

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

In the Matter of	)	
	)	
Inquiry Concerning the Deployment of	)	GN Docket No. 12-228
Advanced Telecommunications Capability to	)	
All Americans in a Reasonable and Timely	)	
Fashion, and Possible Steps To Accelerate	)	
Such Deployment Pursuant to Section 706 of	)	
the Telecommunications Act of 1996, as	)	
Amended by the Broadband Data	)	
Improvement Act	)	

**COMMENTS OF  
THE STATE OF HAWAII**

The State of Hawaii, by its attorneys and through its Department of Commerce and Consumer Affairs (“DCCA”) respectfully submits these comments in response to the Commission’s Ninth Annual Broadband Notice of Inquiry (“NOI”).<sup>1</sup> As an island state with some of the most insular and challenging broadband deployment markets, Hawaii wishes to provide further information on the role of universal service support, in particular that of high cost support for remote and insular areas.

**I. HAWAII IS REMOTE AND INSULAR AND SHOULD BE TREATED AS SUCH FOR THE PURPOSES OF UNIVERSAL SERVICE**

The NOI seeks comment generally on “whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion” and includes specific

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<sup>1</sup> *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Ninth Broadband Progress Notice of Inquiry, FCC 12-91, (rel. Aug. 21, 2012) (“*Ninth Broadband NOI*”).

inquiries into any “unique challenges” facing states and territories due to rural, remote, insular, and tribal areas.<sup>2</sup> These areas comprise a significant portion of Hawaii, which makes attaining universal service in the State at once critical and particularly challenging.

**A. Hawaii’s Island Geography Creates a Remote and Challenging Telecommunications Environment**

As the State and operators within the state have explained in comments in numerous proceedings, ample evidence demonstrates the unique obstacles facing the deployment of broadband communications in Hawaii, and the significant impact that these challenges have had on broadband penetration and availability to all consumers in the rural areas of the State.<sup>3</sup>

As the Commission is well aware, Hawaii is located about 2,500 miles from the Mainland. In addition, the State’s population of more than 1.3 million people spreads across not one, but six major and several smaller islands separated from each other by distances of more than 100 miles and by ocean channels that are more than 10,000 feet deep.<sup>4</sup> Moreover, like other insular island areas, carriers operating in the State must contend with salt erosion, rough terrain, rocky subsoil, high transportation costs, and the need for inter-island distribution facilities, in addition to the challenges of tropical storms and volcanic disruptions.<sup>5</sup>

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<sup>2</sup> *Ninth Broadband NOI*, ¶ 1 n.1; *see also* ¶¶ 39, 41.

<sup>3</sup> *See, e.g.*, Comments of Hawaiian Telecom, Inc., WC Docket Nos. 10-90, et al. (April 18, 2011) (Appendix: Background on the Unique Challenges of Bringing Broadband to Hawaii) (“*Hawaiian Telecom Comments*”). Data from the 2010 U.S. Census indicates that nearly 50% of the population lives in rural areas, many of which are remote and mountainous. *See also* Reply Comments of the State of Hawaii, WC Docket Nos. 10-90, et al. (May 23, 2011) (“*DCCA NPRM Comments*”).

<sup>4</sup> *Hawaiian Telecom Comments*, at Appendix, 1.

<sup>5</sup> *DCCA NPRM Comments* at 4.

These geographic conditions result in unique telecommunications infrastructure needs in the State.<sup>6</sup> For example, the Bureau noted that service providers in Hawaii “rely on submarine cable transmission to connect the various islands that they serve” and the use of expensive route diversity for those cables is “particularly important in an area like Hawaii, given, for example, the depth of the ocean and associated difficulty of repairs.”<sup>7</sup>

The State of Hawaii and carriers operating within the State face the challenge of bringing reliable broadband to some of the most technically challenging and physically remote locations in the United States. It follows that Hawaii warrants classification as an insular area for purposes of universal service.

#### **B. The Definition of Insular Areas Should Include Hawaii**

Despite the common features among the many United States islands, including Hawaii, the Commission continues to, at times, improperly treat the term “insular” as referring to islands other than states. The plain language of the Communications Act, however, contains no such distinction. Good policy and plain reading of the Act urge that universal service provisions apply equally to states and to territories.

The Notice of Inquiry (“NOI”) states that “[t]he Commission has in the past proposed to define ‘insular areas,’ for purposes of our universal service program, as ‘islands that are territories or commonwealths of the United States.’”<sup>8</sup> The Commission acknowledges that it has

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<sup>6</sup> *Sandwich Isles Communications, Inc., Petition for Declaratory Ruling, DA 10-1880, Declaratory Ruling, 25 FCC Rcd 13647, ¶¶ 17-18 (rel. Sept. 29, 2010).*

<sup>7</sup> *Id.*

<sup>8</sup> *Ninth Broadband NOI, ¶ 39.*

never formally adopted this definition,<sup>9</sup> and with good reason. The NOI also seeks comment on the question of “to what extent should we consider the barriers that insular areas face regarding broadband deployment, as part of or independent from any analysis we might make of U.S. Territories?”<sup>10</sup> Hawaii urges the Commission to address the needs of insular areas wherever they exist, regardless of the classification of the jurisdiction in which they are located, and reiterates its position that that statutory construction and good policy mandate an inclusive definition of insular.

Section 254(b)(3) of the Act provides for the federal universal service program and mandates that consumers in all regions of the nation, including “insular” areas, have access to advanced services.<sup>11</sup> In its 1999 *Unserved Areas NPRM*, the Commission acknowledged that “in common usage, the term insular area means ‘of, or having the form of an island.’”<sup>12</sup> The State of Hawaii clearly falls within this plain meaning and because no ambiguity exists, the *Unserved Areas NPRM* inquiry should have ended there. Likewise, Section 153(40) of the Act defines the term “State” to include all United States “territories and possessions.”<sup>13</sup> In accordance with this

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<sup>9</sup> *Ninth Broadband NOI*, ¶ 39, n. 104.

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

<sup>11</sup> See 47 U.S.C. § 254(b)(3).

<sup>12</sup> *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, 21233 ¶ 137 (1999) (“*Unserved Areas FNPRM*”).

<sup>13</sup> 47 U.S.C. § 153(40).

definition, the Commission has previously found that several of Section 254's universal service provisions apply equally to States and territories.<sup>14</sup>

The Commission has in the past attempted to glean additional guidance regarding the definition of insular by canvassing the use of the term in other federal statutes.<sup>15</sup> Such a review demonstrates only that technical terms, such as insular, must be defined based on the history and purposes of the federal statutes in which they are used. For example, at least one federal statute defines insular to include the State of Hawaii,<sup>16</sup> while other federal statutes define insular to exclude Puerto Rico.<sup>17</sup> Indeed, the NOI itself varies on the usage of "insular areas," first citing the definition at 47 C.F.R § 2.1 of "a jurisdiction that is neither a part of the several States nor a Federal district"<sup>18</sup> but later noting that "it is important to understand whether certain areas, such as U.S. Territories or insular areas, face special barriers to deployment."<sup>19</sup> These inconsistent and sometimes contradictory uses of the term underscore that it is susceptible to multiple interpretations based on the context. In the context of universal service, insular is best understood as referring to those areas, such as Hawaii and other islands – regardless of whether

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<sup>14</sup> See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, FCC 99-269, CC Docket Nos. 97-21, 96-45 (Nov. 1, 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).

<sup>15</sup> *Unserved Areas NPRM*, ¶ 137.

<sup>16</sup> See 16 U.S.C. § 1447(b) (Regional Marine Research Boards).

<sup>17</sup> See, e.g., 16 U.S.C. § 2503(k) (Urban Park and Recreation Recovery) and 42 U.S.C. § 5204 (disaster survival and recovery).

<sup>18</sup> *Ninth Broadband NOI*, ¶ 39 n. 104.

<sup>19</sup> *Id.* n. 105.

they are states, territories, possessions, or otherwise – where geographic isolation and challenging conditions have created particularly difficult deployment environments.

Ultimately, the Commission should interpret “insular areas” to give maximum effect to the principle behind the universal service program, which is “that *all* Americans should have access to communications services universal service.”<sup>20</sup> This premise has been “the core of the Commission’s mandate since its founding,”<sup>21</sup> and a narrowly circumscribed definition of “insular areas” does not give effect to this mission or to the plain reading of the Act. 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.

## **II. HAWAII NEEDS ACCESS TO VERY HIGH COST AREAS SUPPORT TO ACHIEVE UNIVERSAL BROADBAND DEPLOYMENT**

One of the major inquiries of the *NOI* is whether broadband is being delivered to all Americans, including those in hard-to-serve areas such as rural and insular areas, island territories, and tribal lands.<sup>22</sup> Each of these areas faces similar challenges, either in constructing infrastructure, securing enough customers to make a business case, or both. The *NOI* seeks comment on what actions it can take to ensure that advanced telecommunications capability reaches even those areas where buildout is costly, difficult, or not supported by a business case.

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<sup>20</sup> 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 Board on Universal Service; Lifeline and Link-Up*, Notice of Proposed Rulemaking, FCC 11-13, ¶ 2 (rel. Feb 9, 2011) (“*NPRM*”) (emphasis added).

<sup>21</sup> *Id.*

<sup>22</sup> *Ninth Broadband NOI*, ¶¶ 37-39, 41.

The Commission’s major initiatives in this regard, pursuant to its newly-created Connect America Fund (“CAF”) are the Mobility Fund and the Remote Areas Fund, two programs of particular importance to Hawaii and other similarly insular areas.

**A. The Mobility Fund Phase I Auction May Not Increase Service in Hawaii**

The Commission created the CAF Mobility Fund based on its conclusion that “mobile voice and broadband services provide unique consumer benefits, and that promoting the universal availability of such services is a vital component of the Commission’s universal service mission.”<sup>23</sup> The two-phase Mobility Fund is “the first universal service mechanism dedicated to ensuring availability of mobile broadband networks in areas where a private-sector business case is lacking.”<sup>24</sup> Phase I of the Mobility Fund is a one-time \$300 million support to be distributed through a reverse auction, designated Auction 901, that is primarily intended for those regions for which there is a business case for mobile network operations but not for initial buildout.

On September 14, 2012, the Commission released its final list of 52 qualified bidders for Auction 901.<sup>25</sup> Based on a facial review of the list, other than one national carrier, there is no indication that any of the potential bidders has a significant history or current holdings in the State. Although Hawaii supports the Mobility Phase I auction and hopes to see some or all of its unserved areas included in the bidding, it recognizes the possibility that such areas are too remote or insular to form a business case under Mobility Phase I.

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<sup>23</sup> *USF/ICC Transformation Order*, ¶ 28.

<sup>24</sup> *Id.*

<sup>25</sup> *Mobility Fund Phase I Auction, 52 Bidders Qualified to Participate in Auction 901*, Public Notice, DA12-1456, Attachment A.

Mobility Fund Phase II will provide \$500 million dollars annually to provide ongoing support.<sup>26</sup> In contrast to Phase I, which will provide one-time funding for the expansion of current and next generation mobile networks, Phase II is intended to provide recurring support for those mobile service infrastructure serving areas where the cost is too high to offer cost-effective service at reasonable rates.<sup>27</sup> However, to the extent that Hawaii markets are not among the winning bids for infrastructure buildout support in the Phase I auction, there may not be any new infrastructure to which Phase II support could be applied.

Thus, the State believes that the cost of full deployment and maintenance of sufficient broadband facilities may need to be met by the recurring support to be provided by the Commission's Remote Areas Fund.

#### **B. Remote Areas Fund Support is Appropriate to Hawaii's Circumstances**

The State has previously filed comments expressing the importance of Remote Areas Fund support to broadband deployment in the insular and challenging deployment environment of the Hawaiian Islands.<sup>28</sup>

Telecommunications providers in the state have also explained that high-cost support is crucial to meeting the needs of their customers because costly and difficult construction coupled with limited revenues due to Hawaii's sparse rural population mean that there is limited or no business case for the extensive infrastructure projects necessary to assure reliable service to

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<sup>26</sup> *USF/ICC Transformation Order*, ¶ 494.

<sup>27</sup> *Id.*, ¶ 493.

<sup>28</sup> State of Hawaii, Written Ex Parte Presentation, WC Docket No. 10-90, et al. (Mar. 5, 2012).

remote parts of the islands.<sup>29</sup> Making the infrastructure investment required to provide universal service in areas where the cost of deployment and maintenance is greater than the expected revenue is precisely the goal of remote areas support, and Hawaii's insular environment of isolated islands, steep volcanic mountains, rain forests, and nearly inaccessible communities creates significant cost challenges for carriers attempting to provide universal service.<sup>30</sup>

For this reason, the per-line cap of \$250 per month<sup>31</sup> on universal service support is not likely to be sufficient to achieve service in many instances across rural portions of Hawaii, particularly in those areas where no infrastructure yet exists. Indeed, Hawaii's unserved areas include not just remote island and rural areas, but also unserved areas of the Hawaiian Home Lands, which fall within the Commission's "tribal lands" classification.<sup>32</sup> The uniquely remote and insular deployment environment, as well as the low population density and high cost of deployment, provide the "further justification" as envisioned for ongoing very high-cost support in the *USF/ICC Transformation Order*.<sup>33</sup>

Hawaii understands that there is a Public Notice on the Remote Areas Fund forthcoming in September. The State is keenly interested in this important addition to the universal service toolbox and looks forward to commenting on the Public Notice when it is released.

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<sup>29</sup> See e.g. Reply of Hawaii Telecom, Inc, High-Cost Universal Service Support, WC Docket No. 05-337, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, at 2-5 (Jun. 8, 2009).

<sup>30</sup> Hawaiian Telecom, Ex Parte Presentation, Docket 09-51 et al., H-BAF Presentation at 2 (Oct. 7, 2011).

<sup>31</sup> *USF/ICC Transformation Order*, ¶ 27; *Id.* at Appendix A, ¶ 37 (§ 54.302 Monthly per-line limit on universal service support).

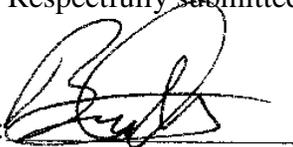
<sup>32</sup> *Id.*, ¶ 126 n.197.

<sup>33</sup> *Id.*, ¶ 274.

### III. CONCLUSION

For the reasons set forth above, the State respectfully requests that the Commission include Hawaii in the definition of insular area for purposes of receiving funding and other support targeted to insular areas, and to move forward expeditiously with making Mobility Fund and Remote Areas Fund support mechanisms available to extend broadband into the underserved areas of Hawaii. The Commission has routinely recognized the importance of making available broadband service to *all* regions of our nation.<sup>34</sup> Hawaii believes that these support mechanisms are critical to overcoming the economic and geographic challenges prevalent in insular areas such as Hawaii, and enabling operators to deploy the broadband infrastructure necessary to offer affordable broadband services to these often unserved regions in fulfillment of the Commission's universal service goals.

Respectfully submitted,

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<sup>34</sup> See 47 U.S.C. § 151.