

**REDACTED FOR PUBLIC INSPECTION**

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

In the Matter of	)	
	)	
Application of Cellco Partnership d/b/a	)	WT Docket No. 12-4
Verizon Wireless and SpectrumCo LLC	)	
For Consent To Assign Licenses	)	
	)	
Application of Cellco Partnership d/b/a	)	
Verizon Wireless and Cox TMI Wireless, LLC	)	
For Consent To Assign Licenses	)	

**REPLY COMMENTS OF HAWAIIAN TELCOM COMMUNICATIONS, INC.**

March 26, 2012

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**REPLY COMMENTS OF HAWAIIAN TELCOM COMMUNICATIONS, INC.**

Hawaiian Telcom Communications, Inc. (“HTCI”), by its undersigned counsel, hereby replies to the Joint Opposition to Petitions to Deny and Comments, filed by Verizon Wireless, SpectrumCo, and Cox Wireless (collectively “Applicants”),<sup>1</sup> in the above-captioned applications for consent to assign certain wireless spectrum licenses, pursuant to 47 USC §§ 309(d) and 310(d), and the Commission’s rules.

**I. EXECUTIVE SUMMARY**

HTCI maintains its contention that Verizon Wireless’ acquisition of Hawaii wireless licenses from SpectrumCo and the related joint marketing and research and development agreements between Verizon Wireless and Oceanic Time Warner Cable will harm the market for voice, high-speed Internet (wireless and wireline) and paid video programming services in Hawaii as well as harm HTCI, which, through its wholly owned subsidiaries, Hawaiian Telcom,

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<sup>1</sup> *Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC For Consent To Assign Licenses Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC For Consent To Assign Licenses, Joint Opposition to Petitions to Deny and Comments, WT Docket No. 12-4 (Mar. 2, 2012)* (“Joint Opposition”).

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Inc. and Hawaiian Telcom Services Company, Inc., competes directly in the provision of those services. HTCI and its wholly owned subsidiaries are collectively referred to herein as “Hawaiian Telcom.” Specifically, the transaction and agreements will enhance Oceanic’s already dominant market position and will facilitate coordinated action between Verizon Wireless and Oceanic that will harm competition in various markets.<sup>2</sup> Accordingly, Hawaiian Telcom continues to request that the Commission (1) deny assignment of the wireless licenses from SpectrumCo to Verizon Wireless, (2) in the alternative, deny assignment of the wireless licenses from SpectrumCo to Verizon Wireless in Hawaii, (3) or, as a less desirable alternative, condition the transferring of the wireless licenses from SpectrumCo to Verizon Wireless in Hawaii on the modification of the Verizon Wireless and Oceanic joint marketing agreements such that Hawaii is the last location where those agreements would be implemented.

## II. HAWAIIAN COMMUNICATION MARKETS ARE UNIQUE

Unique circumstances in Hawaii hinder effective competition with Oceanic's dominant position. Hawaiian Telcom has described its state’s unique geography, geology, topology, and population characteristics that makes the provision of communications services in Hawaii extremely challenging.<sup>3</sup> For example, Hawaii is the only state where deep-sea submarine fiber and microwave links are essential to provide both intrastate and interstate transport. Microwave solutions have limited bandwidth and distance limitations, and are affected by atmospheric

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<sup>2</sup> It should be noted that Oceanic is a significantly larger company than Hawaiian Telcom. As reflected in Exhibit A attached hereto, an article published in *Hawaiian Business*, Oceanic had 2010 revenue of \$516.9 million, while Hawaiian Telcom’s 2010 revenue was \$401.4 million.

<sup>3</sup> *Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC For Consent To Assign Licenses Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC For Consent To Assign Licenses*, Hawaiian Telcom Communications, Inc. Petition to Deny or Condition Assignment of Licenses, WT Docket No. 12-4, pp. 4-5 (Feb. 21, 2012)(“Petition to Deny”).

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conditions. Undersea fiber optic cables have to deal with strong ocean currents, violent storms, tsunamis, volcanic activity and seaquakes. Additionally, coastal infrastructure must withstand corrosive salt exposure, lava flows, and hurricanes. Those conditions and the dramatic variations in topography across even short distances makes telecommunications infrastructure deployment especially difficult in the sparsely populated areas of the state outside of Honolulu.<sup>4</sup> The Applicants did not contest Hawaiian Telcom's description.

Hawaiian Telcom further explained how the state's unique geography significantly hinders satellite video services and broadcast television from being effective competitive alternatives in the video programming market in Hawaii. For example, in contrast to their significant presence in the continental U.S., DISH Network and DirecTV do not provide a significant competitive presence in Hawaii, comprising only about 5% of the market. This stems from the technical problems created by the fact that Hawaii is at the edge of the satellite transponder footprint for those services. Antennas must be pointed at a relatively low angle to the horizon and, therefore, signals can be hindered easily because of physical or topographical reasons (not to mention an increase in signal disruptions resulting from rain attenuation). Furthermore, broadcast television is a particularly poor alternative to paid television in Hawaii given the large number of households without line-of-sight and near-line-of-sight to television broadcasting towers because of mountain ridges and valley walls. Again, the Applicants did not contest Hawaiian Telcom's statements.

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<sup>4</sup> The island of Oahu, which comprises approximately 9 percent of Hawaii's land mass, houses about 70 percent of its population, with the vast majority located in a single city, Honolulu. The remaining islands comprise approximately 91 percent of Hawaii's land mass, but house only about 30 percent of its population. Outside of Honolulu, therefore, the state's population density is generally extremely low. The same is true with respect to geographic loop density, with only three of Hawaiian Telcom's wire centers, all located in Honolulu, having line density greater than 10,000 loops per square mile.

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The uniqueness of the terrain in Hawaii heavily influences its communications markets and directly impacts the Commission's public interest analysis. The Commission has previously recognized those facts in prior proceedings.<sup>5</sup> The practical effect in the instant case is that the Applicants' generic arguments about the availability of competitive alternatives and impact that joint marketing and product development agreements will have on competition, which make no mention whatever of competitive conditions in Hawaii, fail to account for the unique challenges facing competitors within the Hawaii communications markets. Hawaiian Telcom maintains that these conditions unique to Hawaii exacerbate the anticompetitive effects of the proposed deal and related arrangements, and despite Hawaiian Telcom having raised these arguments in its Petition to Deny, Applicants have offered no Hawaii-specific response. Hawaiian Telcom therefore strongly urges the Commission to assess the professed public interest benefits espoused by the Applicants through the prism of Hawaii's unique marketplace and conclude that at the very least, the Applicants have not carried their burden of proving that the proposed transaction is in the public interest in the Hawaii market.

### III. COMMISSION MUST REVIEW JOINT AGREEMENTS

#### A. Commission has the authority to review joint agreements

The Commission has broad discretion to determine the scope of information required to complete its public interest analysis and the manner in which that review will be conducted.<sup>6</sup>

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<sup>5</sup> *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶ 193 (Nov. 18, 2011)("We direct the Wireline Competition Bureau to consider the unique circumstances of [Hawaii] when adopting a cost model ... ."); *Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 to Amend Section 338 of the Communications Act*, Report and Order, 20 FCC Rcd 14242, 14257, at ¶ 32 (2005)("We believe that this statutory provision recognizes the existing physical limitations on satellite service, particularly in [Alaska and Hawaii].").

<sup>6</sup> Section 310(d) of the Act provides that no wireless license "shall be transferred, assigned or disposed of in any manner ... except ... upon finding by the Commission that the public interest, convenience, and necessity will be served thereby." 47 U.S.C. § 310(d).

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Section 4(j) of the Act empowers the Commission to "conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice."<sup>7</sup> Additionally, section 309(a) states that the Commission may decide whether the public interest standard has been satisfied based on its review of the application and consideration "of such other matters as the Commission may officially notice."<sup>8</sup> Thus the Act does not restrict the Commission's authority to reviewing only what an *applicant* deems relevant to the transfer of wireless assets.<sup>9</sup> That choice is instead given to the Commission.

With respect to deciding what material is relevant, "[t]he Commission's authority to use its administrative discretion in determining which documents and materials are necessary to, or otherwise most relevant and probative to, its public interest analysis is well-established."<sup>10</sup> As the D.C. Circuit has stated, "[t]he Commission is fully capable of determining which documents are relevant to its decision-making."<sup>11</sup> In the instant case, the Commission's conclusion with respect to the relevance of the joint marketing agreements is clear: "*In order for the Commission to complete its review of the applications and consider the necessary public interest findings*

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<sup>7</sup> 47 U.S.C. § 154 (j).

<sup>8</sup> 47 U.S.C. § 309 (a). The provisions of section 309 address not only an initial license application but also pertain to the review of license transfers pursuant to section 310 of the Act ("Any such application shall be disposed of as if the proposed transferee or assignee were making application under section 308 of this title for the permit or license in question ... ."). Section 309 governs applications to which section 308 applies.

<sup>9</sup> The only area the Commission is expressly prohibited from considering is "whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee." 47 U.S.C. § 310 (d).

<sup>10</sup> *In the Matter of Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, Order, 17 FCC Rcd 22633, 22636 (2002) ("Comcast/AT&T Order"), *aff'd* *Consumer Federation of America v. FCC*, 348 F.3d 1009 (D.C. Cir. 2003).

<sup>11</sup> *SBC Communications Inc v. FCC*, 56 F.3d 1484, 1496 (D.C. Cir. 1995).

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*under section 310(d) of the Communications Act, we require that [Verizon, SpectrumCo, and Cox] provide ... a revised copy of [their joint marketing agreements].”<sup>12</sup>*

Given that “[i]t is incumbent upon the Commission to include in the public record documents or evidence of decisional significance,”<sup>13</sup> the Commission’s request that the Applicants produce their joint product development agreements also clearly indicates that such agreements are considered by the Commission relevant to its public interest analysis and should be considered in its review of Applicants’ license transfer request. The Applicants even acknowledged that such a request was made.<sup>14</sup> As the Commission is authorized to examine those matters it deems necessary to conduct its public interest analysis, the Applicants’ protestations that the joint marketing and product development agreements are outside of the Commission’s authority should be disregarded.

Such consideration is not unique; the Commission has on numerous occasions requested and examined similar agreements and arrangements. For example, in Frontier’s acquisition of Verizon wireline assets, the Commission inquired specifically about Frontier’s co-marketing agreements with Dish Network Satellite TV.<sup>15</sup> In AT&T’s acquisition of Centennial’s wireless assets, the Commission requested information from America Movil regarding its relationship with AT&T and required the production of the management services agreement between

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<sup>12</sup> Letter to Michael Samscock, Cellco Partnership, from Rick Kaplan, Chief, Wireless Telecommunications Bureau, WT Docket No. 12-4, p.1 (March 8, 2012) (emphasis added, citations omitted).

<sup>13</sup> *Comcast/AT&T Order*, 17 FCC Rcd at 22636, ¶ 7.

<sup>14</sup> Letter to Marlene H. Dortch, Secretary, FCC, from Michael H. Hammer, WT Docket No. 12-4, p.3 (January 18, 2012) (“in order to avoid undue delay in the Commission’s review of the spectrum transaction and in response to a Commission request”).

<sup>15</sup> Letter to Kenneth F. Mason, Frontier Communications Corporation, and Karen Zacharia, Verizon, from Sharon Gillett, Chief, Wireline Competition Bureau, WC Docket No. 09-95, Attachment, p.7 (Feb. 12, 2010).

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subsidiaries of AT&T and America Movil.<sup>16</sup> In the Comcast/NBCUniversal transaction, the FCC required production of Comcast and NBCUniversal video programming and carriage agreements.<sup>17</sup> Even in the transfer of control of Time Warner Cable Inc. from Time Warner Inc., the Commission had requested details about ancillary agreements between the parties and the production of programming carriage contracts.<sup>18</sup> A Commission request to review agreements in order to perform its public interest analysis is not unique; in fact, even a casual examination of prior transactions demonstrates that such agreements are often reviewed by the Commission. The Commission's authority to review the joint marketing and product development agreements is therefore clear.

### **B. Commission's authority under the public interest standard is broad and requires that the Commission review the joint agreements**

The Commission's public interest analysis "necessarily encompasses the 'broad aims of the Communications Act.'"<sup>19</sup> As the Commission explained in its recent *AT&T-Qualcomm* decision, these broad aims include, among other things, "a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, promoting a diversity of license holdings, and generally managing the spectrum in the public interest."<sup>20</sup>

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<sup>16</sup> Letter to William R. Drexel, AT&T Inc., and Jonathan V. Cohen, Wilkinson Barker Knauer, from James D. Schlichting, Acting Chief, Wireless Telecommunications Bureau, General Information Request, pp. 8-9 (April 30, 2009).

<sup>17</sup> Letter to Bryan N. Tramont, Wilkinson Barker Knauer, from William T. Lake, Chief, Media Bureau, MB Docket No. 10-56, Information and Discovery Request for NBC Universal, Inc., pp.7-8 (May 21, 2010).

<sup>18</sup> Letter to Marlene H. Dortch, Secretary, FCC, from Arthur H. Harding, counsel for Time Warner Cable, Inc., MD Docket No. 08-120, WC Docket No. 08-157, pp. 1-2 (Oct. 9, 2008).

<sup>19</sup> *Application of AT&T Inc. and Qualcomm Inc. for Consent to Assign Licenses and Authorizations*, Memorandum Opinion and Order, WT Docket No. 11-18, FCC 11-118, ¶ 24 (2011) (emphasis in original) ("*AT&T-Qualcomm Order*").

<sup>20</sup> *AT&T-Qualcomm Order*, at ¶ 24.

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The Applicants seek to constrain the scope of the Commission's review and contend that with respect to the joint marketing and research and development agreements, (a) the Commission has previously declined to review business agreements in the context of license assignments, and (b) the Commission should not review those agreements because the Department of Justice will do so.<sup>21</sup> Hawaiian Telcom wholly disagrees with the Applicants' position on both points.

As noted previously, the FCC is charged with determining whether the Applicants have carried their burden to demonstrate that the proposed assignment of licenses will serve the public interest, convenience, and necessity. Furthermore, the Commission's public interest evaluation is broad in nature and that it reviews, among other things, the competitive effects of a proposed transaction.<sup>22</sup> In fact, "the Commission review of the competitive effects of a transaction under the public interest standard is broader [than the competitive review conducted by DOJ]."<sup>23</sup> Accordingly, the Commission has a great deal of latitude as to what it may examine in order to effectuate its charge.

The Commission has examined ancillary agreements in the context of a license assignment beyond merely the spectrum transaction as discussed above.<sup>24</sup> Furthermore, the Commission has already requested the production of the joint agreements in order to complete its public interest evaluation,<sup>25</sup> so there can be little debate that Commission finds the joint agreements relevant to its review.

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<sup>21</sup> *Joint Opposition*, pp. 70-75.

<sup>22</sup> *AT&T-Qualcomm Order*, at ¶¶ 24-25.

<sup>23</sup> *AT&T-Qualcomm Order*, at ¶ 25.

<sup>24</sup> *See, infra*, Section III.A.

<sup>25</sup> Letter to Michael Samscock, Cellco Partnership, from Rick Kaplan, Chief, Wireless Telecommunications Bureau, WT Docket No. 12-4, p.1 (March 8, 2012).

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As discussed above and in numerous license transfers, the Commission has explained that its public interest standard is very broad. In matters that also require review by the United States Department of Justice, the Commission has routinely observed that the scope of DOJ's review is limited in comparison to the Commission's.<sup>26</sup> The Applicants' suggestion the Commission should refrain from reviewing the joint agreements because the DOJ will review the agreements independently is, therefore, nonsensical. The DOJ looks at the impact the transaction has on competition and whether competition is harmed. The Commission, on the other hand, is required to determine whether the proposed transaction supports the public interest including, but not limited to, the competitive impact of the proposed license transfer. Because the Commission's mandate is broader than the DOJ's, the Commission cannot justifiably refrain from examining the joint agreements simply because the DOJ will be examining them for its own purposes.

#### **IV. THE JOINT MARKETING AND JOINT RESEARCH AND DEVELOPMENT AGREEMENTS ARE NOT IN THE PUBLIC INTEREST**

Hawaiian Telcom maintains that the Joint Marketing and Joint Development Agreements are anticompetitive rendering the transaction contrary to the public interest. As more fully addressed below, many of the Applicants' statements regarding the actual impact of those agreements raised in their *Joint Opposition* are without merit.

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<sup>26</sup> See, e.g., *AT&T-Qualcomm Order*, at ¶ 25; *Applications Filed by Global Crossing Limited and Level 3 Communications, Inc. For Consent to Transfer Control*, Memorandum Opinion and Order and Declaratory Ruling, 26 FCC Rcd 14056, 14058, ¶ 3 (2011); *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17461-62, ¶ 28 (2008).

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**A. Joint Agreements facilitate the exchange of information**

Hawaiian Telcom continues to assert that the Joint Marketing Agreements permit the exchange or disclosure of competitively sensitive information that will facilitate explicit or tacit collusion between Verizon Wireless and Oceanic. In the *Joint Opposition*, the Applicants assert that Verizon Telecom “will receive no information or data from the MSOs concerning the implementation of these agreements.”<sup>27</sup> But as Hawaiian Telcom had pointed out before, that is only half of the equation because while the Joint Development Agreement restricts [Highly Confidential] [REDACTED] [Highly Confidential] such a restriction does not exist for [Highly Confidential] [REDACTED] [Highly Confidential] At a minimum, Verizon Wireless, as an agent for Oceanic, would presumably receive pricing and promotional information about Oceanic’s high-speed Internet access and video services in advance of its public disclosure. Such information would afford Verizon Wireless an opportunity to act in an anticompetitive manner in advance of when it might otherwise be able to that could harm the competitive landscape for high-speed Internet access and video services as Verizon Wireless and Oceanic could subtly coordinate their offerings in a manner to the detriment of competition and consumers.

The Applicants’ statement that “there is no plausible basis on which to conclude that the [Joint Agreements] will facilitate collusion between or among any competing businesses”<sup>29</sup> is incorrect on its face. The DOJ has long recognized that “[a]greements that facilitate collusion sometimes involve the exchange or disclosure of information”<sup>30</sup> and that the “sharing of

<sup>27</sup> *Joint Opposition*, Exhibit 6, p.1

<sup>28</sup> Joint Development Agreement, [Highly Confidential] [REDACTED] [Highly Confidential]

<sup>29</sup> *Joint Opposition*, Exhibit 6, p.2.

<sup>30</sup> Federal Trade Commission and U.S. Department of Justice, Antitrust Guidelines for Collaborations Among Competitors, § 3.31(b) (2000).

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information related to a market in which the collaboration operates or in which the participants are actual or potential competitors may increase the likelihood of collusion on ... competitively sensitive variables.”<sup>31</sup> In fact all other things being equal, “the sharing of information relating to price, output, costs, or strategic planning is more likely to raise competitive concern” than the sharing of less competitively sensitive information and that “the sharing of information on current operations and future business plans is more likely to raise concerns than the sharing of historical information.”<sup>32</sup> As they are currently structured, the Joint Marketing Agreements permit that level of information exchange. Accordingly, Hawaiian Telcom urges the Commission to conclude that the potentially collusive effects of those agreements are not in the public’s interest.

**B. Exclusivity of Joint Agreements harms Hawaiian Telcom’s ability to compete**

As noted previously, the unique conditions in Hawaii present significant challenges to Hawaiian Telcom’s ability to deploy the facilities necessary to compete against Oceanic. These difficulties magnify the impact of any anticompetitive actions engaged in by the Applicants. The effect of Verizon Wireless being able to market Oceanic’s service and Oceanic being able to market Verizon Wireless’ services is, therefore, greater in Hawaii than it might be in another region of the U.S. Given that Hawaiian Telcom’s market penetration in the paid video market is sufficiently small at this point, any effort that curtails its growth will mean that there will be fewer competitive forces in the market place to restrain any anticompetitive conduct (*e.g.*, increase prices or reduce output) engaged in by Oceanic and/or Verizon Wireless.

With respect to the video market, the potentially anticompetitive effects of the Joint Marketing Agreements are similar. Under those agreements, as publicly disclosed, Verizon Wireless will be able to sell Oceanic’s video services along with Oceanic’s high-speed Internet

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

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access service. Verizon Wireless does not sell Hawaiian Telcom's services, in fact, the TWC Agent Agreement [Highly Confidential] [REDACTED]

[REDACTED] [Highly Confidential] Given that Oceanic's market share for paid video services exceeds 90%, any further increase in market concentration raises significant competitive concerns and warrants antitrust scrutiny.<sup>34</sup>

The Joint Development Agreement also bars [Highly Confidential] [REDACTED]

[REDACTED] [Highly Confidential]

<sup>33</sup> TWC Agent Agreement, [Highly Confidential] [REDACTED] [Highly Confidential]

<sup>34</sup> *Horizontal Merger Guidelines*, U.S. Department of Justice and the Federal Trade Commission, § 5.3, p. 19 (Aug. 19, 2010).

<sup>35</sup> Joint Development Agreement, [Highly Confidential] [REDACTED] [Highly Confidential]

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With respect to the provision of video content, Oceanic's exclusive programming assets (e.g., high school sports) could be deployed in a unique manner with Verizon Wireless, and unavailable to Hawaiian Telcom or to other wireless carriers. Customer inability to access live sports or other video programming exclusive to Oceanic from other wireless carriers would disadvantage those carriers, as well as Hawaiian Telcom. Given the growing convergence of video programming delivery services and high-speed Internet access, the competitive impact of the Joint Agreements will not impact those services independently and any negative consequences resulting from coordinated conduct will affect Hawaiian Telcom directly as a competitor in the voice, high-speed Internet and paid video programming markets. Accordingly, Hawaiian Telcom contends that such Joint Agreements, coupled with the transfer of wireless spectrum to Verizon Wireless, are not in the public interest.

**C. Joint Agreements create a disincentive for the Applicants to compete**

As the provider of 4G LTE wireless services in Hawaii, Verizon Wireless provides a broadband service that competes with Hawaiian Telcom's and Oceanic's Internet access services.<sup>36</sup> As publicly disclosed, the agreements between Verizon Wireless and Oceanic provide for Verizon Wireless to market Oceanic's high-speed Internet service in Hawaii. Because Verizon Wireless' sales agents will be receiving payment for selling Oceanic's high-speed Internet service, those agents will have a reduced incentive to sell Verizon Wireless' own 4G LTE service. The net effect is that Verizon Wireless sales agents will have a reduced incentive to compete against Oceanic's high-speed Internet access service. Accordingly, under such a scenario, the agency relationship created by the agreements between Verizon Wireless and Oceanic harms competition in the broadband Internet access services market.

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<sup>36</sup> AT&T, Sprint, and T-Mobile do not provide 4G LTE services in Hawaii.

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**D. Joint Development Agreement will restrain competition**

The product development joint venture may foreclose Hawaiian Telcom's ability to compete with the products likely to be created by the venture. Such products would specifically disadvantage Hawaiian Telcom, as its two largest rivals could coordinate to develop a product that, in all likelihood, would be incompatible with Hawaiian Telcom's network or subject Hawaiian Telcom to onerous provisions. For example, the joint research and development agreement could generate a product that requires the use of the large amount of spectrum that Verizon Wireless will have in Hawaii post-transaction. Without access to that level of spectrum, even if Hawaiian Telcom could obtain products jointly developed by the Applicants, Hawaiian Telcom could not utilize such a product. The practical impact of this is that the large service providers will continue to grow in size and market power and that the competitors with fewer underlying spectrum resources in Hawaii will have a diminished ability to compete. The resulting market will be one in which the small service providers are unable to provide sufficient competitive pressure on the larger players, and therefore, the large providers' price and output will not be constrained. Additionally, without sufficient competitive pressures in the market, the Applicants will be able to enhance their ability to act in a coordinated manner, all to the detriment of consumers.

**E. Provisions related to backhaul services are anticompetitive**

Hawaiian Telcom agrees with the comments submitted by Sprint, Free Press, and RCA that the joint marketing agreements are anticompetitive and imbalance the market for backhaul

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services, especially given the unique aspects of Hawaii’s communications market.<sup>37</sup> Verizon is a very large customer for backhaul, and as a result of the proposed license transfer, is likely to become a larger customer for backhaul over time. While the Applicants assert that “[n]othing in the Commercial Agreements requires the [cable companies] to provide backhaul services to Verizon Wireless on any terms,”<sup>38</sup> that is not the entire story. The joint marketing agreements state that [Highly Confidential] [REDACTED]

[REDACTED]

[REDACTED] [Highly Confidential] Such agreements directly harm Hawaiian Telcom and limit competition in the backhaul market in Hawaii.

In Hawaii, Oceanic and Hawaiian Telcom are the two major providers of backhaul services to wireless providers. Verizon Wireless is the nation’s leading wireless provider.

[Highly Confidential] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>37</sup> Comments of Sprint Nextel Corporation, WT Docket No. 12-4, pp. 9-13 (Feb. 21, 2012); Petition to Deny of Free Press, WT Docket No. 12-4, p. 47 (Feb. 21, 2012); RCA – The Competitive Carriers Association Petition to Condition or Otherwise Deny Transactions, WT Docket No. 12-4, p. 58 (Feb. 21, 2012).

<sup>38</sup> *Joint Opposition*, Exhibit 6, p.20.

<sup>39</sup> VZW Agent Agreement, [Highly Confidential] [REDACTED] [Highly Confidential]; Reseller Agreement for Time Warner Cable, [Highly Confidential] [REDACTED] [Highly Confidential].

[Highly Confidential] The end result is that the market for backhaul services is constrained and that between Oceanic and Hawaiian Telcom, only Hawaiian Telcom is harmed.

**F. Professed benefits of reseller agreements are speculative**

The Applicants' stated benefits associated with their resale agreements are speculative. The Applicants allege that the future wholesale agreements for the resale of Verizon wireless services will "increase competition and provide consumers with additional choice, convenience, and savings."<sup>40</sup> Hawaiian Telcom contends that any benefits from those agreements are too speculative for the Commission to assign any weight in the context of its public interest analysis. If the FCC decides to examine the impact of the reseller agreements despite their speculative nature, the Commission cannot reliably assume that the cable companies will exercise that right when the option becomes available. Accordingly, the Applicants' arguments touting the alleged pro-competitive effects associated with their possible future reseller agreements should be discounted by the Commission.

**V. REQUESTED RELIEF**

Pursuant to Commission's authority to review, deny, and condition license assignments, Hawaiian Telcom requests that to address the public interest concerns raised by the Applicants' transaction and other related agreements, especially in light of the uniquely dominant position of Oceanic and an Oceanic/Verizon Wireless combination in Hawaii, the Commission deny the

<sup>40</sup> *Joint Opposition*, Exhibit 6, p.4.

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assignment of SpectrumCo wireless licenses to Verizon Wireless in their entirety. In the alternative, Hawaiian Telcom requests that the Commission deny the assignment of SpectrumCo's wireless licenses in Hawaii and condition the approval of the assignment of SpectrumCo wireless licenses elsewhere on the amendment of the Joint Development and Joint Marketing agreements to exclude Hawaii. As a third, and less desirable alternative, Hawaiian Telcom requests that the Commission condition the transfer of the wireless licenses from SpectrumCo to Verizon Wireless in Hawaii on the modification of the Verizon Wireless and Oceanic joint marketing agreements such that Hawaii is the last location where those agreements would be implemented.

Respectfully submitted,

/s/

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Dated: March 26, 2012

# Hawaiian Telcom Reply -- Exhibit A

**TOP 250**

Download the 2011 Top 250 list in a Microsoft Excel format at [www.hawaiibusiness.com/top250](http://www.hawaiibusiness.com/top250)

## 2011 RANKING

RANK	COMPANY LINE OF BUSINESS WEB SITE PARENT COMPANY	CHIEF EXECUTIVES	—Sales (\$Mil)—		—Employees—	
			'10 '09 '08	% Change % Change	'10 '09	% Change
<b>11</b>	<b>Servco Pacific Inc.</b>	Mark H. Fukunaga -Chair, CEO	<b>\$699.0</b>	27.6%	1,314	13.5%
11	Automotive; appliances; home and consumer products; insurance; investments.	Eric S. Fukunaga -Pres., COO	\$548.0	-18.9%	1,158	
11		Patrick D. Ching -Exec. VP	\$676.0			
	www.servco.com					
<b>12</b>	<b>Kyo-ya Company LLC</b>	Greg Dickens -Pres.	<b>\$560.1</b>	11.0%	3,700	4.7%
12	Resorts, hotels; parking lots; retail stores;	Ernest K. Nishizaki -Exec. VP, Sec.	\$504.7	-9.7%	3,535	
13	restaurants; golf courses; insurance agencies.	Cyrus I. Oda -CFO, Treas.	\$558.7			
	Kokusai Kogyo Co. Ltd.					
<b>13</b>	<b>Oceanic Time Warner Cable</b>	Robert Barlow -Pres.	<b>\$516.9</b>	4.2%	954	1.6%
13	Cable TV, Internet, phone.		\$496.0	4.4%	939	
18			\$474.9			
	www.oceanic.com					
	Time Warner Cable, Inc.					
<b>14</b>	<b>Aloha Petroleum Ltd.</b>	Richard Parry -Pres., CEO	<b>\$482.5</b>	20.6%	450	17.2%
17	Wholesale petroleum products; retail gas stations and convenience stores.	Tom Grimes -VP, CFO	\$400.0	-23.7%	384	
15			\$524.0			
	www.alohagas.com					
<b>15</b>	<b>Hilton Hawaii</b>	Jerry Gibson -Area VP	<b>\$466.0</b>	7.1%	4,645	N/A
15	Resort.		\$435.0	16.6%	N/A	
21			\$373.0			
	www.hiltonhawaii.com					
	Hilton Hotels Corp. <sup>2</sup>					
<b>16</b>	<b>Hawaiian Dredging Construction Co. Inc.</b>	William J. Wilson -Pres.	<b>\$432.0</b>	25.2%	674	15.4%
20	General contractor.	Allan K.F. Lock -VP/Marketing, Preconstruction and Estimating	\$345.0	-30.3%	584	
17		Glenn K.L. Yee -VP/Finance	\$495.0			
	www.hdcc.com					
	Kajima U.S.A. Inc.					
<b>17</b>	<b>Hawaii Health Systems Corp.</b>	Bruce S. Anderson -Pres., CEO	<b>\$423.3</b>	6.6%	4,316	6.3%
18	Acute, long-term and rural health care provider.		\$397.0	1.5%	4,062	
20			\$391.0			
	www.hhsc.org					
<b>18</b>	<b>Outrigger Enterprises Group</b>	Richard R. Kelley -Chair	<b>\$416.0</b>	-6.3%	3,103	-12.7%
14	Hawaii-based, full-service lodging; hospitality services.	W. David P. Carey -Pres., CEO	\$444.0	-15.3%	3,554	
14		Barry L. Wallace -Exec. VP/Hospitality Services	\$524.4			
		Melvin M. Wilinsky -Exec. VP, CFO				
	www.outrigger.com; www.dhanahotels.com					
<b>19</b>	<b>Hawaiian Telcom</b>	Eric K. Yeaman -Pres., CEO	<b>\$401.4</b> <sup>3</sup>	-1.8%	1,400	-4.4%
16	Telecommunications products and services, including local service, long-distance, high-speed Internet, wireless, equipment, managed services and more.	Robert Reich -CFO	\$408.6	-8.8%	1,464	
N/A			\$447.8			
	www.hawaiiantel.com					
	Hawaiian Telcom Communications Inc.					
<b>20</b>	<b>ProService Hawaii Business Development Corporation</b>	Benjamin Godsey -Pres./Finance & Operations	<b>\$383.6</b>	28.2%	N/A	N/A
23	Professional employer organization.	Dustin Sellers -Pres./Marketing & Business Development	\$299.2	0.9%	N/A	
26			\$296.6			
	www.proservicehawaii.com					

1 Previously ranked as Oceanic Cablevision 2 Previous parent: Blackstone Group LP (NY) 3 Per 2010 annual report