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 an 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
To: The Commission	

REPLY COMMENTS OF THE STATE OF HAWAII

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THE STATE OF HAWAII

The State of Hawaii (the "State"),[1] by its attorneys and pursuant to Section 1.415 of the Federal Communications Commission's ("FCC" or "Commission") rules, 47 C.F.R. § 1.415, hereby submits the following reply comments in response to the Commission's Notice of Proposed Rulemaking ("*NPRM*") in the above captioned proceeding.[2]

[1] These Comments are submitted by the State of Hawaii acting through its Department of Commerce and Consumer Affairs.

[2] *See In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint*

Hawaii commends the Commission's efforts to reform its Universal Service Fund and Intercarrier Compensation programs to support broadband growth and implement the goals of the National Broadband Plan. As the Commission correctly observes, broadband is crucial to our nation's economic development and civic life, and "can be even more important in America's remote small towns, rural and insular areas, and Tribal Lands."[3] Accordingly, Hawaii supports those comments proposing to reserve funds from the first phase of the Connect America Fund ("CAF") for insular areas.[4] Hawaii further urges the Commission to designate the entire State of Hawaii as an insular area for purposes of receiving such funds. Finally, the State requests that the Commission require broadband satellite service providers to deploy high-speed broadband services at competitive prices to consumers in Hawaii as a condition to receiving funds from the CAF.

I. THE COMMISSION SHOULD DESIGNATE SPECIAL FUNDING FROM THE CONNECT AMERICA FUND FOR INSULAR AREAS

The *NPRM* seeks comment on whether the Commission "should reserve a defined amount of funds in the CAF for insular areas."[5] The record in this proceeding and others

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Board on Universal Service; Lifeline and Link-Up, Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb 9, 2011) ("*NPRM*").

[3] *NPRM*, ¶ 3; *see also Comments of the Department of Health and Human Services*, WC Docket No. 10-90, at 3 (filed April 18, 2011) (stressing that "[w]ithout broadband access on the islands and wireless capabilities across the islands, Hawaiians are often limited in their access to quality primary and specialist care close to their homes.")

[4] *See, e.g.*, *Comments of Hawaiian Telcom, Inc.*, WC Docket No. 10-90, at 10-11 (filed April 18, 2011) ("*HTI Comments*"); *Comments of Docomo Pacific, Inc., PR Wireless, Inc., Choice Communications, LLC, and AST Tel*, WC Docket No. 10-90 (filed April 18, 2011); *Comments of Virgin Islands Public Services Commission*, WC Docket No. 10-90 (filed April 18, 2011) ("*VIPSC Comments*"); *Comments of Puerto Rico Telephone Company, Inc.*, WC Docket No. 10-90 (filed April 18, 2011) ("*PRTC Comments*").

[5] *NPRM*, ¶ 305.

demonstrates clear industry-wide support for the Commission to implement such a proposal. The Commission acknowledges that several commenting parties in the *USF Reform NOI/NPRM* proceeding have already argued that the geographic and economic challenges faced by insular areas warrant special treatment by the Commission.[6] Parties to this proceeding continue to stress the unique challenges facing insular areas that effectively prevent broadband deployment and adoption.[7]

For instance, the Virgin Islands Public Services Commission has explained that "insular territories are physically remote and have difficult terrain and weather conditions", which results in high costs that make it difficult to deploy broadband infrastructure.[8] The Puerto Rico Telephone Company, Inc. has reported that "broadband providers and investors are reluctant to invest heavily in broadband in Puerto Rico because of the higher operational expenses associated with providing service in an isolated and tropical area."[9] Similarly, Hawaiian Telcom, Inc. has described the geographic and economic obstacles to providing broadband and information technology services in insular areas such as Hawaii, including geographic isolation, volcanic activity, and the limited availability and capacity of fiber and microwave links.[10]

As the Commission is well aware, Hawaii is located about 2500 miles from the Mainland. Its population is spread across not one, but six major and several smaller islands. Carriers

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[6] *See NPRM*, ¶ 306; *see also Reply Comments of PR Wireless, Inc.*, WC Docket No. 10-90, GN Docket No. 09-51, at 4 (filed Aug. 11, 2010); *Comments of Puerto Rico Telephone Company, Inc.*, WC Docket No. 10-90, GN Docket No. 09-51, at 5-7 (filed July 12, 2010).

[7] *See, e.g.*, *HTI Comments*, at 11 (urging the Commission to reserve support for broadband infrastructure build-out in insular areas).

[8] *VIPSC Comments*, at 9.

[9] *PRTC Comments*, at 7.

[10] *See HTI Comments*, at Appendix, 1-2.

operating in the State must contend with salt erosion, rough terrain, rocky subsoil, tropical storms, high transportation costs, diverse cultures and the need for inter-island distribution facilities. Even the provision of services from the satellite industry, as discussed in further detail below, have proven to be insufficient in the State. All of these factors have created distinct challenges for advanced infrastructure deployment and, as a result, consumers in the State have traditionally had limited access to high-speed broadband services at affordable prices. In fact, the State has consistently fallen behind other states in its broadband capabilities and pricing, and has been at the bottom of many national broadband studies.[11]

In light of these barriers and lack of viable alternatives for advanced services, Hawaii urges the Commission to set aside special funding from the CAF to support carriers seeking to deploy broadband and information technology services in insular areas.

II. THE DEFINITION OF INSULAR AREAS SHOULD INCLUDE HAWAII

The State recognizes that the Commission has not yet defined "insular" areas in the context of the universal service program.[12] Hawaii urges the Commission to state clearly that the definition of "insular" areas includes Hawaii in accordance with the plain language of Section 254(b)(3) of the Communications Act, as amended.[13] The State has repeatedly argued that insular should be defined to include all islands that are territories, possessions or states of the

[11] *See Hawai'i Broadband Task Force Final Report*, The Auditor, State of Hawai'i and RHD Consulting, LLC, at 5 (Dec. 2008).

[12] *See NPRM*, ¶ 306.

[13] *See* Communications Act of 1934, as amended, 47 U.S.C. § 254(b)(3) (2010).

United States.[14] Such an approach would be consistent with the plain meaning of federal law as well as the realities of providing telecommunications and information services to island-based communities.

Section 254(b)(3) of the Communications Act, which provides for the federal universal service program, mandates that consumers in all regions of the nation, including "insular" areas, have access to advanced services.[15] In its 1999 *Unserved Areas NPRM*, the Commission openly acknowledged that "in common usage, the term insular area means 'of, or having the form of an island.'"[16] The State clearly falls within this plain meaning and since no ambiguity exists, the *Unserved Areas NPRM* inquiry should have ended there.[17]

In apparent disregard for Supreme Court precedent, however, the *Unserved Areas NPRM* attempted to look behind the plain meaning of the statute, suggesting that other statutes have defined insular to exclude states.[18] If, arguendo, one were to look behind the Congressional exercise that led to the insertion of this term in the Communications Act, one would appropriately conclude that the Hawaiian Islands was one of the insular areas intended for inclusion under the statute. The history and purpose of Section 254(b)(3) suggests that Congress

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[14] *See Reply Comments of the State of Hawaii*, CC Docket No. 96-45, WC Docket No. 05-377 (filed May 26, 2006); *Comments of the State of Hawaii*, CC Docket No. 96-45 (filed Dec. 16, 1999).

[15] *See* 47 U.S.C. § 254(b)(3).

[16] *Federal-State Joint Board on Universal Service Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177 (1999).

[17] The Supreme Court has shown that, where neither the text nor a provision's legislative history is clear, a dictionary is an appropriate reference point for deriving the meaning of an undefined term in the Act. *See MCI v. AT&T*, 512 U.S. 218, 225-29 (1994).

[18] *But see* 16 U.S.C. § 1447(b) (defining insular to include Hawaii).

intended the Commission to accord states and territories the same treatment. For example, Section 153(40) of the Act defines the term "state" to include all United States "territories and possessions."[19] The Commission has also previously found that several of Section 254's universal service provisions apply equally to states and territories.[20] Further, the Commission has observed in this *NPRM* that the principal behind the universal service program is "that *all* Americans should have access to communications services universal service," which has been "the core of the Commission's mandate since its founding."[21] The history and purpose of the Communications Act and the universal service program thus clearly support similar treatment of territories and states in designating insular areas for purposes of receiving universal service funds.

Moreover, as noted above, carriers in Hawaii have long faced all the same challenges that are experienced in other insular areas. Like many "insular" islands, the State is located in the Pacific Ocean thousands of miles from the Mainland. The State's six major islands are separated from each other by distances of over 100 miles and by ocean channels that are over 10,000 feet deep.[22] Carriers operating in the State face geographic isolation, turbulent weather and volcanic disruptions. In short, the State's citizens and carriers face many of the same obstacles to achieving the universal service goals of the Communications Act as their counterparts in the

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[19] 47 U.S.C. § 153(40).

[20] *See Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, Sixth Order on Reconsideration in CC Docket No. 97-21, Fifteenth Order on Reconsideration in CC Docket No. 96-45, 14 FCC Rcd 18756 (1999); *Policy and Rules Concerning the Interstate, Interexchange Marketplace – Implementation of Section 254(g) of the Communications Act of 1934, as Amended*, Report and Order, 11 FCC Rcd 9564, 9589 (1996).

[21] *NPRM*, ¶ 2 (emphasis added).

[22] *See HTI Comments*, at Appendix, 1.

islands proposed to be designated as insular areas. It follows that Hawaii warrants classification as an insular area for purposes of universal service.

III. BROADBAND SATELLITE SERVICE PROVIDERS SHOULD BE REQUIRED TO PROVIDE COMPETITIVE HIGH-SPEED SERVICES TO CONSUMERS IN HAWAII AS A CONDITION TO RECEIVING CONNECT AMERICA FUND SUPPORT

Finally, the State requests that the Commission require providers of broadband satellite services, as a condition to receiving CAF universal service support, to make available high-speed broadband services to consumers in Hawaii at prices that are comparable with those in the Mainland. The Commission, as well as a few commenting parties, has suggested that satellite service providers can play a significant role in extending cost-effective broadband service to many unserved and underserved areas.[23] These parties request that satellite service providers also be granted access to CAF funds. The State agrees that satellite service providers can play a vital role in providing broadband service to certain unserved areas. In the State's experience, however, satellite providers have historically failed to provide sufficient communications services to consumers in Hawaii.

Hawaii has routinely been subject to discrimination in its access to direct broadcast satellite ("DBS") video services and direct-to-home ("DTH") broadband Internet satellite services.[24] Although the FCC has worked extensively to ensure that DBS services are available

[23] *See, e.g.*, *Joint Comments of Satellite Broadband Providers*, WC Docket No. 10-90, at 6 (filed April 18, 2011).

[24] *See Comments of the State of Hawaii*, CSR-8302-O (filed April 8, 2010) (discussing Directv's failure to meet its comparable DBS service obligations in Hawaii).

throughout the United States,[25] DBS and DTH services in Hawaii continue to be limited and substantially inferior to the services available to consumers in the rest of the United States.

For instance, Directv has deployed DBS services in Hawaii, but on a discriminatory and substandard basis. Directv offers services to consumers in Hawaii only if they utilize special equipment, potentially including multiple antennas that are significantly larger than those used on the Mainland. Consumers in Hawaii must purchase and install one or more 1.2 meter satellite antennas to accommodate Directvs' weak signal strength and diverse satellite channelization plan.[26] Such large antennas are often too cumbersome and hazardous to be used by residents in multi-family housing, which constitute a significant percentage of Hawaii's population.

The State's access to DTH broadband Internet satellite services is even more limited. For instance, WildBlue Communications, Inc. ("WildBlue") currently provides broadband Internet satellite service to all regions of the United States (including in portions of Alaska), except for Hawaii.[27] WildBlue reportedly plans to rectify this omission next year.[28] Spacenet, Inc. claims that it does provide broadband satellite services to the State, but the services are more expensive than services to the Mainland, and Hawaiian customers are required to use larger

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[25] *See Policies and Rules for the Direct Broadcast Satellite Service*, Report and Order, FCC 02-110, ¶¶ 50-83 (rel. June 13, 2002) (adopting geographic service rules that required DBS licensees to provide service to Alaska and Hawaii.)

[26] Directv transmits programming to Hawaii using different satellites at multiple orbital positions (119° W.L. to 101° W.L.), resulting in lower signal strength and necessitating the use of multiple large receive antennas.

[27] WildBlue holds a Commission license to launch and operate space stations in the Fixed-Satellite Service using 500 MHz of Ka-band spectrum at each of the 109.2° W.L. and 73° W.L. orbital locations. *See KaStar Satellite Communications Corp.*, 13 FCC Rcd 1366 (1977).

[28] *See* Frequently Asked Questions, *available at* http://www.wildblue.com/aboutWildblue/qaa.jsp.

transmit/receive antennas.[29] Hughes Network Systems, LLC similarly provides broadband Internet satellite services to the State, but at higher rates for Hawaiian consumers.[30]

Further Commission action is needed to encourage providers of broadband satellite services to accommodate the needs of Hawaii's consumers. Therefore, to the extent that the Commission determines that broadband satellite service providers should be granted direct access to CAF funds, the Commission should mandate as a condition to receiving such funds that the providers commit to providing access to high-speed broadband satellite services to consumers in Hawaii at prices that are comparable to those on the Mainland.

IV. CONCLUSION

For the reasons set forth above, the State respectfully requests that the Commission reserve special funding to be specifically targeted to insular areas. Further, the State strongly urges the Commission to include Hawaii in the definition of insular area for purposes of receiving such funding. Finally, the Commission should require providers of broadband satellite services to make their services available to consumers in Hawaii at prices that are comparable to those on the Mainland, as a condition to receiving universal support from the CAF. The Commission has routinely recognized the importance of making available broadband service to

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[29] According to a telephone conference with Spacenet, Inc.'s customer service department on May 17, 2011, prices for service in Hawaii start at $110.00 per month plus more than $1,000.00 in equipment installation costs. Pursuant to the company's website, rates start at $49.99 per month on the Mainland. The company also requires consumers in Hawaii to install a 1.2 meter antenna instead of the .75 meter antenna used on the Mainland. *See* Service Requirements and Availability, *available at* http://www.starband.com/questions/satellite-internet-service-requirements.html.

[30] Hughes Network Systems, LLC offers customers located in the continental United States rates on its website starting at $39.99 per month. *See* Plans and Pricing, *available at* http://consumer.hughesnet.com/plans.cfm. Pursuant to a telephone conference on May 17, 2011, with the company's service provider in Hawaii, however, prices for consumers in Hawaii start at $59.99 per month.

all regions of our nation.[31] Hawaii believes that its proposals, if adopted, will help operators overcome the geographic, economic and social challenges prevalent in insular areas such as Hawaii, and enable carriers to deploy broadband infrastructure and offer affordable broadband services to these often unserved regions in accordance with the Commission's stated goals.

Respectfully submitted,

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[31] *See* 47 U.S.C. § 151.