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

In the Matter of	)	
	)	
Petition of the United States Telecom Association for Waiver of the Application of the Equal Access Scripting Requirement	)))	WC Docket No. 08- 225

COMMENTS OF HAWAIIAN TELCOM, INC.

Hawaiian Telcom, Inc. ("Hawaiian Telcom") hereby submits its Comments in support of the Petition filed by the United States Telecom Association ("USTA Petition") seeking waiver of the Commission's equal access scripting requirement as it applies to independent, incumbent local exchange carriers ("ILECs").[1] The FCC has already eliminated the equal access scripting requirement for AT&T, Verizon, and Qwest. These Bell Operating Companies ("BOCs") arguably are in a stronger position to exercise market power than are mid-size and smaller ILECs, who are not facilities-based long distance providers. The same factors the Commission used to eliminate equal access scripting for BOCs in the *Equal Access Scripting Order* also apply to Hawaiian Telcom, and other ILECs. Therefore, the FCC should promptly eliminate the equal access scripting requirement for all ILECs in order to promote regulatory parity.

The equal access scripting requirement. Non-BOC ILECs are required to provide a rotating script of long distance carriers that are available to provide wired long distance

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1 Public Notice, *Wireline Competition Bureau Seeks Comment on Petition of United States Telecom Association for Waiver from Application of the Equal Access Scripting Requirement: Pleading Cycle Established*, WC Docket No. 08-225, DA 09-1816 (rel. Aug. 14, 2009) ("Notice").

services on a presubscribed basis in association with a customer's wired local exchange service provided by an ILEC, known as the equal access scripting requirement. The equal access scripting requirement was never imposed on cable TV, wireless, Voice over Internet Protocol (VoIP), or competitive local exchange carriers ("CLECs"). This scripting requirement was adopted as one of the equal access requirements imposed on the non-BOC ILECs by the Commission following a similar requirement applied to the BOCs pursuant to the MFJ.[2] When imposed, the ILEC was virtually a monopoly for local exchange voice services, and the Commission believed that the requirement was necessary to promote long distance competition. During the ensuing 25 years, the marketplace for telecommunications and related services has changed substantially, and it is questionable whether there remains any stand-alone long distance market at all.[3] Based on this and other factors, the FCC lifted the equal access scripting requirement, among other regulations, for the provision of long distance service by a BOC.[4]

Hawaiian Telcom's interest. Hawaiian Telcom is a mid-size ILEC providing local, long distance, and data services in the State of Hawaii. Hawaiian Telcom reported approximately 492,000 switched access lines as of year end 2008, but these lines have been decreasing in recent years as a result of competition from other service providers. Like other mid-size carriers, competition in Hawaii has been growing from CLECs, cable

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[2] *Investigation of Access and Divesture Related Tariffs*, 10 FCC 2d 911, App. B, ¶ 22 (1985); 101 FCC 2d 935, ¶ 40 (1985).

[3] *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, *et al.*, 22 FCC Rcd 16440, ¶ 121 (2007)("*Equal Access Scripting Order*")(stand-alone long distance services described as a "fringe" market).

[4] *Id.*, ¶ 126. The Commission did not extend such relief to independent ILEC long distance services because of the potentially different competitive circumstances applicable to independent ILECs and it did not have a record in that proceeding to extend such relief. *Id.*

TV, VoIP and wireless carriers. Customers in Hawaii are fully aware that they have choices for all types of communications services, including voice, data, and video services.

There is robust competition for long distance services. First, Hawaiian Telcom does not possess market power in the long distance market. The FCC clearly found that BOCs should be treated as nondominant in the provision of long distance services.[5] Both AT&T and Verizon had facilities-based long distance affiliates. Hawaiian Telcom, as is the case with virtually all non-BOC ILECs, is largely a reseller of interstate long distance services, and it primarily purchases its interstate long distance services from facilities-based long distance providers. As a reseller, Hawaiian Telcom's main cost for these services is the rates it has to pay to the facilities-based providers, and its rates will vary primarily based on what it pays to these wholesalers. Thus, there is little opportunity for Hawaiian Telcom to exercise market power in the long distance market. From a competitive standpoint, it is more justifiable to waive the equal access scripting requirement for Hawaiian Telcom than it was for the BOCs, who had significant facilities-based long distance affiliates. The FCC has often justified deregulatory measures based on a carrier's reseller status, and should do so here as well.[6]

5 *Id.*, ¶ 72.

6 The FCC has recognized that a reseller does not have the ability to raise prices or restrict output, and certainly could not hope to maintain such anticompetitive behaviors when the facilities-based supplier could supplant it in the market. *See, e.g., Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities,* 12 FCC Rcd 23891, ¶¶ 194 & 199 n.404 (1997); *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, 91 FCC 2d 59, ¶ 5 (1982).

Second, there are a number of strong competitors offering long distance services in the market today. As demonstrated in USTA's petition, cable companies, wireless carriers, VoIP providers, and CLECs all provide long distance services in today's market.[7] Consumers know of and use these other provider's long distance services, regardless of whether they receive local exchange services from an ILEC. The same competition that exists nationwide, and which was used by the FCC to relieve the BOCs of equal access scripting requirements, exists in Hawaii. Hawaiian Telcom offers resold long distance services in competition with at least 50 other carriers, including AT&T, Sprint, Qwest, Excel, all the major national wireless companies, including Verizon Wireless, Sprint, AT&T, and T-Mobile, and Oceanic Time Warner, the dominant cable TV company serving the islands. Therefore, the competitive circumstances in Hawaii are at least as competitive as the market analysis relied on by the FCC in the *Equal Access Scripting Order*.[8]

Third, the market for long distance services has significantly changed since the equal access scripting requirement was adopted. Customers have asked for and now receive most long distance services in a bundle of communications services. Thus, voice customers of Oceanic Time Warner can obtain a package of video, data, and local and long distance voice services pursuant to one monthly price and unlimited long distance calling is available under one version of this bundled plan. All major wireless carriers offer "all distance" services as a bundle where a certain "bucket" of minutes is purchased,

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7 USTA Petition at 10-20.

8 *Equal Access Scripting Order*, ¶¶ 19, *et seq*.

regardless of whether the minutes are local or long distance.[9] Thus, to customers, they are no longer evaluating long distance services based on discrete long distance voice service prices. Hawaiian Telcom is not able to influence the market for voice long distance services any more than another long distance reseller.

Hawaiian Telcom has no special advantages that justify retention of the rule. First, customers do not need to be informed that there are multiple providers of long distance voice services when they subscribe to new telephone service from the Hawaiian Telcom. Customers are typically fully aware of their ability to obtain long distance services from a provider other than Hawaiian Telcom. As the FCC has noted, many customers use this knowledge to obtain long distance services pursuant to bundles or to place long distance telephone calls from cellphones during non-peak hours where they experience no marginal cost for obtaining such services.[10] A customer call to Hawaiian Telcom to establish new local exchange service is an isolated event in the context of the customer's selection of competitive long distance voice services. Thus, Hawaiian Telcom does not possess any special bottleneck during this initial call which would justify the continued imposition of the restriction.[11]

Second, the scripting requirement distorts the marketplace because it interferes with the marketing and provision of service to the customer in the most efficient manner

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[9] International long distance calling is still priced separately, although all heavy users of international long distance services also purchase special bundles to reduce their prices.

[10] *See generally, Equal Access Scripting Order,* ¶ 45.

[11] *Accord, id.*, ¶ 120 (equal access scripting requirement was originally imposed to address the bottleneck control of ILECs over local exchange services). In fact, as USTA has indicated, 40 percent of customers nationwide use competitive local exchange services. *USTA Petition* at 29.

in today's environment. As USTA indicates, the equal access text is confusing to and unnecessary for customers who already know about their options.[12] It unnecessarily and unduly lengthens the conversation with the customer, which no customer needs with today's hectic pace of life. This added conversation time, with the need for the ILEC to update the list and to check its accuracy, unnecessarily raises carrier costs. There is simply no public policy reason for only ILECs to be forced to provide equal access scripting, where other competitors are free to offer their services in the manner they deem most efficient.

Other FCC safeguards will be in place to protect consumers. First, existing accounting regulations ensure that ILECs do not subsidize the provision of long distance services with local exchange service revenues.[13] For Hawaiian Telcom in particular, because it is regulated pursuant to price caps at the federal level, it cannot normally modify interstate access prices based on a change of costs.[14] Therefore, it has virtually no ability to use regulated service revenues to subsidize the provision of competitive long distance services.[15] Second, other legal obligations requiring nondiscriminatory treatment will continue to exist to protect long distance competition and preserve customer options. The bedrock equal access mandate that customers be able to select their own long distance provider from an ILEC phone will continue to be in place. In

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12 *USTA Petition* at 28.

13 *See, e.g.,* 47 C.F.R. Part 32, § 64.1903(a).

14 *Id*. § 61.41.

15 The nature of price cap regulation has been used to justify elimination of other FCC regulations. *United States Telephone Association's Petition for Forbearance from Depreciation Regulation of Price Cap Local Exchange Carriers*, Memorandum Opinion and Order, 15 FCC Rcd 242, ¶ 46 (1999)(depreciation rates for price cap carriers no longer require regulation).

addition, Section 251 and subsection (b)(3) obligations will continue to mandate that all LECs provide dialing parity, and nondiscriminatory access to telephone numbers, operator service, directory assistance, and directory listings, with no unreasonable dialing requirements.

Conclusion. For the foregoing reasons, the FCC should eliminate the equal access scripting requirement for all ILECs in order to create a level competitive playing field. Competition for long distance services is robust, and consumers do not need information on this one aspect of long distance competition to make an informed choice of long distance carrier. Finally, other safeguards continue to exist to protect competition and consumers.

Respectfully submitted,

By: *<u>/s/ Gregory J. Vogt</u>*

Gregory J. Vogt
Law Offices of Gregory J. Vogt, PLLC
2121 Eisenhower Ave.
Suite 200
Alexandria, VA 22314
(703) 838-0115
Fax: (703) 684-3620
gvogt@vogtlawfirm.com

Steven Golden
Vice President External Affairs
Hawaiian Telcom, Inc.
1177 Bishop Street
Honolulu, Hawaii 96813

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Certificate of Service

I, Gregory J. Vogt, do hereby certify that I have on this 11th day of September 2009 caused a copy of the foregoing "Comments of Hawaiian Telcom, Inc." to be served by electronic mail upon the following:

Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
CPDcopies@fcc.gov

Best Copy and Printing, Inc.
Portals II
Room CY-B402
445 12th Twelfth St., S.W.
Washington, D.C. 20554
fcc@bcpiweb.com

/s/ Gregory J. Vogt
Gregory J. Vogt