

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

CINCINNATI BELL INC.,)
HAWAIIAN TELCOM, INC.,)
HAWAIIAN TELCOM SERVICES COMPANY)
INC., and)
WAVECOM SOLUTIONS CORPORATION)

DOCKET NO. 2017-0208

For Approval (1) to Transfer)
Indirect Control of Licensees to)
Cincinnati Bell Inc.; (2) for)
Pro Forma Transfer of Control;)
(3) for Licensees to Participate in)
Certain Financing Arrangements; and)
(4) to Modify and Extend Certain)
Waivers.)

DECISION AND ORDER NO. 35427

FILED
2018 APR 30 P 1:09
PUBLIC UTILITIES
COMMISSION

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DECISION AND ORDER

The Public Utilities Commission ("commission")¹ hereby
issues its Decision and Order approving the proposed transfer of

¹The Parties to this docket are HAWAIIAN TELCOM, INC. ("HTI"), HAWAIIAN TELCOM SERVICES COMPANY, INC. ("HTSC"), WAVECOM SOLUTIONS CORPORATION ("Wavecom") (collectively, HTI, HTSC, and Wavecom are referred to as "Hawaiian Telcom" or "Licensees"), CINCINNATI BELL INC. ("Cincinnati Bell") (collectively, Hawaiian Telcom and Cincinnati Bell are referred to as "Applicants"), and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

In addition, the commission has granted Participant status to the INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,

indirect control proposed in the Application filed by the Applicants on August 11, 2017 ("merger" or "transfer of indirect control").² In doing so, the commission largely adopts the Parties' April 4, 2018 Settlement Agreement, as amended on April 6, 2018 ("Settlement Agreement").³ However, the commission's ruling on the relief sought in the Application does not

LOCAL UNION 1357 ("IBEW") and OCEANIC TIME WARNER CABLE, LLC, TIME WARNER CABLE INFORMATION SERVICES (HAWAII), LLC, and TIME WARNER CABLE BUSINESS LLC (collectively, "Charter"). See Order No. 34854, "(1) Establishing Statement of Issues; (2) Addressing Motions to Intervene; and (3) Instructing the Parties to Submit a Proposed Procedural Schedule," filed October 2, 2017 ("Order No. 34854").

²"Joint Application; Exhibits A-L; Verification; and Certificate of Service," filed August 11, 2017 ("Application").

³See Letter From: J. Ono To: Commission Re: Docket No. 2017-0208 - Joint Application of Cincinnati Bell Inc., Hawaiian Telcom, Inc., Hawaiian Telcom Services Company, Inc. and Wavecom Solutions Corporation for Approval (1) to Transfer Indirect Control of Licensees to Cincinnati Bell Inc.; (2) for Pro Forma Transfer of Control; (3) for Licensees to Participate in Certain Financing Arrangements and (4) to Modify and Extend Certain Waivers - Settlement Agreement with Division of Consumer Advocacy, filed April 4, 2018; and Letter From: J. Ono To: Commission Re: Docket No. 2017-0208 - Joint Application of Cincinnati Bell Inc., Hawaiian Telcom, Inc., Hawaiian Telcom Services Company, Inc. and Wavecom Solutions Corporation for Approval (1) to Transfer Indirect Control of Licensees to Cincinnati Bell Inc.; (2) for Pro Forma Transfer of Control; (3) for Licensees to Participate in Certain Financing Arrangements and (4) to Modify and Extend Certain Waivers - Amended Settlement Agreement with Consumer Advocate, filed April 6, 2018. As noted, infra, the Parties' April 6, 2018, amendment to the Settlement Agreement did not alter it materially. Accordingly, the term "Settlement Agreement," as used herein," refers to the Parties' Supplemental Settlement Agreement supplemented filing on April 6, 2018.

wholly adopt the Parties' Settlement Agreement, in that: (1) the commission imposes additional conditions intended to clarify certain aspects of the Settlement Agreement to ensure that they provide meaningful benefits to the public, consistent with satisfying the public interest standard; and (2) the commission denies, without prejudice, Applicants' request to modify and extend the waivers granted in Decision and Order No. 32193 (the "Waiver Request").⁴

The details of the commission's ruling are discussed below.

I.

BACKGROUND

A.

Applicants

HTI, a Hawaii corporation, is a wholly-owned subsidiary of Hawaiian Telcom Communications, Inc. ("HT Communications"). HT Communications, in turn, is wholly-owned by Hawaiian Telcom Holdco, Inc. ("Holdco"), a Delaware corporation and publicly

⁴See Application at 38-40; see also, In re Hawaiian Telcom, Inc., Docket No. 2014-0033, Decision and Order No. 32193, filed July 7, 2014 (in which the commission granted Hawaiian Telcom a limited waiver, pursuant to HRS §§ 269-16.85 and 269-16(e) and HAR § 6-80-135).

traded company.⁵ HTI provides local and intraLATA⁶ telecommunication services on a statewide basis and is also the incumbent local exchange carrier ("ILEC") for the State, as defined by Section 251(h) of the Communications Act of 1934.⁷

HTSC is a Delaware corporation authorized to conduct business in the State of Hawaii and is a wholly-owned subsidiary of HT Communications (and thus, an affiliate of HTI, and is also indirectly owned by Holdco).⁸ HTSC is a telecommunications carrier as defined under HRS § 269-1 and provides interstate and intrastate long-distance, high-speed Internet, managed services, video services, advanced communications and network services, data center services including co-location and virtual private cloud, cloud-based services, and wireless services.⁹

Wavecom, a Hawaii corporation, is a subsidiary of HTI and a competitive local exchange carrier ("CLEC") that provides local dial tone, high-speed Internet access, long-distance data, Ethernet and other services.¹⁰

⁵Application at 4.

⁶Local Transport and Access Area (LATA); intraLATA refers to a contiguous geographic local calling area.

⁷Application at 4-5.

⁸Application at 5.

⁹Application at 5.

¹⁰Application at 6.

Cincinnati Bell is an Ohio corporation headquartered in Cincinnati, Ohio. Through its various subsidiaries, Cincinnati Bell provides high-speed data, video, and voice solutions to consumers and businesses over an expanding fiber network and legacy copper network. Cincinnati Bell's subsidiaries include: Cincinnati Bell Telephone Company, which provides residential and business services in Cincinnati and the surrounding territory, covering approximately 2,400 square miles in Ohio, Indiana, and Kentucky; Cincinnati Bell Extended Territories LLC, which provides CLEC and video services in Ohio, Kentucky, and Indiana; Cincinnati Bell Any Distance Inc., which provides nationwide long-distance, VoIP, and CLEC services; and Cincinnati Bell Technology Solutions Inc., which offers scalable office communications systems and end-to-end IT solutions to enterprise customers in the United States, Canada, Europe, and Singapore.¹¹

¹¹Application at 6-7.

B.

The Indirect Transfer Of Control

On July 10, 2017 Cincinnati Bell and Hawaiian Telcom announced an Agreement and Plan of Merger ("Merger Agreement" or "Agreement")¹² had been reached between the two companies providing for a transfer of ownership by which HTI and HTSC would become wholly-owned, indirectly-controlled subsidiaries of Cincinnati Bell, subject to the approvals of their respective directors, shareholders, and regulators (Wavecom, as a subsidiary of HTI, would also become wholly-owned by Cincinnati Bell as a result).¹³

¹²A complete copy of the Merger Agreement is attached as Exhibit A to the Application.

¹³See <http://investor.cincinnati-bell.com/news-releases/news-release-details/cincinnati-bell-inc-combine-hawaiian-telcom-and-onx-enterprise>. The transaction reportedly emerged from informal discussions between the respective Chief Executive Officers related to market similarities. This characterization of the transaction was given by Leigh Fox, President of Cincinnati Bell, in response to a query from an industry analyst during the conference call announcing the transaction on July 10, 2017. See Cincinnati Bell's SEC Form 425 Filing, July 10, 2017, at 5 (Form 425 contains a full transcript of that session).

Concurrent with its announced transfer of ownership of Hawaiian Telcom, Cincinnati Bell disclosed its intent to separately acquire OnX Enterprises Solutions ("OnX") - a privately-held information services firm - ultimately finalized on October 2, 2017. While OnX is outside the scope of the commission's regulatory authority, the commission nonetheless considers the consequences of that transaction to the extent it may impact or otherwise affect the overall health of Cincinnati Bell, of which Hawaiian Telcom would become a part.

On August 11, 2017 Applicants filed the Application seeking approval of the proposed merger. Specifically, Applicants requested that the commission: (1) approve the proposed indirect transfer of control of Hawaiian Telcom (i.e., HTI, HTSC and Wavecom) to Cincinnati Bell; (2) authorize the pro forma transfer of ownership of HTI and HTSC to Cincinnati Bell, through merger of intermediate holding companies; (3) approve and authorize HTI, HTSC, and Wavecom to participate in Cincinnati Bell's financing arrangements upon completion of the indirect transfer of control; and (4) modify and extend the waivers granted in Decision and Order No. 32193, Docket No. 2014-0033, so HTI, HTSC, and Wavecom can, in the future, expeditiously participate in new or modified financing arrangements under favorable market conditions without seeking prior approval from the commission.

The proposed merger would occur at the holding company level, with Holdco (parent company to HT Communications, which, in turn, is parent to both HTI and HTSC) becoming a

A detailed timeline of the process leading up to the Agreement can be found in Cincinnati Bell's SEC Form S-4, filed August 17, 2017, at 72-90. See also, Applicants response to PUC-Applicants-IR-70 (citing to Cincinnati Bell's August 17, 2017 SEC Form S-4 at <http://investor.cincinnati-bell.com/sec-filings/sec-filings/s-4a/0001193125-17-302148>).

wholly-owned subsidiary of Cincinnati Bell.¹⁴ As described in the Merger Agreement, Twin Acquisition Corp. ("Merger Sub") (a Delaware corporation formed for this merger, and a direct, wholly-owned subsidiary of Cincinnati Bell), would merge with and into Holdco, whereupon the separate existence of Merger Sub would cease and Holdco would survive as a directly, wholly-owned subsidiary of Cincinnati Bell.¹⁵

The terms of the proposed transfer of indirect control provide for each outstanding share of Holdco's common stock to be converted into the right to receive, at the shareholder's election and subject to proration set forth in the Merger Agreement:

- (1) 1.6305 common shares, par value \$0.01 per share, of the Cincinnati Bell (the "CB Common Shares") (the "Share Consideration");
- (2) 0.6522 Cincinnati Bell Common Shares and \$18.45 in cash, without interest (the "Mixed Consideration"); or
- (3) \$30.75 in cash per Holdco share, without interest (the "Cash Consideration").¹⁶

Applicants value this Merger Agreement at approximately \$650 million.¹⁷ The Agreement further provides that Holdco stockholders who elect to receive the Share Consideration or the

¹⁴See Application at 8-9.

¹⁵Application at 8-9 and Exhibit B.

¹⁶Application at 8. See also, id. at Exhibit A.

¹⁷Application at 8.

Cash Consideration will be subject to proration to ensure that the aggregate number of CB Common Shares to be issued by Cincinnati Bell pursuant to the merger, and the aggregate amount of cash to be paid, will be the same as if all electing stockholders received the Mixed Consideration. Any Holdco stockholder who does not make an election will be treated as having elected to receive the Mixed Consideration.¹⁸

The Holdco shareholders voted to approve the terms of the Agreement and Plan of Merger at a Special Shareholders' Meeting.¹⁹ Subsequently, the proposed merger was reviewed pursuant to terms of the Hart-Scott-Rodino Act and the Hawaii Department of Commerce and Consumer Affairs, Cable Division ("DCCA").²⁰

¹⁸See Cincinnati Bell Inc. SEC Form 8-K Agreement and Plan of Merger, filed July 10, 2017, at 2.

¹⁹The Parties to the Agreement served notice upon Holdco shareholders on October 10, 2017 (see Cincinnati Bell Inc. SEC Form 8-K filed October 10, 2017) and provided the necessary prospectus, disclosures, and proxy statements with a recommendation to approve the Agreement. On November 7, 2017, a special meeting of the shareholders of Holdco was held at the headquarters of Hawaiian Telcom at 1177 Bishop Street, Honolulu, Hawaii 96813 (the "Special Meeting"). At the Special Meeting, the shareholders of Holdco voted to, among other things, adopt the Merger Agreement and the shareholders voted the Subject Shares as specified in the Voting Agreement. See Cincinnati Bell Inc. Schedule SC-13D/A, filed November 7, 2017.

²⁰The size of the proposed transaction met certain prescribed thresholds contained in Public Act 94-35 referred to as the Hart-Scott-Rodino Act ("HSR Act"). The HSR Act - which represents a set of amendments to existing U.S. anti-trust law - requires separate review of the transaction by the United States Department of Justice ("DOJ") and the Federal Trade Commission ("FTC") prior

Review by the Federal Communications Commission ("FCC") is currently underway and awaiting a decision.²¹

C.

Procedural History

On August 11, 2017, Applicants filed the Application. Concurrent with the Application, Applicants also sought a protective order from the commission.²² The commission subsequently issued Protective Order No. 34779 on August 30, 2017.

to any consummation of the transaction to ensure the transaction will not adversely affect U.S. commerce. On September 1, 2017, both Cincinnati Bell and Holdco filed their respective Notification and Report Forms with the FTC and Antitrust Division of the DOJ. The thirty-day statutory waiting period under the HSR Act expired on October 2, 2017. See Definitive Proxy Statement (SEC Schedule 14A) filed by Holdco on October 5, 2017, at 31.

Separately, a review of that portion of the agreement pertaining to Hawaiian Telcom's cable interests was conducted by the DCCA and approval was granted on December 8, 2017. See In re Cincinnati Bell, Inc., Decision and Order No. 370, filed December 8, 2017 ("DCCA Decision and Order No. 370").

²¹See In the Matter of the Joint Application of Cincinnati Bell Inc., Transferee and Hawaiian Telcom Holdco, Inc., Transferor, and Hawaiian Telcom, Inc., Hawaiian Telcom Services Company, Inc. and Wavecom Solutions Corporation, Licensees 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, IB File Nos. ITC-T/C-20170811-00138; and ITC-T/C-20170811-00139.

²²"Applicants Motion for Protective Order; and Certificate of Service," filed August 11, 2017.

On August 29, 2017, the IBEW filed a motion to intervene in this proceeding.²³ Similarly, on August 31, 2017, Charter filed a motion to intervene.²⁴ On October 12, 2017 the commission issued Order No. 34584 which: (1) established a statement of issues to govern this proceeding; (2) denied the IBEW and Charter's motions to intervene, but granted them both Participant status; and (3) instructed the Parties (i.e., Applicants and the Consumer Advocate) to submit a proposed procedural schedule for the commission's review and approval.

On November 28, 2017, the commission issued Procedural Order No. 35047, which set forth a procedural schedule to govern this proceeding, as well as provide clarification on various procedural issues to facilitate and expedite the orderly conduct of this proceeding.

Pursuant to the procedural schedule, the Consumer Advocate and Charter issued information requests

²³"International Brotherhood of Electrical Workers Local Union 1357's Motion to Intervene; Memorandum in Support of Motion to Intervene; Declaration of Andie Kakakui; and Certificate of Service," filed August 29, 2017.

²⁴"Motion to Intervene; Affidavit of Gregg Fujimoto; and Certificate of Service," filed by Charter on August 31, 2017.

("IRs") to Applicants from December 2017 through February 2018.²⁵

The commission also issued IRs of its own to Applicants.²⁶

On March 7, 2018, the Consumer Advocate, Charter, and the IBEW filed their respective statements of position.²⁷

Thereafter, on April 4, 2018, Applicants filed their Reply Statement of Position²⁸ concurrently with the Parties' Settlement Agreement. On April 6, 2018, the Parties filed an amended Settlement Agreement; however, the Parties clarified that the amended Settlement Agreement "is identical to the previous

²⁵See "Charter's First Set of Information Requests to Applicants, Charter-Applicants-IR-1 to 11; and Certificate of Service," filed December 11, 2017; "Division of Consumer Advocacy's First Submission of Information Requests," filed January 22, 2018; "Division of Consumer Advocacy's Second Submission of Information Requests," filed February 13, 2018; "Charter's Second Set of Information Requests to Applicants, Charter-Applicants-IR-12 to 18; and Certificate of Service," filed February 14, 2018; and "Division of Consumer Advocacy's Third Submission of Information Requests," filed February 14, 2018.

²⁶See Letters from commission to Applicants filed December 22, 2017, and January 25, 2018.

²⁷"Division of Consumer Advocacy's Statement of Position," filed March 7, 2018 ("CA SOP"); "Charter's Statement of Position; Affidavit of Mitchell M. Miyoshi; and Certificate of Service," filed March 7, 2018 ("Charter SOP"); and "International Brotherhood of Electrical Workers Local Union 1357's Statement of Position; and Certificate of Service," filed March 7, 2018 ("IBEW SOP"). The Consumer Advocate subsequently filed an erratum to its SOP. See "Division of Consumer Advocacy's Errata to its Statement of Position Filed on March 7, 2018," filed March 9, 2018.

²⁸"Applicants' Reply Statement of Position; Confidentiality Log; and Certificate of Service," filed April 4, 2018 ("Applicants RSOP").

Settlement Agreement except that it contains additional language and citations to the record that address Issue No. 3 identified in Order No. 34851[.]”²⁹

Also on April 6, 2018, the Parties submitted a joint letter in which they stated that all procedural steps have been completed and that they deem the docket ready for decision-making.³⁰

II.

LEGAL STANDARD

In seeking commission approval of the proposed merger, Applicants indicate that the Application is filed pursuant to HRS §§ 269-7(a), 269-17, 269-17.5, and 269-19, as well as HAR §§ 6-61-101 and 6-61-105.³¹ The commission observes that it

²⁹ Settlement Agreement at 1.

³⁰Joint Letter From: J. Ono and K. Nakagawa To: Commission Re: Docket No. 2017-0208 - Joint Application of Cincinnati Bell Inc., Hawaiian Telcom, Inc., Hawaiian Telcom Services Company, Inc. and Wavecom Solutions Corporation for Approval (1) to Transfer Indirect Control of Licensees to Cincinnati Bell Inc.; (2) for Pro Forma Transfer of Control; (3) for Licensees to Participate in Certain Financing Arrangements and (4) to Modify and Extend Certain Waivers - Ready for Decision-Making, filed April 6, 2018.

³¹See Application at 1.

has applied these statutory provisions in prior commission proceedings involving proposed transfers of control.³²

HRS § 269-19 expressly applies to the "[m]erger and consolidation of public utilities." The commission has previously interpreted HRS § 269-19 as incorporating the standards and criteria of HRS § 269-7.5; i.e., "(1) the acquiring utility is fit, willing, and able properly to perform the service currently offered by the utility to be acquired, and (2) the acquisition is reasonable and in the public interest."³³

As it pertains to mergers of telecommunications carriers at the parent holding company level, the commission has recently affirmed the applicability of the "fit, willing and able" and "public interest" standards:

In effect, "a parent level transaction which involves the transfer of a public utility's assets and operations is reviewed by the commission under HRS § 269-7(a) to determine whether the transaction is reasonable and consistent with the public interest." Such transaction is "reasonable and in the public interest if it will not adversely affect the public utility's regulated services," as authorized by its certificate of public convenience and necessity. With respect to telecommunications carriers, a proposed financial transaction at the parent holding company level "is reasonable and

³²See generally, In re Hawaiian Elec. Co., Docket No. 2015-0022; and In re Charter Comm., Inc., Docket No. 2015-0207.

³³In re Citizens Comm. Co., Docket No. 02-0060, Decision and Order No. 19658, filed September 17, 2002, at 14-15.

consistent with the public interest if it will not adversely affect the carrier's fitness, willingness, and ability to provide intrastate telecommunications services in the State, as authorized by the commission."³⁴

Before applying these standards to the Application, the commission takes this opportunity to clarify that the "fit, willing, and able" and "public interest" criteria represent two distinct standards that must be independently met.³⁵ In this regard, the commission emphasizes that they are intrinsic to HRS § 269-7.5 (and, by extension, HRS § 269-19) and must be independently satisfied.³⁶ The commission has recently emphasized that review of a proposed transaction's satisfaction of the "public interest" standard is distinct from an applicant's satisfaction of the "fit, willing, and able" standard.³⁷

³⁴See In re Charter Comm., Inc., Docket No. 2015-0207, Decision and Order No. 33602, filed March 24, 2016 ("Decision and Order No. 33602"), at 18-19.

³⁵As a further point of distinction, the "fit, willing, and able" standard refers to the Applicant(s), in that the acquiring entity must be fit, willing, and able to perform the service(s) currently offered by the utility being acquired, whereas the "public interest" standard pertains to the underlying proposed transfer of control, in that the terms and conditions of the proposed transfer are in the public's interest. See Order No. 33795 at 37.

³⁶See Order No. 34854 at 18 (establishing Statement of Issues).

³⁷See In re Hawaiian Elec. Co., Docket No. 2015-0022, Order No. 33795, "Dismissing Application Without Prejudice and Closing Docket," filed July 15, 2016 ("Order No. 33795") (finding that while the applicants had

III.

PARTIES AND POSITIONS

A.

IBEW

The IBEW expresses support for the Application, assuming the current labor agreement between the IBEW and Hawaiian Telcom remains in effect and there are no plans to lay-off bargaining unit employees.³⁸

B.

Charter

Charter opposes the merger, as proposed, and maintains that the approval should only be granted if certain conditions are imposed.

Charter claims that Applicants' responses to Charter's IRs demonstrate a lack of candor and an unwillingness to cooperatively offer relevant information or assurances about the impacts of the merger. Charter maintains that it "has a substantial interest resulting from its reliance on Hawaiian Telcom, the State's sole ILEC, to provide timely,

satisfied the "fit, willing, and able" standard, they had failed to meet the "public interest" standard).

³⁸IBEW SOP at 2.

substantial interest resulting from its reliance on Hawaiian Telcom, the State's sole ILEC, to provide timely, high quality, non-discriminatory, and operationally efficient access to services and facilities, including interconnection, number porting, wholesale operational interfaces, and pole attachments."³⁹

Charter maintains that Applicants have provided inconsistent statements regarding any planned changes to Hawaiian Telcom's Operational Support Systems and Billing Support Systems ("OSS/BSS").⁴⁰ Charter also argues that when it sought clarification regarding Applicants' willingness to make commitments to maintain certain practices for certain periods after the merger closes, Applicants either refused to commit or did not respond directly.⁴¹ Additionally, Charter states that Hawaiian Telcom has recently failed to provide a "substantive response" to Charter's overtures regarding a new pole and conduit agreement, which Charter maintains is necessary to ensure Charter's competitive position.⁴²

³⁹Charter Motion to Intervene at 2.

⁴⁰Charter SOP at 7-8.

⁴¹See Charter SOP at 10.

⁴²Charter SOP at 11-12.

Based on Applicants' alleged lack of responsiveness, Charter proposes a number of conditions to "provide a reasonable level of continuity and certainty for Charter to be protected against the foreseeable potential impacts of the [merger]." ⁴³ Specifically, Charter proposes the following conditions:

(1) **Interconnection Agreements ("ICA").** Applicants will not cancel or terminate Charter's existing ICA for thirty-six (36) months from the date the merger transaction closes. During this time, Applicants will not request amendments, except as a result of change of law. Applicants will permit use of Charter's ICA as the starting draft for negotiating any replacement agreement. ⁴⁴

(2) **Local Number Portability ("LNP").** Applicants will handle ports post-merger so as to meet or exceed commission and FCC porting requirements, and with at least the same level of quality and intervals as Hawaiian Telcom did pre-merger. Applicants will continue to provide Hawaiian Telcom's existing Change Management Process or its equivalent. ⁴⁵

(3) **OSS/BSS.** Applicants will use Hawaiian Telcom's existing OSS/BSS for at least thirty-six (36) months from the date

⁴³Charter SOP at 12.

⁴⁴Charter SOP at 14.

⁴⁵Charter SOP at 14.

the merger transaction closes, maintaining at least the same intervals, quality of service, accuracy and flow-through, including for local service requests associated with LNP and directory listing, and for access service requests and design layout records associated with interconnection facilities, including trunks and DS-1 (and higher capacity) facilities. In addition, Applicants must file a plan with the commission detailing any migration away from systems Hawaiian Telcom currently uses for the preordering, ordering, maintenance, repair, billing, provisioning, or other processing of wholesale services to CLECs, before initiating any such migration. Furthermore, affected providers, like Charter, shall have the opportunity to comment on the proposal. In the event of a migration, Applicants must provide Charter with training (at no cost) on the new system and the ability to test the new system during a period of ninety (90) days before the migration, in the event the commission approves any such migration. Applicants must maintain updated escalation procedures, contact lists, and account manager information, and will identify and assign a single point of contact to address issues.⁴⁶

(4) **Pole Attachments and Conduits.** Applicants shall expedite the processing of pending pole attachment or conduit

⁴⁶Charter SOP at 15-16.

occupancy permits that Charter has previously submitted but Hawaiian Telcom has failed to process within the applicable timeframes required by the FCC, and shall complete such processing within twenty (20) days from the effective date of the commission's order.⁴⁷

Furthermore, Applicants must prioritize the ongoing negotiation of a new pole attachment agreement ("Pole Agreement") in good faith with Charter, with the goal of reaching agreement with Charter within six (6) months. The new Pole Agreement shall be consistent with commission and FCC rules and orders, and the Pole Agreement must afford Charter access to Applicants' poles and conduits to enable Charter to offer its full range of services using such facilities; in addition, these same conditions should apply to Joint Pole Committee poles that Applicants manage.⁴⁸

Finally, Charter asks the commission to clarify that the CLEC Stipulation, previously introduced in Docket No. 2004-0140, remains in effect and applies to all interconnected Hawaii carriers and any changes to that stipulation must be submitted to the commission for approval, in a proceeding which provides

⁴⁷Charter SOP at 16.

⁴⁸Charter SOP at 16-18.

Hawaii's CLECs and other telecommunications carriers with notice and an opportunity to participate.⁴⁹

C.

The Consumer Advocate

The Consumer Advocate supports the proposed merger, albeit with certain conditions. The Parties (i.e., Applicants and the Consumer Advocate) subsequently submitted the Settlement Agreement in support of the proposed merger, which addresses many of the concerns raised by the Consumer Advocate in its Statement of Position, as discussed, infra.

D.

Applicants

Concurrently with the Parties' Settlement Agreement, Applicants also submitted their Reply Statement of Position. As it pertains to the standards of review, the arguments in the Applicants' Reply Statement of Position are reflected in the Settlement Agreement. The only material difference is that Applicants' Reply Statement of Position includes additional

⁴⁹Charter SOP at 18-19.

arguments rebutting the proposed conditions raised in Charter's Statement of Position.⁵⁰

E.

The Parties' Settlement Agreement

Here, the Parties have submitted the Settlement Agreement which purports to address both legal standards and maintains that Applicants have met both standards satisfactorily.⁵¹

Briefly, the Settlement Agreement supports the relief requested in the Application, including, in pertinent part:

(1) The transfer of indirect control of Hawaiian Telcom to Cincinnati Bell, via the merger of Holdco (Hawaiian Telcom's ultimate parent holding company) with Merger Sub (a wholly-owned subsidiary of Cincinnati Bell), resulting in Holdco being a wholly-owned subsidiary of Cincinnati Bell;

(2) Approval for Hawaiian Telcom to participate in the debt financing arrangements organized by Cincinnati Bell; and

⁵⁰See Applicants RSOP at 23-35.

⁵¹See Settlement Agreement, Exhibit 1 at 19-24.

(3) Approval of the Waiver Request, modified to replace the current 65/35 debt-to-equity ratio with a total leverage ratio.⁵²

1.

Fit, Willing, And Able

The Settlement Agreement states that Cincinnati Bell is fit, willing, and able to perform the services currently being offered by Hawaiian Telcom.⁵³ Specifically, the Settlement Agreement states that Cincinnati Bell is "financially and technically fit to operate Hawaiian Telcom and perform the services currently being offered by Hawaiian Telcom."⁵⁴ In particular, the Settlement Agreement notes Cincinnati Bell's robust financial condition⁵⁵ and describes how Hawaiian Telcom will be integrated into Cincinnati Bell's financial operations.⁵⁶

⁵²Settlement Agreement, Exhibit 1 at 5-8.

⁵³Settlement Agreement, Exhibit 1 at 19.

⁵⁴Settlement Agreement, Exhibit 1 at 20.

⁵⁵Settlement Agreement, Exhibit 1 at 20 (citing Application at 17-19 and Exhibits C, F, G and K; Applicants response to CA-IR-21 (Restricted/Confidential); Applicants response to CA-IR-2(c) (Restricted/Confidential); Applicants response to PUC-Applicants-IR-28; and Applicants response to CA-IR-38(a) - (b) (Restricted/Confidential)).

⁵⁶Settlement Agreement, Exhibit 1 at 20 (citing Applicants responses to PUC-Applicants-IR-46, -48, -51, and -65-66).

Regarding Cincinnati Bell's willingness, the Settlement Agreement states that Cincinnati Bell is "clearly willing to continue providing the services Hawaiian Telcom currently provides."⁵⁷ The Settlement Agreement notes that "Cincinnati Bell has deep experience in the industry and extensive expertise managing both incumbent and competitive operations across its footprint" and will "continue to rely on locally based management" and is "willing to offer, or continue to offer, affordable, reliable, and quality telecommunications services in the state of Hawaii."⁵⁸

The Settlement Agreement concludes that Cincinnati Bell has demonstrated that it is fit, willing, and able to continue providing Hawaiian Telcom's current services based on its financial ability, experienced management team, and record in the telecommunications industry.⁵⁹

⁵⁷Settlement Agreement, Exhibit 1 at 20 (citing Application at 19-20).

⁵⁸Settlement Agreement, Exhibit 1 at 20-21 (citing Application at 6; Applicants' response to CA-IR-6 and -7; and CA SOP at 19).

⁵⁹Settlement Agreement, Exhibit 1 at 21.

Public Interest

The Settlement Agreement concludes that the proposed merger is in the public interest. In general terms, the Settlement Agreement states that the merger will allow Hawaiian Telcom to "continue providing high-quality telecommunications services to consumers, businesses, and other carriers while gaining access to the additional resources and operational expertise of Cincinnati Bell."⁶⁰ Specifically, the Parties state as follows:

(1) The merger will improve the competitiveness of Hawaiian Telcom. The Settlement Agreement notes that Cincinnati Bell has committed to investing at least \$20 million in fiber infrastructure to build out 15,000 new or upgraded connections or extensions of Hawaiian Telcom's current network to homes over the next four years.⁶¹ Bringing fiber closer to customer premises is expected to increase Hawaiian Telcom's service offerings, service quality, and bandwidth performance,

⁶⁰Settlement Agreement, Exhibit 1 at 21-22.

⁶¹Settlement Agreement, Exhibit 1 at 22. This appears to be a further clarification of the commitment made by Cincinnati Bell in the context of receiving regulatory approval from the Department of Commerce and Consumer Affairs, Cable Television Decision. See DCCA Decision and Order No. 370 at 15.

thereby making Hawaiian Telcom more competitive.⁶² In addition, no system cutover is anticipated, and the transition from indirect control of Hawaiian Telcom from Holdco to Cincinnati Bell is expected to be seamless for customers.⁶³

(2) There should not be any immediate change for Hawaiian Telcom's employees. The Settlement Agreement clarifies that the merger "is not being driven by cost savings to be achieved by employment reductions."⁶⁴ To that end, the Parties have agreed that Cincinnati Bell will honor Hawaiian Telcom's collective bargaining agreement ("CBA") with the IBEW; furthermore, following the consummation of the merger, Hawaiian Telcom employees will continue to have "the same rights under employment agreements or at-will employment arrangements as they now have."⁶⁵ In this regard, the Settlement Agreement notes that the IBEW provided support for the merger in the IBEW's Statement of Position.⁶⁶ In addition, the Settlement Agreement clarifies that there are no planned or proposed changes to Hawaiian Telcom's 401(k) plans as a result of the merger, nor does Cincinnati Bell

⁶²Settlement Agreement, Exhibit 1 at 22.

⁶³Settlement Agreement, Exhibit 1 at 22.

⁶⁴Settlement Agreement, Exhibit 1 at 23.

⁶⁵Settlement Agreement, Exhibit 1 at 23.

⁶⁶Settlement Agreement, Exhibit 1 at 23.

plan to combine Hawaiian Telcom's pension plan with Cincinnati Bell's or make any material changes to the defined benefits plan as it applies to retired employees.⁶⁷

(3) The merger will not adversely impact competition in Hawaii. The Settlement Agreement states that Hawaiian Telcom's existing wholesale arrangements with competitors will be unaffected by the merger. The Parties affirm that "[n]othing in the indirect transfer of control will impact Hawaiian Telcom's existing interconnection agreements . . . [and] [u]nder Cincinnati Bell's management, Hawaiian Telcom will continue to provide nondiscriminatory access to its wholesale customers, consistent with its regulatory and contractual obligations."⁶⁸

In addition to these statements regarding the public interest expressed in the Settlement Agreement, the Parties also agree to a number of conditions proposed by the Consumer Advocate, which appear to be in response to the concerns raised by the Consumer Advocate in its Statement of Position.⁶⁹ Specifically,

⁶⁷Settlement Agreement, Exhibit 1 at 24.

⁶⁸Settlement Agreement, Exhibit 1 at 24.

⁶⁹See CA SOP at 17-19 (expressing concern regarding the ability to evaluate and monitor the financial condition of the Applicants), 20-23 (discussing improvements to standards to measure service quality), and 24-26 (discussing clarification and elaboration of the Applicants' commitment to invest \$20 million in

the Settlement Agreement provides for: (1) a financing condition ("Financing Condition"); (2) a service quality condition ("Service Quality Condition"); and (3) refinement of Cincinnati Bell's earlier pledge in DCCA Decision and Order No. 370 to invest at least \$20 million toward infrastructure improvements, including a 15,000 door fiber build out in Hawaii over the next four years ("Fiber Buildout Condition").

(1) Financing condition. Related to Applicants' Waiver Request, is a request to modify the Waiver by replacing the existing 65/35% debt-to-equity ratio limit with a total leverage ratio.⁷⁰ In response to the Consumer Advocate's proposal for an escalating series of reporting requirements based on Applicants' debt to Earnings Before Interest, Taxes, Depreciation, and Amortization ("EBITDA"), the Parties have agreed to a "trigger" when Hawaiian Telcom's debt reaches 5.0 times the consolidated enterprise's EBITDA (i.e., the leverage ratio), at which time, Applicants will file a report with the Consumer Advocate and commission within thirty (30) days addressing: the underlying cause(s) of the ratio increase; the potential impact this level of debt will have on Hawaii consumers, debt holders, equity holders,

fiber networks to an additional 15,000 households over the next four years).

⁷⁰See Settlement Agreement, Exhibit 1 at 12-13.

and future business and investment plans; and how long the debt to EBITDA ratio is expected to exceed 5.0.⁷¹

(2) Service quality condition. In response to the Consumer Advocate's proposal for "a detailed plan outlining steps to improve performance on selected service quality metrics and implementation of new benchmarks for other measures of performance,"⁷² the Parties have agreed to revise Hawaiian Telcom's service quality metrics as follows:

(A) Retain the service quality metrics of:
(i) total customer trouble reports per 100 lines; (ii) percent out of service cleared in 24 hours; (iii) percent repair commitments met; and (iv) percent installation commitments met.⁷³

(B) Adopting: (i) a First Call (Contact) Resolution ("FCR") for the call centers; and (ii) Repeat Rate for installation/repairs. As these metrics are either new to Hawaiian Telcom, or currently exist in a more limited form, Cincinnati Bell requests approximately twelve (12) months to develop and implement the systems and processes needed to generate these metrics.⁷⁴

⁷¹Settlement Agreement, Exhibit 1 at 14-15.

⁷²Settlement Agreement, Exhibit 1 at 15-16 (citing CA SOP at 22).

⁷³Settlement Agreement, Exhibit 1 at 16.

⁷⁴Settlement Agreement, Exhibit 1 at 16-17.

(C) Fiber buildout 'condition. Related to Cincinnati Bell's earlier commitment to invest \$20 million, the Consumer Advocate sought to develop metrics by which to ensure that the \$20 million represents additional capital expenditures than would have been made under a stand-alone Hawaiian Telcom scenario.⁷⁵ The Consumer Advocate also maintained that any such investment should also benefit the neighbor islands and not just Oahu.⁷⁶ In response, Applicants noted that Hawaiian Telcom has been slowing its fiber-build, as indicated in its 2018 Operating Plan.⁷⁷ As a result, the Parties have agreed to a condition under which Applicants "commit to building an incremental 15,000 doors --- 9,000 on neighbor islands, due to the underserved nature of those areas, and 6,000 on Oahu --- over the next four years," which the Parties agree is above and beyond Hawaiian Telcom's current buildout schedule.⁷⁸

⁷⁵See Settlement Agreement, Exhibit 1 at 18; and CA SOP at 26.

⁷⁶Settlement Agreement, Exhibit 1 at 18.

⁷⁷See Settlement Agreement, Exhibit 1 at 18.

⁷⁸See Settlement Agreement, Exhibit 1 at 19.

Appendix A To Order No. 33795

In addition to the conditions prompted by the Consumer Advocate, the Parties also discussed the applicability of Appendix A to Order No. 33795, filed in Docket No. 2015-0022 ("Appendix A"), to this proceeding.⁷⁹ The Parties note that Appendix A identified six elements that the commission deemed relevant to the public interest standard in the proposed merger between the Hawaiian Electric Companies and NextEra, but contend that two elements, "achievement of the state's clean energy goals" and "the H[awaiian Electric] Companies' transformation" are inapplicable to this proceeding.⁸⁰

Regarding the remaining considerations (ratepayer benefits, mitigation of risk, competition, and corporate governance), the Parties agree that Applicants are able to satisfy these standards, further supporting a finding that the merger is in the public interest.⁸¹ Specifically, the Settlement Agreement provides as follows:

⁷⁹Docket No. 2015-0022 involved the proposed merger between the Hawaiian Electric Companies (collectively, Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Limited) and NextEra Energy, Inc. ("NextEra").

⁸⁰See Settlement Agreement, Exhibit 1 at 25.

⁸¹Settlement Agreement, Exhibit 1 at 25.

(A) Ratepayer benefits. As discussed in other parts of the Settlement Agreement, the Parties note that Cincinnati Bell has committed to: (1) investing in fiber deployment in Hawaii, with a minimum investment of \$20 million in the first four years to buildout 15,000 new or upgraded connections; and (2) improving Hawaiian Telcom's service quality metrics.⁸² In addition, the Settlement Agreement states that "Cincinnati Bell is committed to the long-term development of the Hawaiian Telcom fiber network," and that "[t]he post-merger Hawaiian Telcom will be stronger financially and, therefore, better poised to take a leadership role in the deployment of a modern fiber network capable of supporting robust 5G mobile and enhanced services"⁸³

(B) Mitigation of risk. This principle was heavily tied into consideration of ring-fencing measures proposed in Docket No. 2015-0022. The Parties contend that many of the business risks associated with NextEra that prompted this concern in Docket No. 2015-0022 are not present in this proceeding.⁸⁴ For example, the Parties state that, unlike NextEra (whose investments included nuclear power plants and natural gas exploration), Cincinnati Bell is not engaged in high risk

⁸²Settlement Agreement, Exhibit 1 at 25-26.

⁸³Settlement Agreement, Exhibit 1 at 26.

⁸⁴Settlement Agreement, Exhibit 1 at 28-29.

investments and intends to focus on investing in additional fiber infrastructure. Consequently, the Consumer Advocate does not believe that the merger would result in increased risk for Hawaiian Telcom or its customers and does not recommend imposing any ring-fencing measures at this time.⁸⁵

(C) Competition. The Settlement Agreement states that this consideration was developed with the Hawaiian Electric Companies' competitive bidding framework for new electricity generation in mind and, similar to the considerations of the State's clean energy goals and transformation of the Hawaiian Electric Companies in Docket No. 2015-0022, is not directly applicable to the circumstances facing Hawaiian Telcom.⁸⁶ Unlike the Hawaiian Electric Companies, which enjoy the position of being the single franchised provider of electric services in their respective service territories, the Settlement Agreement notes that Hawaiian Telcom operates in a fully competitive market where there is a "well-funded incumbent cable broadband Internet provider with a significantly larger market share in Hawaii."⁸⁷ Accordingly, Applicants' post-merger plan to increase fiber deployment throughout the State is expected to provide greater,

⁸⁵Settlement Agreement, Exhibit 1 at 29.

⁸⁶Settlement Agreement, Exhibit 1 at 29.

⁸⁷Settlement Agreement, Exhibit 1 at 29.

and in some instances, the only, competition to the incumbent cable television and broadband Internet service provider.⁸⁸

Furthermore, Applicants confirm that they "will continue to allow competitors, such as Charter, to access Hawaiian Telcom's network in a fair and non-discriminatory manner, consistent with applicable law, regulation and interconnection agreements."⁸⁹

(D) Corporate governance. The Parties note in the Settlement Agreement that Applicants have confirmed their commitment to appoint two Hawaii residents to Cincinnati Bell's Board of Directors, and that Cincinnati Bell is committed to "maintaining Hawaiian Telcom local management and control[,] such that "all day-to-day operational functions to manage the profit and loss of the Hawaii market will be the responsibility of the local management team without the need for consultation with Cincinnati Bell."⁹⁰

In sum, the Settlement Agreement asserts that, to the extent applicable, the considerations identified in Appendix A have all been satisfactorily addressed and met by Applicants.

⁸⁸Settlement Agreement, Exhibit 1 at 29. Although not identified by name in the Settlement Agreement, it is apparent from the record that Hawaiian Telcom's dominant market competitor is Charter. See Applicants RSOP at 3 and 26.

⁸⁹Settlement Agreement, Exhibit 1 at 29.

⁹⁰Settlement Agreement, Exhibit 1 at 30-31.

IV.

DISCUSSION

As a preliminary matter, the commission observes that, notwithstanding the Parties' Settlement Agreement, the Settlement Agreement is not binding on the commission, as the commission retains the discretion to review and approve the Settlement Agreement in whole or in part, in light of the record in this proceeding, pursuant to its authorized statutory powers provided by law, including, but not limited to, HRS §§ 269-6, -7, -7.5, -17, -17.5, and -19. Ultimately, the legal standards set forth in HRS Chapter 269, as discussed above, remain dispositive, and it is with these standards in mind that the commission reviewed the Settlement Agreement, as well as the underlying transfer of control proposed in the Application.

A.

Whether Cincinnati Bell Is Fit, Willing, And Able

The commission, after reviewing the Settlement Agreement and the record in this proceeding, finds that Cincinnati Bell is fit, willing, and able to properly perform the intrastate telecommunications services currently offered by Hawaiian Telcom.

As set forth in the Settlement Agreement, the Parties have agreed that Cincinnati Bell is fit, willing, and able based on Cincinnati Bell's financial resources, long track record in the

telecommunications service industry, and commitments regarding local management.⁹¹ Upon reviewing the record, the commission notes that this position is adequately supported.

1.

Fit

Regarding fitness, Cincinnati Bell has confirmed that it has secured the financing from its creditors necessary to effectuate the merger and post-merger operations.⁹² In addition, Cincinnati Bell's larger size is expected to allow it to access financial markets on more favorable terms than currently available to Hawaiian Telcom.⁹³ Hawaiian Telcom will also be granted access to Cincinnati Bell's intercompany cash management system, which is expected to increase Hawaiian Telcom's access to liquidity to fund its daily and long-term capital and operating needs.⁹⁴

⁹¹See Settlement Agreement, Exhibit 1 at 20-21.

⁹²See Applicants response to PUC-Applicants-IR-29, as amended by Applicants response to CA-IR-12.

⁹³See Applicants response to PUC-Applicants-IR-29; see also Applicants response to PUC-Applicants-IR-31; and Applicants response to CA-IR-29(a) (Restricted).

⁹⁴See Applicants response to PUC-Applicants-IR-51.

Willing

Regarding willingness, the commission notes that Cincinnati Bell appears cognizant of the tradition and culture that has developed at Hawaiian Telcom and is committed to retaining local management and control over day-to-day operations.⁹⁵ In addition, Cincinnati Bell has committed to appoint two Hawaii residents to the Cincinnati Bell Board of Directors.⁹⁶ As it concerns this commitment, the commission will impose an additional condition intended to provide clarification. Specifically: (A) the appointees must have resided in Hawaii no less than five (5) years; (B) the appointees are vested with the same rights, privileges, and responsibilities as other members of the Cincinnati Bell Board of Directors; (C) the appointments meet the prevailing standards of an independent director; and (D) these requirements shall remain in effect for as long as Cincinnati Bell remains in control of Hawaiian Telcom, or as otherwise modified by the commission. Furthermore, the initial appointments will be made within 180 days of closing of the merger. The commission emphasizes that this condition is merely to provide

⁹⁵See Settlement Agreement, Exhibit 1 at 30; see also Applicants responses to PUC-Applicants-IR-6 and -9.

⁹⁶Applicants response to PUC-Applicants-IR-56.

clarification to the commitment already offered by Applicants and does not believe any of the specified requirements above are inconsistent with the intent expressed by Applicants.

Moreover, as indicated in the Parties' Settlement Agreement, Cincinnati Bell has agreed to several conditions to address the concerns raised by the Consumer Advocate in its Statement of Position.⁹⁷ While some of these considerations are articulated by the Parties in the context of the "public interest" standard, rather than the "fit, willing, and able" standard, Cincinnati Bell's agreement on these conditions nonetheless indicates its willingness to continue the provision of services offered by Hawaiian Telcom.

3.

Able

Regarding ability, the commission notes that Cincinnati Bell appears competent to assist Hawaiian Telcom in improving its telecommunications services offerings. Cincinnati Bell is a well-established telecommunications carrier that has successfully been providing residential and business services to customers in Cincinnati and the surrounding territory in Ohio, Indiana, and Kentucky, and holds over 2,800 technical

⁹⁷See Settlement Agreement, Exhibit 1 at 11-19.

certifications.⁹⁸ In the past ten years, there have been no network reliability and/or service quality investigations of Cincinnati Bell's regulated utility operations by the Public Utility Commission of Ohio ("PUCO");⁹⁹ in fact, Cincinnati Bell has met or exceeded the PUCO's mandated reliability and service standards over the past ten years.¹⁰⁰

Based on the above, the commission concludes that the Applicants have satisfactorily demonstrated that Cincinnati Bell is fit, willing, and able to properly perform the intrastate telecommunications services currently offered by Hawaiian Telcom.

B.

Whether The Proposed Merger Is In The Public Interest

The commission, after reviewing the Parties' Settlement Agreement and the record in this proceeding, finds that the proposed merger is in the public interest, provided that certain conditions are adopted. In this regard, the commission declines to adopt the Parties' Settlement Agreement, in toto, and instead imposes certain conditions necessary to ensure that the proposed merger satisfies the public interest standard.

⁹⁸Settlement Agreement, Exhibit 1 at 4; and Applicants response to PUC-Applicants-IR-15.

⁹⁹Applicants response to PUC-Applicants-IR-26.

¹⁰⁰Applicants response to PUC-Applicants-IR-27.

Improved Financial Condition

It appears that the merger will improve the financial condition of Hawaiian Telcom, as well as provide it with access to larger amounts of liquid capital to help sustain and expand its operations. In general, the commission finds that this should improve the overall financial well-being of Hawaiian Telcom. That being said, the commission shares some of the concerns raised by the Consumer Advocate regarding the benefit of monitoring Applicants' overall debt and the potential impact it may have on Hawaiian Telcom's financial viability.¹⁰¹

However, the commission declines to adopt the financing condition proposed by the Parties' in the Settlement Agreement. While the commission agrees with the logic behind the proposed financing condition, it has reservations over the relatively high trigger point; i.e., a 5.0x debt-to-EBITDA ratio. In this regard, the commission observes that the Consumer Advocate also initially expressed concern over this relatively high ratio trigger and recommended a tiered approach of reporting, beginning at a more conservative debt-to-EBITDA ratio.¹⁰² However, the commission is

¹⁰¹See Settlement Agreement, Exhibit 1 at 13 (citing CA SOP at 18.

¹⁰²See CA SOP at 18-19.

also cognizant of the counter-arguments raised by Applicants, primarily the preservation of flexibility and discretion to raise capital without undue regulatory constraint. Accordingly, the commission imposes its own financing reporting condition: Applicants shall file, on a quarterly basis, its debt-to-EBITDA ratio with the commission and the Consumer Advocate. This filing will be made in this docket and will be subject to Protective Order No. 34779, to the extent necessary. This will allow the commission and Consumer Advocate to actively monitor the financial fitness of the newly merged entity and, in the event the debt-to-EBITDA ratio is cause for concern, the opportunity to take timely action to address any such concerns. If, in the future, Applicants find that this requirement is unduly burdensome, or should be modified in some way, they may seek adjustment by filing a request with the commission.

Furthermore, while the Parties' discussion regarding the debt-to-EBITDA ratio appears to be made in the context of replacing the "hard cap" debt-to-equity ratio contained in the Waiver provision currently enjoyed by Hawaiian Telcom,¹⁰³ as noted, infra, the commission is not, at this time, approving Applicants' Waiver Request. Accordingly, the commission clarifies that the debt-to-EBITDA ratio condition discussed above shall apply to

¹⁰³See Settlement Agreement, Exhibit 1 at 11-15.

Applicants as an independent reporting requirement, and not as part of a condition to any waiver.

In addition, the commission notes that there is also a financial issue related to the recently enacted federal Tax Cuts and Jobs Act, which took effect on January 1, 2018 ("Tax Act"). The commission has articulated its intent to conduct an examination into the impacts of the Tax Act as it pertains to regulated utilities, including Hawaiian Telcom.¹⁰⁴ While this will naturally implicate Applicants once the merger is consummated, this issue is not specific to this proceeding; i.e., regardless if ownership of Hawaiian Telcom remains with Holdco or is transferred to Cincinnati Bell, Hawaiian Telcom is required to comply with Order No. 35241.

Given the independent nature of this examination, as well as the potential complications associated with analyzing the Tax Act's impacts, the commission will proceed with addressing this issue in a separate proceeding, as provided in Order No. 35241. This will avoid delaying resolution on the underlying Application, as well as provide Cincinnati Bell, as Hawaiian Telcom's new owner, more time to understand the

¹⁰⁴See In re Public Utils. Comm., Docket No. 2018-0012, Order No. 35241, "Opening a Proceeding to Investigate the Impacts of the Tax Cuts and Jobs Act of 2017," filed January 26, 2018 ("Order No. 35241").

impacts of the Tax Act on Hawaiian Telcom. That being said, the commission clarifies that the decision to address the Tax Act separate and apart from this proceeding in no way abridges or excuses Applicants from complying with the provisions of Order No. 35241.

2.

Improvements To Infrastructure

The proposed merger will result in a financially stronger Hawaiian Telcom, which, in turn, will allow for improved and/or accelerated development of infrastructure and provision of telecommunication services. In particular, Applicants have committed to invest \$20 million in fiber infrastructure to build out 15,000 new or upgraded connections or extensions of Hawaiian Telcom's current network to homes over the next four years. While the \$20 million was initially proposed in the context of the Cable Division's proceeding, the Parties here have further elaborated on this commitment via the Fiber Buildout Condition to ensure that the \$20 million will be spent on improving fiber build out, not only on Oahu, but on neighbor islands as well.

As it pertains to the Fiber Buildout Condition, the commission notes: (1) the 15,000 door fiber build out is intended to be incremental to what Hawaiian Telcom proposed as part of its 2018 Operating plan, exclusive of Hawaiian Telcom's

2018 Connect America Fund ("CAF") build;¹⁰⁵ and (2) 9,000 doors are to be on neighbor islands, which are underserved as compared to Oahu.¹⁰⁶ The commission appreciates the efforts made by the Parties to elaborate on this condition and ground it in a verifiable standard of measurement. However, the commission will impose a slight modification to further clarify that the \$20 million commitment, and corresponding 15,000 door buildout, is additive to Hawaiian Telcom's pre-merger buildout plans.

Accordingly, regarding the Fiber Buildout Condition, the condition is modified to incorporate the most recent pre-merger capital expenditure forecasts for Hawaiian Telcom, which shall serve as a baseline against which the additional 15,000 door buildout will be measured. Furthermore, Applicants shall file: (1) within sixty (60) days of closing of the merger, a four-year 15,000 door buildout schedule of the incremental fiber buildout (by island) that provides annual deployment milestones (by island); and (2) an annual progress report by March 1 of each year demonstrating the annual progress

¹⁰⁵The CAF is a federal program under which, the FCC provides funding for local utilities, such as Hawaiian Telcom, to expand access to broadband and voice services to areas that are unserved or underserved. As this program is subject to federal subsidies and reimbursement, counting it towards any public interest commitment would be inappropriate, as it does not reflect an "out of pocket" effort by Applicants.

¹⁰⁶Settlement Agreement, Exhibit 1 at 18-19.

toward the forecasted target provided for in the plan described in (1), above. The Applicants should not object to this condition, as it appears that their intent in crafting the Fiber Buildout Condition is to ensure that an incremental amount of fiber buildout doors is added on top of what was projected in Hawaiian Telcom's 2018 Operating plan.¹⁰⁷

3.

Improvements To Service Quality

In addition to increased fiber buildout, the Parties have also agreed that Applicants will improve Hawaiian Telcom's service quality metrics (i.e., the Service Quality Condition). The Parties agree that certain Hawaiian Telcom service quality standards merit reconsideration.¹⁰⁸ As a result, the Parties have agreed to revise Hawaiian Telcom's quality service standards, keeping only those which are deemed useful and adding two new metrics (FCR and Repeat Rate for installation/repair).¹⁰⁹ The Parties have also agreed to a timeline for implementing these changes.¹¹⁰ The commission concludes that the requested revisions

¹⁰⁷See Settlement Agreement, Exhibit 1 at 18-19.

¹⁰⁸See e.g., CA SOP at 21.

¹⁰⁹Settlement Agreement, Exhibit 1 at 15-16.

¹¹⁰See Settlement Agreement, Exhibit 1 at 17-18.

appear reasonable and will serve the public interest by improving Hawaiian Telcom's ability to measure its customer service and provide necessary improvements.

On a broader scale beyond the above-mentioned metrics, Applicants maintain that the merger will provide the opportunity for both Hawaiian Telcom and Cincinnati Bell to use their respective experience to further develop a "best practice" for the merged company, including, for example, improvements in the areas of data analytics, call center service strategy, outside plant planning and network build, and capital management and sourcing.¹¹¹ Furthermore, Applicants have repeatedly stated that, if approved, they expect the merger transition to be seamless from the customers' perspective.¹¹²

¹¹¹Applicants response to PUC-Applicants-IR-11.

¹¹²See Applicants responses to PUC-Applicants-IR-20 and -21; and Settlement Agreement, Exhibit 1 at 22.

Effect On Competition

It does not seem that the proposed merger will negatively impact robust competition in the telecommunication market in Hawaii. Unlike the electric utility industry in Hawaii, which has a single franchised provider within each service territory, telecommunications customers enjoy healthy competition when it comes to the provision of telecommunication services.¹¹³ Furthermore, Applicants contend that the merger will allow Hawaiian Telcom to expand its service offerings into areas that are currently dominated by a single provider, thereby increasing competition in certain areas, particularly in the area of broadband Internet access.¹¹⁴

In addition, Applicants have confirmed that Cincinnati Bell does not have any current interests in Hawaii (besides the proposed merger) and does not have any planned joint ventures or operational agreements between any of the business units of Hawaiian Telcom and Cincinnati Bell or its subsidiaries.¹¹⁵ Furthermore, Applicants pledge that they will abide by the

¹¹³See Applicants response to CA-IR-34.

¹¹⁴See Applicants response to CA-IR-34.

¹¹⁵Applicants response to PUC-Applicants-IR-1.

affiliate transaction requirements provided in HRS § 269-19.5, to the extent applicable.¹¹⁶

The commission is not persuaded by the arguments raised in Charter's Statement of Position. As a preliminary matter, the commission observes that most of Charter's proposed conditions would clearly improve Charter's specific market position, not necessarily those of all CLECs or competitors of Hawaiian Telcom.¹¹⁷ Conditions which advance a particular competitor's position are not consistent with maintaining or improving competition, in that they disproportionately favor one competitor over others.

Furthermore, it appears that a primary point of contention raised by Charter is the "unwillingness" of Applicants to make firm commitments to Charter beyond what is currently provided for in their existing ICAs.¹¹⁸ The commission is not

¹¹⁶Applicants response to PUC-Applicants-IR-2.

¹¹⁷See Charter SOP at 14-19.

¹¹⁸See Charter SOP at 10-11. Additionally, Charter also raises concerns regarding attempted negotiations over new pole and conduit agreements with Hawaiian Telcom. Id. at 11. On this issue, the commission takes administrative notice of Docket No. 2018-0075, in which Hawaiian Telcom and the Hawaiian Electric Companies have jointly petitioned the commission to transfer Hawaiian Telcom's equity ownership interest in its poles to the Hawaiian Electric Companies, who, thereafter, would assume responsibilities for negotiating with and arranging access for third parties such as Charter. See In re Hawaiian Telcom, Inc. Docket No. 2018-0075 (Application filed April 4, 2018).

persuaded by Charter's arguments, and is not insensitive to Applicants' position on this issue, *per se*, as it is unclear as to whether Hawaiian Telcom, absent the merger, would commit to any revisions beyond its current ICAs at this time.

Pertinently, Applicants have stated that "the [merger] should not disturb Hawaiian Telcom's compliance with its wholesale obligations and no changes to its performance are anticipated as a result of the [merger]."¹¹⁹ According to the Application, the merger will not impact Hawaiian Telcom's existing ICAs, and Hawaiian Telcom will continue to provide non-discriminatory access to its wholesale customers under Cincinnati Bell.¹²⁰ However, to dispel any ambiguity regarding this issue, the commission imposes a condition that affirms that Applicants expressly assume the extant duties and obligations of Hawaiian Telcom to provide services and support to CLECs. This should effectively preserve the *status quo ante* until such time as Applicants and its counterparties negotiate an amendment to, or replacement of, their current ICAs.¹²¹

¹¹⁹Application at 30.

¹²⁰Application at 30; see also Applicants RSOP at 16.

¹²¹In this regard, the pertinent issue under consideration here is the presence of equal opportunity for competition, not a guaranteed market share or specific outcome. Furthermore, the commission notes that the ICAs are the result of private negotiations to which the commission is not a party.

C.

The Effect Of The Merger On The IBEW's CBA And
Hawaiian Telcom's Pension Plan

The proposed merger is not expected to negatively impact Hawaiian Telcom's employees or those who currently receive retirement benefits from Hawaiian Telcom.

During this proceeding, Applicants clarified that they have reached a new CBA with the IBEW, effective from January 1, 2018, through September 30, 2022.¹²² In addition, Applicants have confirmed that there are no employee headcount reductions planned for the first calendar year and that there "are no employee headcount reductions planned beyond normal attrition."¹²³

Regarding Hawaiian Telcom's pension plan, Applicants have clarified that there are no planned or proposed changes to Hawaiian Telcom's 401(k) plans or defined benefit plans.¹²⁴ In addition, as noted above, the IBEW has filed a Statement of Position in support of the merger.

¹²²Applicants response to PUC-Applicants-IR-38.

¹²³Applicants response to CA-IR-9(a), (c), and (e)(2); see also, Applicants response to CA-IR-10 (Restricted); and Applicants response to PUC-Applicants-IR-74.

¹²⁴See Applicants responses to PUC-Applicants-IR-39, -41, and -42; see also Settlement Agreement, Exhibit 1 at 23-24.

That being said, the commission will impose several conditions to bolster Applicants' commitment to preserving the pension and benefits currently provided to retirees by Hawaiian Telcom. First, the commission notes that there are two classes of Hawaii pensioners who currently receive retirement benefits that may be affected by the proposed merger: (1) retired employees of Hawaiian Telcom; and (2) retired employees of GTE Hawaii, whose retirement benefits have been passed on through GTE Hawaii's successors (i.e., Verizon Hawaii, prior to becoming Hawaiian Telcom). Hawaiian Telcom currently administers the remaining obligations to these GTE Hawaii retirees in accordance with the terms and conditions of the retirees' agreement with GTE Hawaii, and the commission concludes that requiring Applicants assume this responsibility is in the public interest. Applicants have made no indication in this proceeding that they are unwilling or incapable of continuing this responsibility and the commission's actions are meant to simply affirm this previously implicit commitment. Thus, Applicants will maintain responsibility for the retirement benefits of GTE Hawaii retirees, unless expressly relieved or modified by the commission.

Second, Applicants have acknowledged that Hawaiian Telcom's pension plan has an estimated unfunded liability of \$35.5 million, based on generally accepted accounted

principles ("GAAP").¹²⁵ Notwithstanding Applicants reassurances that the merger will not negatively impact Hawaiian Telcom's pension plan, the commission has concerns about this unfunded liability, particularly as it is assumed by a new acquiring entity. While this pertains to Hawaiian Telcom's employee pension plan, the commission believes that this is still a matter of public concern, as any large unfunded liability could ultimately affect Hawaiian Telcom's prices, as well as the livelihood of its retirees, many of whom live and reside in Hawaii.

Accordingly, Applicants are required to file, within ninety (90) days of closing of the merger, its proposed plan to address this unfunded condition. Additionally, as a sign of Applicants' intent to timely address this issue, Applicants shall make a one-time contribution of \$5 million toward immediately reducing the unfunded condition within ninety (90) days of the closing of the merger.

D.

Applicability Of Order No. 33795 Appendix A

In the Application, the Applicants submit that Appendix A is not applicable to this proceeding.¹²⁶ In addition to

¹²⁵Applicants response to PUC-Applicants-IR-43.

¹²⁶See Application at 32-33.

noting that no such criteria was applied to the recent merger of Charter and Time Warner Cable,¹²⁷ Applicants argue that Appendix A was developed with the unique circumstances facing the Hawaiian Electric Companies and the electric industry in Hawaii in mind.¹²⁸ In the Settlement Agreement, the Parties agree that, to the extent applicable,¹²⁹ Applicants and the proposed merger satisfy the Appendix A elements.¹³⁰

Before addressing this issue, the commission takes this opportunity to clarify that Appendix A is not directly applicable to this proceeding. As reflected in the express language of Appendix A, it is intended as guidance "on key elements that would be necessary to meet the public interest standard in any future applications seeking a change in control of the H[awaiian Electric] Companies."¹³¹ Accordingly, as noted by the Parties, some of the elements are not directly applicable to Cincinnati Bell or the telecommunications industry. This is not to say that the elements

¹²⁷See Decision and Order No. 33602.

¹²⁸Application at 32-33.

¹²⁹The Parties agree that Appendix A elements (3) (achievement of the State's energy goals) and (6) (the Hawaiian Electric Companies' transformation) are inapplicable to Hawaiian Telcom, Cincinnati Bell, and this proceeding. Settlement Agreement, Exhibit 1 at 25.

¹³⁰See Settlement Agreement, Exhibit 1 at 25-31.

¹³¹Order No. 33795, Appendix A at 1 (emphasis added).

set forth in Appendix A are completely inapplicable to the proposed merger; considerations such as ratepayer benefits, mitigation of risk, effects on competition, and corporate governance are, to a certain degree, pertinent factors in any proposed change of control proceeding. Accordingly, while not treating Appendix A as directly applicable to this proceeding, the commission has considered its underlying concerns, and appreciates the Parties' efforts to respect the commission's guidance in this proceeding.

As discussed above, many of the elements of Appendix A have been satisfactorily addressed by Applicants. Ratepayer benefits, the effect of the merger on competition, and corporate governance have been directly addressed by the Parties in the Settlement Agreement. As noted above, Applicants have committed to investing \$20 million, in the form of an additional 15,000 door buildout over the next four years. Similarly, the commission has concluded that the proposed merger is not likely to negatively affect competition, and has imposed a condition meant to preserve the *status quo ante* regarding Applicants and their existing ICAs with CLECs and other third parties. Additionally, corporate governance is addressed in this Decision and Order by Applicants' expressed intent to retain local control and management, as well as their commitment to place two Hawaii residents on Cincinnati Bell's Board of Directors, as clarified by the commission, above.

Regarding mitigation of risk, this was primarily addressed by adoption of certain "ring-fencing" measures meant to protect against unforeseen exposure to risk as a consequence of a merger. In this instance, Applicants contend that ring-fencing is inappropriate, as Cincinnati Bell does not exhibit the business risks of NextEra and that ring-fencing measures would effectively nullify many of the anticipated financial benefits of the merger, such as easy access to Cincinnati Bell's capital.¹³² The Consumer Advocate also concludes that ring-fencing measures are not necessary at this time.¹³³

Based upon the record in this proceeding, as well as the circumstances of this proposed merger, the commission agrees that ring-fencing measures are not necessary under the present circumstances. That being said, any change in circumstances may warrant re-examination. Thus, the commission will require Applicants to notify the commission and the Consumer Advocate of any commitment to convert Hawaiian Telcom, including any of its subsidiaries, from an indirect subsidiary of Cincinnati Bell into a direct-subsidary. Such notice shall be provided prior to the consummation of any such conversion, and with sufficient time for

¹³²See Applicants responses to CA-IR-22(b) and PUC-Applicants-IR-48; see also Applicants response to CA-IR-28.

¹³³See CA SOP at 28.

the commission and the Consumer Advocate to thoroughly examine the public interest in any such proposed change.

Furthermore, Applicants shall notify the commission of any proposed sale of Hawaiian Telcom assets, including land that might be held by another Hawaiian Telcom subsidiary or corporate parent, that in the aggregate represents a transaction worth more than \$10 million for a period of five (5) years following the closing of the merger. Similar to the condition described above, such notice shall be provided prior to the consummation of any such sale and with sufficient time for the commission and the Consumer Advocate to thoroughly examine the public interest in any such sale.¹³⁴

With these additional conditions described above, the commission believes the record demonstrates that the mitigation of risk consideration is satisfied under these circumstances.

¹³⁴This condition is intended to act as a supplement to the the applicable provisions of HRS §§ 269-19 and -19.5, and does not abridge the commission's authority under, or excuse the Applicants' compliance with, these provisions.

E.

Participation In Cincinnati Bell's Financing Arrangements

As noted above, the commission is satisfied that Cincinnati Bell is financially fit to assume the responsibilities of Hawaiian Telcom. Furthermore, the commission has imposed conditions intended to keep the commission informed of Applicants' financial condition (i.e., debt-to-EBITDA ratio) and to mitigate financial risks. Based on the commission's discussion above, the commission approves Applicants' request to allow Hawaiian Telcom to participate in Cincinnati Bells' financing arrangements.

F.

Applicants' Waiver Request

The commission denies Applicants' Waiver Request. Notwithstanding the Parties' agreement on this issue,¹³⁵ the commission has reservations and is not persuaded that granting a waiver is necessary or appropriate at this time.

Cincinnati Bell is a new entity to this State and the commission believes it prudent to impose the applicable regulatory reporting provisions, at this time, while it observes Hawaiian Telcom under its new ownership. Based on statements made

¹³⁵See Settlement Agreement, Exhibit 1 at 8.

by Applicants, as well as other evidence provided, it does not appear that extending the Waiver is essential to securing financing for this merger or near-term capital expenditures,¹³⁶ so denying Applicants' Waiver Request should not unduly prejudice Applicants.

To the extent Applicants maintain this puts them at a disadvantage to their competitors,¹³⁷ the commission observes that Charter, a competitor of Hawaiian Telcom, has raised its own anti-competition concerns regarding the merging of Hawaiian Telcom and Cincinnati Bell. Under the circumstances, the commission believes that the public interest is better served if Applicants are required to comply with the statutory and regulatory reporting requirements during their interim transition as a merged entity. However, this denial is without prejudice. Following the closing of the merger, Applicants may apply for a waiver under HRS § 269-16.9 in a subsequent proceeding, at which time the commission will consider it under the circumstances present at the time.

Thus, the commission denies this aspect of the Settlement Agreement.

¹³⁶See Applicants response to PUC-Applicants-IR-29.

¹³⁷See Applicants response to PUC-Applicants-IR-49.

G.

Retention Of Commission Authority

Finally, the commission clarifies that its rulings in this Decision and Order do not diminish or otherwise excuse Applicants from the scope of the commission's authority. Nothing in this Decision and Order in any way abridges the commission's statutory authority or its rules, regulations, or requirements as they have been applied to Hawaiian Telcom or other regulated utilities. Thus, notwithstanding the transfer of indirect control of Hawaiian Telcom to Cincinnati Bell, the commission fully expects Cincinnati Bell to comply with all applicable statutory and regulatory provisions as applied by the commission.¹³⁸

V.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the above, the commission finds and concludes as follows:

1. Cincinnati Bell is fit, willing, and able to properly perform the intrastate telecommunication services currently provided by Hawaiian Telcom.

¹³⁸As noted, supra, this includes complying with Order No. 35241, regarding the commission's examination into the impacts of the Tax Act on Hawaiian Telcom.

2. The proposed merger is in the public interest, as set forth in the Parties' Settlement Agreement, and as further modified by the commission's conditions described above in this Decision and Order.

3. In this regard, the commission adopts the Parties' Settlement Agreement in part, while imposing additional conditions intended to clarify and augment various aspects of the Settlement Agreement. Specifically, the commission:

(A) Approves the Service Quality Condition;

(B) Approves, in principle, the Fiber Buildout Condition, but modifies the condition to incorporate the most recent pre-merger capital expenditure forecasts for Hawaiian Telcom, which shall serve as a baseline against which the additional 15,000 door buildout will be measured. Applicants shall file: (1) within sixty (60) days of closing of the merger, a four-year 15,000 door buildout schedule of the incremental fiber buildout (by island) that provides annual deployment milestones (by island); and (2) an annual progress report by March 1 of each year demonstrating the annual progress toward the forecasted target provided for in the plan described in (1), above;

(C) The Financing Condition is rejected; instead, Applicants shall file, on a quarterly basis, its debt-to-EBITDA ratio with the commission and the Consumer Advocate;

(D) Regarding the appointment of two Hawaii residents to Cincinnati Bell's Board of Directors: (i) the appointees must have resided in Hawaii no less than five (5) years; (ii) the appointees must be vested with the same rights, privileges, and responsibilities as other members of the Cincinnati Bell Board of Directors; (iii) the appointments must meet the prevailing standards of an independent director; and (iv) the initial appointments must be made within 180 days of closing of the merger;

(E) Following the completion of the merger, Applicants' duties and obligations to provide services and support to CLECs will remain in full force, so as to preserve the *status quo ante* until Hawaiian Telcom and its various counterparties amend or replace their various ICAs;

(F) Applicants shall maintain responsibility for the retirement benefits of GTE Hawaii retirees in accordance with the term and conditions of the retirees' agreement with GTE Hawaii, unless expressly relieved or modified by the commission;

(G) Applicants shall file, within ninety (90) days of closing of the merger, its proposed plan to address Hawaiian Telcom's unfunded pension liability. Additionally, Applicants shall make a one-time contribution of \$5 million toward reducing the unfunded liability within ninety (90) days of the closing of the merger;

(H) Applicants shall notify the commission and the Consumer Advocate of any commitment to convert Hawaiian Telcom, including any of its subsidiaries, from an indirect subsidiary of Cincinnati Bell into a direct-subsubsidiary. Such notice shall be provided prior to the consummation of any such conversion and with sufficient time for the commission and the Consumer Advocate to thoroughly examine the public interest in any such proposed change; and

(I) Applicants shall notify the commission of any proposed sale of Hawaiian Telcom assets, including land that might be held by another Hawaiian Telcom subsidiary or corporate parent, that in the aggregate represents a transaction worth more than \$10 million for a period of five (5) years following the closing of the merger. Such notice shall be provided prior to the consummation of any such sale and with sufficient time for the commission and the Consumer Advocate to thoroughly examine the public interest in any such proposed sale.

4. The commission approves Applicants' request to allow Hawaiian Telcom to participate in Cincinnati Bell's financing arrangements.

5. The commission denies Applicants' request for an extension and modification of the waiver granted to Hawaiian Telcom in Decision and Order No. 32193 (i.e., the Waiver Request) at this time. However, this denial is without prejudice, and Applicants

may apply for a such a waiver in the future, post-merger, at which time the commission will review any such application under the circumstances at such time.

6. Nothing in this Decision and Order in any way abridges the commission's statutory authority or its rules, regulations or requirements as they have been applied to Hawaiian Telcom or other regulated utilities.

VI.

ORDERS

THE COMMISSION ORDERS:

1. Subject to the conditions set forth above, the transfer of indirect control is approved.

2. Applicants shall file its debt-to-EBITDA ratio with the commission and Consumer Advocate on a quarterly basis, beginning with the first full quarter following the closing of the merger.

3. Within sixty (60) days of closing of the merger, Applicants shall file a four-year 15,000 door buildout schedule of the incremental fiber buildout (by island) that provides annual deployment milestones (by island). Thereafter, an annual progress report shall be filed by March 1 of each year demonstrating the annual progress toward the forecasted target provided for in the plan described above.

4. Within 180 days of the closing of the merger, Applicants shall appoint two Hawaii residents to the Cincinnati Bell Board of Directors based on the criteria discussed above.

5. Within ninety (90) days of closing of the merger, Applicants shall file their proposed plan to address Hawaiian Telcom's current unfunded pension liability. Additionally, Applicants shall make a one-time contribution of \$5 million toward reducing the unfunded liability within ninety (90) days of the closing of the merger.

6. Applicants' request to allow Hawaiian Telcom to participate in Cincinnati Bell's financing arrangements is approved.

7. Applicants' request for an extension and modification of the waiver granted to Hawaiian Telcom in Decision and Order No. 32193 is denied without prejudice.

8. Nothing in this Decision and Order in any way abridges the commission's statutory authority or its rules, regulations or requirements as they have been applied to Hawaiian Telcom or other regulated utilities.

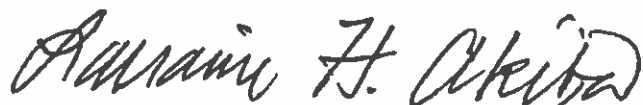
9. The failure to comply with any of the requirements set forth in this Decision and Order may constitute cause to void this Decision and Order, and may result in further regulatory action as authorized by State law.

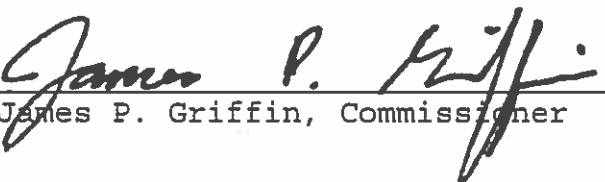
10. Upon the filing of the written reports describing Applicants' anticipated fiber buildout schedule and Applicants' plan for addressing the unfunded pension liability in Ordering Paragraphs 3 and 5, this docket shall be considered closed. Applicants' quarterly debt-to-EBITDA ratios and annual fiber buildout progress reports, shall continue to be filed in this docket unless otherwise directed by the commission.

DONE at Honolulu, Hawaii APR 30 2018.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Randall Y. Iwase, Chair

By 
Lorraine H. Akiba, Commissioner

By 
James P. Griffin, Commissioner

APPROVED AS TO FORM:


Mark Kaetsu
Commission Counsel

2017-0208.ljk

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail,
postage prepaid, and properly addressed to the following parties:

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