Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
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Hawaiian Telcom, Inc.	)	WC Docket No. 08-4
	)	
	)	
Petition for Waiver of Sections 54.309 and 54.313(d)(vi) of the Commission's Rules	)	
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REPLY COMMENTS OF GVNW CONSULTING, INC.

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Executive Summary

The HawTel petition should be reviewed by the Commission in the context of the larger USF picture. The issues raised by HawTel would best be considered as a portion of the deliberations surrounding comprehensive USF reform. If the Commission moves forward in the direction proposed by the Joint Board's Recommended Decision, the grant of the instant petition would effectively take money from existing recipients and transfer it to HawTel without the benefit of a full record, as the RD gives no indication that the total level of federal USF funding will increase any time soon.

HawTel seeks a waiver that deals, from their perspective, with only their circumstances in a piecemeal fashion. HawTel has not demonstrated good cause, and its circumstances do not at this point in time justify a departure from the general rule.

The Commission is currently deliberating on comprehensive USF reform as it considers the Joint Board's Recommended Decision. The Commission should consider the needs of all insular carriers, and not just the "piecemeal" HawTel needs asserted in its Petition. The data presented in the Petition may indicate the need for a separate insular proceeding, or at least special consideration of insular issues, as a part of comprehensive USF reform.

INTRODUCTION AND BACKGROUND

GVNW Consulting, Inc. (GVNW) is a management consulting firm that provides a wide variety of consulting services, including regulatory and advocacy support on issues such as universal service, intercarrier compensation reform, and strategic planning for communications carriers in rural America.

The purpose of these reply comments is to respond to the Public Notice (DA 08-131) inviting comment on the Petition for Declaratory Ruling filed by Hawaiian Telcom, Inc. (HawTel). GVNW opposes the Petition filed by Hawaiian Telcom, as we believe the issues posed are best resolved in the course of a comprehensive USF proceeding.

In its Petition, Hawaiian Telcom seeks a waiver of the Commission's rules regarding high-cost universal service support. Specifically, Hawaiian Telcom requested a five-year waiver of Section 54.309 of the Commission's rules to allow it to receive high-cost model support by averaging its line costs on a wire center-by-wire center basis, instead of on a statewide basis. Further, a one-time waiver of section 54.314(d)(vi) of the Commission's rules is requested so as to permit receipt of support immediately upon grant of its petition.

References to filings in the comment round may be identified as Carrier, page number, with references to other dockets indicated by the applicable docket number.

THE HAWAIIAN TELCOM, INC. PETITION DOES NOT MEET THE TEST TO JUSTIFY A WAIVER

In its petition request, HawTel is requesting some form of relief for only its company's circumstances, which it deems to be unique, and apparently not to the non-rural portion of the industry or even to the subset of rural carriers. The Commission has established specific requirements that should be met in order for a petition to be granted. As a general matter, Commission rules may be waived for good cause.[1] Such a waiver is appropriate where special circumstances warrant a departure from the general rule, and such departure will serve the public interest.[2] In addition, the waiver should serve the policy goals and principles which underlie the waived rule.[3]

HawTel has not demonstrated good cause, and its circumstances do not at this point in time justify a departure from the general rule. To grant this specific waiver to one carrier[4] whose circumstances are not unique[5] would not serve the public interest. In sum, the HawTel petition fails to meet the established waiver standards. If granted, the petition would serve to exacerbate the existing CETC paradigm wherein carriers are granted support based on another carrier's costs. Since the Commission has tentatively concluded that the identical support rule should be replaced, it is not prudent to add to this problem.

Requests by carriers such as Pacific Lightnet, Inc., as noted in their comments

[1] 47 C.F.R. § 1.3.
[2] *City of Angels Broadcasting, Inc. v. FCC*, 745 F. 2d 656, 662-63 (D.C. Cir. 1984).
[3] *WAIT Radio v. F.C.C.*, 418 F. 2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).
[4] The Commission rejected the Iowa Telecom petition last August wherein the carrier sought a special exception to the federal USF rules that was designed ostensibly to qualify for more support.
[5] *Opposition of the Vermont Public Service Board, The Maine and South Dakota PUCs, The Nebraska PSC, and the West Virginia PSC Consumer Advocate* (collectively, "the Rural States"), to Hawaiian Telcom Waiver Request, at page 3 noting the challenges of weather related incidents in other states.

at page 2, would exacerbate the current identical support[6] dilemma: "*As such, the Commission should ensure that any relief provided to Hawaiian Telcom, the non-rural incumbent local exchange carrier, applies equally to any eligible telecommunications carrier serving lines in the applicable HT service areas.*"

As Verizon states in their comment filing at page 1, HawTel has "*not demonstrated sufficient special circumstances to justify a waiver*" and states further at page 2 that if it was granted one that "*such a waiver would fundamentally alter the way in which non-rural high cost support is determined.*"

THE HAWAIIAN TELCOM, INC. PETITION IS MORE APPROPRIATELY CONSIDERED WITHIN THE COMMISSION'S CURRENT USF PROCESS

The HawTel petition should be reviewed by the Commission in the context of the larger USF picture. The issues raised by HawTel would best be considered as a portion of the deliberations surrounding comprehensive USF reform, as the Commission has released three Notices of Proposed Rulemaking[7] dealing with USF reform on January 29, 2008.

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[6] The recent WiCAC proposal has been made which is intended to address the identical support dilemma. The Commission has requested comments on this proposal in its Identical Support Rule Notice at footnote 40 [Letter from Jeff**ry** H. Smith, Advocates for Regulatory Action, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-337 and CC Docket No. 96-45 (filed July 12, 2007) (WiCAC Proposal Letter)]. The WiCAC proposal is intended to provide an auditable and administratively workable solution to the vexing problem of wireless CETCs receiving support based on another carrier's costs. The WiCAC proposal is geared to provide an identical **basis** of support related to the High-Cost Loop fund.

[7] *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337; CC Docket No. 96-45, FCC 08-22 (Joint Board Comprehensive High Cost Recommended Decision Notice), FCC 08-4 (Identical Support Rule Notice), FCC 08-5 (Reverse Auctions Notice).

If the Commission accepts the direction proposed by the Joint Board's Recommended Decision[8] (RD), the grant of the instant petition could effectively transfer money from existing recipients to HawTel without the benefit of a full record or the consideration of similarly-situated carriers. As Sandwich Isles Communications, Inc. (SIC) stated in their comments at page 2, any waiver "*must be so constructed that any increase in Universal Service Support to Hawaiian Telcom does not reduce the support available to rural telephone companies.*"

While HawTel asserts that a precedent would not be set, we respectfully disagree[9]. It is not surprising that Embarq filed supporting comments, as similar petitions or requests have been offered by other "mid-size" non-rural carriers such as Embarq for support at a granular level. Such petitions or requests downplay[10] the benefit of serving a lucrative market in Honolulu. The issue of how to treat the urban metropolitan centers for non-rural carriers is a relevant issue. As Verizon stated in their filing at page 2, the Commission's reasons for requiring statewide averaging of non-rural carrier costs[11] "*remain sound.*" This line of reasoning is continued in the filing of four state regulatory

[8] *High-Cost Universal Service Support*, WC Docket No. 05-337, Recommended Decision, FCC 07J-4 (released November 20, 2007), at paragraph 24 […we recognize that further growth in universal service funding presents substantial risks] and paragraph 25 […the Joint Board recognized that unrestrained growth in the universal service fund, regardless of the source, could be, and would likely be, catastrophic for universal service].

[9] As do the *Rural States*, who state at page 8 of their filing that "*Granting the Petition will set a harmful precedent – it will open the doors for other carriers that have high costs in individual wire centers to request similar relief.*"

[10] HawTel attempts to "address" this issue with a single sentence referencing competition in the Honolulu market. While expedient for the sake of advocacy of the instant Petition, it is disingenuous for HawTel to simply ignore such economies of scope and scale in the proposed waiver, as it is for Embarq to do so in its filings. As the *Rural States* note in their comment filing at page 4, "*Oahu and its primary city, Honolulu, provide HT with the ability to support high cost areas either through explicit or implicit support.*"

[11] And the reasons for not applying statewide averaging to rural carriers remains equally sound.

agencies and one state consumer advocate[12], which states in part: "*However, the Rural States do not agree that the Commission should resolve Hawaii's high cost of broadband deployment by waiving the statewide averaging rule. . . . It is difficult to see how the Commission can evaluate HT's request for support without first resolving fundamental definitional and conceptual issues in the 10th Circuit remand case.*"

THE COMMISSION SHOULD SEEK CLARIFICATION OF ITEMS NOT MENTIONED IN THE PETITION

In the Recommended Decision[13] of the Joint Board, the concept of relying on assistance from state universal service funding is addressed. In its Petition at page 16, HawTel appears to be dismissive of seeking concomitant assistance from the state USF for the state of Hawaii. Verizon disagrees with this assertion, stating at page 4 of its filing that: "*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.*"

Prior to grant of the HawTel petition, we believe a more rigorous analysis of this approach would be required.

[12] *Opposition of the Vermont Public Service Board, The Maine and South Dakota PUCs, The Nebraska PSC, and the West Virginia PSC Consumer Advocate (collectively, "the Rural States*"), to Hawaiian Telcom Waiver Request, at pages 1-2, 10. These filers also note at page 2 that HT offers basic local service for as low as $9.90 monthly, likely one of the lowest rates in the country.

[13] *High-Cost Universal Service Support*, WC Docket No. 05-337, Recommended Decision, FCC 07J-4 (released November 20, 2007), at paragraph 44-47.

COMMENTERS ASSERT THAT THE INSULAR ISSUES SHOULD BE CONSIDERED TOGETHER

HawTel seeks a waiver that deals, from their perspective, with only their circumstances in a piecemeal fashion. Despite its assertions of the unique nature of the challenges it faces, HawTel is not the only insular carrier[14].

There are several insular carriers in addition to HawTel. In its filing, Puerto Rico Telephone Company, Inc. outlines its efforts over the past decade[15] to draw attention to its insular issues. In its filing at page 1, Puerto Rico asserts that: "*Although HT attempts to portray Hawaii as a singularly unique circumstance that justifies special universal service funding, PRT faces similar challenges in Puerto Rico and is no less deserving of federal universal service support.*"

If the Commission decides to address the needs of insular carriers, the Commission should consider the needs of ALL insular carriers and not just the "piecemeal" HawTel needs asserted in its Petition. The Commission may determine that there is the need for a separate insular proceeding, or at least special consideration of insular issues[16], as a part of comprehensive USF reform. A piecemeal approach to reform

[14] Nor is HawTel the only carrier in the Hawaiian Islands. Sandwich Isles Communications (SIC) is serving customers in the Hawaiian Homelands due to a study area waiver granted by the Commission.
[15] These reply comments do not seek to address the propriety of any previous Puerto Rico filings or pass judgment on the amount of time elapsed since the initial filings were made by the carrier. They are referenced merely to highlight the complexity of the issues and the need to deal with these types of matters in the context of comprehensive reform.
[16] See, for example, Sandwich Isles Communications (SIC), et al comments in CC Docket No. 96-45 and WC Docket No. 05-337, March 27, 2006, addressing insular support wherein SIC et al asserted the need for additional insular support. The SIC made its commitment a decade ago to provide critical infrastructure in the Hawaiian Islands to adequately serve Hawaiian Home Lands (HHL) customers. The Sandwich Isles study area consists of all of the 203,000 acres of the HHL, except the **small** portion which was receiving telephone service from GTE, Hawaiian Telecom's predecessor, in 1997. The excluded portions of the HHL are mainly in the Honolulu area.

of federal USF policies would create arbitrary and capricious effects on study areas[17] that are entirely rural and high cost in nature.

For rural carriers, piecemeal solutions that move support from program to program in a zero sum game will tend to have the effect of decoupling rural carriers from the cost-based rate-of-return model. The implications of such an approach could be to jeopardize the viability of these rural carriers and frustrate the attainment of universal service in areas where there are few providers capable of fulfilling carrier of last resort responsibilities. This would appear to be contrary to the Joint Board's recommendation of a provider of last resort.

Respectfully submitted

Via ECFS on 3/5/08

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[17] HawTel is one of the 10 largest incumbent local exchange carriers, and serves one of the 50 largest cities in the country, since according to recent Census Bureau statistics, Honolulu ranked 46th on the list of the 50 largest cities in the United States for the 2006 period.