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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92

REPLY COMMENTS OF HAWAIIAN TELCOM

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

Gregory J. Vogt
Law Offices of Gregory J. Vogt, PLLC
101 West Street, Suite 4
Black Mountain, NC 28611
(828) 669-2099
gvogt@vogtlawfirm.com

September 8, 2014

Table of Contents

SUMMARY

Hawaiian Telcom ("HT") and its affiliates provide telecommunications and broadband services in the nation's only island State, where it faces unique circumstances that make serving its customers more costly. HT serves a geographically isolated area of several islands with diverse climate, topography, and character. Violent storms, harsh sun, corrosion from salt air, and seismic activity all combine to increase HT costs. Extensive environmental and zoning laws can increase HT's costs. All of these factors make any investment challenging.

HT applauds the Bureau's efforts to make modifications to the Connect America Cost Model ("CACM") to take into account the higher costs faced by price cap carriers in non-contiguous areas of the United States. Notwithstanding, the Bureau failed to make certain changes, such as HT's proposals regarding modeling costs for undersea cables, designation of the State as entirely made up of hard rock, and unique plant mix. Because of this failure, it is imperative that the Commission stabilize its broadband parameter requirements, and provide flexibility in meeting service standards associated with a price cap company making statewide commitments for Connect America Fund, Phase II ("CAF II").

If the Commission adopts higher broadband speed requirements, it must alter other parameters and deployment rules to promote broadband in price cap territories. In line with other commenter suggestions, the changes recommended are:

- An increase in the broadband speed required of CAF recipients to 10 Mbps should be conditioned on concurrent changes being made to other terms of the statewide offer.
- The upload speed should not exceed 1 Mbps.
- Given that the costs of a 10/1 Mbps speed standard are significantly higher than for 4/1 Mbps, the Commission should adopt a ten-year term for support and adjust its interim and final build-out milestones accordingly.
- The Commission should permit providers making a statewide commitment to serve 90 percent of eligible locations, with support reductions made on a one-for-one basis.

- The Commission should permit price cap carriers to substitute for their location commitments, unserved customer locations in census blocks that are designated as "served."

The proposed changes would account for CACM modeling inaccuracies and promote provision of broadband to unserved customers, thus furthering the Commission's broadband objectives.

The Commission should throughout the funding period exclude census blocks from support eligibility only where "served" by an "unsubsidized" fixed terrestrial broadband and voice provider which provides services meeting the Commission's broadband parameters:

- HT opposes dropping the limiting phrase "unsubsidized" from the definition of "served" customer locations because such a policy would eliminate support to a provider that has previously proven the need for universal service subsidies.
- There is no basis for the Commission to revisit its "served" location exclusion by adding mobile providers to the definition of "unsubsidized" provider.
- The Commission should use 10 Mbps as the standard for determining the presence of an unsubsidized competitor in a census block.
- The Commission should remove census blocks from eligibility for a CAF II statewide election only when based on a granted application for a rural broadband experiment.

The Commission should adopt the same broadband service parameters for providers that are successful in the CAF II competitive bidding process as apply to price cap carriers making a statewide election. This would not only be fair to all CAF II support recipients, it would also correct any skewed competitive incentives that might be created by permitting bidders to commit to less-stringent requirements. For instance, the Commission should adopt its proposal to apply the 100 ms roundtrip latency benchmark to its broadband commitments.

Adoption of these proposals would provide better incentives to price cap carriers providing broadband to unserved locations, particularly for those carriers servicing non-contiguous areas of the country. In order to accelerate broadband deployment in rural areas of price cap companies, the Commission should promptly adopt modified CAF II obligations so that it can begin providing support at the beginning of calendar year 2015.

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	))	WC Docket No. 07-135
	)	
Developing an Unified Intercarrier Compensation Regime	))	CC Docket No. 01-92

REPLY COMMENTS OF HAWAIIAN TELCOM

Hawaiian Telcom ("HT") hereby submits its reply in the above-captioned proceeding in which the Federal Communications Commission ("FCC" or "Commission") proposes to establish procedures for awarding Connect America Fund, Phase II ("CAF II" or "Phase II") support for price cap carriers,[1] including those who serve areas outside the contiguous United States.[2] The *FNPRM* proposes a number of service parameters applicable to broadband service required in exchange for acceptance of CAF II funds. HT supports those commenters which request that the Commission adopt more flexible service deployment rules in order to

---

[1] *Connect America Fund* ,WC Docket No. 10-90, *et al*., Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2014) ("*FNPRM*").

[2] The locations involved are the States of Alaska and Hawaii, and the territories of Puerto Rico, U.S. Virgin Islands, and the Commonwealth of the Northern Marianas Islands. *Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 193 (2011), *aff'd, Direct Communications Cedar Valley v. FCC (Universal Service Issues)*, 753 F.3d 1015, 1054 (10th Cir. 2014) ("*USF/ICC Transformation Order*") (other subsequent history omitted).

accommodate a higher 10 Mbps download speed requirement. In imposing higher standards on CAF II recipients, the Commission should especially be mindful of the unique circumstances affecting price cap carriers serving non-contiguous areas. In order to accelerate broadband deployment in rural areas of price cap companies, the Commission should promptly adopt modified Phase II obligations so that it can begin providing CAF II support at the beginning of calendar year 2015.

I. INTRODUCTION.

A. HT Incurs Significantly Higher Costs Than Other Parts of the Continental United States.

HT and its affiliates constitute a diversified communications company operating throughout the State of Hawaii, providing voice, broadband, and video services. It provides local voice services in large part as an incumbent local exchange carrier regulated under the Commission's price cap rules. As a broadband service provider in the nation's only island State, HT faces unique circumstances that make serving its customers difficult and costly.

First, HT serves a geographically isolated area made up of several islands with diverse climate, topography, and character. Violent storms, harsh sun, corrosion from salt air, and seismic activity all combine to increase HT costs.[3] Two recent examples of the harsh environment are the 2011 tsunami that hit the Kona coast of the Big Island[4] and the recent Tropical Storm Iselle, which seriously damaged portions of the Big Island and Maui.[5]

---

[3] Comments of Hawaiian Telcom, Inc., WC Docket No. 10-90, 9-12 (filed Mar. 11, 2013) ("HTI Non-Contiguous Area Comments").

[4] Hawaii County Surveys Tsunami Damage, Kona Hit Hard, Big Island Video News (Mar. 11, 2011), *available at* http://www.bigislandvideonews.com/2011/03/11/hawaii-county-surveys-tsunami-damage-kona-hit-hard/ (last viewed Sept. 8, 2014).

[5] *See, e.g.*, Maya Srikrishnan, Iselle Hits Hawaii: Heavy Rain Damages Homes; Roads Blocked, Los Angeles Times (Aug. 8, 2014), *available at* http://www.latimes.com/nation/nationnow/la-na-nn-hawaii-storm-iselle-juliio-20140808-

Second, the State, as a major tourist hub, has extensive environmental and zoning laws in order to protect the natural beauty of the islands.[6]

Third, Hawaii's population is dispersed throughout the islands with the exception of a single population center in Honolulu. Located in the middle of the Pacific Ocean, Hawaii is considered to be the most geographically isolated of all major population centers on the planet. Seventy two percent of Hawaii's population lives on the island of Oahu, with most of those people resident in the city of Honolulu. The remaining population—approximately 335,000 people—are scattered throughout the remaining islands. Thus, the majority of the islands have an extremely low population density.[7]

Fourth, HT lacks other sources of funding for network investment. This combination of factors makes providing service to Hawaii's historically underserved and economically challenged population particularly difficult and underscores the need for sufficient universal service support to provide broadband and voice services in its rural and insular locations.[8]

B. Despite Beneficial Bureau Efforts, The CACM Does Not Adequately Identify and Reimburse Hawaii Costs.

HT applauds the Bureau's efforts to make modifications to the Connect America Cost Model ("CACM") to take into account the higher costs faced by price cap carriers in non-

---

story.html (last viewed August 25, 2014). Tropical Storm Iselle made landfall on the Big Island of Hawaii and Maui on August 8, 2014, creating power outages and causing flooding and road closures to remote areas on those islands, including downed communications and power lines. HT's infrastructure is still being repaired; the restoration is expected to be completed by the end of September 2014.

6 HTI Non-Contiguous Area Comments at 19-20.

7 *Id.* at 8-9.

8 *Id.* at 8-13; Reply Comments of Hawaiian Telcom, Inc., WC Docket No. 10-90 (filed Mar. 25, 2013).

contiguous areas of the United States.[9] As a result of these efforts, the CACM produces additional universal service funding for Hawaii over that provided previously.[10] HT supports the Commission's modeling efforts and believes that the CACM holds the promise of furthering the FCC's broadband deployment goals to an extent. Notwithstanding, the Bureau failed to make certain changes that were necessary to properly model Hawaii costs.

Of most significance, unlike the rest of the United States, HT must depend on deep sea submarine cables to provide voice and broadband transport facilities to connect to the U.S. mainland.[11] Although fiber is the best choice for interstate connectivity, deploying submarine fiber entails substantial costs, as HT has fully explained elsewhere.[12] The near-final CACM v4.1.1, continued to use the same erroneous formulation of transpacific undersea cable costs as used in an earlier version of the model. Although the Commission did include special adjustments for undersea cable costs for price cap carriers serving non-contiguous areas, HT identified specific parameters that would have better modeled undersea cable costs utilizing real market scenarios based on the use of total lit capacity, modeling based on all provider cables, as well as more real world utilization factors.[13] HT also did not agree with all the final parameters of CACM v4.0, such as the failure to treat Hawaii as entirely made up of hard rock or to adjust

---

9 *Connect America Fund et al.*, WC Docket No. 10-90, *et al.*, Report and Order, 29 FCC Rcd 3964 (Wir. Comp. Bur. 2014).

10 Public Notice, *Wireline Competition Bureau Releases Results for Adopted Connect America Cost Model (CACM v4.1.1)*, 29 FCC Rcd 4126 (Wir. Comp. Bur. 2014) (results spreadsheet for v4.1.1 available at http://www.fcc.gov/encyclopedia/connect-america-cost-model-illustrative-results (last viewed Aug. 25, 2014)). The original high cost model generated no high cost support for Hawaii due to study-area-wide averaging.

11 Comments of Hawaiian Telcom, Inc., WC Docket No. 10-90, DA-13-1846, 2-6 (filed Sept. 12, 2013) ("HTI CACM v3.2 Comments").

12 HTI Non-Contiguous Area Comments at 9.

13 Comments of Hawaiian Telcom, Inc., WC Docket No. 10-90, DA-13-2304, 4-9 (filed Jan. 7, 2014) .

plant infrastructure mix factors to be consistent with HT's current plant mix. Support for taking into account these additional factors has been well documented in previous HT comments.[14]

Given that the CACM decisions continue modeling inaccuracies, it is vital that the FCC's CAF II polities be adjusted to reduce investment disincentives that will adversely affect Hawaii.

II. IF THE COMMISSION ADOPTS HIGHER BROADBAND SPEED REQUIREMENTS, IT MUST ALTER OTHER PARAMETERS AND DEPLOYMENT RULES TO PROMOTE BROADBAND IN PRICE CAP TERRITORIES.

HT does not oppose the Commission's proposal to increase the broadband speed required of CAF II recipients to 10 Mbps download speed,[15] conditioned on concurrent changes being made to other terms of the statewide offer. The upload speed should not exceed 1 Mbps.[16] HT believes that the higher speed can be a realistic expectation based on customers' growing expectations. As a consequence, however, the Commission must adjust broadband build-out requirements to accommodate the much more challenging infrastructure demands associated with the increased speed.[17] Changing the standard requires that the network be designed and built to meet the anticipated evolved standard. This planning effectively increases network deployment costs at the outset, seriously impacting the number of locations to which faster

---

[14] HTI CACM v3.2 Comments at 6-10.

[15] Comments of United States Telecom Association, WC Docket No. 10-90, *et al*., 2-4 (filed Aug. 8, 2014) ("USTelecom Comments"). HT supports USTelecom's requested modifications to the Commission's CAF II funding proposals. *See also* Comments of CenturyLink, WC Docket No. 10-90, *et al*., 11 (filed Aug. 8, 2014) ("CenturyLink Comments").

[16] Commenters urge the Commission not to adopt a higher standard than 1 Mbps upload speed. A 1 Mbps upload speed should be adequate for the vast majority of customers over the long term, and reengineering the network for higher upload speeds necessarily poses a serious detriment to delivering higher download speeds. *See, e.g.*, Comments of Alaska Communications Systems, WC Docket No. 10-90, *et al*., 31 (filed Aug. 8, 2014) ("ACS Comments"); USTelecom Comments at 4; CenturyLink Comments at 11.

[17] *See* Sections II.A-C, *infra*.

broadband can be extended. These infrastructure costs are particularly challenging in Hawaii, as specified above.[18]

Notwithstanding, if the Commission adopts the higher standard, CACM cost estimates will increase, and that result will impact support levels because the universal service budget is static.[19] Although the American Cable Association ("ACA") claims that the current model estimates already cover higher speed broadband,[20] most commenters correctly observe that higher speeds entail different network infrastructure enhancements and added costs.[21] These modified costs are significant for some carriers. For Hawaii, the modified results significantly reduce the amount of funding per location, which is a relatively arbitrary change.[22] Such results will put pressure on HT's ability to meet FCC build-out requirements, consequently risking the ability to make a statewide commitment and thereby potentially adversely affecting the ability of any provider to provide broadband service to the areas affected.

---

18 *See* Sections I.A & B., *supra*.

19 Public Notice, *Wireline Competition Bureau Releases Connect America Cost Model Illustrative Results Using Higher Speed Benchmark*, DA 14-833 (Wir. Comp. Bur. Rel. Jun. 17, 2014) (results spreadsheet for v4.1.1 (10/1 Mbps) available at http://www.fcc.gov/encyclopedia/connect-america-cost-model-illustrative-results (last viewed Aug. 25, 2014)).

20 Further Notice of Proposed Rulemaking Comments of the American Cable Association, WC Docket No. 10-90, *et al*., 4-9 (filed Aug. 8, 2014) ("ACA Comments").

21 CenturyLink Comments at 7-10; ACS Comments at 26; Comments of the ITTA—The Voice of Mid-Size Communications Companies, WC Docket No. 10-90, *et al*., 11 (filed Aug. 8, 2014) ("ITTA Comments"); Comments of Windstream Corp., WC Docket No. 10-90, *et al*., 2-3 (filed Aug. 8, 2014) ("Windstream Comments").

22 A rational way to promote investment incentives in non-contiguous areas of the United States, a position that the Commission is committed to, would ensure that there is no reduction in the overall funding commitment for non-contiguous areas. *USF-ICC Transformation Order*, ¶ 193. Adopting such a policy would also avoid the significant swings in support that occur when different model runs are made using different scenarios. But even if such a mechanism is adopted, the Commission should continue to refuse to make further changes to broadband parameters during the period of CAF II funding.

This is particularly the case with changing standards, which creates uncertainty and deters investment incentives.[23] Such uncertainty would occur if there is a threat that mandatory deployment requirements might increase during the period of the funding. Such risk during the middle of a program exposes a project to failure, even at the outset when statewide commitments are being formulated. Such a result is markedly inconsistent with the Commission's broadband deployment objectives. Thus, if the Commission is going to adopt new standards, such as the 10/1 Mbps requirement, it should adopt them prior to initiating CAF II statewide commitments, then maintain the requirements unchanged until the deployment period is ended.[24]

A. A Ten-Year Deployment Period Would Ease the Ability of Price Cap Carriers to Meet the FCC's Higher Objectives.

Given that the costs of a 10/1 Mbps speed standard are significantly higher than for 4/1 Mbps, and the lower standard has not yet become effective for CAF II funding, the Commission should adopt a ten-year term for support.[25] Building a network to achieve 10/1 Mbps requires fiber to be extended closer to customer premises, which build-out costs are especially high in Hawaii with its difficult terrain and climate, as well as historical preservation and environmental issues.[26] To achieve such higher objectives, capital and operating expenses will be incurred, some extending well beyond the funding period. The Commission should also make

---

[23] *See, e.g.*, sources cited in Comments of AT&T, Inc., GN Docket No. 10-127, 2-5 (filed Jul. 15, 2010); P. Fajgelbaum, E. Schall, M. Taschereau-Dumouchel, *Uncertainty Traps* (available at http://www.parisschoolofeconomics.eu/IMG/pdf/uncertainty_traps.pdf (last viewed August 26, 2014)); USTelecom Comments at 2; CenturyLink Comments at 11-12.

[24] The Constitution's due process clause condemns cost-recovery methodologies which are not adjusted to provide fair compensation to account for mid-course regulatory changes. *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 315 (1989)("[A] State's decision to arbitrarily switch back and forth between methodologies in a way which required investors to bear the risk of bad investments at some times while denying them the benefit of good investments at others would raise serious constitutional questions.").

[25] USTelecom Comments at 4-6; ITTA Comments at 10-12; CenturyLink Comments at 20; Windstream Comments at 3.

[26] HTI Non-Contiguous Area Comments at 9-12, 19-20.

corresponding extensions to the mandatory build-out milestones which occur prior to the end of the ten-year period.

As the United States Telecom Association ("USTelecom") indicates, the ABC Coalition originally proposed a ten-year deployment period.[27] And the longer period would be more consistent with the term that the Commission proposes for ETCs that are awarded CAF Phase II support through a competitive bidding process,[28] as well as the winning bidders in the rural broadband experiments,[29] including the broadband speed requirement of 10/1 Mbps for one class of experiment.[30] Extending the term of support will promote market-driven investment incentives, stability, and ultimately better achieve the Commission's broadband service deployment objectives. The Commission should reward this positive achievement, not punish it with proposals suggested by cable TV competitors that will be a disincentive to price cap companies.[31]

ACA argues that the build-out period for price cap carriers should remain at five years, primarily because it alleges that the CACM was designed to adequately fund networks built to deliver 4/1 or 10/1 Mbps.[32] If this statement were true, the illustrative results published for 10/1 Mbps would not have identified different funding amounts or covered locations, which clearly is not the case. And these nay-saying comments are based in large part on the prejudice that

---

27 USTelecom Comments at 5.

28 *See FNPRM*, ¶ 35.

29 *See Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report & Order & Further Notice of Proposed Rulemaking, FCC 14-98 (rel. Jul. 14, 2014).

30 *Id.*, ¶74.

31 ACA Comments at 4.

32 *Id.* at 5.

CACM is too generous, and therefore funding should be scaled back.[33] As stated previously, CACM's hypothetical results underestimate costs, particularly for Hawaii.[34] Unless the Commission wishes to undermine its broadband deployment objectives, it should err on the side of providing flexibility so that consumers will actually enjoy the benefits of broadband. It is significant that the Commission has frequently noted that broadband deployment in rural areas of price cap territories are particularly behind the rest of the country.[35] A more realistic ten-year build-out requirement will better reflect operational difficulties in Hawaii and better achieve the Commission's broadband deployment objectives.

B. The Commission Should Allow Price Cap Companies Flexibility to Serve Less Than 100 Percent of Customer Locations.

The FCC should adopt its proposal to allow price cap carriers the flexibility to serve less than 100 percent of eligible locations. HT agrees with US Telecom's proposal that service to 90 percent of eligible locations should be sufficient to meet CAF II broadband requirements.[36] Because price cap carriers are forced to make statewide commitments to serve, a lack of flexibility raises the risk that the provider may eventually be forced to remit 100 percent of the funds received, a very steep penalty that risks undermining investment incentives. This risk is exacerbated because of the arbitrariness of the CACM customer location outputs. This problem is acute in Hawaii because the State has problems with its addressing system, particularly in the

---

33 *Id.* at 7-9.

34 *See* Section I.B., *supra*.

35 The Commission agreed with this conclusion when it stated that 83 percent of Americans who lack access to fixed broadband live in price cap territories, and carriers who serve them do not receive targeted support to enable service equivalent to that available in urban areas. *USF-ICC Transformation Orde*r, ¶ 127. *See also* Federal Communications Commission, Connecting America: The National Broadband Plan, GN Docket No. 09-51, at 141 (rel. Mar. 16, 2010).

36 USTelecom Comments at 13. *See also* CenturyLink Comments at 13; Windstream Comments at 5.

rural areas of the state subject to CAF II funding. In order to smooth out the inaccuracies inherent in CACM output locations, flexibility can take into account unforeseen variables, while still achieving the lion's share of the intended obligation.

In exchange for the slightly reduced number of locations served, it is more logical to require a pro-rata percentage reduction in support, as suggested by a number of commenters.[37] ACA, on the other hand, argues that this procedure would allow price cap companies to game the system by substituting low cost customers with high cost ones.[38] This argument ascribes unproven motives to price cap carriers committed to expanding broadband services, and ignores the benefits of extending broadband deployment to unserved customers. A directly proportional reduction approach would smooth out any inaccuracies and would require only a simple calculation to determine the amount.

Permission to serve to 90 percent of the funded locations would encourage providers to deploy a cost-efficient network, the prime motivation behind use of modeled costs.[39] CAF II recipients would still be motivated to serve as close to 100 percent of locations as possible to increase support and meet customer demand. A 90 percent service commitment rightfully recognizes that the CACM likely inaccurately counts locations in certain areas. If the model substantially over-counts locations, as some have demonstrated,[40] the 95 percent level suggested in the *FNPRM*[41] may effectively be significantly higher, because the locations that do not

---

[37] USTelecom Comments at 14; Windstream Comments at 5.

[38] ACA Comments at 10-12.

[39] *USF-ICC Transformation Order*, ¶¶ 74.

[40] ACS Comments at 19.

[41] *FNPRM*, ¶ 165.

actually exist are included in the percentage calculation. Serving 90 percent of the locations addresses this problem without appreciably impacting the number of customers served.

C. Price Cap Carriers Should Be Able to Substitute Unserved Customer Locations Located in "Served" Census Blocks to Meet the Location Commitment.

The Commission should adopt an additional flexibility measure that would permit price cap carriers to meet their location commitments by substituting unserved customer locations in census blocks designated as "served." The Commission's policies classify a census block as "served" when only one but not all locations can obtain eligible service from an unsubsidized competitor.[42] Such a policy inevitably may leave certain customers in "served" census blocks without access to broadband service. The National Cable & Telecommunications Association ('NCTA") opposes permitting location substitution because they allege it would produce inefficiencies and "abuse" regarding what is an "unserved" location, mostly associated with any challenge process.[43]

Defining "served" census blocks based on service to a minimum of one location was viewed as efficient at the outset. Nevertheless, the Commission must recognize that such a policy risks punishing customers located within "served" census blocks who may continue to be denied access to broadband service. This is especially true in rural, low density areas with large geographical census blocks. The Commission correctly notes about its substitution proposal: "This approach could enable more effective network deployment and bring service to unserved consumers in those partially served census blocks."[44] Allowing substitutions promotes

---

[42] USTelecom Comments at 15-16; ACS Comments at 17-18; ITTA Comments at 14-15; Windstream Comments at 6.

[43] Comments of National Cable & Telecommunications Association, WC Docket No. 10-90, *et al.*, 8 (filed Aug. 8, 2014) ("NCTA Comments").

[44] *FNPRM*, ¶ 167.

achievement of ubiquitous broadband deployment goals and therefore should be adopted. Substituted locations should be permitted on a pro-rata basis to account for CACM inaccuracies, for the same reasons as permitting price cap carriers to serve less than 100 percent of modeled locations.[45]

NCTA's claim that the Commission would be mired in challenges to such substituted locations is highly exaggerated. Any challenge would be made based on the price cap carrier's deployment report, which does not entail the same abbreviated time period associated with the up-front challenge process.[46] Given enforceable provider certifications of their compliance with the rules, together with audit and document retention policies, the chance for abuse is highly limited. In any event, the slight potential for abuse would be significantly outweighed by the palpable benefits achievable by bringing new service to admittedly unserved customers.

III. ELIMINATION OF SUPPORT IN AREAS SERVED BY AN "UNSUBSIDIZED PROVIDER" SHOULD NOT BE MODIFIED.

The Commission has in the *FNPRM* also solicited comments as to whether it should alter several policies applicable to excluding certain areas from receiving support. In the *USF-ICC Transformation Order* the Commission has already adopted policies regarding funding only areas unserved by an unsubsidized terrestrial fixed broadband service provider.[47] The facts that led to the adoption of this policy are still in effect and therefore the current definition should be retained.

---

45 *See* Section II.B., *supra*.

46 *Connect America Fund*, WC Docket No. 10-90, Order, 28 FCC Rcd 7211, ¶¶ 23-29 (Wir. Comp. Bur. 2013), *recon. den*ied, DA 14-1169 (Wir. Comp. Bur., rel. Aug. 11, 2014); Public Notice, *Wireline Competition Bureau Provides Guidance Regarding Phase II Challenge Process*, WC Docket Nos. 10-90, DA 14-864 (Wir. Comp. Bur., rel. Jun. 20, 2014).

47 *USF-ICC Transformation Order*, ¶ 24.

A. The Commission Should Not Adopt Its Proposal to Eliminate Support in Areas Served by a Subsidized Provider.

HT opposes dropping the limiting phrase "unsubsidized" from the funding "served" customer exclusion definition.[48] Adoption of such a policy would eliminate support to any provider in those census blocks, even though a provider has previously proven the need for universal service subsidies.[49] Such a policy would be problematic in Hawaii, where Sandwich Isles, a rural provider that receives high cost support, has unique overlapping service areas which cover some customer locations located in the same census blocks as HT's customers are located.[50] Some commenters cynically support such a proposal, most probably not because they believe in universal service support for broadband, but rather because they want it limited.[51] The Commission should reject such arguments.

The Commission in the *FNPRM* only justifies the proposed policy on the basis that it would be unwise to spend universal service support on areas already served by broadband provider whose service meets the Commission's definition. However, the proposed change makes an unsubstantiated assumption that the competitive eligible telecommunications carrier ("CETC") will continue to provide service in the census block.[52] If both providers originally were subsidized, there is every reason to believe that at least one provider can make a case that

---

48 *See FNPRM*, ¶ 174; USTelecom Comments at 18.

49 This is particularly so for areas where support is being phased down, but has not been totally eliminated due to application of the now rescinded identical support rule. *See, e.g.*, Application for Review of Alaska Communications Systems 12 (filed Nov. 26, 2013).

50 HT's study area includes the entire State of Hawaii. Sandwich Isles "study area" includes a confusing array of individual locations scattered throughout HT's price cap study area. See description of Sandwich Isles' "patchwork" study area in Opposition of Hawaiian Telcom, Inc. to Petition for Expedited Study Area Waiver, *Sandwich Isles Communications Inc. Petition for Waiver of the Definition of "Study Area" of the Appendix-Glossary of Part 36 of the Commission's Rules*, CC Docket No. 96-45, 2 (filed Mar. 4, 2013).

51 *See, e.g.*, NCTA Comments at 9-11.

52 *See NPRM*, ¶ 177.

its continued ability to meet the Commission's service commitments in the census block is not justified by economic principles. Therefore, retaining CAF II support for the price cap carrier is necessary to meet the Commission's broadband deployment goals.

B. The Commission Should Not Treat Mobile Broadband Providers as an "Unsubsidized" Provider.

While the Commission has determined that CAF II support should be eliminated where already served by an "unsubsidized" terrestrial fixed voice and broadband provider, as other commenters have argued, the Commission should not add wireless providers to the definition of "unsubsidized provider."[53] The Competitive Carriers Association ("CCA") proposed this change once CAF II competitive bidding is operational.[54] CCA claims that such a change should be made in order to put all providers on an equal footing.

CCA's proposal should be rejected. The Commission rejected wireless technology as functionally equivalent to fixed terrestrial broadband services because of differences in coverage, reliability, and failure to meet the Commission's broadband parameters.[55] USTelecom and others outline such concerns.[56] The Mobility Fund II is being developed in order to meet support needs of wireless customers.[57] CCA's proposal is not justified at this point in time, and therefore should be rejected. If mobile technologies at some later date should be included in the policy, the Commission can conduct a rulemaking at that time to determine the wisdom of a change in the definition of "unsubsidized provider."

---

[53] USTelecom Comments at 8; Windstream Comments at 7-8; Comments of The Wireless Internet Service Providers Association, WC Docket No. 10-90, *et al.*, 6-7 (filed Aug. 8, 2014).

[54] Comments of Competitive Carriers Association, WC Docket No. 10-90, *et al.*, 19 (filed Aug. 8, 2014).

[55] *USF-ICC Transformation Order*, ¶ 104.

[56] *See* note 54 *supra*.

[57] *USF-ICC Transformation Order*, ¶¶ 295, *et seq.*; *FNPRM*, ¶¶ 235, *et seq.*

C. The Commission Should Define an "Unsubsidized Provider" as One that Meets the New Broadband Parameters.

As it has done in the past, the Commission should define an "unsubsidized provider" as one that meets all of the Commission's broadband parameters, including the new 10/1 Mbps speed standard, if adopted. Excluding potential areas of support based on a lower standard would be inconsistent with its goals of encouraging deployment at the higher parameters. Commenters support retaining this aspect of the "unsubsidized provider" definition.[58]

D. The Commission Should Exclude Census Blocks as "Served" Until a Rural Broadband Experiment Application Has Been Awarded USF Experimental Funds.

The Commission should not remove any census blocks from eligibility for a price cap carrier's CAF II statewide election based solely on a filed application to provide a rural broadband experiment.[59] Only the census blocks that are the subject of winning bids should be used for eligibility purposes, and then only if such bids are awarded prior to the time that the price cap carrier makes its statewide election. As several commenters have argued, an exclusion based on an ungranted application would be inconsistent with Commission policies regarding census blocks eligible for receipt of CAF II funding.[60]

IV. THE COMMISSION SHOULD ADOPT THE SAME BROADBAND SERVICE PARAMETERS IN ITS COMPETITIVE BIDDING PROCESS AS REQUIRED OF PRICE CAP CARRIERS MAKING A STATEWIDE COMMITMENT.

The Commission should adopt the same broadband service parameters for all Phase II providers, including those which make a statewide commitment and competitive bidding

[58] US Telecom Comments at 10; ITTA Comments at 15.

[59] The FCC has announced that such applications are due on October 14, 2014. Public Notice, *Wireline Competition Bureau Announces Application Process for Entities Interested in Participating in the Rural Broadband Experiments*, DA 14-203, 3 (Wir. Comp. Bur., rel. Aug. 19, 2014).

[60] USTelecom Comments at 29; ITTA Comments at 21.

winners.[61] This would not only be fair to all CAF II support recipients, it would also correct any skewed competitive incentives that might be created by permitting bidders to commit to less-stringent requirements. This is particularly the case because competitive bidders will have substantially more deployment flexibility due to the fact that they may serve smaller geographic territories than price cap carriers making statewide elections. Such skewed competitive motivations would also disserve consumers because competitive bidding winners could selectively choose only the least-costly customers to serve, thereby creating a higher cost structure for price cap carriers making statewide elections.

Consistent with this policy, the Commission should adopt its proposal to apply the 100 ms roundtrip latency benchmark to its broadband commitments.[62] This is consistent with the existing standard, and would ensure that service parameters do not deteriorate over time. Satellite providers are the only commenters that request a modification of the latency standard: they propose a range of 500 to 750 ms, an increase of five to eight times over the current latency requirement.[63] That standard far exceeds the maximum latency parameter customers will tolerate, as the Bureau has previously concluded.[64] To the extent the Bureau has deemed that the roundtrip 100 ms latency benchmark is necessary to render broadband service "suitable for real-time applications, such as VoIP, and with usage capacity reasonably comparable to that available in comparable offerings in urban areas,"[65] there is no logical reason that such standard would not

---

[61] *See* ITTA Comments at 16-17; Windstream Comments at 6.

[62] *See FNPRM*, ¶ 149.

[63] Comments of DISH Network L.L.C. and Hughes Network Systems, LLC, WC Docket No. 10-90, *et al.*, 3-4 (filed Aug. 8, 2014).

[64] *See Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 15060, ¶ 20 (Wir. Comp. Bur. 2013).

[65] *Id.*, ¶¶ 20-22

apply in the context of the competitive bidding process. Relaxing this standard solely to enable satellite participation should be rejected.

V. CONCLUSION

The Commission's universal service support policies have historically short-changed non-contiguous areas of the country, making provision of advanced voice and broadband services difficult. HT applauds the Commission's efforts to date to move forward under CAF II to grant further USF support to price cap carriers serving the non-contiguous area of Hawaii. If the Commission increases its broadband service parameters to 10/1 Mbps, it should alter its broadband deployment rules to accommodate the more challenging construction issues associated with such higher bandwidth speed. Such accommodation would further the Commission's goal to bring robust broadband services to all Americans, including rural areas of price cap territories such as Hawaii. Maintaining such standards for competitive bidding winners would promote stability in the CAF II program, and help ensure proper competitive incentives in seeking additional funds. In order to accelerate broadband deployment in rural areas of price cap companies, the Commission should promptly adopt modified Phase II obligations so that it can begin providing Phase II support at the beginning of calendar year 2015.

Respectfully submitted,

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

Gregory J. Vogt
Law Offices of Gregory J. Vogt, PLLC
101 West Street, Suite 4
Black Mountain, NC 28611
(828) 669-2099
gvogt@vogtlawfirm.com

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

September 8, 2014