of the National Institute of Standards and Technology and 27001 Series standards of the International Organization for Standardization. These measures should also include items such as configuration management, security audits, and system interconnection documentation, as well as contractual safeguards and screening procedures for personnel with logical access to the DCI.

HT agrees that its policies will also include, among other things, policies or plans relating to its information security, supply chain security, cybersecurity incident response, remote access, cybersecurity, third-party contractors, outsourcing and offshoring, maintenance and retention of system logs, protection of lawful U.S. process, protection of U.S. Records obtained by HT in the ordinary course of business, and HT’s plans regarding new contracts or amendments to existing contracts with third-party providers requiring those third parties to notify HT in the event of a breach or loss of U.S. Records within a specified time period after discovery, not to exceed 48 hours from the time of discovery, unless the CMAs grant a waiver.

HT agrees to take appropriate measures to protect and promote resiliency of Paniolo, including measures to ensure that security patches for systems and applications are up to date.

HT agrees to maintain or exceed security standards and best practices utilized within the U.S. telecommunications industry for maintenance of password systems and firewalls, monitoring and oversight of logical Access to Paniolo, maintenance of non-destructive logical Access logs, and periodic internal audits of network security and associated network devices.

HT agrees to submit a policy regarding logical security measures for Paniolo adopted in accordance with the requirements of this Section to the CMAs within **90 days** of the date of execution of this LOA. HT agrees that the policy will be updated when appropriate to conform with evolving information security standards, and that HT will make additional modifications to the policy, if requested by the USG Parties, and to work with the USG Parties to implement such modifications. The CMAs will approve or disapprove the policy within **90 days** of receipt.

## **9. Physical Security Measures**

HT agrees to take practicable measures to physically secure Paniolo, including the DCI and Wet Infrastructure. HT will screen appropriate personnel in accordance with Section 10 below, and HT will require that all persons who physically access the DCI are escorted at all times by Screened Personnel, as defined herein.

HT agrees to submit a policy setting forth its physical security measures for Paniolo to the CMAs within **90 days** of the date of execution of this LOA. The CMAs will approve or disapprove the policy within **90 days** of receipt.

## **10. Screening of Personnel**

HT agrees to implement, either directly (including through an affiliate) or through a vendor or service provider, a process to screen any existing or newly hired HT personnel (or any personnel performing under an agreement or arrangement with HT) in, at minimum, the following circumstances:

- (a) any person whose position could involve logical Access to the DCI; and
- (b) any person charged with securing the DCI.

HT's personnel screening process will be reflected in a written policy and will include background investigations, public criminal records checks, or other analogous means to ascertain a person's trustworthiness. Upon satisfactory completion of the requirements set forth in the screening policy, such persons will be considered "Screened Personnel."

HT agrees to submit the screening policy to the CMAs within **90 days** of the execution of this LOA. The CMAs will approve or disapprove the policy within **90 days** of receipt. HT agrees to cooperate with any request by the CMAs to provide additional identifying information regarding Screened Personnel.

## **11. Reporting Incidents and Breaches**

HT agrees to report to the CMAs within **48 hours** if it learns of information that reasonably indicates:

- (a) unauthorized third-party Access to, or disruption or corruption of, Paniolo or any information being carried on Paniolo.
- (b) any other unauthorized Access to or disclosure of Domestic Communications on Paniolo in violation of federal, state, or local law; or
- (c) any material breach of the commitments made in this LOA, including a violation of any approved plan, policy, or procedure under this LOA.
- (d) Any unauthorized Access to, or disclosure of, information obtained from or relating to Government entities; or

- (e) Any one or more of the following which affect HT's computer network(s) or associated information systems:
- i. Unauthorized disruptions to a service or denial of a service;
  - ii. Unauthorized processing or storage of data;
  - iii. Unauthorized modifications to system hardware, firmware, or software, including the identification of vulnerabilities introduced through a cyber supply chain compromise;
  - iv. Unplanned incidents that cause activation of HT's Cybersecurity Incident Response Plan; or
  - v. Attempts from unauthorized sources to Access systems or data if these attempts to Access systems or data may materially affect HT's ability to comply with the terms of this LOA; or
  - vi. An unauthorized occurrence that (A) actually or imminently jeopardizes the integrity, confidentiality, or availability of information or an information system; or (B) constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable use policies.

HT agrees to require any third-party service provider to disclose to HT any security breach, whether from data breach or other cause, within 48 hours of the third party discovering the breach, unless the CMAs grant a waiver. HT agrees further to require any third-party service provider to disclose to HT, within 48 hours of discovery, unless the CMAs grant a waiver, any critical exposure, threat, and vulnerabilities activating its Cybersecurity Incident Response Plan, associated with the products or services provided to HT, including as a result of tainted software, introduction of malware, insertion of counterfeits, unauthorized production, tampering, theft, or insertion of malicious software and hardware, as well as poor development and manufacturing practices in the cyber supply chain.

Upon CMA request, HT agrees to submit in writing a follow-up report describing in greater detail the incident or breach and HT's steps to remediate the incident or breach to the CMAs within **15 days** of discovery of the relevant conduct. HT also agrees to submit in writing supplementary information regarding any follow-up report until such evaluation is complete. HT agrees to remediate any incidents or breaches reported pursuant to this provision to the satisfaction of the CMAs.

HT further agrees to take timely and appropriate remedial measures, as recommended by the US-Computer Emergency Readiness Team/Cybersecurity and Infrastructure Security Agency ("US-CERT"/"CISA"), an Information Sharing and Analysis Center ("ISAC"), or other authority, to respond and recover from any cyber or supply chain incident and mitigate vulnerabilities.

## 12. Instruction of Obligations

HT agrees to instruct appropriate officers, employees, contractors, and agents as to HT's obligations under this LOA, including the individuals' duty to report any violation, and to issue periodic reminders of such obligations.

HT agrees to issue initial instructions in writing and provide appropriate live training within **90 days** of the execution of this LOA, and HT agrees to submit a copy of such instructions to the CMAs at the same time. HT agrees to issue updated instructions or training annually thereafter.

## 13. Change in Services or Cable Operations

HT agrees to notify the CMAs in writing at least **30 days** prior to implementing any changes to the communications services or operations of Paniolo, including notice if HT's proposed change would impact any services provided to U.S. government customers pursuant to a contract with the U.S. government. HT agrees to provide a detailed description of the proposed change including the terms, conditions, individuals and/or entities involved in making the change to the communications services or operations.

## 14. Change in Control

If HT learns of any information that reasonably indicates that any single foreign entity or individual, other than those already identified, has or likely will obtain an ownership interest, whether direct or indirect, in HT or Paniolo above ten (10) percent, or if any foreign entity or individual, singly or in combination with other foreign entities or individuals, has or likely otherwise will gain either: (i) control, as determined in accordance with 47 C.F.R. § 63.09(b); or (ii) *de facto* or *de jure* control of HT or Paniolo, HT agrees to provide notice in writing to the CMAs within **15 days**. Notice under this Section will, at a minimum:

- (a) identify the entity or individual(s) acquiring control (specifying the name, addresses, and telephone numbers of the entity or individual(s));
- (b) identify the beneficial owners of any such increased or prospective increased ownership interest in HT or Paniolo by the entity or individual(s) (specifying the name, addresses, and telephone numbers of each beneficial owner); and
- (c) quantify the amount of ownership interest that the entity or individual(s) has or likely will obtain in HT or Paniolo and, if applicable, the basis for their prospective control of HT or Paniolo.

## 15. Annual Report

On March 12, 2022 and each subsequent anniversary, HT agrees to submit to the CMAs a report assessing HT's compliance with the terms of this LOA for the preceding year. The report shall include:

- (a) a certification, under penalties outlined in 18 U.S.C. § 1001, that all statements contained within the report are true and correct;
- (b) the names and contact information of the then-current POC(s);
- (c) Cable System Information, as described in Section 2 above, noting any changes during the reporting period;
- (d) an updated Principal Equipment List containing all information described in Section 3 above, identifying any modifications during the reporting period;
- (e) a copy of the then-current policies adopted in accordance with this LOA, including policies for logical security (Section 8), physical security (Section 9), screening (Section 10), incident reporting (Section 11), and employee training (Section 12), and a summary of any changes during the reporting period and the reasons therefor;
- (f) a summary of any events that occurred during the reporting period that will or reasonably could impact the effectiveness of or compliance with this LOA;
- (g) a summary of any known acts of noncompliance with the terms of this LOA that occurred during the reporting period, whether inadvertent or intentional, with a discussion of what steps have been or will be taken to prevent such acts from occurring in the future;

## 16. Third-Party Audit

At their sole discretion, but no more frequently than once every calendar year, unless the original audit is found by the CMAs to have been unsatisfactory, the CMAs may request a third-party audit of HT's compliance with the terms of this LOA.

- (a) Within **60 days** of the CMAs requesting a third-party audit, HT will nominate two third-party auditors, subject to the approval of the CMAs. Within **60 days** of the nominations, the CMAs will approve or disapprove the nominated third-party auditor firms.
- (b) If the CMAs disapprove of either of the nominated third-party auditors, HT agrees to nominate, within **30 days** of such objection, another third-party auditor. If the CMAs disapprove the nomination of a supplemental third-party auditor, HT will provide to the

CMAs three (3) additional candidates to be considered for third-party auditor from which the CMAs may choose at their discretion.

- (c) As part of the auditor nomination and approval process, the CMAs may condition approval of a nominated auditor on HT providing information regarding HT's and the nominated auditor's pre-existing relationship (if any).
- (d) HT will be solely responsible for any costs associated with any third-party audit carried out pursuant to this Section. The CMAs, however, will consider avoidance of unreasonable costs as a factor when exercising their rights under this Section.
- (e) HT will ensure the selected third-party auditor submits, prior to commencing the audit, a methodology and proposed scope of audit, both of which will be subject to CMA approval.
- (f) HT will ensure that the executed engagement agreement with the third-party auditor is provided to the CMAs within **5 days** of execution.
- (g) The third-party auditor will promptly deliver to the CMAs and HT all reports and related information generated or gathered during its review that relate directly to HT's compliance with the terms of this LOA and agrees to meet independently with the CMAs upon request.

## **17. Consultation and Visitation**

HT agrees to meet and confer with the CMAs and to resolve to the satisfaction of the CMAs any concerns the CMAs may raise regarding compliance with this LOA.

HT agrees to negotiate in good faith to resolve to the satisfaction of the CMAs any national security or law enforcement risks the CMAs may identify with respect to any matters set forth in this LOA.

HT agrees that, upon **48 hours** advance notice, except when due to exigent circumstances such advance notice is not practicable, the CMAs may visit HT or Paniolo facilities to conduct on-site reviews to verify the implementation of and compliance with the terms of this LOA. Subject to applicable law, HT will provide unimpeded access to any documents, information, facilities, and personnel necessary to verify compliance with the terms of this LOA on the understanding that when advance notice of a visit is not provided, HT will provide the CMAs with access to documents, information, facilities, and personnel within **24 hours** of such an access request.

## **18. Computing Time**

In computing any time period pursuant to this LOA, the below rules apply.

- (a) For any period stated in days:
  - i. the day of the event that triggers the period is excluded;
  - ii. every day thereafter is counted, including intermediate Saturdays, Sundays, and federal holidays, except for those days that are tolled pursuant to Section 18(c); and
  - iii. the last day of the period is included, but if the last day is a Saturday, Sunday, or federal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or federal holiday.
- (b) For any period stated in hours:
  - i. begin counting immediately on the occurrence of the event that triggers the period;
  - ii. count every hour, including hours during intermediate Saturdays, Sundays, and federal holidays, except for those hours that are tolled pursuant to Section 18(c).; and
  - iii. if the period would end on a Saturday, Sunday, or federal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or federal holiday.
- (c) Any approval provision applicable to the CMAs pursuant to this LOA shall be tolled during a lapse in appropriations or any time when the Federal government in the greater Washington, D.C. area is closed.

This LOA shall inure to the benefit of, and shall be binding upon, HT and its successors, assigns, subsidiaries, and affiliates.

HT agrees that, in the event that HT breaches the commitments set forth in this LOA, to include conduct contrary to the CMAs' timely objection to any notice submitted pursuant to this LOA, under subsection 10(f) of Executive Order 13913 ("the Executive Order"), a recommendation may be made that the FCC modify, condition, revoke, cancel, terminate, enter other declaratory relief, or render null and void any relevant license, permit, or other authorization granted by the FCC to HT or any successors-in-interest, in addition to any other remedy available at law or equity.

If, after this LOA takes effect, the CMAs or HT believe that changed circumstances warrant modifying or terminating this LOA (including if the CMAs determine that the terms of this LOA are inadequate or no longer necessary to address national security or law enforcement risks), HT and the CMAs agree to negotiate in good faith to modify this LOA. Rejection of a proposed modification alone shall not constitute evidence of a failure to negotiate in good faith.

Nothing in this LOA excuses HT from its obligations to comply with all applicable legal requirements and obligations, including all applicable statutes, regulations, requirements, or orders. More specifically, HT understands that all statements HT and/or its representatives make to the CMAs are and will remain subject to the penalties set forth in 18 U.S.C. § 1001, should any such statements violate that statute.

HT agrees to permit disclosure of confidential and highly confidential information submitted to the FCC pursuant to 47 C.F.R. § 0.442 to Federal government departments, agencies, and offices whose principals are listed in Section 3 of Executive Order 13913.

HT understands that, upon execution of this LOA by an authorized representative or attorney, or shortly thereafter, the FCC will be notified that there is no objection to grant of the application.

For and on behalf of Hawaiian Telcom Inc.



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