Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
HAWAIIAN TELCOM, INC.	)	WCB/Pricing File No. 08-01
Petition for Phase I Pricing Flexibility Pursuant to Section 69.709 of the Commission's Rules	)	

REPLY COMMENTS OF HAWAIIAN TELCOM, INC.

Hawaiian Telcom, Inc. ("HT") hereby files these Reply Comments in support of the Petition for Phase I Pricing Flexibility ("Petition") filed by HT on November 16, 2007 in the above-captioned proceeding. In the Petition, HT demonstrates that it qualifies for Phase I relief pursuant to Section 69.709(b)(2) of the Commission's rules because approximately 32.62 percent of total revenues generated by dedicated transport and special access services, other than channel terminations between HT's end offices and end-user customer premises ("Qualifying DT/SA Services") provided within HT's state-wide study area but outside of the Honolulu Metropolitan Statistical Area (the "Hawaii Non-MSA Area") from January 1, 2006 through December 31, 2006 are attributable to wire centers located in the Hawaii Non-MSA Area in which competitors unaffiliated with HT have collocated, and from which at least one such competitor uses transport facilities owned by a transport provider other than HT ("Qualifying Wire Centers").

In its Comments, Pacific LightNet, Inc. ("PLNI") asks the Commission to require HT to "produce circuit level data that can be reviewed and verified by the customers who are the source

of the revenue[.]"[1] PLNI bases its request on "concern" with respect to "the validity of the revenue calculations supporting HT's Petition."[2] At bottom, though, PLNI takes issue with the Commission's methodology for evaluating pricing flexibility petitions, which, by design, does not require carriers to submit, nor the Commission to review, granular revenue data.

In the *Pricing Flexibility Order*, the Commission adopted revenue-based triggers for granting pricing flexibility for special access and dedicated transport designed to provide an "easily verifiable, bright-line test to avoid excessive administrative burdens."[3] HT's Petition fully satisfies the requirements set forth in Section 69.709(b)(2) of the Commission's rules[4] and, in fact, exceeds them by incorporating revenue data on a wire center-by-wire center basis. On numerous occasions, the Commission has rejected calls to require carriers to provide data on a more granular basis, recognizing such calls for what they really are – collateral attacks on the Commission's pricing flexibility rules.[5] While PLNI claims that it "does not take issue with the adequacy of the Commission's established triggers to effectively gauge the level of competition in a market,"[6] in truth this is exactly what PLNI is doing.

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1 Comments of Pacific LightNet, Inc., WCB/Pricing File. No. 08-01, at 1 (Feb. 4, 2008) ("PLNI Comments").

2 *Id.* at 1.

3 *Access Charge Reform*, Fifth Report and Order, 14 FCC Rcd 14221, at ¶ 78 (1999).

4 47 C.F.R. § 69.709(b)(2). Moreover, the Petition is consistent with other recent petitions for pricing flexibility that the Commission has granted.

5 *See, e.g., Verizon Petition for Pricing Flexibility for Special Access Services*, 20 FCC Rcd 9809, at ¶ 11 (2005) ("We have stated repeatedly that we will not consider collateral challenges to the Pricing Flexibility Order when reviewing a pricing flexibility petition."); *Frontier Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, 16 FCC Rcd 13885, at ¶¶ 11-12 (2001) (confirming that carriers need not submit data at the *wire center* level under the Commission's rules).

6 PLNI Comments at 1.

PLNI attempts to rewrite the Commission's rules by proposing that HT supply "sufficient information or disclosure to reasonably demonstrate that the 32.62% revenue calculation is accurate and reliable."[7] However, from its very first decision under the new pricing flexibility framework, the Commission has made clear that a carrier need not provide such a showing in order to satisfy applicable revenue-based triggers, and that a carrier's revenue data is presumptively accurate and reliable.[8] Accordingly, it is clear that HT has demonstrated its *prima facie* satisfaction of the trigger established in Section 69.709(b)(2).

PLNI has not provided any facts that would warrant the imposition of additional administrative burdens on HT or the Commission above and beyond those already satisfied as part of HT's *prima facie* showing.[9] Critically, PLNI produces no evidence that HT has failed to satisfy the relevant revenue trigger, and does not even allege that this is the case. Instead, PLNI merely suggests, by citing out of context public statements by HT, that HT's data *may* be unreliable.[10] The Commission should reject PLNI's attempts to substitute innuendo for fact, and

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7 *Id.* at 4-5.

8 *See BellSouth Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, 15 FCC Rcd 24588, at ¶ 21 (2000). The Commission has determined that "there is no reason to doubt that [a carrier's] billing databases are reliable" for purposes of the pricing flexibility analysis, since "[i]t is in [the carrier's] interest to maintain their reliability for its own business purposes."

9 *See BellSouth Petition for Phase I Pricing Flexibility for Switched Access Services*, 16 FCC Rcd 5040, at ¶ 19 (2001).

10 PLNI cites HT's disclosure to the SEC and noteholders of a weakness in internal controls related to HT's financial reporting. PLNI Comments at 4 n.6. PLNI claims that this disclosure is "extraordinary," and indicative "that [HT's] billing systems were materially deficient during 2006." *Id.* at 5. PLNI mischaracterizes the nature of this disclosure, though, which indicates only that there is "more than a remote likelihood" that a possible misstatement in HT's financial statements would not be detected, and does not report any deficiencies in HT's billing systems. Moreover, as anyone familiar with the nature of SEC filings knows, HT's disclosure is far from "extraordinary." In short, nothing in HT's disclosure establishes that the billing or revenue calculations conducted by HT in support of the Petition are generally unreliable. PLNI also cites a public statement by HT before

recognize these attempts for what they are – an effort to obstruct HT's Petition for competitive reasons by a carrier that has not demonstrated any genuine interest in the actual data supporting the Petition; tellingly, PLNI has not bothered to examine the confidential revenue data submitted by HT to the Commission – despite the fact that the Commission has issued a Protective Order in connection with this proceeding.[11] HT also notes that PLNI has made similar arguments in other contexts, which have been rejected by the Commission.[12]

Equally unconvincing is PLNI's suggestion that HT's revenue calculations are suspect because they may include revenues subject to billing disputes. As an initial matter, the Commission's rules do not preclude any carrier from including revenues subject to such disputes in its revenue calculations. Indeed, virtually every carrier's revenues are subject to such disputes, and the pricing flexibility rules intentionally spare the Commission the need to evaluate the merits of each and every such dispute. Instead, the Commission has historically relied upon the good faith of the petitioning carrier while providing other parties with the opportunity to submit *specific* data challenging the carrier's calculations. HT's good faith has not been questioned in this proceeding. Further, there is no reason to credit PLNI's speculative arguments, as PLNI has offered no substantive evidence to contradict HT's revenue calculations.

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the Hawaii Public Utilities Commission, in which HT describes certain challenges implementing new systems following entry into the Hawaii market. *Id.* at 3. However, referencing certain system functionalities described by HT does not, in and of itself, establish that the revenue methodology or billing systems employed by HT in preparing the Petition were materially flawed.

11 *See Petition of Hawaiian Telcom, Inc. for Phase I Pricing Flexibility Pursuant to Section 69.709 of the Commission's Rules*, Protective Order, DA 08-20, WCB/Pricing File No. 08-01 (Jan. 3, 2008).

12 *See Hawaiian Telcom Inc. Petition for a Waiver of Section 61.42(g) of the Commission's Price Cap Rules for Advanced Services Formerly Offered by Verizon Hawaii, Inc.*, Order, DA 07-2366, WCB/Pricing File No. 07-12 (Jun. 6, 2007).

Moreover, the only quantitative claim that PLNI does make with respect to HT's revenue calculations is vague and unsubstantiated, and without clear decisional significance. PLNI alleges, in perfunctory fashion, that "unresolved disputes resulted in overbilling by HT for DT/SA Services in Qualifying Wire Centers by approximately 18%."[13] However, among a host of other failings, PLNI does not specify (i) the timeframe in which the alleged overbilling occurred; (ii) its methodology for calculating the 18 percent figure; (iii) the proportion of allegedly overbilled revenues to total revenues from the relevant wire centers; (iv) how the allegedly overbilled revenues for circuits between qualifying and non-qualifying wire centers were allocated; or (v) its basis for claiming that revenues were allegedly overbilled. Moreover, PLNI's claim is not backed by any hard data, and PLNI provides no analysis of how its claim, even if assumed to be true, would impact HT's calculations. Consequently, there is no reason to believe that PLNI's claim has any decisional significance. Indeed, under any number of sets of assumptions, the percentage of total revenues generated by Qualifying DT/SA Services provided by HT in the Hawaii Non-MSA Area from January 1, 2006 through December 31, 2006 would still exceed the 30 percent threshold established in Section 69.709(b)(2) even if PLNI's claim were credited.

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[13] PLNI Comments at 3.

In short, PLNI has presented no evidence that should disturb the *prima facie* showing contained in the Petition. Accordingly, for the foregoing reasons and those set forth in the Petition, HT respectfully requests that the Commission grant HT's Petition without further delay.

Respectfully submitted,

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February 14, 2008