

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

In the Matter of

Federal-State Joint Board on Universal
Service

High-Cost Universal Service Support

CC Docket No. 96-45

WC Docket No. 05-337

Comments of Hawaiian Telcom, Inc.

Hawaiian Telcom, Inc. (“HT”), through counsel, hereby submits its Comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding (the “*NPRM*”).¹

I. Introduction and Summary

In the *NPRM* the Commission proposes adoption of a non-rural insular support mechanism through which high-cost universal service support would be provided to carriers operating in the Commonwealth of Puerto Rico.² HT understands that Puerto Rico may face telecommunications service challenges that are unique to insular areas, because the state of Hawaii faces many of the same challenges. Therefore, HT agrees that the Commission should establish a program that addresses the exceptional challenges faced by providers that serve high-cost insular areas in non-rural study areas. In keeping with the statutory goals of preserving and

¹ *Federal-State Joint Board on Universal Service; High Cost Universal Service Support*, Notice of Proposed Rulemaking in CC Docket 96-45 and WC Docket 05-337, FCC 05-205 (rel. Dec. 9, 2005).

² Petition for Clarification and/or Reconsideration of the Puerto Rico Telephone Company, Inc. (“PRTC”), CC Docket 96-45 (filed Jan. 14, 2004) (“PRTC Petition”).

enhancing universal service for *all* Americans, however, HT encourages the Commission to look beyond the Commonwealth of Puerto Rico and adopt a “plain meaning” definition of “insular” that includes the state of Hawaii, a non-rural state comprised entirely of islands. A non-rural high-cost insular support mechanism should be crafted in a way that allows all non-rural providers in high-cost insular areas to draw on such a mechanism, and also ensures that the support is used for the purpose for which it is intended, as anticipated by Congress.

II. The Hawaiian Home Lands: High-Cost and Underserved Areas Within the State of Hawaii

HT’s study area, for which HT is the “carrier of last resort” under state law, covers the entirety of the state of Hawaii, including the Hawaiian Home Lands (“HHL”).³ The HHL are approximately 70 non-contiguous areas covering over 203,000 acres on six different Hawaiian islands.⁴ The HHL include some of the most remote areas of Hawaii. The HHL have the potential and, indeed, the mandate to provide housing for native Hawaiians.⁵ HHL customers are served by two providers: Sandwich Isles Communications, Inc. (“SIC”) and HT, both of which are treated as incumbent local exchange carriers (“ILECs”) for universal service support

³ Hawaii Administrative Rules §§6-81-4, 6-81-8, 6-81-54 (requiring HT, then known as GTE Hawaiian Telephone Company Incorporated, to provide service upon request and continue providing service until another carrier is designated carrier of last resort by the Hawaii Public Utilities Commission); Hawaii Revised Statutes §269-7.5(c).

⁴ *Sandwich Isles Communications, Inc., Petition for Waiver of the Definition of “Study Area” Contained in Part 36, Appendix-Glossary and Sections 36.611, and 69.2(hh) of the Commission’s Rules*, Order, CC Docket No. 96-45, DA 05-1355, n. 4 (Wireline Comp. Bur. rel. May 16, 2005) (“*HHL 2005 Order*”).

⁵ According to the 2004 Annual Report of the Department of Hawaiian Home Lands, there were 22,539 people living on HHL at that time. See <http://www.hawaii.gov/dhhl/annualrpt04.pdf>

purposes.⁶ HT is classified as a non-rural ILEC in the entirety of its study area, and receives no support under the non-rural high-cost fund.⁷ SIC is permitted to receive high-cost support, based on its own reported costs, in portions of the HHL that the FCC found were unserved as of 1997. This year, SIC is projected to receive over \$14,000 per line for service to the HHL. Whether SIC has an exclusive right to serve these customers, and whether HT has a right to obtain support at the same level as SIC in the HHL, are matters currently pending before this Commission.⁸

The HHL represent unique challenges for telecommunications service because of their dispersed insular locations, often rugged topography, and low population density, as well as the demographics of the HHL residents, and the historical absence of demand for service in these areas. For these reasons, the administrators of the HHL created extraordinary incentives for SIC to provide service there.⁹ This Commission, too, has granted extraordinary rule waivers to SIC so it can have access to support that is unavailable to HT.¹⁰ Yet, SIC provides service only to a small subset of HHL residents.¹¹ Although HT serves more customers in the HHL than SIC, to date HT has not yet been eligible for federal high-cost support relating to its service in the HHL. As the carrier with a proven track record in serving all Hawaiian customers, and the carrier for

⁶ See *HHL 2005 Order* at para. 31. Importantly, though the Wireline Competition Bureau granted SIC's request for support calculated based on SIC's reported costs, the Bureau did not expressly relieve HT of ILEC status in the so-called unserved areas within the HHL, nor clarify whether HT may apply to serve these areas as a CLEC (*i.e.*, based on the amount of support to which SIC is entitled) pursuant to Section 54.307 of the Commission's rules, 47 C.F.R. §54.307. See *Hawaiian Telcom, Inc., Application for Review, In the Matter of Sandwich Isles Communications, Inc.*, CC Docket No. 96-45 (filed June 15, 2005) ("*HT Application for Review*").

⁷ As a price cap carrier HT does receive Interstate Access Support pursuant to Part 54, Subpart J of the FCC's rules. See 47 C.F.R. §§ 54.800-809.

⁸ See *HT Application for Review*, *supra* note 6, at 15-16.

⁹ See *HHL 2005 Order* at para. 2.

¹⁰ See *id.* at paras. 29-31.

¹¹ See *id.* at para. 11.

more residents of the HHL than SIC serves, HT ought to have access to high-cost support in those insular, high-cost areas.

The Commission has identified competitive neutrality as a goal of implementing Section 254 of the Communications Act, in addition to the express statutory goals of ensuring that consumers in *all* areas have access to services comparable to those available in urban areas, at comparable rates.¹² Yet it is not clear how continuing to support only one local exchange carrier (“LEC”) – SIC – in the HHL will be sufficient to achieve the objective of attaining universal service throughout these insular areas, nor how it can be said to be a competitively neutral policy. The Commission has found the HHL to be underserved areas.¹³ As the LEC that serves the rest of the state and has the infrastructure already in place to provide voice and broadband service throughout the state, HT believes it would be as efficient a service provider as any in the HHL. Making non-rural insular high-cost support available in the HHL would enable HT to apply for such support for the preservation and advancement of universal service in the HHL. Without such a mechanism, residents of the HHL (like those of Puerto Rico) effectively are penalized merely because the HHL are part of a study area that has been classified as non-rural.¹⁴

Clearly, the Commission’s stated goal of competitive neutrality in the administration of federal high-cost funding, as well as the goal of expanding coverage to underserved areas, both counsel in favor of providing support for more than one LEC in these high-cost island communities. The non-rural high-cost mechanism for insular areas proposed in

¹² See 47 U.S.C. §254(b)(3).

¹³ See *HHL 2005 Order*.

¹⁴ If the HHL were a separate study area, rather than part of HT’s statewide non-rural study area, HT believes the HHL would qualify for rural high-cost support today.

the *NPRM* can be structured, and responsibly managed, as discussed further in Section IV, to ensure that these areas receive much-needed improvements in their telecommunications and information services.

III. The Commission Should Not Exclude Hawaii, as an Insular State, from the Benefits of the New High-Cost Insular Support Mechanism

In the *NPRM* the Commission recognizes some of the unique challenges facing telecommunications carriers serving island communities. The cost of shipping supplies to the islands, the unpredictable terrain, water erosion, and frequent tropical storms all are common to Hawaii as well as Puerto Rico.¹⁵ As the only state comprised exclusively of islands, Hawaii should be considered an “insular” area for the purpose of an insular support mechanism. Although the Commission previously proposed that “insular” areas be defined as “islands that are territories or commonwealths of the United States,” a definition for this term has never been adopted,¹⁶ and this proposed definition is unnecessarily restrictive. Moreover, there is no reason to ignore the plain meaning of the word “insular” employed in the Act. Island states and territories such as Hawaii, Guam, and the U.S. Virgin Islands have more in common with each other, from the standpoint of providing telecommunications services, than do Hawaii and many of the other states in the United States.¹⁷ In fact, Hawaii is even more geographically isolated than some other island communities that the FCC proposes to classify as “insular,” such as Puerto Rico, in that it is located much farther from the mainland. Thus many of the challenges

¹⁵ See *NPRM* para. 31.

¹⁶ *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Further Notice of Proposed Rulemaking, CC Docket No. 96-45 (rel. Sep. 3, 1999).

¹⁷ See, e.g., 16 U.S.C. §1802(30); 16 U.S.C. §2503(k); 42 U.S.C. §5204; 48 U.S.C. §1492 (all defining and describing “insular” areas).

identified by PRTC are magnified in the state of Hawaii, and in the HHL in particular.

Excluding Hawaii from the insular high-cost mechanism would needlessly exclude island-based American communities from federal high-cost support that could be used to extend service to new residents, upgrade existing facilities, improve the quality of service, offer new services, and maintain affordable rates.¹⁸ Ironically, if Hawaii had remained a territory, it now would qualify for the insular funding proposed in the *NPRM*. The exclusion of “states of the United States” from the definition of insular is at odds with the goals of the Act. It restrictively leaves out areas that need this type of federal support, in contradiction of the goal of ensuring *all* Americans have access to service that is adequate and reasonably comparable. Without justification, it creates a vanity fund that would serve and support only one community: Puerto Rico. It is not clear what objective criteria could support such special status for that commonwealth.

Moreover, Hawaii is the only state that is entirely comprised of islands, and shares this “insular” characteristic only with the territories and commonwealths identified by the Commission. Further, the HHL comprise a unique territory within the state of Hawaii, insular areas within an insular state, in effect.¹⁹ Accordingly, the Commission need not be concerned about any significant expansion of the proposed support program to broad applications throughout the country such that it might no longer be feasible to sustain. Adding “states” to the definition of “insular” and adopting an insular high-cost support mechanism would simply ensure that universal service support would benefit customers in truly unusual environments such as the HHL.

¹⁸ See *NPRM* at para. 34.

¹⁹ See *HHL 2005 Order*.

IV. The Commission Should Adopt an Insular High-Cost Support Mechanism Designed to Ensure the Support Is Used to Expand Coverage and Improve Services In Insular Areas

The Commission should adopt a non-rural high-cost support mechanism that is applicable to insular territories *and* states. Such a support mechanism would make great strides in helping achieve universal service in these isolated areas that are drastically impacted by high per-line costs. In doing so, the Commission also should ensure that support is being used for the purpose for which it is intended, expanding infrastructure and improving services in high-cost insular areas.²⁰

HT supports the proposal that support be calculated based on embedded or historic costs.²¹ The use of forward-looking, state-wide average costs as predicted by the Commission's non-rural high-cost proxy model is not likely to accurately predict the unique costs inherent in serving insular high-cost areas such as the HHL.

Moreover, HT suggests that the provision of a newly adopted insular-specific support mechanism be conditioned in several ways to ensure the support is used for the purpose for which it is intended. First, applicants should be required to provide the Commission a comprehensive description of the area proposed to be served, including a description of the number of customers, an assessment of the penetration levels, and the amount of support that is sought. Second, applicants should be required to include in their proposals a plan for expanding penetration, and a firm commitment to utilize the support for the purpose for which it is intended, namely, expanding penetration in underserved, high-cost insular areas. Third, HT recommends that the FCC audit the use of this support, requiring recipients to provide specific performance data on how the money was spent, and how penetration levels have changed, on an annual basis,

²⁰ See 47 U.S.C. §254(e).

²¹ *NPRM* para. 35.

and explicitly verifying each year that the support is being used in the insular areas for which it is targeted. These safeguards will help the Commission to ensure that support is being applied responsibly, for the benefit of consumers, as intended by the Act.

V. Conclusion

HT supports the adoption of a new insular mechanism for non-rural study areas targeted to high-cost communities such as the HHL. In keeping with the ultimate goal of preserving and enhancing universal service, any new support mechanism should be designed to ensure that it reaches all Americans and all areas where support actually is required in order for services to be comparable to those available elsewhere. These areas should include not only islands that are territories or commonwealths but also states of the United States. Any new mechanism should be designed to ensure that the support is not only adequate in insular areas, but also fully and properly utilized to serve those areas.

Respectfully Submitted,

HAWAIIAN TELCOM, INC.

/s/ Karen Brinkmann

Alan Oshima
Senior Vice President & General Counsel
HAWAIIAN TELCOM COMMUNICATIONS,
INC.
1177 Bishop Street
Honolulu, HI 96813

Karen Brinkmann
Jessica W. Hafer
LATHAM & WATKINS, LLP
555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004
(202) 637-2200

Its Attorneys

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