

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding for)
the Purpose of Adopting Annual)
Certification Requirements for)
Eligible Telecommunications)
Carriers in the State of Hawaii.)

DOCKET NO. 05-0243

ORDER NO. 22051

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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Karen Higashi.
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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the Purpose of Adopting Annual)
Certification Requirements for)
Eligible Telecommunications)
Carriers in the State of Hawaii.)

ORDER

The commission opens this docket for the purpose of establishing annual certification requirements applicable to entities designated as eligible telecommunications carriers ("ETC" or "ETCs") by the commission, thereby entitling said carriers to federal Universal Service Funding under the Telecommunications Act of 1996 (the "Act"). The commission names as parties to this docket: (1) the three (3) telecommunications providers currently designated by the commission as ETCs in the State of Hawaii ("State") -- GTE Hawaiian Telephone Company, Incorporated ("GTE Hawaiian Tel"), nka Hawaiian Telcom, Inc. ("Hawaiian Telcom"); Sandwich Isles Communications, Inc. ("SIC"); and NPCR, Inc., dba Nextel Partners ("Nextel Partners"); and (2) the Division of Consumer Advocacy ("Consumer Advocate"). Any interested person seeking to intervene or participate in this proceeding shall file a timely motion with the commission.

I.

Annual Certification/Reporting

Pursuant to Sections 254(e) and 214(e)(1) of the Act, only a common carrier that is designated an ETC under Section 214(e) is eligible to receive federal universal support. 47 United States Code ("U.S.C.") §§ 214(e)(1), 254(e); and 47 Code of Federal Regulations ("C.F.R.") § 54.201(a) and (d). A carrier that receives such support "shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 U.S.C. § 254(e); and 47 C.F.R. § 54.7. State commissions must annually certify to the Federal Communications Commission ("FCC") that "all federal high-cost support provided" to an ETC that is subject to its jurisdiction "will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 C.F.R. §§ 54.313(a) and 54.314(a).

To date, the commission has granted ETC status to three (3) entities: GTE Hawaiian Tel, nka Hawaiian Telcom; SIC; and Nextel Partners.¹ Hawaiian Telcom is the incumbent, statewide carrier of telecommunications services. SIC is authorized by the commission to provide intrastate telecommunications services on

¹See Decision and Order No. 16111, filed on December 4, 1997, in Docket No. 97-0363 (GTE Hawaiian Tel); Decision and Order No. 16737, filed on December 9, 1998, in Docket No. 98-0317 (SIC); and Decision and Order No. 21089, filed on June 25, 2004, in Docket No. 03-0104 (Nextel Partners).

The commission designated: (1) Hawaiian Telcom (1997) and SIC (1998) as ETCs without condition; and (2) Nextel Partners (2004) an ETC subject to certain conditions, including annual reporting requirements.

lands administered by the State Department of Hawaiian Home Lands.² Nextel Partners is a duly authorized provider of commercial mobile radio services in the State.³

On February 27, 2004, the Federal-State Joint Board on Universal Service ("Joint Board") issued its Recommended Decision to the FCC.⁴ In part, the Joint Board recommended that the states adopt an annual certification process "for all ETCs to ensure that federal universal service support is used to provide the supported services and for associated infrastructure costs."⁵ "Where an ETC fails to comply with requirements in section 214(e) and any additional requirements proposed by the state commission, the state commission may decline to grant an annual certification or may rescind a certification granted previously."⁶

On June 8, 2004, the FCC issued its Notice of Proposed Rulemaking, seeking comments on the Joint Board's Recommended Decision.⁷ On March 17, 2005, the FCC issued its Report and

²*In re Sandwich Isles Comm., Inc.*, Docket No. 96-0026 (certificate of authority).

³*In re NPCR, Inc.*, Decision and Order No. 17036, filed on June 15, 1999, in Docket No. 99-0038 (certificate of registration).

⁴*In re Federal-State Joint Board on Universal Service*, Recommended Decision of the Federal-State Joint Board on Universal Service, released February 27, 2004, in CC Docket No. 96-45 ("Recommended Decision").

⁵See id. at 19 - 20, paragraphs 46 - 48.

⁶Id. at 20, paragraph 48.

⁷FCC *Notice of Proposed Rulemaking*, adopted June 2, 2004 and released June 8, 2004, in CC Docket No. 96-45.

Order addressing the Joint Board's Recommended Decision.⁸ For the annual certification process, the FCC adopted certain annual reporting requirements for ETCs subject to its jurisdiction.⁹ In particular, every FCC-designated ETC must annually file with the FCC:

1. A progress report on the ETC's five (5)-year service quality improvement plan.
2. Detailed information on any outage lasting at least thirty (30) minutes in any of the ETC's service area.
3. The number of requests for service from potential customers within its service areas that were unfulfilled for the past year.
4. The number of complaints per 1,000 handsets or lines.
5. Certification that the ETC is complying with applicable service quality standards and consumer protection rules.
6. Certification that the ETC is able to function in emergency situations.
7. Certification that the ETC is offering a local usage plan comparable to that offered by the incumbent local exchange carrier in the relevant service areas.

⁸*In re Federal-State Joint Board on Universal Service*, FCC Report and Order, released March 17, 2005, in CC Docket No. 96-45, as amended on April 21, 2005 ("Report and Order"). See FCC Erratum, released April 21, 2005, in CC Docket No. 96-45.

⁹A state commission shall, upon request or its own motion, designate a common carrier that meets the applicable requirements, an ETC for the service area designated by the state commission. 47 U.S.C. § 214(e)(2); and 47 C.F.R. § 54.201(b). See also Hawaii Administrative Rules ("HAR") § 6-81-9(a). However, for common carriers that are not subject to the jurisdiction of a state commission, the FCC is responsible for the ETC designation. 47 U.S.C. § 214(e)(6).

8. Certification that the carrier acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access within the service area.¹⁰

On May 25, 2005, the FCC's annual reporting requirements were published in the Federal Register,¹¹ and are codified at 47 C.F.R. § 54.209. A copy of 47 C.F.R. § 54.209 is attached to this Order as Exhibit 1.

According to the FCC:

These reporting requirements will ensure that ETCs continue to comply with the conditions of the ETC designation and that universal service funds are used for their intended purposes. This information will initially be due on **October 1, 2006**, and thereafter annually on October 1 of each year, at the same time as the carrier's certification that the universal service funds are being used consistent with the Act. In addition, following the effective date of this Report and Order, we anticipate initiating a proceeding to develop procedures for review of these annual reports. Moreover, we anticipate initiating a separate proceeding on or before February 25, 2008, to examine whether the requirements adopted herein are promoting the use of **high-cost support** by ETCs in a manner that is consistent with section 254 of the Act. We further clarify that a carrier that has been previously designated as an ETC under section 214(e)(6) does not have to reapply for designation, but **must comply with the annual certification and reporting requirements on a going-forward basis.**¹²

¹⁰FCC Report and Order, at 31 - 32, paragraph 69. Nextel Partners must already comply with certain of these reporting requirements, in accordance with Decision and Order No. 21089, in Docket No. 03-0104.

¹¹70 Federal Register 29978 - 29979 (1995) (codified at 47 C.F.R. § 54.209).

¹²FCC Report and Order, at 31, paragraph 68 (footnote and citation therein omitted) (emphasis added).

The commission, pursuant to its general and investigative powers, opens this docket for the purpose of establishing annual certification requirements applicable to entities designated as ETCs by the commission.¹³ The commission names as parties to this docket: (1) the three (3) telecommunications providers currently designated as ETCs in the State - Hawaiian Telcom, SIC, and Nextel Partners; and (2) the Consumer Advocate.¹⁴ In addition, interested persons have the opportunity to file, within twenty (20) days from the date of this Order, motions to intervene or participate in this proceeding, pursuant to HAR § 6-61-57(3)(B). The commission envisions the filing of position statements by the parties, followed by the commission's written decision.

The commission will consider adopting the FCC's annual reporting requirements for designated ETCs, codified at 47 C.F.R. § 54.209, to the extent applicable. The FCC found that the annual reporting requirements are reasonable and consistent with the public interest, and encouraged the states to adopt the annual reporting requirements, and to apply the requirements to all ETCs:¹⁵

¹³See Hawaii Revised Statutes §§ 269-6, 269-7, 269-8, and 269-10; and HAR § 6-61-71.

¹⁴Hawaiian Telcom does not receive federal high-cost support funds. Nonetheless, given its status as an ETC, the commission finds it prudent to name Hawaiian Telcom as a party.

¹⁵FCC Report and Order, at 33, paragraphs 70 - 71. "In addition, state commissions may require the submission of any other information that they believe is necessary to ensure that ETCs are operating in accordance with applicable state and federal requirements." Id. at 33, paragraph 71 (footnote and citations therein omitted).

70. We conclude that these reporting regulations are reasonable and consistent with the public interest and the Act. These reporting requirements will further the Commission's goal of ensuring that ETCs satisfy their obligation under section 214(e) of the Act to provide supported services throughout their designated service areas. The administrative burden placed on carriers is outweighed by strengthening the requirements and certification guidelines to help ensure that **high-cost support** is used in the manner that it is intended. These reporting requirements also will help prevent carriers from seeking ETC status for purposes unrelated to providing rural and high-cost consumers with access to affordable telecommunications and information services.

71. **We encourage state commissions to adopt these annual reporting requirements.** To the extent that they do so, **we urge state commissions to apply the reporting requirements to all ETCs,** not just competitive ETCs. In addition, state commissions may require the submission of any other information that they believe is necessary to ensure that ETCs are operating in accordance with applicable state and federal requirements. In doing so, states should conform these requirements with any similar conditions imposed on previously designated ETCs in order to avoid duplicative or inapplicable reporting requirements. Individual state commissions are uniquely qualified to determine what information is necessary to ensure that ETCs are complying with all applicable requirements, including state-specific ETC eligibility requirements.

72. If a review of the data submitted by an ETC indicates that the ETC is no longer in compliance with the [FCC's] criteria for ETC designation, the [FCC] may suspend support disbursements to that carrier or revoke the carrier's designation as an ETC. Likewise, as the Joint Board noted, state commissions possess the authority to rescind ETC designations for failure of an ETC to comply with the requirements of section 214(e) of the Act or any other conditions imposed by the state.¹⁶

¹⁶Id. at 33, paragraphs 70 - 72 (footnotes, text, and citations therein omitted) (emphasis added).

II.

Orders

THE COMMISSION ORDERS:

1. This proceeding is instituted on the commission's own motion for the purpose of establishing annual certification requirements applicable to entities designated as ETCs by the commission.

2. Hawaiian Telcom, SIC, Nextel Partners, and the Consumer Advocate are named as parties to this proceeding. If the parties have any party representatives or counsel for this proceeding, in addition to those listed in the attached Certificate of Service, said party shall promptly inform the commission and other parties in writing.

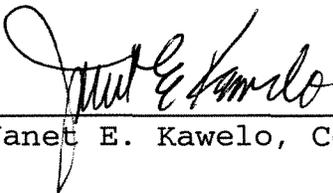
3. Any interested person seeking to intervene or participate in this proceeding shall file a timely motion with the commission, within twenty (20) days from the date of this Order, pursuant to HAR § 6-61-57(3)(B), with copies served on each of the parties identified in Ordering Paragraph No. 2, above. Motions to intervene or participate shall comply with the applicable requirements of HAR §§ 6-61-55 and 6-61-56 of the commission's *Rules of Practice and Procedure*.

DONE at Honolulu, Hawaii September 28, 2005.

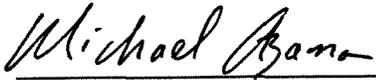
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

ETC.cs

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 4(j), 201–205, 214, 245 and 403 unless otherwise noted.

■ 2. Section 54.202 is added to read as follows:

§ 54.202 Additional requirements for Commission designation of eligible telecommunications carriers.

(a) In order to be designated an eligible telecommunications carrier under section 214(e)(6), any common carrier in its application must:

(1) (i) Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will:

(A) Provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and

(B) Provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by:

(1) Modifying or replacing the requesting customer's equipment;

(2) Deploying a roof-mounted antenna or other equipment;

(3) Adjusting the nearest cell tower;

(4) Adjusting network or customer facilities;

(5) Reselling services from another carrier's facilities to provide service; or

(6) Employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.

(ii) Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Each applicant shall demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.

(2) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

(3) Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.

(4) Demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation.

(5) Certify that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

(b) Any common carrier that has been designated under section 214(e)(6) as an eligible telecommunications carrier or that has submitted its application for designation under section 214(e)(6) before the effective date of these rules must submit the information required by paragraph (a) of this section no later than October 1, 2006, as part of its annual reporting requirements under § 54.209.

(c) *Public Interest Standard.* Prior to designating an eligible telecommunications carrier pursuant to section 214(e)(6), the Commission determines that such designation is in the public interest. In doing so, the Commission shall consider the benefits of increased consumer choice, and the unique advantages and disadvantages of the applicant's service offering. In instances where an eligible telecommunications carrier applicant seeks designation below the study area level of a rural telephone company, the Commission shall also conduct a creamskimming analysis that compares the population density of each wire center in which the eligible telecommunications carrier applicant seeks designation against that of the wire centers in the study area in which the eligible telecommunications carrier applicant does not seek designation. In its creamskimming analysis, the Commission shall consider other factors, such as disaggregation of

support pursuant to § 54.315 by the incumbent local exchange carrier.

(d) A common carrier seeking designation as an eligible telecommunications carrier under section 214(e)(6) for any part of tribal lands shall provide a copy of its petition to the affected tribal government and tribal regulatory authority, as applicable, at the time it files its petition with the Federal Communications Commission. In addition, the Commission shall send the relevant public notice seeking comment on any petition for designation as an eligible telecommunications carrier on tribal lands, at the time it is released, to the affected tribal government and tribal regulatory authority, as applicable, by overnight express mail.

■ 3. Section 54.209 is added to read as follows:

§ 54.209 Annual reporting requirements for designated eligible telecommunications carriers.

(a) A common carrier designated under section 214(e)(6) as an eligible telecommunications carrier shall provide:

(1) A progress report on its five-year service quality improvement plan, including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve signal quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled. The information shall be submitted at the wire center level;

(2) Detailed information on any outage, as that term is defined in 47 CFR 4.5, of at least 30 minutes in duration for each service area in which an eligible telecommunications carrier is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect

(i) At least ten percent of the end users served in a designated service area; or

(ii) A 911 special facility, as defined in 47 CFR 4.5(e).

(iii) Specifically, the eligible telecommunications carrier's annual report must include information detailing:

(A) The date and time of onset of the outage;

(B) A brief description of the outage and its resolution;

(C) The particular services affected;

(D) The geographic areas affected by the outage;

(E) Steps taken to prevent a similar situation in the future; and

(F) The number of customers affected.

(3) The number of requests for service from potential customers within the eligible telecommunications carrier's service areas that were unfulfilled during the past year. The carrier shall also detail how it attempted to provide service to those potential customers, as set forth in § 54.202(a)(1)(i);

(4) The number of complaints per 1,000 handsets or lines;

(5) Certification that it is complying with applicable service quality standards and consumer protection rules;

(6) Certification that the carrier is able to function in emergency situations as set forth in § 54.201(a)(2);

(7) Certification that the carrier is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and

(8) Certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

(b) *Filing deadlines.* In order for a common carrier designated under section 214(e)(6) to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designation, it must submit the annual reporting information in paragraph (a) no later than October 1, 2006, and thereafter annually by October 1 of each year. Eligible telecommunications carriers that file their reports after the October 1 deadline shall receive support pursuant to the following schedule:

(1) Eligible telecommunication carriers that file no later than January 1 of the subsequent year shall receive support for the second, third and fourth quarters of the subsequent year.

(2) Eligible telecommunication carriers that file no later than April 1 of the subsequent year shall receive support for the third and fourth quarters of the subsequent year.

(3) Eligible telecommunication carriers that file no later than July 1 of the subsequent year shall receive support for the fourth quarter of the subsequent year.

■ 4. Section 54.307 is amended by adding paragraph (d) to read as follows:

§ 54.307 Support to a competitive eligible telecommunications carrier.

* * * * *

(d) *Newly designated eligible telecommunications carriers.* Notwithstanding the deadlines in paragraph (c) of this section, a carrier shall be eligible to receive support as of the effective date of its designation as an

eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that it submits the data required pursuant to paragraph (b) of this section within 60 days of that effective date. Thereafter, the eligible telecommunications carrier must submit the data required in paragraph (b) of this section pursuant to the schedule in paragraph (c) of this section.

■ 5. Section 54.313 is amended by adding paragraph (d)(3)(vi) to read as follows:

§ 54.313 State certification of support for non-rural carriers.

* * * * *

(d) * * *

(3) * * *

(vi) *Newly designated eligible telecommunications carriers.*

Notwithstanding the deadlines in paragraph (d) of this section, a carrier shall be eligible to receive support pursuant to § 54.309 or § 54.311, whichever is applicable, as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that it files the certification described in paragraph (b) of this section or the state commission files the certification described in paragraph (a) of this section within 60 days of the effective date of the carrier's designation as an eligible telecommunications carrier. Thereafter, the certification required by paragraphs (a) or (b) of this section must be submitted pursuant to the schedule in paragraph (d) of this section.

■ 6. Section 54.314 is amended by adding paragraph (d)(6) to read as follows:

§ 54.314 State certification of support for rural carriers.

* * * * *

(d) * * *

(6) *Newly designated eligible telecommunications carriers.* Notwithstanding the deadlines in paragraph (d) of this section, a carrier shall be eligible to receive support pursuant to §§ 54.301, 54.305, or § 54.307 or part 36 subpart F of this chapter, whichever is applicable, as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that it files the certification described in paragraph (b) of this section or the state commission files the certification described in paragraph (a) of this section within 60 days of the effective date of the carrier's designation as an eligible telecommunications carrier. Thereafter, the certification required by paragraphs (a) or (b) of this

section must be submitted pursuant to the schedule in paragraph (d) of this section.

■ 7. Section 54.809 is amended by revising paragraph (c) to read as follows:

§ 54.809 Carrier certification.

* * * * *

(c) *Filing deadlines.* In order for a price cap local exchange carrier or an eligible telecommunications carrier serving lines in the service area of a price cap local exchange carrier to receive interstate access universal service support, such carrier shall file an annual certification, as described in paragraph (b) of this section, on the date that it first files its line count information pursuant to § 54.802, and thereafter on June 30 of each year. Such carrier that files its line count information after the June 30 deadline shall receive support pursuant to the following schedule:

(1) Carriers that file no later than September 30 shall receive support for the fourth quarter of that year and the first and second quarters of the subsequent year.

(2) Carriers that file no later than December 31 shall receive support for the first and second quarters of the subsequent year.

(3) Carriers that file no later than March 31 of the subsequent year shall receive support for the second quarter of the subsequent year.

[FR Doc. 05-10231 Filed 5-24-05; 8:45 am]
BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98-170 and CG Docket No. 04-208; FCC 05-55]

Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission concludes that Commercial Mobile Radio Service (CMRS) carriers should no longer be exempt from the Commission's rule requiring that billing descriptions be brief, clear, non-misleading and in plain language. In addition, the Commission puts CMRS carriers on notice that it intends to review complaints regarding unclear or misleading billing descriptions, and

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22051 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: September 28, 2005