

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No 03-109
_____)	

REPLY COMMENTS OF HAWAIIAN TELCOM, INC.

Hawaiian Telcom, Inc. (“HT”) provides this brief reply to the comments that were submitted on the Commission’s Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking in the above-captioned dockets released on February 9, 2011 (the “NPRM”).¹

I. INTRODUCTION & SUMMARY

Many commenters advocate reductions in FCC support programs such as high-cost universal service funding (“USF”), but few acknowledge the essential role that USF has played in ensuring that almost all Americans have access to affordable, quality telecommunications capability. Parties representing the consumers of

¹ In accordance with the NPRM (FCC 11-13), HT replies to the comments other than those addressing Section XV of the NPRM. *See* 76 Fed. Reg. 11632 (Mar. 2, 2011).

insular high-cost areas and native lands know first-hand the extraordinary challenges of ensuring universal service in areas where the costs far exceed the national average, poverty levels are high, and consumer needs are great. Delivering universal broadband in these areas, at affordable and reasonably comparable rates, will be an even more daunting task.

The Commission should adjust its USF and Connect America Fund (“CAF”) programs to reflect both the insular nature of the state of Hawaii, and its historically underserved Native Hawaiian population. The USF and CAF programs should include set-asides for native lands and insular areas, and providers-of-last-resort should be found eligible for support throughout the state. The FCC should not reduce or eliminate interstate access support (“IAS”) or lower interstate or intrastate access rates in Hawaii without providing some form of access revenue recovery mechanism (“ARRM”), lest service levels decline in high-cost areas like rural Hawaii. In addition, the Commission should allocate support in Hawaii at the level of the wire center rather than the census block. Wire center boundaries are publicly available and well known and they tend to follow population concentrations in Hawaii. Accurate information identifying which census blocks contain unserved households is not readily available. The Commission’s USF support and inter-carrier compensation rules should be narrowly tailored to bring about incremental change in fragile environments like Hawaii, without diminishing investment incentives in the state’s many rural areas.

II. COMMENTERS SUPPORT SET-ASIDES FOR NATIVE LANDS AND INSULAR AREAS

Many diverse parties with first-hand experience serving insular and native lands testify to the unique challenges of these environments. Typically, insular areas are served by companies based in those areas, whose mission is to serve local consumers despite difficult terrain, climate, poverty, and other challenges. Several such parties describe the urgent need for a set-aside for insular areas.² The Regulatory Commission of Alaska (“RCA”) and Alaskan carriers note that the isolation of insular service areas and native lands makes broadband both more critical to local customers and significantly more costly and risky to deploy.³

These factors all pertain equally to Hawaii.⁴ Not only is Hawaii distinctly difficult to serve,⁵ but also it is home to the historically disadvantaged population of

² See Joint Comments of Docomo Pacific, Inc., PR Wireless, Inc., Choice Communications, LLC, and AST Telecom, LLC d/b/a BlueSky Communications in WC Docket 10-90 *et al.*, 10-12 (filed Apr. 18, 2011), citing NPRM para. 307 (“we seek comment on whether we should provide bidding credits to bidders that propose to deploy to insular areas”); Comments of the Pub. Svc. Comm’n of the U.S. Virgin Islands in WC Docket 10-90 *et al.*, 3-4, 7 (filed Apr. 18, 2011); Comments of TCA, Inc. in WC Docket 10-90 *et al.*, 12-13 (filed Apr. 18, 2011). See also Comments of the Native Telecom Coalition for Broadband in WC Docket 10-90 *et al.*, 8-9 (filed Apr. 18, 2011) (“*NTCB Comments*”) (urging the FCC to adopt a separate USF program for Native American, *i.e.*, Native Indians, Native Alaskans, and Native Hawaiians, and “add it to existing universal service programs that support rural LECs, including High Cost Loop Support, Local Switching Support, and Interstate Common Line Support.”).

³ See Comments of the Reg’y Comm’n of Alaska in WC Docket 10-90 *et al.*, 7-8 (filed Apr. 18, 2011) (“*RCA Comments*”); Comments of General Comm’ns, Inc. in WC Docket 10-90 *et al.*, 3-4, 20 (filed Apr. 18, 2011) (“*GCI Comments*”); Comments of the Alaska Comm’ns Systems Group, Inc. in WC Docket 10-90 *et al.*, 8 (filed Apr. 18, 2011) (“*ACS Comments*”); Comments of the Alaska Tel. Ass’n in WC Docket 10-90 *et al.*, 11-13 (filed Apr. 18, 2011) (“*ATA Comments*”).

⁴ See NPRM para. 306-307.

⁵ See Comments of Hawaiian Telcom, Inc. in WC Docket 10-90 *et al.*, App. A at 1-14 (filed Apr. 18, 2011) (“*HT Comments*”); *Petition of Hawaiian Telcom, Inc. for Waiver of Sections 54.309 and 54.313(d)(vi) of the Commission's Rules* in WT Docket 08-4, 6-10 (filed Dec. 31, 2007) (“*HT Petition*”) (since Hawaii is entirely comprised of

Native Hawaiians who live throughout the State of Hawaii.⁶ Moreover, Hawaii is both an insular state (the only one) as well as a state with a substantial Native population. In the NPRM, the Commission suggests that Native Americans historically have had substantially less access to telecommunications services than other populations, and Native Lands currently are underfunded.⁷

Many commenters support the proposal to continue supporting Tribal lands.⁸ The comments also suggest that the Commission should expand current programs by adopting a broad definition of “Native Lands” that encompasses not only traditional “Tribal” areas as defined by the Department of the Interior, but also

volcanic islands and cut off from the mainland by thousands of miles of deep ocean trenches, it must use very expensive deep-sea submarine cables for both interstate and intrastate transport. These cables are “more vulnerable to damage than traditional infrastructure; strong currents, violent ocean storms, tsunamis, volcanic activity, and seaquakes are just some of the events that can disrupt network operations and increase costs.” In addition, “within the confines of each individual island, it is especially difficult to deploy telecommunications infrastructure necessary to serve the sparsely populated areas...because conditions are harsh and vary dramatically across small areas.”). *See also* Comments of Sandwich Isles Comm’ns, Inc. and Mescalero Apache Telecom, Inc. in WC Docket 10-90 *et al.*, 7-10 (filed July 12, 2010) (factors such as “thin top soil lays on volcanic rock, coral and sand,” and “recurring severe tropical storms which easily destroy aerial telecommunications plants,” make it “exceptionally expensive to construct and operate anywhere in the state.”).

⁶ *See* Sen. D. Inouye, Hearing of the Communications, Tech., and the Internet Subcomm. of the Sen. Commerce, Sci. & Transp. Comm., *Closing the Digital Divide: Connecting Native Nations and Cmty. to the 21st Century* (Apr. 5, 2011).

⁷ *See, e.g.*, NPRM para. 303 (“We recognize that communities on Tribal lands have historically had less access to telecommunications services than any other segment of the population”); *id.* (“Tribes need substantially greater financial support than is presently available to them, and accelerating Tribal broadband will require increased funding”), *citing* Federal Communications Commission, *Connecting America: The National Broadband Plan* 152 (rel. Mar. 16, 2010) (“NBP”).

⁸ *See ACS Comments* at 3; Comments of MTPCS, LLC, d/b/a Cellular One and N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless in WC Docket 10-90 *et al.*, 3 (filed Apr. 18, 2011); Comments of the National Tribal Telecom Association in WC Docket 10-90 *et al.*, 3-5 (filed Apr. 18, 2011); *NTCB Comments* at 2 (filed Apr. 18, 2011); Comments of Shoshone-Bannock Tribe in WC Docket 10-90 *et al.*, Ex. A. (filed Apr. 18, 2011).

states like Hawaii where the population includes Native Americans, or Native Hawaiians, in much greater proportions than other states.⁹ Alaska currently is designated in this manner because the Alaska Native Claims Settlements Act effectively divides the entire state into Tribal lands, and local commenters urge the FCC to continue this special treatment for that state.¹⁰ HT encourages the Commission to adopt a similar approach for Hawaii, based on the historically underserved Native Hawaiian population residing throughout the state, and not just in the Hawaiian Home Lands.¹¹

III. ILECs SHOULD HAVE A RIGHT OF FIRST REFUSAL AS PROVIDER OF LAST RESORT

HT agrees that federal support should be targeted to the provider-of-last-resort (“POLR”). The Commission should limit eligibility for this support, in the first instance, to the incumbent local exchange carrier (“ILEC”). It is the ILEC that consistently invests, year over year, in the construction, maintenance, and upgrade of facilities necessary for the provision of supported services, and may be relied upon to continue investing as POLR in the broadband environment. No other provider has a proven commitment to investing in rural areas, as attested to by

⁹ As explained in HT’s initial comments, Native Hawaiians make up 26 percent of the population of the state, and the Native Hawaiian population resides throughout the state. *See* 2010 U.S. Census Bureau Redistricting Data Summary File for Hawaii.

¹⁰ *See RCA Comments* at 7-8; *ATA Comments* at 11-13.

¹¹ Though people unfamiliar with Hawaii tend to focus on the Hawaiian Home Lands (“HHL”), the vast majority of the Native Hawaiian population lives in areas other than the HHL. *See HT Comments* at 10 (about 92 percent of Native Hawaiians in the state reside outside the HHL). *Cf.* NPRM n. 4 (including the HHL in the definition of “Tribal lands” as used in the NPRM); *NTCB Comments* at 1 (supporting the same).

many diverse commenters, including the states.¹² No other provider has built as extensive a network, nor undertaken to serve *all* customers on request.

Many other parties support the notion that the recipient of federal funding, and only that entity, should agree to POLR commitments. For example, AT&T points out that it would be irresponsible for funding to be distributed in the absence of a POLR commitment; at the same time, the party that agrees to serve as broadband POLR should be relieved of legacy regulations requiring it to maintain a standalone switched narrowband voice network.¹³ CenturyLink and FairPoint similarly point out that only the POLR can be relied on for ubiquitous coverage, forming the backbone for multiple service providers in a region.¹⁴ These parties also note that

¹² *E.g.*, Comments of the Indiana Regulatory Commission in WC Docket 10-90 *et al.*, 2 (filed Apr. 18, 2011) (FCC's proposed cuts to USF threaten rural-urban parity); Comments of the Kansas Corp. Comm'n in WC Docket 10-90 *et al.*, 10 (filed Apr. 18, 2011) (rural networks, and rural broadband deployment to date, have been dependent on rural LEC investment, supported by federal USF); Comments of the Michigan Pub. Svs. Com'n in WC Docket 10-90 *et al.*, 8 (filed Apr. 18, 2011) ("*MPSC Comments*") (FCC should ensure adequate funding so that ILECs can continue to maintain and upgrade their networks while continuing to provide service at affordable rates); Comments of the N. Dakota Pub. Svc. Com'n in WC Docket 10-90 *et al.*, 3 (filed Apr. 18, 2011) (North Dakota's LECs have heavily invested in their networks under existing cost recovery mechanisms, in many instances facilitated by Rural Utilities Service loans); Comments of Utah Public Service Commission and Division of Public Utilities in WC Docket 10-90 *et al.*, 1-2 (filed Apr. 18, 2011) (cutting support to companies who have invested in reliance on it will harm Utah's rural consumers). *See also* Comments of Fred Williamson & Assos. in WC Docket 10-90 *et al.*, 15 (filed Apr. 18, 2011); Comments of Telephone Ass'n of Maine in WC Docket 10-90 *et al.*, 3 (filed Apr. 18, 2011).

¹³ Comments of AT&T in WC Docket 10-90 *et al.*, 59 (filed Apr. 18, 2011) ("*AT&T Comments*").

¹⁴ Comment of CenturyLink, Inc. in WC Docket 10-90 *et al.*, 15-16, 38-39 (filed Apr. 18, 2011) ("*CenturyLink Comments*") (ILECs have built "robust wireline network, including superior service in disaster situations and necessary infrastructure for mobile broadband services"); Comments of FairPoint Communications, Inc. in WC Docket 10-90 *et al.*, 17-18 (filed Apr. 18, 2011) ("*FairPoint Comments*") (only the carrier of last resort is responsible for providing service upon request).

state COLR regulations must be modified to reflect the FCC's new emphasis on broadband as the "essential service" of the future.¹⁵

The right-of-first-refusal for the ILEC is particularly appropriate in the harsh Hawaii environment, where building an entirely new network would be a monumental undertaking. The challenges of broadband deployment so well documented in the National Broadband Plan are so much greater in Hawaii due to its isolated and insular geography as well as its volcanic geology and demanding terrain.¹⁶ The ILEC has unique expertise in serving Hawaii that makes it the only suitable POLR in most instances.

IV. SUPPORT SHOULD BE ALLOCATED AT THE WIRE CENTER LEVEL

The NPRM proposes to replace study area boundaries as a basis for support with census blocks. Wire centers would be a more suitable geographic funding area.¹⁷ Windstream points out that calculating costs and support at the wire center level will likely target support more accurately to the highest-cost, rural parts of

¹⁵ E.g., *AT&T Comments* at 59 (CAF should be tied to state reform of COLR obligations, or states should be preempted from enforcing COLR duties); *CenturyLink Comments* at 47 ("if an ILEC loses CAF support to another provider, the ILEC should be freed from any COLR obligation for voice services and price regulation of any services it provides in that area, and the auction winner should be required to provide voice and broadband services to all end users"); *FairPoint Comments* at 18 (COLR obligations should be tied to receiving CAF for broadband deployment).

¹⁶ See *HT Comments*, App. A.

¹⁷ HT is seeking a waiver of the non-rural high-cost proxy mechanism to calculate eligibility for support at the wire center level, rather than for the entire study area, which is the state of Hawaii. See *Comment Sought On Hawaiian Telcom, Inc.'s Petition For Waiver of High-Cost Universal Service Support Rules* in WC Docket 08-4, DA 08-131 (Wireline Competition Bur. Jan. 18, 2008). The *HT Petition* remains pending before the Commission.

ILEC study areas.¹⁸ This is a logical first step in redistribution of support at a more granular level. As other parties observe, census block boundaries are not widely known, hence it will not be immediately apparent where the unserved households are located, within each census block. In contrast, both the FCC and the states have access to wire center boundaries, and unserved households can more easily be identified.¹⁹

V. TRANSITIONING IAS TO CAF SHOULD NOT UNDERMINE INCENTIVES FOR BROADBAND INVESTMENT

The comments appear to be divided among those who favor eliminating IAS without any replacement mechanism,²⁰ and those who support a reasonable transition to the CAF, with some safety net to ensure against service degradation or catastrophic failure. Those carriers currently receiving IAS, and the states, who represent consumers that would be affected by the loss of that revenue to the ILEC, predict that ILEC network investment would take a significant blow, undermining the FCC's broadband goals.²¹ These parties urge the Commission to proceed more

¹⁸ Comments of Windstream Communications, Inc. in WC Docket 10-90 *et al.*, 9-11 (filed Apr. 18, 2011) (“*Windstream Comments*”).

¹⁹ See *id.*; *CenturyLink Comments* at 40-41; Comments of the State Members of the Federal State Joint Board on Universal Service in WC Docket 10-90 *et al.*, 44 (filed May 2, 2011) (“Maps at the scale of census blocks will not be sufficiently accurate to use in support calculations” of areas of POLR responsibility. “Facilities-based competitors do not always offer service to every customer in a census block. Moreover, census block boundaries often cross exchange boundaries, leading to approximation of true service conditions.”).

²⁰ See, e.g., Comments of Verizon and Verizon Wireless in WC Docket 10-90 *et al.*, 19-21 (Apr. 18, 2011); Comments of XO Communications, LLC in WC Docket No. 10-90 *et al.*, 47-50 (filed Apr. 19, 2011); Comments of Time Warner Cable in WC Docket 10-90 *et al.*, 8-11 (filed Apr. 18, 2011).

²¹ See Comments of the Independent Telephone and Telecommunications Alliance in WC Docket 10-90 *et al.*, 9-11 (filed Apr. 18, 2011); *Windstream Comments* at 47-48; *CenturyLink Comments* at ii, 63-64; *MPSC Comments* at 8 (emphasizing that “whatever

slowly, and incrementally, either allowing ILECs to retain IAS, or replacing it all with an access revenue recovery mechanism (“ARRM”) for some years to come, so that rural broadband investment can continue.²² In this way, the Commission could observe the impact that any such change has on the ILECs’ ability to maintain current investment levels in the public switched telecommunications network as well as to devote new investment to advanced, IP-based broadband networks.

In contrast, those who favor eliminating IAS offer as the only justification that the amount of support will be reduced, but do not suggest any benefit to customers in the areas where IAS helped to keep end-user rates at reasonable levels. The only reasonable assumption is that service quality and reliability, innovation and long-term investment, all will decline if this support is eliminated without any ARRM.

The same is true of other forms of access revenue targeted in the NPRM, including intrastate access charges. For the reasons discussed previously, Hawaii is truly an ecosystem characterized by fragility not only environmentally but also

end goal the FCC ultimately adopts” for reforming ICC, “adequate funding [must] be allocated under the CAF, or some other recovery mechanism, to ensure that rural incumbent providers can maintain/enhance their networks while still offering service to end-users at reasonable rates.”); Comments of SureWest Communications in WC Docket 10-90 *et al.*, 8 (filed Apr. 18, 2011) (“shifting all of the cost recovery directly onto terminating end users is contrary to the public interest. Essentially, the Commission will be mandating significant end user rate increases that likely will be detrimental to the universal broadband penetration goals of the National Broadband Plan.”).

²² *E.g.*, *AT&T Comments* at 10 (no unfunded mandates); *CenturyLink Comments* at 29-30 (IAS should be retained so broadband facilities deployment will not be disrupted); *FairPoint Comments* at 14 (FCC should conduct a needs analysis and, where justified, replace IAS with CAF support); Comments of Frontier Communications in WC Docket 10-90 *et al.*, 14 (filed Apr. 18, 2011) (IAS should be phased down over five years, instead of two, but ILECs should be permitted to retain IAS support upon certification that it is used to deploy broadband).

economically. HT urges the Commission therefore to take the most cautious approach in Hawaii, foregoing any reductions in access revenues for at least five years, until it has had an opportunity to observe the effects elsewhere of the sweeping changes it is considering. Even incremental reductions in access revenues will prove to be a challenge to rural carriers.²³ In Hawaii, this challenge likely will be magnified to a significant exponent. Therefore, HT urges a cautious approach in this state.

VI. CONCLUSION

HT serves a customer base as diverse as America, including one large, lower cost urban market with sophisticated customers and high broadband demand, and many very high-cost rural areas with low broadband penetration, low incomes, the majority of the Native Hawaiian population, and extraordinary broadband build-out challenges of every description. Because the Commission is serious in its pursuit of universal broadband, its rules should take into account diverse environments such as this, and permit support to be targeted where it is most needed. If providers like HT have a reasonable opportunity to recover their investment, they will be willing and able to raise the financing and commit the resources necessary for state-of-the-art infrastructure deployment to the farthest-flung corners of our nation such as the rural islands of the State of Hawaii.

²³ Comments of Virgin Island Telephone Corporation d/b/a Innovative Telephone in WC Docket 10-90 *et al.*, 15 (filed Apr. 18, 2011) (due to “high operating costs, need for major network upgrades, above-average end user rates, and a low-income population, that uniquely impact it and a handful of other insular operating companies” ViTelCo finds it very difficult to “replace any revenues that may be lost due to access charge reform”).

Respectfully submitted,

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