



PUBLIC NOTICE

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APPLICATIONS GRANTED FOR THE TRANSFER OF CONTROL OF HAWAIIAN TELCOM HOLDCO, INC. TO CINCINNATI BELL INC.

WC Docket No. 17-207

By the Chief, Wireline Competition Bureau; Chief, International Bureau; Chief, Wireless Telecommunications Bureau:

By this Public Notice, the Wireline Competition Bureau, International Bureau, and Wireless Telecommunications Bureau (Bureaus) grant a series of applications filed by Cincinnati Bell Inc. (Cincinnati Bell), Hawaiian Telcom Holdco, Inc. (Holdco), Hawaiian Telcom, Inc. (HTI), Hawaiian Telcom Services Company, Inc. (HTSC), and Wavecom Solutions Corporation (Wavecom) (HTI, HTSC, and Wavecom, collectively, Licensees, and, together with Cincinnati Bell and Holdco, Applicants), pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (Act),¹ and the Cable Landing License Act of 1921,² requesting consent to transfer indirect control of Licensees to Cincinnati Bell.³

¹ 47 U.S.C. §§ 214, 310(d).

² 47 U.S.C. §§ 34-39; *see also* Exec. Ord. No. 10530, Sec. 5(a), reprinted as amended at 3 U.S.C. § 301 (delegating the President's authority under the Cable Landing License Act to the Commission).

³ Joint Application of Cincinnati Bell Inc. and Hawaiian Telcom Holdco, Inc. and Hawaiian Telcom, Inc., Hawaiian Telcom Services Company, Inc., and Wavecom Solutions Corporation for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Transfer Indirect Control of Domestic and International Section 214 Authorization Holders to Cincinnati Bell, Inc., WC Docket No. 17-207 (filed Aug. 11, 2017) (Lead Application). Applicants filed supplements to the Lead Application on August 23, 2017, January 2, 2018, and March 14, 2018. Letter from Catherine Wang, Counsel to Cincinnati Bell Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket 17-207 (filed Aug. 23, 2017); Letter from Catherine Wang, Counsel to Cincinnati Bell Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket 17-207 (filed Jan. 2, 2018) (Applicants' Jan. 2 Supplement); Letter from Catherine Wang, Counsel to Cincinnati Bell Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket 17-207 (filed Mar. 14, 2018). The file numbers for the other applications are set out in Attachment A (collectively, and together with the Lead Application, Applications). The Hawaii Department of Commerce and Consumer Affairs and the Hawaii Public Utilities Commission also conducted separate reviews of the transaction. 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 (Hawaii Dept. of Commerce and Consumer Aff. (DCCA) Dec. 8, 2017) (DCCA Order)); Applicants' Jan. 2 Supplement (acknowledging that the DCCA Order requires Cincinnati Bell/HTSC to invest at least \$20 million, including in areas outside of HTSC's current franchise area, to build out its network and to provide within four years of the close of the transaction, at least 15,000 new or upgraded connections to homes); Application of Cincinnati Bell Inc., Hawaiian Telcom, Inc., Hawaiian Telcom Services Company Inc., and Wavecom Solutions Corporation for Approval to Transfer Indirect Control of Licensees to Cincinnati Bell Inc. et al., Decision and Order, No. 35427,

Holdco is the indirect parent company of HTI, HTSC, and Wavecom, all providing service in Hawaii.⁴ HTI is an incumbent local exchange carrier (LEC) providing voice and data services and also holds submarine cable landing licenses for interisland network facilities and various wireless licenses for fixed microwave and land mobile radio facilities.⁵ HTSC provides interstate and intrastate long distance, data, video, wireless service, and other services and holds an ownership interest in the Southeast Asia-U.S. (SEA-US) fiber optic submarine cable system between the continental United States, Indonesia, Philippines, Guam, and Hawaii.⁶ Wavecom provides competitive LEC services.⁷

Cincinnati Bell, along with its subsidiaries, provides data, video, and voice services.⁸ Cincinnati Bell's subsidiary, Cincinnati Bell Telephone Company LLC, operates as an incumbent LEC serving portions of Ohio, Kentucky, and Indiana.⁹ Beyond its incumbent LEC territory, Cincinnati Bell provides competitive LEC services in Ohio and video service in Ohio, Kentucky, and Indiana through its indirect subsidiary, Cincinnati Bell Extended Territories LLC. Cincinnati Bell also provides nationwide long distance, voice over Internet protocol, and competitive LEC service through its indirect subsidiary, Cincinnati Bell Any Distance Inc.¹⁰

On August 29, 2017, the Bureaus released a public notice seeking comment on the Applications.¹¹ On September 17, 2017, the Department of Justice (DOJ), with the concurrence of the Department of Defense (DOD) and the Department of Homeland Security (DHS, and collectively with DOJ and DOD, the Executive Branch Agencies), filed a letter requesting that the Commission defer action on these applications while they reviewed potential national security, law enforcement, and public safety issues.¹² On June 7, 2018, the Executive Branch Agencies submitted a Petition to Adopt Conditions to Authorizations and Licenses.¹³ In the Petition, the Executive Branch Agencies advise the Commission that they have no objection to the Commission approving the authority sought in this proceeding, provided the Commission conditions its approval on the assurance of Cincinnati Bell to abide by "undertakings set forth in the June 1, 2018 Commitment Letter."¹⁴

at 43-45 (Hawaii Pub. Util. Comm., Apr. 30, 2018) (approving the transaction with conditions, including a condition that provides for further detail associated with the DCCA fiber buildout condition described above).

⁴ Holdco's 100 percent interest in HTI and HTSC is held through an intermediate holding company, Hawaiian Telcom Communications, Inc., a Delaware corporation. Lead Application at 5, n.10.

⁵ *Id.* at 5 and n.14.

⁶ *Id.* at 6 and n.15.

⁷ *Id.* at 5-6.

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ *Id.* at 3.

¹¹ *Applications Filed for the Transfer of Control of Hawaiian Telcom, Inc., Hawaiian Telcom Services Company, Inc., and Wavecom Solutions Corporation to Cincinnati Bell Inc.*, WC Docket No. 17-207, Public Notice, 32 FCC Rcd 6715 (WCB/IB/WTB 2017).

¹² Letter from Elizabeth Poteat, Department of Justice, to Marlene H. Dortch, FCC, WC Docket No. 17-207, File Nos. SCL-T/C-20170811-00019; SCL-T/C-20170811-00020 (filed Sept. 1, 2017).

¹³ Petition of Department of Homeland Security to Adopt Conditions to Authorizations and Licenses, WC Docket No. 17-207, File Nos. SCL-T/C-20170811-00019 and SCL-T/C-20170811-00020 (filed June 7, 2018).

¹⁴ Petition at 1; Letter from Christopher J. Wilson, Vice President & General Counsel, Cincinnati Bell Inc., to Michael Dougherty, Assistant Secretary, Department of Homeland Security, WC Docket 17-207 (June 1, 2018) (Commitment Letter).

One commenter raised questions regarding the future operation of aging undersea cables serving Hawaii post-consummation, but did not oppose a grant of the transaction.¹⁵ In response, Applicants argue that the commenter’s concern is not transaction-specific because the transaction will not affect the age of the existing facilities.¹⁶ Applicants also claim that “Hawaiian Telcom does not anticipate capacity issues on its network as advances in telecommunications transport technology allows Hawaiian Telcom to upgrade the fiber electronics on the system to meet demand even in the unlikely event that demand materially exceeds projections.”¹⁷ We agree that the aging of undersea cables already in service is not transaction-specific, and is not sufficient to justify a denial of the Application or to impose conditions on the terms of the transfer. Applicants contend that the transaction will provide Hawaiian Telcom a stronger financial and operational foundation, which will “enhance future planning and development for interisland submarine cables.”¹⁸ We find that the transaction is likely to result in continued, and perhaps improved, financing for Hawaiian Telcom, which may result in a greater incentive or ability to enhance its service offerings.¹⁹

We find, upon consideration of the record, that the proposed transfer will serve the public interest, convenience, and necessity, and therefore grant the Applications.²⁰ Further, we grant the Petition to Adopt Conditions to Authorizations and Licenses filed by the Executive Branch on June 7, 2018 (Petition).²¹ Accordingly, we condition grant of the cable landing license transfer of control applications, File Nos. SCL-T/C-20170811-00019 and SCL-T/C-20170811-00020, on compliance by Cincinnati Bell with the commitments and undertaking set out in the Commitment Letter.²² A failure to comply with

¹⁵ Comments of Aaron Stene, WC Docket No. 17-207 (filed Sept. 21, 2017); Letter from Aaron Stene to Dennis Johnson, WC Docket No. 17-207 (filed Oct. 19, 2017).

¹⁶ Reply Comments of Applicants, WC Docket No. 17-207 (filed Oct. 13, 2017) (Applicants Reply).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See *Applications of Level 3 Communications, Inc. and CenturyLink for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 32 FCC Rcd 9581, 9605, para. 53 (2017) (finding that a larger, better capitalized combined company is more likely to expand or improve fiber network); *Applications of National Rural Utilities Cooperative Finance Corporation and Atlantic Tele-Network, Inc for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 31 FCC Rcd 6913, 6924-25, paras. 33, 36 (WCB, IB, MB, WTB 2016) (finding that improved financing for a telecommunications provider was likely to result in improved operations overall and improved broadband services, thereby serving the public interest).

²⁰ *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517, 5533-35, paras. 29-34 (2002) (establishing streamlined processing procedures for transactions involving incumbent LECs with no overlapping or adjacent service areas); *Applications filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, Memorandum Opinion and Order, 26 FCC Rcd 4194, 4198-99, para. 7 (2011) (*CenturyLink/Qwest Order*) (finding, in part, that a transaction involving incumbent LECs would result in a strengthened financial position and enhanced ability to compete); *Applications filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control*, Memorandum Opinion and Order, 25 FCC Rcd 5927, 5980, paras. 15-17 (2010) (finding that a transaction involving two incumbent LECs that do not compete would have no adverse effects on existing competition).

²¹ In assessing the public interest, the Commission considers the record and accords the appropriate level of deference to Executive Branch expertise on national security and law enforcement issues. See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919-21, paras. 61-66 (1997) (*Foreign Participation Order*), Order on Reconsideration, 15 FCC Rcd 18158 (2000).

²² See *supra* note 14. The Petition and Commitment Letter may be viewed on the FCC’s website through ECFS at https://www.fcc.gov/ecfs/search/filings?proceedings_name=17-207&sort=date_disseminated, DESC or through the

and/or remain in compliance with any of the provisions of the Commitment Letter shall constitute a failure to meet a condition of this authorization and thus grounds for declaring the underlying licenses terminated without further action on the part of the Commission.²³ Failure to meet a condition of this authorization may also result in monetary sanctions or other enforcement action by the Commission.

Therefore, pursuant to sections 214(a), 214(c), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 214(a), 214(c), 303(r), 309, 310(d), and the Cable Landing License Act, 47 U.S.C. §§ 34-39, and sections 1.767, 1.948, 63.04, and 63.24 of the Commission's rules, 47 C.F.R. §§ 1.767, 1.948, 63.04, 63.24, and pursuant to the authority delegated under sections 0.51, 0.91, 0.131, 0.261, 0.291, and 0.331 of the Commission's rules, 47 CFR §§ 0.51, 0.91, 0.131, 0.261, 0.291, 0.331, the Applications to transfer control of the licenses and authorizations listed in Attachment A are granted.

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the consent granted herein is effective upon the release of this Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information, please contact Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, at (202) 418-0809; Linda Ray, Broadband Division, Wireless Telecommunications Bureau, at (202) 418-0257; or David Krech, Policy Division, International Bureau, at (202) 418-7443.

International Bureau Filing System by searching for File Nos. SCL-T/C-20170811-00019 or SCL-T/C-20170811-00020 and accessing the "Other Filings related to this application" from the Document Viewing Area.

²³ In the Commitment Letter, Cincinnati Bell agrees to abide by the commitments of (1) the January 11, 2017 National Security Agreement (NSA) between GTI Corporation d/b/a GTI Telecom, Hawaiian Telecom Services Company, Inc. (HT) RAM Telecom International, Inc., and TeleGuam Holdings, LLC d/b/a GTA regarding the SEA-US cable, *see* SCI-LIC-20150626-00016; and (2) a December 7, 2012 Letter of Assurance (LOA) from Hawaiian Telecom, Inc. to DHS regarding the Hawaiian Interisland Cable System, SCL-LIC-19921015-00008, and the Hawaiian Island Fiber Network, SCL-LIC-19950627-00024, *see* WC Docket No. 12-206; ITC-T/C-20120716-00183, ISP-PDR-20120716-00003.

ATTACHMENT A

SECTION 214 AUTHORIZATIONS

A. International

| <u>File Number</u> | <u>Authorization Holder</u> | <u>Authorization Number</u> |
|---------------------------|---------------------------------------|--------------------------------------|
| ITC-T/C-20170811-00138 | Hawaiian Telcom, Inc. | ITC-214-20040630-00512 ²⁴ |
| ITC-T/C-20170811-00139 | Hawaiian Telcom Services Company Inc. | ITC-214-20010503-00269 |
| | | ITC-214-20040630-00513 |

B. Domestic

The Wireline Competition Bureau grants the application to transfer control of domestic section 214 authority in connection with the transfer of HTI, HTSC, and Wavecom to Cincinnati Bell.

CABLE LANDING LICENSES

| <u>File Number</u> | <u>Licensee</u> | <u>License Number</u> |
|---------------------------|---------------------------------------|------------------------------|
| SCL-T/C-20170811-00019 | Hawaiian Telcom, Inc. | SCL-LIC-19921015-00008 |
| | | SCL-LIC-19950627-00024 |
| SCL-T/C-20170811-00020 | Hawaiian Telcom Services Company Inc. | SCL-LIC-19950627-00024 |
| | | SCL-LIC-20150626-00016 |

SECTION 310(d) APPLICATIONS

| <u>File Number</u> | <u>Licensee</u> | <u>Lead Call Sign</u> |
|---------------------------|-------------------------------|------------------------------|
| 0007862711 | Hawaiian Telcom, Inc. | KCG66 |
| 0007862629 | Wavecom Solutions Corporation | WQQW580 |
| 0007867994 | Hawaiian Telcom, Inc. | WQSW873 |

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²⁴ Wavecom provides international service under authority of the international Section 214 authorization held by HTI, ITC-214-20040630-00512, pursuant to Section 63.21(h), 47 CFR § 63.21(h).