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May 12, 2008

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

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

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Dear Ms. Dortch:

As previously disclosed, on Thursday, April 24, 2008, Karen Brinkmann and I, counsel to Hawaiian Telcom, Inc. ("Hawaiian Telcom"), met with Dana Shaffer, Jeremy Marcus, Amy Bender, Jennifer McKee and Alex Minard of the Wireline Competition Bureau. Alan Oshima, Joel Matsunaga, Laura Otsuka, and Dan Masutomi of Hawaiian Telcom also participated in the meeting telephonically.

At that meeting, Hawaiian Telcom was asked to consider several questions relating to the implementation of the relief Hawaiian Telcom requested in the above-referenced waiver petition (the "HT Waiver"). Hawaiian Telcom hereby responds as follows:

**1. How many competitive eligible telecommunications carriers ("CETCs") have been designated in Hawaii?**

The Hawaii Public Utilities Commission ("HPUC") has designated two CETCs that provide service within Hawaiian Telcom's study area in the state of Hawaii, namely NPCR, Inc. d/b/a Nextel Partners<sup>1</sup> and Coral Wireless, LLC d/b/a Mobi PCS.<sup>2</sup>

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<sup>1</sup> *Application of NPCR, Inc., dba Nextel Partners for Designation as an Eligible Telecommunications Carrier in the State of Hawaii*, Docket No. 03-0104, Decision and Order No. 21089 (filed June 25, 2004), at 35 ("Nextel Partners' designated service area encompasses the rural and non-rural service areas referred to in Exhibit E of its application, i.e., its licensed service area within the State."). The designated service area includes all but two of the wire centers where Hawaiian Telcom would receive support if the Commission were to grant the HT Waiver.

<sup>2</sup> *Application of Coral Wireless, LLC, d/b/a MobiPCS to be Designated by the Commission as an Eligible Telecommunications Carrier ("ETC")*, Docket No. 05-0300, Decision and Order

In the most recent quarterly filing from the Universal Service Administrative Corporation (“USAC”), Nextel Partners reported 42,215 residential and 40,230 multiline business lines eligible for interstate access support in Hawaiian Telcom’s territory and Coral Wireless reported 215 such residential lines.<sup>3</sup> Based on its knowledge of the market, Hawaiian Telcom believes that the vast majority of these lines are likely to be located in Honolulu and other population centers, and not in the remote wire centers that would receive support if the Commission granted Hawaiian Telcom’s requested waiver.

**2. If the Commission were to grant the HT Waiver, would Section 54.307(a)(1) of the Commission’s rules, 47 C.F.R. § 54.307(a)(1) (the “Equal Support Rule”) entitle CETCs in Hawaii to increased per-line high-cost universal service support for lines such CETCs may serve in affected Hawaiian Telcom wire centers?**

On May 1, 2008, the Commission released an Order capping support CETCs may receive from the Commission’s high-cost loop and high-cost model universal service mechanisms within each state at the annualized level that CETCs within that state collectively were eligible to receive during March, 2008.<sup>4</sup> Thus, a Commission grant of the HT Waiver should have no effect on the amount of high-cost universal service support available to CETCs in Hawaii because, during March 2008, no CETC in Hawaii received high-cost model support under the requested waiver. Even if, in the absence of a cap, a CETC would have been eligible to receive additional support under the Equal Support Rule, the cap, which will take effect 30 days after publication of the Commission’s May 1 order in the Federal Register, will prevent any overall increase in the high-cost support actually provided to CETCs in Hawaii in the aggregate,

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No. 23275 (filed Feb. 23, 2007), at 24-25. In addition to Nextel Partners and Coral Wireless, the HPUC has designated Sandwich Isles Communications (“SIC”) as an eligible telecommunications carrier. The Commission has granted a limited waiver of its rules to permit SIC to receive federal high-cost universal service support based on its own costs in portions of the Hawaiian Home Lands that had no facilities or service from Hawaiian Telcom’s forerunner, GTE HawTel/Verizon Hawaii, as of the date Sandwich Isles filed its HPUC petition in July 1997 (which the Commission noted did not overlap with any of the geographic area served by the incumbent local exchange carrier (“LEC”), which also served and continues to serve some portions of the Hawaiian Home Lands). SIC receives such support from the Commission’s rural high-cost support mechanism, based on its own costs, as if it were an incumbent LEC, not under the Equal Support Rule. *Sandwich Isles Communications, Inc.*, Order in CC Docket 96-45, DA 05-1355, para. 15 and n. 50 (Wireline Competition Bur. May 16, 2005) (“*SIC Waiver*”). Because of the limited geographic scope of the *SIC Waiver*, Hawaiian Telcom does not believe that SIC would qualify for support from the high-cost model support mechanism for which Hawaiian Telcom would be eligible pursuant to the HT Waiver, *i.e.*, over and above the support from the high-cost loop support mechanism for which it already qualifies.

<sup>3</sup> Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter 2008 (filed May 2, 2008), at Appendix HC-20.

<sup>4</sup> *High Cost Universal Service Support*, WC Docket No. 05-337, Order, FCC 08-122 (rel. May 1, 2008) (“*CETC Cap Order*”), at para. 38.

above the annualized level that was available in March 2008. If the Commission were to grant the HT Waiver, the Equal Support Rule might, at most, affect the relative distribution of CETC support among Hawaii's CETCs, but it will not result in any increase to current CETC support levels. The HPUC will consider any future CETC designation requests with knowledge that the cap will be in effect.

Neither of the exceptions to the CETC support cap would alter this result. Under the first exception, a CETC that elects to submit its own cost data demonstrating that its costs meet the support threshold in the same manner as the incumbent LEC will not be subject to the cap.<sup>5</sup> To the extent that a CETC establishes that its costs meet the minimum threshold, the CETC would not qualify for support pursuant to the Equal Support Rule, but rather in accordance with the ordinary operation of the high-cost loop or high-cost model support mechanism under the Commission's rules as written. There is no basis in the current record in this proceeding or the cap proceeding for extending Hawaiian Telcom's requested waiver to other CETCs that choose to utilize this exception to the cap. To the contrary, Hawaiian Telcom's waiver petition requested only that its support be calculated at a wire center level, and Hawaiian Telcom made a particularized showing of the special circumstances that justify this waiver. The record is devoid of information as to the cost or condition of any CETC's infrastructure, the impact of Hawaii's unique operating environment on any CETC's ability to provide service, or the degree to which the national security and public safety considerations identified by Hawaiian Telcom apply to the wireless CETCs that have been designated in the state. Wireless CETCs engineer their networks and provide service to their customers in an entirely different manner from that employed by Hawaiian Telcom. The Commission cannot assume, therefore, that a wireless CETC faces the same obstacles, costs, and need for additional federal support that Hawaiian Telcom does.

Under the second exception to the cap, a CETC that provides service to tribal lands or Alaska Native regions may continue to receive support pursuant to the Equal Support Rule.<sup>6</sup> There are no such areas in the state of Hawaii. Specifically, the Hawaiian Home Lands are not within the areas described in Section 54.400(e) of the Commission's rules, 47 C.F.R. § 54.400(e). Accordingly, this exception to the cap will have no effect in Hawaii.

### **3. What reporting obligations should the Commission impose in connection with Hawaiian Telcom's receipt and use of the increased support?**

The FCC historically has relied on state public utility commissions to ensure carrier compliance with the statutory requirement that federal support be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended," 47 U.S.C. § 254(e). Indeed, the Commission has recognized that Congress gave the

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<sup>5</sup> *CETC Cap Order* at para. 31; see also, e.g., *Applications of ALLTEL Corporation, Transferor, and Atlantis Holdings LLC, Transferee For Consent To Transfer Control of Licenses, Leases and Authorizations*, WT Docket No. 07-128, Memorandum Opinion and Order, FCC 07-185, 22 FCC Rcd 19517, at para. 11 and note 44.

<sup>6</sup> *CETC Cap Order* at paras. 32-33.

state public utility commissions primary responsibility to designate ETCs and monitor their activities for compliance with Section 254(e).<sup>7</sup> Thus, the Commission has consistently declined to adopt “elaborate rules for compliance with section 254(e),” because “it is most appropriate for states to determine how the support is used to advance the goals set out in section 254(e).”<sup>8</sup> The Commission has reached this conclusion despite the fact that its non-rural high-cost universal service support mechanism provides greater support amounts to wire centers with higher costs than it does to those with lower costs, 47 C.F.R. § 54.309(b). While the HT Waiver would calculate the wire center support levels differently, the Commission’s existing rules already explicitly create wire center variations in support levels. The Commission has not, in the past, chosen to impose detailed obligations relating to spending within particular wire centers, and should not do so in connection with this waiver request.

In 2006, the HPUC adopted an Order requiring each carrier that receives federal high-cost universal service support to report nine categories of detailed data on its use of that support, for use by the HPUC in preparing its annual ETC certifications.<sup>9</sup> These categories, modeled on the Commission’s federal requirements, include the carrier’s current and following year capital expenditure plans, including maps and an explanation of the expected benefits of the investment, as well as a progress report detailing capital expenditures for the previous year and an explanation of the benefits achieved. The HPUC’s order requires these data for the “service areas in which a carrier will or expects to expend universal service fund support.”<sup>10</sup>

HPUC Decision and Order No. 22228 requires annual reporting at a service area basis rather than on a wire center basis. In fact, the HPUC adopted the parties’ proposal to file on a service area basis rather than on a wire center basis because, “carriers do not always plan network improvements by wire center, and . . . network improvements may serve multiple wire centers.”<sup>11</sup> Hawaiian Telcom’s investments in infrastructure using support provided pursuant to its requested waiver may support the provision of service in more than one wire center or, in some cases, on more than one island. Moreover, such investments are “lumpy,” in that infrastructure upgrades (such as a new switch) in a wire center in a single year may more than consume the total amount of support Hawaiian Telcom expects to receive for that wire center during the entire five year waiver period.

Applying the HPUC’s order in the context of the HT Waiver, Hawaiian Telcom’s annual reporting would be by service area covering only the wire centers where Hawaiian

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<sup>7</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 05-46, 20 FCC Rcd 6371 (2005), at para. 61 (“*Section 214(e)(6) Order*”)

<sup>8</sup> *Ninth Report and Order*, at para. 95; *see also Section 214(e)(6) Order* at paras. 58-62.

<sup>9</sup> *Public Utilities Commission Instituting a Proceeding for the Purpose of Adopting Annual Certification Requirements for Eligible Telecommunications Carriers in the State of Hawaii*, Docket No. 05-0243, Decision and Order No. 22228 (filed Jan. 17, 2006). This Order is provided as Attachment A.

<sup>10</sup> *Id.* at 9.

<sup>11</sup> *Id.* at 12.

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Telcom receives federal high-cost universal service support, and not other areas of the state. Further, Hawaiian Telcom would report its historical and planned investments in such wire centers in the aggregate, and not by individual wire center. Hawaiian Telcom believes annual reporting by service area and in the aggregate is consistent with the HPUC's Order and intent based on informal discussions with HPUC staff.

In addition to these state-level annual reporting requirements, Hawaiian Telcom would be prepared to provide the Commission with results-oriented confidential annual reports of the yearly increases in the availability of broadband within the wire centers for which it would receive support. These reports would demonstrate the tangible consumer benefits the federal support would provide to remote areas of Hawaii. Because of the issues discussed above, Hawaiian Telcom believes that these milestones should be developed for the aggregate area for which Hawaiian Telcom would receive support (and excluding the wire centers where it would receive no support). Indeed, Hawaiian Telcom already stated ambitious broadband deployment goals in its waiver petition, and would be willing to make annual reports confirming its progress toward meeting them.

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In light of these considerations, Hawaiian Telcom continues to urge the Commission to expeditiously grant its Petition for Waiver in this proceeding, in order to allow it to realize the benefits that will flow from the requested increase in federal high-cost universal service support for its customers in Hawaii as quickly as possible.

Please contact the undersigned should you have any questions in this matter.

Very truly yours,



Karen Brinkmann  
Richard R. Cameron  
*Counsel for Hawaiian Telcom, Inc.*

# **Attachment A**

*Public Utilities Commission Instituting a Proceeding for the Purpose of Adopting Annual Certification Requirements for Eligible Telecommunications Carriers in the State of Hawaii, Docket No. 05-0243, Decision and Order No. 22228*  
(filed Jan. 17, 2006)





The commission named as parties to this docket: (1) the three (3) telecommunications providers currently designated by the commission as ETCs in the State of Hawaii ("State") -- GTE Hawaiian Telephone Company, Incorporated ("GTE Hawaiian Tel"), nka Hawaiian Telcom, Inc. ("Hawaiian Telcom"); Sandwich Isles Communications, Inc. ("SIC"); and NPCR, Inc., dba Nextel Partners ("Nextel Partners"); and (2) the Division of Consumer Advocacy ("Consumer Advocate").<sup>2</sup>

Following the expiration of the deadline for interested persons to file motions to intervene or participate in this proceeding,<sup>3</sup> the commission, on October 28, 2005, instructed the Parties to file by December 9, 2005: (1) a joint, mutually-agreed upon proposal for procedures and requirements for annual certification as an ETC, to the extent feasible; or (2) if the Parties were unable to agree on a joint proposal, to file individual proposals for the commission's review.<sup>4</sup> The commission also instructed Nextel Partners to lead the Parties' efforts in developing a joint proposal.<sup>5</sup>

On December 9, 2005, the Parties filed their Joint Proposal for Establishment of Annual Certification Requirements for Eligible Telecommunications Carriers ("Joint Proposal"). The Parties request that the commission adopt the Joint Proposal, as

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<sup>2</sup>Hawaiian Telcom, SIC, Nextel Partners, and the Consumer Advocate are collectively referred to as the "Parties."

<sup>3</sup>No persons moved to intervene or participate.

<sup>4</sup>Order No. 22086, filed on October 28, 2005.

<sup>5</sup>Id.

described in Section III of this Decision and Order. On December 13, 2005, the Parties filed their Exhibit A in support of the Joint Proposal.<sup>6</sup>

## II.

### Annual Certification/Reporting

Pursuant to Sections 254(e) and 214(e)(1) of the Act, only a common carrier that is designated an ETC under Section 214(e) is eligible to receive federal universal support. 47 United States Code ("U.S.C.") §§ 214(e)(1), 254(e); and 47 Code of Federal Regulations ("C.F.R.") § 54.201(a) and (d). A carrier that receives such support "shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 U.S.C. § 254(e); and 47 C.F.R. § 54.7. State commissions must annually certify to the FCC that "all federal high-cost support provided" to an ETC that is subject to its jurisdiction "will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 C.F.R. §§ 54.313(a) and 54.314(a).

To date, the commission has granted ETC status to three (3) entities: GTE Hawaiian Tel, nka Hawaiian Telcom; SIC; and

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<sup>6</sup>The Parties' Exhibit A consists of a Minnesota Public Utilities Commission Order, issued on July 21, 2005 (the "Minnesota PUC Order"), which adopted the Federal Communications Commission's ("FCC") annual certification requirements for ETCs, subject to two (2) modifications: (1) carriers may file progress reports based on two (2)-year service quality improvement plans instead of five (5)-year plans; and (2) carriers may file information on a service area basis instead of on a wire center basis.

Nextel Partners.<sup>7</sup> Hawaiian Telcom is the incumbent, statewide carrier of telecommunications services. SIC is authorized by the commission to provide intrastate telecommunications services on lands administered by the State Department of Hawaiian Home Lands.<sup>8</sup> Nextel Partners is a duly authorized provider of commercial mobile radio services in the State.<sup>9</sup>

On February 27, 2004, the Federal-State Joint Board on Universal Service ("Joint Board") issued its Recommended Decision to the FCC.<sup>10</sup> In part, the Joint Board recommended that the states adopt an annual certification process "for all ETCs to ensure that federal universal service support is used to provide the supported services and for associated infrastructure costs."<sup>11</sup> "Where an ETC fails to comply with requirements in section 214(e) and any additional requirements proposed by the state commission,

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<sup>7</sup>See Docket No. 97-0363, Decision and Order No. 16111, filed on December 4, 1997 (GTE Hawaiian Tel); Docket No. 98-0317, Decision and Order No. 16737, filed on December 9, 1998 (SIC); Docket No. 03-0104, Decision and Order No. 21089, filed on June 25, 2004 (Nextel Partners).

The commission designated: (1) Hawaiian Telcom (1997) and SIC (1998) as ETCs without condition; and (2) Nextel Partners (2004) an ETC subject to certain conditions, including annual reporting requirements.

<sup>8</sup>In re Sandwich Isles Comm., Inc., Docket No. 96-0026 (certificate of authority).

<sup>9</sup>In re NPCR, Inc., Docket No. 99-0038, Decision and Order No. 17036, filed on June 15, 1999 (certificate of registration).

<sup>10</sup>In re Federal-State Joint Board on Universal Service, Recommended Decision of the Federal-State Joint Board on Universal Service, released February 27, 2004, in CC Docket No. 96-45 ("Recommended Decision").

<sup>11</sup>Id. at 19 - 20, ¶¶ 46 - 48.

the state commission may decline to grant an annual certification or may rescind a certification granted previously."<sup>12</sup>

On June 8, 2004, the FCC issued its Notice of Proposed Rulemaking, seeking comments on the Joint Board's Recommended Decision.<sup>13</sup> On March 17, 2005, the FCC issued its Report and Order addressing the Joint Board's Recommended Decision.<sup>14</sup> For the annual certification process, the FCC adopted certain annual reporting requirements for ETCs subject to its jurisdiction.<sup>15</sup> In particular, every FCC-designated ETC must annually file with the FCC:

1. A progress report on the ETC's five (5)-year service quality improvement plan, including maps detailing progress towards meeting its planned targets, an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled. The information should be submitted at the wire center level.

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<sup>12</sup>Id. at 20, ¶ 48.

<sup>13</sup>FCC Notice of Proposed Rulemaking, adopted June 2, 2004 and released June 8, 2004, in CC Docket No. 96-45.

<sup>14</sup>In re Federal-State Joint Board on Universal Service, FCC Report and Order, released March 17, 2005, in CC Docket No. 96-45, as amended on April 21, 2005 ("Report and Order"). See also FCC Erratum, released April 21, 2005, in CC Docket No. 96-45.

<sup>15</sup>A state commission shall, upon request or its own motion, designate a common carrier that meets the applicable requirements of an ETC for the service area designated by the state commission. 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.201(b). See also Hawaii Administrative Rules § 6-81-9(a). However, for common carriers that are not subject to the jurisdiction of a state commission, the FCC is responsible for the ETC designation. 47 U.S.C. § 214(e)(6).

2. Detailed information on any outage lasting at least thirty (30) minutes in any of the ETC's service area.
3. The number of requests for service from potential customers within its service areas that were unfulfilled for the past year.
4. The number of complaints per 1,000 handsets or lines.
5. Certification that the ETC is complying with applicable service quality standards and consumer protection rules, e.g., the Cellular Telecommunications and Internet Association's ("CTIA") Consumer Code for Wireless Service.
6. Certification that the ETC is able to function in emergency situations.
7. Certification that the ETC is offering a local usage plan comparable to that offered by the incumbent local exchange carrier in the relevant service areas.
8. Certification that the carrier acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access within the service area.<sup>16</sup>

FCC Report and Order at 31 - 32, ¶ 69 (footnotes, text, and citations omitted).

On May 25, 2005, the FCC's annual reporting requirements were published in the Federal Register,<sup>17</sup> and are codified at 47 C.F.R. § 54.209.<sup>18</sup>

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<sup>16</sup>Nextel Partners must already comply with certain of these reporting requirements, in accordance with Decision and Order No. 21089, in Docket No. 03-0104.

<sup>17</sup>70 Federal Register 29978 - 29979 (1995) (codified at 47 C.F.R. § 54.209).

<sup>18</sup>A copy of 47 C.F.R. § 54.209 is attached to Order No. 22051 as Exhibit 1.

According to the FCC:

These reporting requirements will ensure that ETCs continue to comply with the conditions of the ETC designation and that universal service funds are used for their intended purposes. This information will initially be due on October 1, 2006, and thereafter annually on October 1 of each year, at the same time as the carrier's certification that the universal service funds are being used consistent with the Act. In addition, following the effective date of this Report and Order, we anticipate initiating a proceeding to develop procedures for review of these annual reports. Moreover, we anticipate initiating a separate proceeding on or before February 25, 2008, to examine whether the requirements adopted herein are promoting the use of high-cost support by ETCs in a manner that is consistent with section 254 of the Act. We further clarify that a carrier that has been previously designated as an ETC under section 214(e)(6) does not have to reapply for designation, but must comply with the annual certification and reporting requirements on a going-forward basis.

FCC Report and Order at 31, ¶ 68 (footnote and citation therein omitted) (emphasis added).

The FCC found that the annual reporting requirements are reasonable and consistent with the public interest, and encouraged the states to adopt the annual reporting requirements, and to apply the requirements to all ETCs:<sup>19</sup>

70. We conclude that these reporting regulations are reasonable and consistent with the public interest and the Act. These reporting requirements will further the Commission's goal of ensuring that ETCs satisfy their obligation under section 214(e) of the Act to provide supported services throughout their designated service

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<sup>19</sup>FCC Report and Order, at 33, paragraphs 70 - 71. "In addition, state commissions may require the submission of any other information that they believe is necessary to ensure that ETCs are operating in accordance with applicable state and federal requirements." Id. at 33, ¶ 71 (footnote and citations therein omitted).

areas. The administrative burden placed on carriers is outweighed by strengthening the requirements and certification guidelines to help ensure that high-cost support is used in the manner that it is intended. These reporting requirements also will help prevent carriers from seeking ETC status for purposes unrelated to providing rural and high-cost consumers with access to affordable telecommunications and information services.

71. We encourage state commissions to adopt these annual reporting requirements. To the extent that they do so, we urge state commissions to apply the reporting requirements to all ETCs, not just competitive ETCs. In addition, state commissions may require the submission of any other information that they believe is necessary to ensure that ETCs are operating in accordance with applicable state and federal requirements. In doing so, states should conform these requirements with any similar conditions imposed on previously designated ETCs in order to avoid duplicative or inapplicable reporting requirements. Individual state commissions are uniquely qualified to determine what information is necessary to ensure that ETCs are complying with all applicable requirements, including state-specific ETC eligibility requirements.

72. If a review of the data submitted by an ETC indicates that the ETC is no longer in compliance with the [FCC's] criteria for ETC designation, the [FCC] may suspend support disbursements to that carrier or revoke the carrier's designation as an ETC. Likewise, as the Joint Board noted, state commissions possess the authority to rescind ETC designations for failure of an ETC to comply with the requirements of section 214(e) of the Act or any other conditions imposed by the state.

FCC Report and Order at 33, ¶¶ 70 - 72 (footnotes, text, and citations therein omitted) (emphasis added).

III.

Parties' Joint Proposal

A.

Requirements A - C

The Parties propose that the commission adopt new ETC annual certification requirements, stated verbatim as follows:

A. A common carrier designated by the Commission as an eligible telecommunications carrier under 47 U.S.C. § 214(e)(2) shall file with the Commission, on an annual basis, the following information:

- (1) A service quality improvement plan for the current and following year that identifies anticipated capital expenditures in the carrier's service area for service areas in which a carrier will or expects to expend universal service fund support, including maps detailing its planned targets, an explanation of how universal service support will be used to improve signal quality, coverage, or capacity and other network improvement targets.
- (2) A progress report for the previous year that identifies capital expenditures for service areas in which a carrier expended universal service fund support, including maps detailing its progress towards meeting its planned targets, an explanation of how universal service support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled.
- (3) Detailed information on any outage, as that term is defined in 47 C.F.R. § 4.5, lasting at least thirty (30) minutes for any service area in which an ETC is designated for any facilities it owns, operates, leases or otherwise utilizes that potentially affects at least ten percent of the end users' service in a designated service area or that potentially affects a 911 special facility. Specifically, the ETC's annual report must include: (a) the date and time of onset of

the outage; (b) a brief description of the outage and its resolution; (c) the particular services affected; (d) the geographic areas affected by the outage; (e) steps taken to prevent a similar situation in the future; and (f) the number of customers affected.

- (4) The number of requests for service from potential customers within the carrier's service area that were unfulfilled during the past year. The carrier shall also detail how it attempted to provide service to those potential customers. A wireless carrier shall attempt to provide service using the steps set forth in 47 C.F.R. § 54.202(a)(1)(A).
- (5) The number of complaints, per 1,000 handsets or lines, made to the Commission, the FCC, or the state attorney general during the past calendar year.
- (6) A certification that, to the best of its knowledge, the carrier is complying with applicable service quality standards and consumer protection rules. A wireless carrier's compliance with the CTIA Code for Wireless Service will satisfy this requirement.
- (7) A certification that, to the best of its knowledge, the carrier is able to demonstrate its ability to remain reasonably functional in emergency situations.
- (8) A certification that, to the best of its knowledge, the carrier is offering a local usage plan comparable to that offered by the incumbent local exchange carrier in the relevant service areas.

B. The information set forth in Subpart A above must be filed and provided to the Commission and Consumer Advocate no later than June 30.

- (1) This filing shall include any request by a wireline carrier that the Commission not require a strict application of Requirements A(1) and A(2) based on the application of those standards to wireline technology. Such a modified filing shall meet the intent of Requirements A(1) and A(2).

- (2) The Consumer Advocate may file comments on or before July 30 stating whether an ETC's filing is complete, and addressing any request made under Section B(1). The ETC shall file any reply comments, and any supplemental information, no later than August 10.
- (3) If the Commission determines the filing to be complete and not deficient, it will certify that the eligible telecommunications carrier is eligible to receive high cost universal service funding pursuant to 47 C.F.R. § 54.313 and/or § 54.314.
- (4) If the Commission determines that a filing is incomplete or otherwise deficient the Commission will notify the eligible telecommunications carrier on or before August 25, and provide the eligible telecommunications carrier with an opportunity to remedy any deficiency prior to the October 1 certification deadline. These filing requirements replace any annual reporting obligations previously imposed in a Commission ETC designation order.

C. An eligible telecommunications carrier that does not seek to obtain a state certification pursuant to 47 C.F.R. § 54.313 and/or 47 C.F.R. § 54.314 need not submit the annual filing described in Subpart A above.

Parties' Joint Proposal, at 3 - 4.

B.

Differences with the FCC's Requirements

The Parties explain that their Joint Proposal is based on the annual certification requirements set forth in the FCC's Report and Order, subject to certain modifications the Parties believe are appropriate for the State. Specifically, the differences between the FCC's requirements and the Joint Proposal are:

1. *Service Improvement Plan and Progress Report.* The Joint Proposal provides for a service improvement plan that covers two (2) calendar years for which USF support will be used, and a progress report regarding expenditures and the use of universal service support for the prior calendar year. The Joint Proposal allows this filing to be made on a service area basis instead of on a wire center basis. This differs from the FCC's requirement that ETCs file a five (5)-year service improvement plan, and for the filing to be made on a wire center basis.<sup>20</sup>

The Parties note that "[b]y allowing ETCs to file a two-year plan setting forth the proposed USF support expenditures, the Commission will recognize that carriers can and should plan based on current customer demand, technology trends, available capital and universal service funding. In contrast, a five-year projection would be speculative, will not necessarily drive the actual planning that a carrier does for years three, four and five of the plan, and will likely need to be modified significantly over time."<sup>21</sup>

The Parties also explain that their "proposal to allow ETCs to file service improvement information on a service area basis instead of on a wire center basis recognizes that carriers do not always plan network improvements by wire center, and that network improvements may serve multiple wire centers. Reporting on a service area basis (especially in a small state like Hawaii) will provide the Commission with all [the] necessary information

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<sup>20</sup>See 47 C.F.R. § 54.209(a)(1).

<sup>21</sup>Parties' Joint Proposal at 5 - 6.

to understand [the] carriers' network investments without imposing a limitation that is inconsistent with [the] carriers' standard business practices."<sup>22</sup>

2. *Certification Regarding Equal Access.* The Joint Proposal eliminates the FCC's eighth (8<sup>th</sup>) requirement that carriers certify that the FCC may require the carrier to provide equal access to interexchange services in the event that no other ETC is providing equal access in the applicable service area.<sup>23</sup> "While Hawaiian Telcom and SIC support the overall Joint Proposal, they do not take a position on this section, Certification Regarding Equal Access[.]"<sup>24</sup>

3. *Wireless-Specific Terminology.* The Parties' proposed Requirements A(1), A(2), and B(1) reflect modifications to the FCC's certification requirements that were designed to apply primarily to wireless carriers. Specifically:

. . . The language in Requirements A(1) and A(2) continue to use terminology most appropriately applied to wireless carriers. The Parties believe that due to the technical differences between the provision of service for wireline and wireless carriers some of the reporting requirements as discussed in Requirements A(1) and A(2) may not apply to wireline carriers. A wireline carrier can make a filing that meets the intent of Requirements A(1) and A(2) and explain in the filing that a strict application of the rule is not warranted. The Consumer Advocate will address any such requested modification in its comments, and if the Commission decides that additional information is necessary it will provide the carrier with an opportunity to cure the deficiency

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<sup>22</sup>Parties' Joint Proposal at 6.

<sup>23</sup>See 47 C.F.R. § 54.209(a)(8).

<sup>24</sup>Parties' Joint Proposal at 6 n.2.

prior to the October 1 certification deadline in accordance with the schedule outlined in [Requirements B].

Parties' Joint Proposal, at 7.

C.

Additional Requests

The Parties also make two (2) specific requests, independent of any of the FCC's certification requirements:

1. *Filing Deadlines.* The Parties propose that their annual filings with the commission be made on or before June 30, with a schedule for comments and reply comments, "so that the Commission has an opportunity to review the filings and address any concerns prior to the October 1 deadline to file certification letters with the FCC and the Universal Service Administrative Company."<sup>25</sup>

2. *Elimination of Duplicative Filing Obligations.* The commission's Decision and Order No. 21089 which designated Nextel Partners an ETC contains "information that is identical to, similar to, or less detailed than the information that would be filed in June pursuant to the Joint Proposal. In order to eliminate duplicative filing requirements, the [P]arties propose that the new certification filings be deemed to supersede any similar annual filing requirements."<sup>26</sup>

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<sup>25</sup>Parties' Joint Proposal at 7.

<sup>26</sup>Id. at 8.

IV.

Discussion

A.

Requirements A(1) through (8)

The Parties' Requirements A(1) through A(8) largely mirror the FCC's annual certification requirements set forth in 47 C.F.R. § 54.209, as well as the reporting requirements imposed by the commission upon Nextel Partners in Decision and Order No. 21089. Specifically, Requirement A(1) incorporates the ETC's build-out plan,<sup>27</sup> while A(2) sets forth Nextel Partners' existing requirement that it report on the network upgrade and expansion projects completed in the prior year.<sup>28</sup> Requirements (A)(3) to (A)(8), meanwhile, incorporate the FCC's annual certification requirements set forth in 47 C.F.R. § 54.209(a)(2) to (a)(7).<sup>29</sup>

Concomitantly, Requirement A(1) incorporates certain modifications to an ETC's build-out plan that are intended to better assist the commission in its annual certification process.<sup>30</sup> In particular, the ETCs propose to file service quality improvement plans that: (1) cover a two (2)-year rolling calendar period that reflect "current customer demand, technology

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<sup>27</sup>See 47 C.F.R. § 54.209(a)(1); Decision and Order No. 21089, Ordering Paragraphs 2, 3, and 5.

<sup>28</sup>See Decision and Order No. 21089, Ordering Paragraphs 2 - 4.

<sup>29</sup>See also Decision and Order No. 21089, Ordering Paragraphs 2 - 4.

<sup>30</sup>See also Requirement B(1).

trends, available capital and universal service funding[;]" and (2) cover the carrier's applicable service areas.<sup>31</sup>

As they appear reasonable, the commission adopts the Parties' Requirements A(1) through (8), as consistent with 47 C.F.R. § 54.209 and Decision and Order No. 21089.

B.

Elimination of Equal Access Certification

The Parties' proposal to eliminate the FCC's eighth (8<sup>th</sup>) requirement represents a dichotomy. Hawaiian Telcom and SIC do not take a position on this proposal. Instead, this proposal is largely driven by Nextel Partners, which maintains that the FCC's eighth (8<sup>th</sup>) requirement:<sup>32</sup>

. . . was adopted by the FCC, which has jurisdiction to certify wireless ETCs in a number of states. Only wireless carriers (which are relieved of equal access obligations pursuant to 47 U.S.C. § 332(c)(8)) would be affected by this certification. Because this requirement would apply only to one of the three carriers designated as ETCs in Hawaii, and because it makes little sense for a wireless carrier to certify to the Hawaii Commission regarding the authority the FCC has under federal law, this certification requirement has been eliminated from the State ETC certification.

Parties' Joint Proposal, at 6 - 7 (footnote and text therein omitted).

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<sup>31</sup>Parties' Joint Proposal at 5 - 6. See also the Parties' Exhibit A, the Minnesota PUC Order.

<sup>32</sup>Consistent with the commission's instructions, Nextel Partners led the Parties' efforts in developing a Joint Proposal for the commission's review and consideration. See Order No. 22086.

The commission's review of the FCC's Report and Order finds no discernible intent on the FCC's part to limit the application of its eighth (8<sup>th</sup>) requirement to wireless ETC carriers only.<sup>33</sup> Instead, the FCC's eighth (8<sup>th</sup>) requirement states, without limitation:

(a) A common carrier designated under section 214(e)(6) as an eligible telecommunications carrier shall provide:

. . . .

(8) Certification that the carrier acknowledges that the [FCC] may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

47 C.F.R. § 54.209(a)(8). See also FCC Report and Order at 31 - 32, ¶ 69. Furthermore, the FCC encourages state commissions to adopt and apply the FCC's certification requirements "to all ETCs, not just competitive ETCs."<sup>34</sup>

The commission also notes that while Nextel Partners states that it is currently the sole CMRS provider designated as an ETC by the commission, another CMRS provider recently filed an application with the commission seeking ETC status.<sup>35</sup>

Accordingly, the commission retains the FCC's 8<sup>th</sup> requirement as an additional requirement, designated Requirement (A)(9).

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<sup>33</sup>See FCC Report and Order at 31 - 33.

<sup>34</sup>FCC Report and Order at 33, ¶ 71.

<sup>35</sup>See In re Coral Wireless, LLC, dba Mobi PSC, Docket No. 05-0300.

C.

Requirements B and C

In general, Requirements B(1) through B(4) set forth various procedural deadlines for the purpose of meeting the FCC's annual October 1<sup>st</sup> re-certification deadline for ETCs.<sup>36</sup> Requirement (B)(1), meanwhile, provides that a wireline ETC's annual certification request shall meet the intent of Requirements A(1) and A(2), without requiring a strict application of said requirements. As explained by the Parties (including the Consumer Advocate):

. . . A wireline carrier can make a filing that meets the intent of Requirements A(1) and A(2) and explain in the filing that a strict application of the rule is not warranted. The Consumer Advocate will address any such requested modification in its comments, and if the Commission decides that additional information is necessary it will provide the carrier with an opportunity to cure the deficiency prior to the October 1 certification deadline[.]

Parties' Joint Proposal, at 7.

The commission adopts the Parties' Requirements B(1) through (4),<sup>37</sup> subject to the following modifications:

A. Amends the Parties' Requirement B(1) by:  
(i) changing "shall include" to "may include" to reflect the

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<sup>36</sup>Requirement B(4) also includes language which essentially states that the Parties' Joint Proposal supersedes the reporting requirements set forth in Decision and Order No. 21089 for Nextel Partners.

<sup>37</sup>The commission's adoption of Requirement B(4), with modification, includes the adoption of the language which essentially states that the Parties' Joint Proposal, as adopted by the commission with modifications, supersedes the reporting requirements set forth in Decision and Order No. 21089 for Nextel Partners.

wireline ETC's option of requesting a non-strict application of Requirements A(1) and A(2); and (ii) incorporating the Parties' agreed-upon language that "[t]he Consumer Advocate will address any such request[ ] . . . in its comments, and if the [c]ommission decides that additional information is necessary it will provide the carrier with an opportunity to cure the deficiency prior to the October 1 certification deadline."<sup>38</sup>

B. Amends the Parties' Requirement B(3) by changing "will certify" to "may certify" to ensure that the commission properly retains the authority to determine whether ETC is utilizing its federal universal support "only for the provision, maintenance, and upgrading of facilities and services for which [such] support is intended[,]" consistent with 47 U.S.C. § 254(e) and 47 C.F.R. § 54.7, and based on the commission's review of the ETC's annual certification request.

C. Amends the Parties' Requirement B(4) by changing the proposed commission deadline of "on or before August 25," to "as soon as practical," consistent with the commission's practice of thoroughly reviewing an ETC's annual certification request.

Requirement C makes it clear that an ETC that opts not to seek federal universal service funding for the subsequent year or period need not comply with Requirements A and B. The commission adopts the Parties' Requirement C.

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<sup>38</sup>Parties' Joint Proposal at 7.

D.

Summary of Commission-Approved Annual Certification Requirements

In sum, the commission:

1. Adopts the Parties' Requirement A(1) through (8), as consistent with 47 C.F.R. § 54.209 and Decision and Order No. 21089.

2. Retains the FCC's 8<sup>th</sup> requirement as an additional requirement, designated Requirement (A)(9).

3. Adopts the Parties' Requirement B(1) through (4), subject to the following modifications:

A. Amends the Parties' Requirement B(1) by: (i) changing "shall include" to "may include" to reflect the wireline ETC's option of requesting a non-strict application of Requirements A(1) and A(2); and (ii) incorporating the Parties' agreed-upon language that "[t]he Consumer Advocate will address any such request[ ] . . . in its comments, and if the [c]ommission decides that additional information is necessary it will provide the carrier with an opportunity to cure the deficiency prior to the October 1 certification deadline."

B. Amends the Parties' Requirement B(3) by changing "will certify" to "may certify" to ensure that the commission properly retains the authority to determine whether ETC is utilizing its federal universal support "only for the provision, maintenance, and upgrading of facilities and services for which [such] support is intended[,]" consistent with 47 U.S.C. § 254(e) and 47 C.F.R. § 54.7, and based on the commission's review of the ETC's annual certification request.

C. Amends the Parties' Requirement B(4) by changing the proposed commission deadline of "on or before August 25," to "as soon as practical," consistent with the commission's practice of thoroughly reviewing an ETC's annual certification request.

4. Adopts the Parties' Requirement C.

The commission adopts as reasonable and consistent with the public interest the Parties' Joint Proposal, as modified by the commission. The annual ETC certification requirements adopted by the commission, attached as Exhibit 1 to this Decision and Order, are intended to "ensure that ETCs continue to comply with the conditions of the ETC designation and that universal service funds are used for their intended purposes[,]"<sup>39</sup> consistent with 47 U.S.C. § 254(e) and 47 C.F.R. § 54.7.

V.

Orders

THE COMMISSION ORDERS:

1. The commission adopts as reasonable and consistent with the public interest the Parties' Joint Proposal, as modified by the commission, to govern the annual certification requirements applicable to ETCs. See Exhibit 1, attached.

2. ETCs shall: (A) comply with any and all laws, decisions, or orders applicable to the federal universal service fund and support programs; and (B) fully cooperate and respond to

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<sup>39</sup>FCC Report and Order at 31, ¶ 68.

any requests for information or data from the commission or Consumer Advocate.

3. The commission reserves the right to revoke a telecommunications carrier's ETC status: (A) should any of the information or data provided by the ETC be proven inaccurate or incorrect; (B) if the carrier's receipt or use of federal universal service support monies is inconsistent with applicable federal law, including any FCC regulations, decisions, and orders, or applicable State law, including any conditions or requirements imposed by the commission; or (C) if a carrier does not satisfy any of the applicable conditions or requirements imposed by the commission.

DONE at Honolulu, Hawaii JAN 17 2006.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By (EXCUSED)  
Wayne H. Kimura, Commissioner

By   
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:



Michael Azama  
Commission Counsel  
05-0243.cs

## EXHIBIT 1

A. A common carrier designated by the commission as an eligible telecommunications carrier ("ETC") under 47 U.S.C. § 214(e)(2) shall file with the commission, on an annual basis, the following information:

- (1) A service quality improvement plan for the current and following year that identifies anticipated capital expenditures in the carrier's service area for service areas in which a carrier will or expects to expend universal service fund support, including maps detailing its planned targets, and an explanation of how universal service support will be used to improve signal quality, coverage, or capacity and other network improvement targets.
- (2) A progress report for the previous year that identifies capital expenditures for service areas in which a carrier expended universal service fund support, including maps detailing its progress towards meeting its planned targets, an explanation of how universal service support was used to improve signal quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled.
- (3) Detailed information on any outage, as that term is defined in 47 C.F.R. § 4.5, lasting at least thirty (30) minutes for any service area in which an ETC is designated for any facilities it owns, operates, leases or otherwise utilizes that potentially affects at least ten percent (10%) of the end users' service in a designated service area or that potentially affects a 911 special facility. Specifically, the ETC's annual report must include: (a) the date and time of onset of the outage; (b) a brief description of the outage and its resolution; (c) the particular services affected; (d) the geographic areas affected by the outage; (e) steps taken to prevent a similar situation in the future; and (f) the number of customers affected.

- (4) The number of requests for service from potential customers within the carrier's service area that were unfulfilled during the past year. The carrier shall also detail how it attempted to provide service to those potential customers. A wireless carrier shall attempt to provide service using the steps set forth in 47 C.F.R. § 54.202(a)(1)(A).
- (5) The number of complaints, per 1,000 handsets or lines, made to the commission, the Federal Communications Commission ("FCC"), or the Department of Attorney General of the State of Hawaii during the past calendar year.
- (6) A certification that, to the best of its knowledge, the carrier is complying with applicable service quality standards and consumer protection rules. A wireless carrier's compliance with the Cellular Telecommunications and Internet Association's Code for Wireless Service will satisfy this requirement.
- (7) A certification that, to the best of its knowledge, the carrier is able to demonstrate its ability to remain reasonably functional in emergency situations.
- (8) A certification that, to the best of its knowledge, the carrier is offering a local usage plan comparable to that offered by the incumbent local exchange carrier in the relevant service areas.
- (9) A certification that the carrier acknowledges that the FCC may require the carrier to provide equal access to long distance carriers in the event that no other ETC is providing equal access within the service area.

B. The information set forth in Subpart A above must be filed and provided to the commission and Consumer Advocate no later than June 30.

- (1) This filing may include any request by a wireline carrier that the commission not require a strict application of Requirements A(1) and A(2) based on the application of those standards to wireline technology. Such a modified filing shall meet the intent of Requirements A(1) and A(2). The Consumer

Advocate, in its comments, will address any such request made by a wireline carrier, and if the commission decides that additional information is necessary it will provide the carrier with the opportunity to cure the deficiency prior to the October 1 certification deadline.

- (2) The Consumer Advocate may file comments on or before July 30 stating whether an ETC's filing is complete, and addressing any request made under Section B(1). The ETC shall file any reply comments, and any supplemental information, no later than August 10.
- (3) If the Commission determines the filing to be complete and not deficient, it may certify that the ETC is eligible to receive high cost universal service funding pursuant to 47 C.F.R. § 54.313 and/or § 54.314.
- (4) If the commission determines that a filing is incomplete or otherwise deficient the commission will notify the ETC as soon as practical, and provide the ETC with an opportunity to remedy any deficiency prior to the October 1 certification deadline. These filing requirements replace any annual reporting obligations previously imposed in a commission ETC designation order.

C. An ETC that does not seek to obtain a state certification pursuant to 47 C.F.R. § 54.313 and/or 47 C.F.R. § 54.314 need not submit the annual filing described in Subpart A above.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22228 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: JAN 17 2006