Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
The Department of Hawaiian Home Land's Request for Guidance on Whether Sandwich Isles, Inc.'s Exclusive License to Serve the Hawaiian Home Lands Conflicts with Section 253(a) of the Communications Act	)	WC Docket No. 10-90; CC Docket No. 96-45

To: The Wireline Competition Bureau

COMMENTS OF CROWN CASTLE USA INC.

Monica Gambino
Vice President, Legal

Crown Castle USA Inc.
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February 20, 2017

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COMMENTS OF CROWN CASTLE USA INC.

Crown Castle USA Inc. ("Crown Castle") hereby submits these comments and request for additional guidance in response to the Federal Communications Bureau (the "Commission")Wireline Competition Bureau's notice seeking comment on the Department of Hawaiian Home Land ("DHHL") request for guidance regarding DHHL's exclusive license "in perpetuity" to Waimana Enterprises, Inc., the parent company of Sandwich Isles Inc. ("Sandwich Isle") ("Sandwich Isle Exclusive License"), to provide telecommunication services to the Hawaiian home lands conflicts with Section 253(a) on the Communications Act, 47 U.S.C. § 253(a). On August 31, 2006, T-Mobile West Corporation ("T-Mobile") entered into a non-exclusive license agreement with DHHL to construct, manage, maintain and operate a cellular telephone facility on DHHL property ("DHHL License"). The DHHL License was granted for two five year periods with an option to extend for two additional five year periods. Pursuant to the DHHL License, T-Mobile constructed and operated a communications tower on the subject property ("T-Mobile Tower").

CCTMO LLC Inc., a subsidiary of Crown Castle, currently sublicenses the T-Mobile Tower and on August 11, 2016, on behalf of T-Mobile, Crown Castle notified DHHL of its intention to exercise the option to extend the DHHL License ("Crown Castle Notice"). In response to the Crown Castle Notice, DHHL notified Crown Castle of its contract with Sandwich Isle allowing them exclusive rights to transmit broadband services from DHHL properties. Crown Castle has continued to pursue the extension of the DHHL License since August 2016, however, the parties have been unable to resolve whether the Sandwich Isle Exclusive License precludes the extension of the DHHL License. The T-Mobile Tower is currently utilized to provide commercial mobile radio services ("CMRS") and mobile broadband. If the Sandwich Isle Exclusive License continues to be interpreted by DHHL to exclude mobile broadband services, the Sandwich Isle Exclusive License would be in conflict with Section 253(a) because it would prohibit the ability of CMRS and mobile broadband providers to provide telecommunications service to the Hawaiian home lands. Indeed, one of the primary motivations behind Congress's enactment of Section 253 was to break up just such local monopolies on the provision of telecommunications services. A jurisdiction-wide requirement that allows a single entity to provide service while barring all other competitors is the paradigmatic "prohibition" on competition that Congress sought to eliminate with Section 253. *See, e.g.*, *N.J. Payphone Ass'n v. Town of West New York*, 299 F.3d 235, 242 (3d Cir. 2002) (an exclusive town-wide franchise to provide payphones in the public rights of way is a "deliberate creation of scarcity" in violation of Section 253(a)).

Crown Castle respectfully requests that the Commission address this issue in its response to the DHHL request for guidance and clarify that any interpretation of the Sandwich Isle Exclusive License to exclude mobile broadband services would violated Section 253(a) of the Communications Act.

Respectfully submitted,

/s/ Monica Gambino

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