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Federal Communications Commission
Office of the Secretary

October 14, 2008

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PUBLIC VERSION

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

Re: Petition of Hawaiian Telcom, Inc. for Waiver of Sections 54.309 and 54.313(d)(vi) of the Commission's Rules, WC Docket No. 08-04

Dear Ms. Dortch:

Hawaiian Telcom, Inc. ("Hawaiian Telcom") submits herewith a letter (the "Letter") containing further information in connection with its above-referenced Petition for Waiver ("Petition") of Sections 54.309 and 54.313(d)(vi) of the Commission's rules, 47 C.F.R. §§ 54.309, 54.313(d)(vi). Pursuant to Section 0.459(b) of the Commission's rules, 47 C.F.R. § 0.459(b), Hawaiian Telcom requests confidential treatment of certain portions of the Letter. In support of this request, Hawaiian Telcom states as follows:

- (1) **Identification of the specific information for which confidential treatment is sought.** Hawaiian Telcom requests that the Commission afford confidential treatment to portions of the Letter detailing sensitive aspects of Hawaiian Telcom's operations and business plans. These portions are redacted in the "public" version of this filing.
- (2) **Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.** The information for which confidential treatment is sought is being submitted in conjunction with Hawaiian Telcom's Petition, filed in the above-referenced docket.
- (3) **Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.** The information for which confidential treatment is sought is highly sensitive data regarding Hawaiian Telcom's operations and business plans. Public disclosure of this information could place Hawaiian Telcom at a competitive disadvantage vis-à-vis its competitors, and damage Hawaiian Telcom's

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position in the marketplace. The Commission has recognized that competitive harm can result from the disclosure of confidential business information that gives competitors insight into a company's costs, pricing plans, market strategies, and consumer identities. See *Pan American Satellite Corporation*, FOIA Control Nos. 85-219, 86-38, 86-41 (May, 2 1986).

- (4) **Explanation of the degree to which the information concerns a service that is subject to competition.** The information for which confidential treatment is sought concerns telecommunications and broadband services provided by Hawaiian Telcom. The market for these services is subject to existing and potential competition from existing competitive local exchange carriers ("CLECs"), cable operators, wireless carriers, and satellite providers.
- (5) **Explanation of how disclosure of the information could result in substantial competitive harm.** A number of service providers compete, or could potentially compete, with Hawaiian Telcom in the market for telecommunications and broadband services. If the information for which confidential treatment is sought were disclosed, these service providers would be able to access highly sensitive and confidential information regarding Hawaiian Telcom's operations and business plans. Disclosing this information would give Hawaiian Telcom's competitors an unfair and unwarranted advantage competing vis-à-vis Hawaiian Telcom.
- (6) **Identification of any measures taken by the submitting party to prevent unauthorized disclosure.** The information for which confidential treatment is sought is not normally distributed, circulated, or provided to any party outside of Hawaiian Telcom. The company treats this information as sensitive information; thus only specialized personnel within the company have access to it.
- (7) **Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.** The information for which confidential treatment is sought is not available to the public, and has not previously been disclosed to third parties.
- (8) **Justification of the period during which the submitting party asserts that material should not be available for public disclosure.** Hawaiian Telcom maintains that the information for which confidential treatment is sought should remain subject to confidential treatment indefinitely. Even historical data can be used to track trends or business decisions, and this information could then be used against Hawaiian Telcom.
- (9) **Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.** The information for which Hawaiian Telcom seeks confidential treatment falls within Exemption 4 of the Freedom of Information Act ("FOIA"), which protects from disclosure "commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4). Specifically, the information is confidential because

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disclosure is likely “(1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.” *Washington Post Co. v. U.S. Department of Health and Human Services*, 690 F.2d 252 (D.C. Cir. 1982).

Pursuant to Section 1.51(c) of the Commission's rules, enclosed are an original and four copies of each of the Confidential and Public versions of this Letter. Please date-stamp and return to me the additional copies provided for that purpose. Should you have any questions concerning this filing, please contact the undersigned.

Very truly yours,

A handwritten signature in black ink that reads "Richard R. Cameron". The signature is written in a cursive style with a large, prominent "R" at the beginning.

Richard R. Cameron

Counsel to Hawaiian Telcom, Inc.

Hawaiian Telcom ○

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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

Dear Ms. Dortch:

During the previously-disclosed meeting of Hawaiian Telcom, Inc. ("Hawaiian Telcom") representatives with Chairman Martin, Daniel Gonzalez, Chief of Staff, and Amy Bender, Acting Legal Advisor to the Chairman, on Wednesday, September 24, 2008, Hawaiian Telcom was asked to provide additional information on Hawaiian Telcom's broadband deployment in the wire centers that would receive support if the Commission were to grant the above-referenced waiver petition (the "Petition"). This letter responds to those inquiries.

1. Are the wire centers that would receive support under the Hawaiian Telcom proposal currently unserved or underserved with respect to broadband capability?

In November 2007, the Federal-State Joint Board on Universal Service ("Joint Board") provided recommendations to the Commission on reform of the current high-cost support mechanisms.¹ At that time, the Joint Board recommended that the Commission establish a Broadband Fund that would support the construction of new facilities in unserved and underserved areas. Specifically, the Joint Board recommended that the Broadband Fund provide "grants for the construction of new facilities in . . . unserved areas" as well as "grants for new construction to enhance broadband service in areas with substandard service" and "continuing operating subsidies to broadband Internet providers serving areas where low customer density would suggest that a plausible economic case cannot be made to operate broadband facilities, even after receiving a substantial construction subsidy."²

Hawaiian Telcom's Petition is consistent with the Joint Board's recommendation. The wire centers that would receive support if the Commission were to grant the Petition include a substantial number that are unserved or underserved by broadband, even at Hawaiian Telcom minimum broadband speed of 768 kbps. Specifically, Hawaiian Telcom has **BEGIN**

¹ *High-Cost Universal Service Support*, WC Docket No. 05-337, Recommended Decision, FCC 07J-4, 22 FCC Rcd 20477 (2007) ("Recommended Decision").

² *Id.* at para. 12.

CONFIDENTIAL [END CONFIDENTIAL] percent broadband availability in [BEGIN
CONFIDENTIAL] [END CONFIDENTIAL] wire centers and a total of [BEGIN
CONFIDENTIAL] [END CONFIDENTIAL] wire centers listed below with less than the
[BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent aggregate level of
broadband availability that Hawaiian Telcom proposes to achieve throughout the [BEGIN
CONFIDENTIAL] [END CONFIDENTIAL] supported wire centers if the Commission
grants this Petition. [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL] While the Recommended Decision does not specifically
define an “unserved area” or “substandard” broadband service, the Joint Board stated that “at
least one high speed provider is providing service in at least 99.6% of the zip codes in the
country.”³ Therefore, providing support to the above-referenced wire centers, where [BEGIN

³ Recommended Decision at ¶ 59.



CONFIDENTIAL] **[END CONFIDENTIAL]** percent of loops are broadband qualified would be consistent with the Joint Board's recommendations.⁴

In all of these areas, the additional universal service support Hawaiian Telcom seeks would bring critically-needed benefits to underserved customers. Even in wire centers with broadband availability today, additional support would provide great public interest benefits. For example, although the **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** wire center has **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** percent broadband availability today, that service is available largely in small, relatively densely populated (and more economically vibrant) pockets of the wire center leaving large geographic areas unserved. Hawaiian Telcom cannot provide broadband to the more economically challenged, but faster growing, rural portions of the wire center (affecting **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** lines, or **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** percent of the wire center's total customer lines) at an affordable rate. Furthermore, because of growth in POTS demand in more remote portions of the **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** wire center, Hawaiian Telcom has no additional available transport capacity to support broadband service, even if the loop plant could support it, and the high cost of transport upgrades to reach those areas makes the service truly prohibitive. Thus, the number of customers that would benefit from this waiver in the **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** wire center is greater than that in any of the unserved wire centers identified above, despite the broadband already deployed there.⁵

⁴ In the Petition, Hawaiian Telcom proposed to achieve **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** percent broadband availability throughout the **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** wire centers that would receive support under its Petition over the five year proposed duration of the waiver, with some lines achieving speeds reaching up to **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]**. Changes to the set of wire centers that would receive support or the amount of support could impact the aggregate percent qualified lines Hawaiian Telcom can achieve by the end of the five year waiver period.

⁵ While Hawaiian Telcom acknowledges that its proposal would yield support for **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** wire centers where broadband availability today exceeds the **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** percent aggregate level that Hawaiian Telcom proposes to achieve throughout the supported area if the Commission grants this waiver, that result is unremarkable. Hawaiian Telcom's proposal adheres to the Commission's high cost model, which estimates the cost of serving a particular non rural wire center. The model approximates the relative forward-looking costs among non-rural carriers of providing the services currently within the definition of universal service, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, FCC 99-306, 14 FCC Rcd 20432 (1999) at ¶ 45, and undoubtedly results in support being provided to a certain number of wire centers across the country where the majority of loop lengths are short enough to support broadband availability. Hawaiian Telcom intends to target the support where needed to achieve the targeted service levels, including not just improvement of loop plant but also enhancement of transport between wire centers. Support for all **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** of the wire centers targeted by the Commission's model will permit Hawaiian Telcom to increase the availability and speed of broadband service in all wire centers, as well as enhancing basic telecommunications capability between wire centers.

2. Is Hawaiian Telcom currently able to provide broadband to schools, libraries or rural health care providers in the wire centers that would receive support under the requested waiver?

Based on a review of billing records, Hawaiian Telcom does not provide broadband supported by the Commission's schools and libraries universal service support mechanism to any school or library in the [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] wire centers that would receive support under this waiver. In fact, to the best of Hawaiian Telcom's knowledge, Hawaiian Telcom provides broadband to only a limited number of schools in all of Hawaii, none of which are located within the [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] wire centers, and none of the libraries.

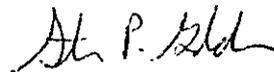
Hawaiian Telcom is [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]

Neither does Hawaiian Telcom provide service to any rural health care providers in these wire centers under the Commission's rural health care support mechanism. In fact, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL], in the [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] wire center, serves an area much larger than the entire island of Oahu, and does so without any access to broadband. If the Commission were to grant this waiver, Hawaiian Telcom would be better able to upgrade its facilities to provide broadband suitable for telemedicine services in the [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] wire center.

Please contact the undersigned at (808) 546-3877 should you have any questions in this matter.

Very truly yours,



Steven P. Golden
Vice President, External Affairs

Marlene H. Dortch, Secretary
October 14, 2008
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PUBLIC VERSION

cc: Kevin J. Martin, Chairman
Deborah Taylor Tate, Commissioner
Daniel Gonzalez
Amy Bender
Greg Orlando
Dana Shaffer
Jeremy Marcus
Jennifer McKee