

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

In the Matter of)	
)	
Hawaiian Telecom, Inc.)	WC Docket No. 08-4
)	
Petition for Waiver of Sections 54.309 and)	
54.313(d)(vi) of the Commission's Rules)	
)	

OPPOSITION OF VERIZON¹

The Commission should deny Hawaiian Telecom's request for a waiver of the Commission's rules requiring statewide averaging of non-rural carrier costs.² Use of statewide average costs to determine support from the high cost model mechanism was expressly approved by the Tenth Circuit in *Qwest I*³ and *Qwest II*⁴ and has been a settled component of federal subsidies to non-rural carriers for many years. The Commission's reason for requiring statewide averages, adherence to its federal role of ensuring reasonably comparable rates *between* states, remains persuasive. There has been no change in statutory language or the Commission's universal service policies, and Hawaiian has not demonstrated sufficient special circumstances to justify a waiver.

¹ The Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

² *Petition of Hawaiian Telecom, Inc. for Waiver of Sections 54.309 and 54.313(d)(vi) of the Commission's Rules*, WC Docket No. 08-4 (filed Dec. 31, 2007) ("*Hawaiian Petition*").

³ *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001) ("*Qwest I*").

⁴ *Qwest Corp. v. FCC*, 398 F.3d 1222 (10th Cir. 2005) ("*Qwest II*").

Non-rural carriers in each state are eligible to receive high cost model support from the Universal Service Fund if the average cost of service among non-rural carriers in the state exceeds the national average by a certain amount. 47 C.F.R. § 54.309(a)(1). Hawaiian requests a waiver of Section 54.309 in order to receive approximately \$6 million in high cost model support annually on a wire-center-by-wire-center cost basis versus a statewide average cost basis. *Hawaiian Petition* at 1, 23. If granted, such a waiver would fundamentally alter the way in which non-rural high cost support is determined.

The current high cost model mechanism was finalized and put in place by the Commission in its *Ninth Report and Order* issued more than eight years ago.⁵ Some aspects of the *Ninth Report and Order* were remanded to the Commission by the Tenth Circuit in *Qwest I* and again in *Qwest II*. While certain aspects of the high cost model mechanism remain unsettled because the Commission has not yet issued a further remand order, use of statewide average costs was expressly upheld by the Tenth Circuit. *Qwest I*, 258 F.3d at 1202, n.9 (“We therefore reject Qwest’s argument that the use of statewide and national averages is necessarily inconsistent with § 254.”); *see also Qwest II*, 398 F.3d at 1227.

Moreover, the Commission’s reasons for requiring statewide averaging of non-rural carrier costs remain sound. In the *Ninth Report and Order* the Commission reasonably recognized that its federal role was to ensure comparable rates between states, not within states.

[W]e believe that statewide averaging is the approach most consistent with the federal role of providing support for intrastate universal service to enable reasonable comparability of rates among states. Federal high-cost support is generated through contributions by all interstate telecommunications carriers for purposes of providing support to high-cost states. This has the effect of shifting

⁵ See *Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432 (1999) (“*Ninth Report and Order*”); *see also Federal-State Joint Board on Universal Service*, *Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, Tenth Report and Order, 14 FCC Rcd 20156 (1999).

money from relatively low-cost states to relatively high-cost states. By averaging costs at the statewide level, the federal mechanism compares the relative costs of providing supported services in different states. . . This approach ensures that no state with costs greater than the national benchmark will be forced to keep rates reasonably comparable without the benefit of federal support. By averaging costs at the statewide level, the federal mechanism is designed to achieve reasonable comparability of intrastate rates among states based solely on the interstate transfer of funds. *Ninth Report and Order* ¶ 45.

Following the *Ninth Report and Order*, to the extent states desired to further harmonize non-rural carrier rates within their borders, state legislatures and commissions remained free to establish or modify their own support mechanisms, and many have. *Ninth Report and Order* ¶ 38 (“[S]ection 254 does not alter the states’ historical responsibility for intrastate universal service. . . the federal role in achieving reasonably comparable rates should be to provide ‘those amounts necessary to establish a standard of reasonable comparability of rates across states.’”). Indeed, in order to induce states to achieve reasonably comparable rates, the Commission adopted a rate review and annual certification process in its order on remand following *Qwest I* that was approved by the Tenth Circuit in *Qwest II*.⁶

In choosing to average non-rural costs at the state level the Commission struck a reasonable balance between its universal service obligations in the Act and preservation of state jurisdiction over intrastate rates. Hawaiian points to no flaw in the Commission’s balancing of jurisdictional concerns in the *Ninth Report and Order* nor any change in the legal standards that underlie federal universal service policy since the Tenth Circuit approved statewide averaging. Rather, Hawaiian suggests that special circumstances exist to justify a waiver of the Commission’s rules⁷ because some of Hawaiian’s wire centers are located in high cost areas

⁶ *Qwest II*, 398 F.3d at 1238; *Federal-State Joint Board on Universal Service, Order on Remand*, 18 FCC Rcd 22559, ¶ 70 (2003).

⁷ See 47 C.F.R. § 1.3 (the Commission’s rules may be “waived for good cause shown”); see also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“a

within the state and some are not, and because additional federal support would benefit telecommunications consumers in Hawaii. *Hawaiian Petition* at 13-21. All of this may be true, but such is the case for non-rural carriers and consumers in every state.

The federal high cost support mechanism was not, and should not be, designed to do all things for all non-rural carriers and telecommunications consumers. To the extent there are inequitable disparities in the cost of serving different non-rural carrier wire centers within Hawaii, that is a matter for the Hawaii Public Utilities Commission, not the FCC. *Ninth Report and Order* at ¶ 46 (“The states. . .have the primary responsibility for ensuring reasonable comparability of rates within their borders.”).

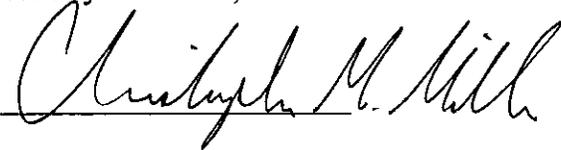
Further, Hawaiian’s petition demonstrates no special circumstances that are “substantially different from those which have been carefully considered at the rulemaking proceeding.” *Industrial Broadcasting*, 437 F.2d at 683. Many carriers could, and presumably would, make similar arguments that increasing the subsidies they receive from the federal fund theoretically might allow them to somehow upgrade their service offerings. Hawaiian’s claim that its customers might benefit from additional or better services cannot get Hawaiian beyond the “heavy burden” that “traditionally has been placed upon one seeking a waiver.” *Id.*

waiver is appropriate only if special circumstances warrant a deviation from the general rule”) (citing *Industrial Broadcasting Co. v. FCC*, 437 F.2d 680 (D.C. Cir. 1970), and *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969)).

Conclusion

For the foregoing reasons, the Commission should deny Hawaiian's petition for waiver.

Respectfully submitted,

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February 19, 2008