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September 30, 2016 Received & Inspected

OCT 07 2016

FCC Mail Room

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 – 12th Street, SW
Washington, DC 20554

USAC
Vice President of the High Cost Division
700 12th Street, NW, Suite 900
Washington, DC 20005

DOCKET FILE COPY ORIGINAL

Re: CC Docket No. 96-45/WC Docket No. 14-58, Annual State Certification of Support for Eligible Telecommunications Carriers Pursuant to 47 Code of Federal Regulations ("C.F.R.") Section 54.314

Dear Ms. Dortch and USAC Vice President:

Pursuant to the requirements of 47 C.F.R. § 54.314, the Public Utilities Commission of the State of Hawaii hereby certifies to the Federal Communications Commission and the Universal Service Administrative Company that the telecommunications carrier included in this letter is eligible to receive federal high-cost support for the program years cited.

The Public Utilities Commission of the State of Hawaii certifies for the carrier listed all federal high-cost support provided to such carrier within Hawaii was used in the preceding calendar year (2015) and will be used in the coming calendar year (2017) only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.¹ See the enclosed D&O No. 33955.

¹47 C.F.R. § 54.314(a) ("Certification. States that desire eligible telecommunications carriers to receive support pursuant to the high-cost program must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carriers within that State was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. High-cost support shall only be provided to the extent that the State has filed the requisite certification pursuant to this section").

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Marlene H. Dortch and USAC Vice President
September 30, 2016
Page 2

Applicant/Company Name	Study Area Code
HTI	623100

If this letter does not fully satisfy the requirements for state certification of carriers to receive federal universal service support, we respectfully request a waiver of the October 1, 2016 deadline to correct any deficiencies.

Please contact Delmond J. H. Won, Executive Officer, at (808) 586-2020 to address any questions on this matter.

Sincerely,



Caroline Ishida
Chief Counsel

Cl:laa

Enclosure

- c: Dean Nishina, Division of Consumer Advocacy (w/o enc.)
Steven P. Golden, HTI (w/o enc.)
Clifford K. Higa, Esq., Lex R. Smith, Esq.,
Anthony F. Suetsugu, Esq., SIC and Pa Makani (w/o enc.)
Mark Woelfel, Mobi (w/o enc.)

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

Received & Inspected

OCT 07 2016

FCC Mail Room

----In the Matter of----

PUBLIC UTILITIES COMMISSION

Instituting a Proceeding to Investigate Whether Designated Eligible Telecommunications Carriers Participating in the High-Cost Program of the Universal Service Fund Should be Certified By the Commission Pursuant to 47 Code of Federal Regulations § 54.314(a).

DOCKET NO. 2016-0093
DOCKET NO. 2016-0120
DOCKET NO. 2016-0121
(CONSOLIDATED)

DECISION AND ORDER NO. 33955

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PUBLIC UTILITIES
COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of-----)
)
PUBLIC UTILITIES COMMISSION) Docket No. 2016-0093
) Docket No. 2016-0120
Instituting a Proceeding to) Docket No. 2016-0121
Investigate Whether Designated) (Consolidated)
Eligible Telecommunications)
Carriers Participating in the) Decision and Order No. **33955**
High-Cost Program of the)
Universal Service Fund Should be)
Certified By the Commission)
Pursuant to 47 Code of Federal)
Regulations § 54.314(a).)
_____)

DECISION AND ORDER

The objective of this docket is for the commission to:

- (1) determine whether the eligible telecommunications carrier ("ETC") Parties¹ have each sufficiently complied with

¹The "ETC Parties" to this proceeding are (1) HAWAIIAN TELCOM, INC. ("HTI"); (2) SANDWICH ISLES COMMUNICATIONS, INC., ("SIC"); (3) SIC's affiliate PA MAKANI LLC, dba SANDWICH ISLES WIRELESS ("Pa Makani" or "SIW"); and (4) CORAL WIRELESS, LLC, dba MOBI PCS ("Mobi"). The "Parties" to this proceeding are the ETC Parties and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party, pursuant to Hawaii Revised Statutes § 269-51 and Hawaii Administrative Rules § 6-61-62(a). See: (1) Order No. 33638 Initiating Investigation, filed in Docket No. 2016-0093, on April 6, 2016 ("Order Initiating Investigation") at 5-6; (2) Order No. 33849 Granting Motion to Intervene, Consolidating and Incorporating Related Dockets, and Modifying Procedural Steps and Filing Deadlines, filed in this docket,

the annual ETC certification requirements pertaining to the provision of certain reports established by the commission in Decision and Order No. 30932, filed on December 28, 2012, in Docket No. 2011-0052 ("Order No. 30932");² and (2) determine whether to certify to the Federal Communications Commission ("FCC") and the Universal Service Administrative Company ("USAC") that all federal high-cost support provided to the ETCs in the State of Hawaii ("State") participating in the federal high-cost support program of the universal service fund ("USF") was used in the preceding calendar year, and will be used in the coming calendar year, only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with Title 47 of the Code of Federal Regulations ("C.F.R.") § 54.314(a) ("§ 54.314(a) certification").³

as consolidated, on August 8, 2016 ("Order No. 33849") at 8-9; and (3) Hawaii Administrative Rules ("HAR") § 6-61-57(3).

²The annual ETC certification requirements are codified at 47 C.F.R. § 54.313, "Annual reporting requirements for high-cost recipients," and are hereafter referred to in this Order as the "Annual Reporting Requirements."

³Pursuant to 47 C.F.R. § 54.314(a), "States that desire eligible telecommunications carriers to receive support pursuant to the high-cost program must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carriers within that State was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."

As discussed below, in this Decision and Order ("Order"), the commission determines that HTI has sufficiently complied with the Annual Reporting Requirements, and, based on the record, the commission is satisfied that there is no uncertainty as to whether all federal high-cost support provided to HTI was used and will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, pursuant to 47 C.F.R. § 54.314(a).

The commission determines that Mobi has not sufficiently complied with the Annual Reporting Requirements, and, based on the record, there is uncertainty as to whether all federal high-cost support provided to Mobi was used and will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, pursuant to 47 C.F.R. § 54.314(a).

The commission determines that SIC and Pa Makani have sufficiently complied with the Annual Reporting Requirements, however, based on the record, there is uncertainty as to whether

In determining whether to provide § 54.314(a) certification to the FCC and the USAC, the commission, based on the record, must be satisfied that there is no uncertainty as to whether all federal high-cost support provided to the ETC party was used and will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, pursuant to 47 C.F.R. § 54.314(a). This finding is critical to a commission determination that an ETC designation "is in the public interest." Order No. 30932 at 29.

all federal high-cost support provided to SIC and Pa Makani was used and will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, pursuant to 47 C.F.R. § 54.314(a). Therefore, the commission cannot at this time conclude that certification of SIC and Pa Makani would be in the public interest.

The commission concludes that it should certify HTI as a USF high-cost ETC in 2016. The commission further concludes that it should not certify Mobi, SIC, and Pa Makani as USF high-cost ETCs at this time.

I.

Background

On April 6, 2016, the commission instituted an investigation to determine whether State-designated ETCs participating in the high-cost support program of the USF should be certified by the commission in 2016, pursuant to 47 C.F.R. § 54.314(a).⁴ As the commission noted in Order No. 33638, the federal rules require state commissions that desire ETCs to receive USF high-cost support to annually submit a certification to the FCC and the USF administrator, USAC, that the ETCs have used and will use the support only for the provision,

⁴See Order No. 33638 at 1.

maintenance, and upgrading of facilities and services for which the support is intended.⁵

By Order No. 33638, the commission established procedural deadlines for this proceeding,⁶ based on certain FCC filing deadlines, including the October 1, 2016⁷ federal deadline for state certification of USF high-cost support program recipients.⁸ In Order No. 33638, the commission referenced Decision and Order No. 33167 ("Order No. 33167"),⁹ and based thereon, only named HTI and Mobi, along with the Consumer Advocate,

⁵Order No. 33638 at 2. See also 47 C.F.R. § 54.314(a).

⁶The procedural deadlines included a May 2, 2016 deadline for HTI and Mobi to file their Annual Certification Requirements ("Annual Certification Requirements" or "ACR") reports, and a July 6, 2016 deadline by which the Parties could issue Information Requests ("IRs") to each other. On July 1, 2016, the Consumer Advocate issued its IRs to HTI and Mobi. While HTI timely filed its responses to the Consumer Advocate's IRs, Mobi did not file any responses.

⁷According to an E-mail from the USAC High Cost Program (September 26, 2016) (on file with author) "[s]ince October 1 falls on a Saturday this year, submissions received by Monday, October 3, 2016 will be considered timely."

⁸On April 29, 2016, the commission, on its own motion, issued a protective order to govern the classification, acquisition, and use of trade secrets and other confidential information produced in Docket No. 2016-0093. See Protective Order No. 33678, filed in Docket No. 2016-0093, on April 29, 2016.

⁹By Order No. 33167, filed in Docket No. 2015-0083 on September 28, 2015, the commission determined that: (1) HTI and Mobi should be certified in 2015, pursuant to 47 C.F.R. § 54.314(a); and (2) certification of SIC and Pa Makani, pursuant to 47 C.F.R. § 54.314(a), could not be made at that time.

as parties to Docket No. 2016-0093.¹⁰ HTI subsequently timely filed its ACR report, as well as a copy of its FCC Form 481, and copies of its Rate Floor Data Collection Form.¹¹ Mobi, however, did not file its ACR report, a copy of its FCC Form 481, or copies of its Rate Floor Data Collection Form.

On April 26, 2016, SIC and Pa Makani filed a Motion to Intervene as Parties to the Proceeding ("Motion to Intervene").¹²

By letter dated August 3, 2016, HTI informed the commission that it would not be submitting a Statement of Position ("SOP"). The Consumer Advocate timely filed its SOP on August 5, 2016.

On August 8, 2016, the commission issued Order No. 33849, wherein the commission, among other things: granted intervenor status to SIC and Pa Makani; consolidated Docket No. 2016-0120 and Docket No. 2016-0121 with Docket No. 2016-0093; and modified

¹⁰Order No. 33638 at 5-10.

¹¹HTI's FCC Form 481 and Rate Floor Data Collection Form were filed in accordance with the July 1, 2016 deadline identified in Order No. 33638.

¹²The Motion to Intervene was filed in Docket No. 2016-0093, on April 26, 2016. On May 2, 2016, SIC filed its ACR report with attachments, and in receipt thereof, the commission opened Docket No. 2016-0120.

On May 2, 2016, Pa Makani filed its ACR report with attachments, and in receipt thereof, the commission opened Docket No. 2016-0121.

procedural steps and filing deadlines to govern the subject proceeding.¹³

With regard to the extended deadline dates identified in Order No. 33849, HTI informed the commission that it would not be submitting a reply SOP.¹⁴ Additionally, SIC and Pa Makani each timely complied with Procedural Step 1; the Consumer Advocate issued IRs upon SIC and Pa Makani in compliance with Procedural Step 2; SIC and Pa Makani filed their responses to the Consumer Advocate's IRs in compliance with Procedural Step 3; SIC and Pa Makani filed their Statement of Position ("SOP"), and the Consumer Advocate filed its Supplemental Statement of Position ("Supplemental SOP") in compliance with Procedural Step 4; and SIC and Pa Makani filed their Reply to Division of Consumer Advocacy's Supplemental Statement of Position

¹³By Order No. 33849, the commission established August 12, 2016 as the deadline date for the ETC Parties to file any "outstanding Annual Certification Requirements reports and outstanding copies of Annual Reporting Requirements for High-Cost Recipients Filed Pursuant to 47 C.F.R. § 54.313(i)" ("Procedural Step 1"). The commission also extended the deadline date to August 17, 2016, for the Parties' issuance of IRs to each other ("Procedural Step 2"); extended the deadline date to August 23, 2016, for the Parties' responses to the IRs ("Procedural Step 3"); extended the deadline date to August 26, 2016, for simultaneous SOPs ("Procedural Step 4"); and extended the deadline date to August 31, 2016, for reply SOPs ("Procedural Step 5").

¹⁴See the letter from HTI to the commission, dated August 30, 2016.

Dated August 26, 2016 (SIC and Pa Makani's "Reply SOP"), and the Consumer Advocate filed its Reply Statement of Position (Consumer Advocate's "Reply SOP") in compliance with Procedural Step 5.

In its SOP, the Consumer Advocate concluded: that only HTI has provided sufficient information to justify its certification as a state-designated ETC participating in the high-cost support program of the Federal USF for 2017, pursuant to 47 C.F.R. § 54.314(a); and until Mobi provides additional support, the Consumer Advocate is unable to determine that Mobi has met the certification requirements.¹⁵

In their SOP, SIC and Pa Makani state that they have met the annual ETC certification requirements established by the commission in Docket No. 2011-0052, and have demonstrated that all high-cost funds, if any, were used and will be used exclusively for their intended purpose. SIC and Pa Makani conclude that as such, the commission should certify them as ETCs in the State, or at the very least, should provide them with a "tentative certification," provided that all conditions set forth by the FCC and the USAC as part of an interim support agreement,

¹⁵Consumer Advocate SOP at 2, wherein the Consumer Advocate further notes that the existing ETCs receiving high-cost support are currently HTI and Mobi.

or any agreement to restart the disbursement of high-cost support to SIC, are met.¹⁶

In its Supplemental SOP, the Consumer Advocate contends that there is insufficient information to justify the certification of Mobi, SIC, and Pa Makani as State-designated ETCs participating in the high-cost support program for 2017.¹⁷

In their Reply SOP, SIC and Pa Makani reiterate that at the very least, the commission should provide them with a tentative certification, pending the results of the FCC report or reserve its rights to add additional remedies and measures should the commission see fit, following a review of the FCC report.¹⁸

In its Reply SOP, the Consumer Advocate maintains its position that the commission should certify HTI as a State-designated ETC participating in the high-cost support program of the USF for 2017, pursuant to 47 C.F.R. § 54.314(a), and that the commission should deny certification of Mobi, SIC, and Pa Makani.¹⁹

For the reasons which follow, the commission, by this Decision and Order, determines that HTI has sufficiently complied

¹⁶SIC and Pa Makani SOP at 7.

¹⁷Consumer Advocate Supplemental SOP at 2.

¹⁸SIC and Pa Makani Reply SOP at 10.

¹⁹Consumer Advocate Reply SOP at 2.

with the Annual Reporting Requirements, and based on the record, is satisfied that there is no uncertainty as to whether all federal high-cost support provided to HTI was used and will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, pursuant to 47 C.F.R. § 54.314(a).

The commission determines that Mobi has not sufficiently complied with the Annual Reporting Requirements, and based on the record, there is uncertainty as to whether all federal high-cost support provided to Mobi was used and will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, pursuant to 47 C.F.R. § 54.314(a).

The commission determines that SIC and Pa Makani have sufficiently complied with the Annual Reporting Requirements, however, based on the record, there is uncertainty as to whether all federal high-cost support provided to SIC and Pa Makani was used and will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, pursuant to 47 C.F.R. § 54.314(a). Therefore, on this record, the commission cannot conclude that designation of SIC and Pa Makani as ETCs is in the public interest at this time.

The commission certifies to the FCC and the USAC that HTI has used and will use the USF high-cost support for the

purposes for which the support is intended, consistent with 47 C.F.R. § 54.314(a). The commission concludes that it cannot certify Mobi, SIC, and Pa Makani as USF high-cost ETCs at this time.

II.

Discussion

In Order No. 30932, the commission adopted the Annual Reporting Requirements for State-designated ETCs participating in the USF's high-cost program.²⁰ These requirements superseded the annual ETC certification requirements previously adopted by the commission on an interim basis in Order No. 30230, filed on February 27, 2012, in Docket No. 2011-0052, which amended the commission's formerly adopted ETC certification requirements in "Decision and Order No. 22228," filed on January 17, 2006, in Docket No. 05-0243.

²⁰These requirements do not apply to ETCs designated by the commission for the limited and sole purpose of participating in the USF Lifeline program, known as Lifeline-only ETCs. See Decision and Order No. 30932 at 9-13 and 32.

The Annual Reporting Requirements (individually, "Reporting Requirement") adopted by the Commission in Order No. 30932 are as follows:

A. Federal Reporting Requirements Applicable to All ETCs Other Than Lifeline-Only ETCs

The following federal reporting requirements shall apply to all ETCs in Hawaii other than Lifeline-only ETCs:

1. Provide a copy of all of the ETC's current year filings to the FCC required by 47 C.F.R. Sections 54.313 (annual reporting requirements for high-cost recipients) and 54.1009 (annual reports).
2. Any carrier affected by the cap shall provide a discussion on whether the carrier has sought or plans to seek a waiver from the \$250/line/month cap on universal service support as specified in 47 C.F.R. § 54.302. If a waiver has been requested, provide the status of the waiver.

B. Additional Hawaii Reporting Requirements Applicable to All ETCs Other Than Lifeline-Only ETCs

The following additional reporting requirements shall apply to all ETCs in Hawaii other than Lifeline-only ETCs:

1. Provide the percentage of all out-of-state troubles cleared within twenty-four hours of the time such troubles are reported. The standard for this is a minimum of ninety-five percent cleared within twenty-four hours.
2. Provide the number of customer trouble reports per one hundred lines per month. The standard for this is no more than six customer trouble reports per one hundred lines per month.

3. Provide a certification that the carrier will promptly notify its customers, and as appropriate, law enforcement and fire agencies that will be affected when its service will be interrupted for scheduled repairs or maintenance, or if the occurrence of an interruption in service is otherwise known to the carrier.
4. Any ETC that is already filing with the commission the information detailed in Paragraph Nos. 1 to 3, above, on an annual or more frequent basis, is not required to resubmit that information.

Pursuant to 47 C.F.R. § 54.314(a), "States that desire eligible telecommunications carriers to receive support pursuant to the high-cost program must file an annual certification with the Universal Service Administrator and the FCC stating that all federal high-cost support provided to such carriers within that State was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."

To assist with the identification of the benefactors of federal high-cost support, excluding frozen Interstate Access Support ("IAS") that is not required to be used for deploying broadband services, ETCs shall provide the following information:

1. The number of locations or customers in each wire center or census block within its ETC service area for the previous calendar year and the anticipated number of locations or customers in each wire center or census block for the coming calendar year;
2. The services available to locations or customers in each wire center or census block within its ETC service area for the previous calendar year and the anticipated services available to locations or customers in each

wire center or census block for the coming calendar year; and

3. In addition to the information provided on its progress report pursuant to 47 C.F.R. § 54.313(a)(1):
 - a. Identify all capital, operating and maintenance expenditures for which the carrier has received universal high-cost support for the previous calendar year, broken down to the wire centers or census blocks, as appropriate.
 - b. An update on the status of projects that were planned for the previous calendar year. For each project, provide: the amount of universal high-cost support utilized; a discussion of whether competitive bidding was utilized; a discussion of whether any project related contracts were awarded to entities affiliated to the carrier or in which an officer of the entity is related to an officer of the carrier; a discussion of whether the project plans were changed, and if so, the reasons why; maps detailing the location of the project as well as the wire centers or census blocks of the affected customers; an explanation of the project and how it was used to improve service quality, coverage, or capacity for the intended benefactors; data supporting improvements in service quality, coverage, or capacity. Beginning July 1, 2013, separate progress reports shall be provided for voice and broadband service, to the extent required by federal law.
 - c. For the coming calendar year, identify all anticipated capital, operating, and maintenance expenditures on projects that the carrier plans to seek federal high-cost support for,

broken down to the wire center level or census block, as appropriate;

- d. For the coming calendar year, maps detailing the location of the project and the wire center or census block of the affected locations or customers, an explanation of the project and how it will be used to improve service quality, coverage, or capacity for the intended benefactors, and the data supporting the quantification of the benefactors. Beginning June 1, 2013, separate progress reports shall be provided for voice and broadband service to the extent required by federal law; and
- e. If in the final year of high-cost support, plans for the following (i.e., future) calendar years are not required.

- 4. Pursuant to 47 C.F.R. § 54.320, provide a certification that the carrier will retain, for at least ten years, all records required to demonstrate to auditors that the support received was consistent with the universal service high-cost program rules and that these documents will be available upon request to the FCC and any of its bureaus or offices, Universal Service Administrative Company, and their respective auditors.

- C. Requirements for an Incumbent Local Exchange Carrier or a Rural Local Exchange Carrier

To confirm whether the carrier is or will charge a limited monthly access recovery charge on its wireline service, carriers are to provide a list of the monthly access recovery charge for each of the carrier's class of service.

Order No. 30932 at 9-13 (citation omitted).

In addition, the commission required that ETCs providing service on Hawaiian Home Lands provide redacted, non-confidential copies of their annual ETC certification reports to the Department of Hawaiian Home Lands ("DHHL") and the Office of Hawaiian Affairs ("OHA").²¹ The commission's review of each of the ETC Parties' filings submitted for certification to receive USF high-cost support is discussed in the sections below.

A.

HTI

HTI is the State's incumbent local exchange carrier, providing a "comprehensive slate" of local and "intraLATA" telecommunication services, statewide.²² In 1997, the commission approved HTI's application for designation as an ETC to receive federal USF support, effective January 1, 1998.²³

²¹See Order No. 30932 at 32.

²²Pursuant to Newton's Telecom Dictionary (30th ed. 2016), intraLATA refers to telecommunications services that originate and terminate in the same Local Access and Transport Area.

²³See In re GTE Hawaiian Telephone Company, Incorporated, Docket No. 97-0363, Decision and Order No. 16111, filed on December 4, 1997. HTI was formerly known as GTE Hawaiian Telephone Company, Incorporated.

HTI filed its ACR report with the commission on May 2, 2016,²⁴ requesting that the commission certify to the FCC and USAC that it is eligible to receive USF support in accordance with the FCC's rules.

With regard to the applicable certification requirements set forth in Order No. 30932, HTI provided the necessary information, or indicated how the requirements are currently inapplicable. For instance, HTI filed a complete copy of its Annual Report for High-Cost Recipients with the commission on July 1, 2016, in accordance with the Regulatory Schedule in Order No. 33638.²⁵ HTI further states that it "is not affected" by the \$250/line/month cap on USF support as specified

²⁴See Hawaiian Telcom, Inc.'s Annual Certification Requirements Report for the Year Ending December 31, 2015; Confidential Attachments A-E; Certification of Steven P. Golden; Verification; and Certificate of Service, filed on May 2, 2016 (collectively, "HTI Report"). Consistent with the commission's requirement, a copy of HTI's Report was served on DHHL and OHA. See HTI Report, Certificate of Service.

²⁵As it relates to its obligations under Reporting Requirement A(1) regarding the reporting required by 47 C.F.R. § 54.313, HTI filed copies of its FCC Form 481 with the commission on June 30, 2016. The form was submitted and certified by HTI to USAC, and a copy was sent to the FCC on June 29, 2016. On June 24, 2016, HTI filed its Rate Floor Data Collection Form and certification relating to voice services, which was also submitted to the FCC and to the USAC.

in 47 C.F.R. § 54.302, and therefore, the reporting requirement is not applicable to it.²⁶

HTI provides additional information regarding: (1) the number of its locations or customers in each wire center within its service area; (2) the services available to locations or customers in each wire center or census block within its service area; (3) all capital, operating, and maintenance expenditures for which high-cost support was received, by wire center or census block; and (4) updates on the status of projects planned for the previous calendar year.²⁷

Included among other things in HTI's Report is the Certification of its Vice President, External Affairs, Steven P. Golden, who provides the necessary certifications regarding notification of planned service interruptions and retention of records in response to Reporting Requirements B(3) and B(4)(4).²⁸ As it relates to Reporting Requirement C (applicable to the incumbent LEC or a rural LEC), HTI states that it initiated an access recovery charge ("ARC") on its wireline

²⁶See HTI Report at 5, which relates to Reporting Requirement A(2).

²⁷The above-referenced information, which relates to Reporting Requirements B(4)(1) through B(4)(3), was filed by HTI on May 2, 2016, as confidential attachments A-E, and thus, shall not be further described herein.

²⁸See HTI Report, Certification of Steven P. Golden at 1-2.

services, effective July 3, 2012, and provides its current ARC rates.²⁹

In its SOP, the Consumer Advocate recommended that HTI should be certified as a State designated ETC participating in the high-cost support program of the Federal USF for 2017, pursuant to 47 CFR § 54.314(a).³⁰

HTI did not submit a reply to the Consumer Advocate's SOP. In its supplemental SOP, the Consumer Advocate renewed its recommendation with regard to HTI.³¹

Based on the foregoing, the commission concludes that HTI has sufficiently complied with the Annual Reporting Requirements adopted in Order No. 30932. As noted by the Consumer Advocate, HTI has provided the requisite information and certifications mandated by the commission, as applicable.

HTI has complied with the Annual Reporting Requirements, and based on the record, the commission is satisfied that there is no uncertainty as to whether all federal high-cost support provided was used and will be used only for the provision, maintenance, and upgrading of facilities and services for which

²⁹See HTI Report at 9.

³⁰See Consumer Advocate SOP at 4.

³¹Consumer Advocate Supplemental SOP at 13.

the support is intended, and, thus, certification is in the public interest. Therefore, pursuant to 47 C.F.R. § 54.314(a), the commission certifies HTI as a high-cost ETC in 2016.

B.

Mobi

Mobi is authorized by the FCC and the commission to provide commercial mobile radio service, or wireless telecommunications service, throughout the State.³² In 2007, the commission designated Mobi as an ETC for the service areas of HTI and SIC.³³

The record reflects that Mobi has not provided the requisite information to justify its certification as a State-designated ETC participating in the high-cost support program of the USF for 2017, pursuant to 47 C.F.R. § 54.314(a). First, Mobi did not file its ACR report, even though the commission provided additional time for the Parties to file any certification reports and reporting requirements. Second, Mobi did not respond to the Consumer Advocate's IRs, issued on July 1, 2016, even though

³²See In re Coral Wireless, LLC dba Mobi PCS, Decision and Order Nos. 21744 and 23234, filed on April 14, 2005, and January 31, 2007, in Docket Nos. 05-0018 and 2006-0457, respectively.

³³See In re Coral Wireless, LLC dba Mobi PCS, Decision and Order No. 23275, filed on February 23, 2007, in Docket No. 05-0300.

the commission provided additional time for a response thereto. Third, Mobi filed a copy of its FCC Form 481 on July 6, 2016, in Docket No. 2015-0083, which is closed. Moreover, Mobi did not include the attachments to its FCC Form 481.³⁴

In its SOP, the Consumer Advocate stated that "Mobi did not provide sufficient information to support its designation as an ETC for the upcoming year."³⁵ The Consumer Advocate noted that Mobi had not filed its ACR report or copies of its FCC Form 481, and had not responded to the Consumer Advocate's IRs."³⁶

In its Supplemental SOP, the Consumer Advocate pointed out that there is insufficient information to justify the certification of Mobi as a State designated ETC participating in the high-cost support program for 2017,³⁷ and as such, renewed its recommendation that Mobi not be certified.³⁸

The commission observes that Mobi has not sufficiently complied with the Annual Reporting Requirements adopted in

³⁴Even if Mobi had correctly filed its FCC Form 481 in this docket (Docket No. 2016-0093, 2016-0120, 2016-0121 (Consolidated)), the information in its FCC Form 481, as filed without the attachments, is not sufficient to meet the Annual Reporting Requirements identified in Order No. 30932.

³⁵Consumer Advocate SOP at 4.

³⁶Consumer Advocate SOP at 3-4.

³⁷Consumer Advocate Supplemental SOP at 2 and 4.

³⁸Consumer Advocate Supplemental SOP at 4 and 13.

Order No. 30932. As noted by the Consumer Advocate, Mobi has not provided the documentation necessary to support re-certification.³⁹ In addition, based on this record, the commission determines that there is uncertainty as to whether all federal high cost support provided to Mobi was used and will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, pursuant to 47 C.F.R. § 54.314(a) and, thus, the commission cannot conclude that certification would be in the public interest. Based on the foregoing, the commission is unable to certify Mobi as a high-cost ETC in 2016.

C.

SIC and Pa Makani

1.

Reporting Requirements

SIC, a rural LEC, is authorized by the commission to provide intrastate telecommunications services in the State on lands administered by DHHL.⁴⁰ In 1998, the commission designated

³⁹Consumer Advocate Supplemental SOP at 13.

⁴⁰See In re Sandwich Isles Communications, Inc., Decision and Order No. 16078, filed on November 14, 1997, in Docket No. 96-0026.

SIC as an ETC for the service areas consisting of lands administered by DHHL.⁴¹

Pa Makani, an affiliate of SIC, is authorized by the commission to provide wireless telecommunications services in the State.⁴² In 2012, the commission designated Pa Makani as an ETC for SIC's study area.⁴³

SIC and Pa Makani contend that they "have met the annual ETC certification requirements established by the Commission in Docket No. 2011-0052," and "have demonstrated that all high-cost funds, if any, were used and will be used exclusively for their intended purpose, and that as such, they should be certified as ETCs for the State."⁴⁴

Both SIC and Pa Makani individually filed their ACR reports with the commission on May 2, 2016.⁴⁵ SIC and Pa Makani

⁴¹See In re Sandwich Isles Communications, Inc., Decision and Order No. 16737, filed on December 9, 1998, in Docket No. 98-0317.

⁴²See In re Pa Makani LLC, dba Sandwich Isles Wireless, Decision and Order, filed on August 4, 2011, in Docket No. 2011-0131.

⁴³See In re Pa Makani LLC, dba Sandwich Isles Wireless, Decision and Order No. 30309, filed on April 10, 2012, in Docket No. 2011-0145.

⁴⁴SIC and Pa Makani SOP at 2.

⁴⁵See "SIC's Annual Certification as an Eligible Telecommunications Carrier; Attachments "1" - "7"; and Certificate of Service," filed on May 2, 2016, in Docket No. 2016-0120 (collectively, "SIC Report"). Consistent with the commission's

also filed copies of their FCC Form 481, as directed by 47 C.F.R. § 54.313(i) and Order No. 33638.⁴⁶ With respect to the Annual Reporting Requirements, the commission recognizes that SIC and Pa Makani have provided the necessary information or indicated how a particular requirement is inapplicable.

For example, both SIC and Pa Makani provided responses relating to: (1) the percentage of all out-of-state troubles cleared within 24 hours; and (2) the number of customer trouble reports per 100 lines per month.⁴⁷ SIC and Pa Makani also submitted information regarding (1) the number of customers and the services they provide in each wire center or census block; (2) information regarding capital, operating, and maintenance expenditures; and (3) an update of projects planned for the previous calendar year for which USF high-cost support was

requirement, a copy of SIC's Report was served on DHHL and OHA. See SIC Report, Certificate of Service.

See "Pa Makani's Annual Certification as an Eligible Telecommunications Carrier; Attachments "1" - "7"; and Certificate of Service," filed on May 2, 2016, in Docket No. 2016-0121 (collectively, "Pa Makani Report"). Consistent with the commission's requirement, a copy of Pa Makani's Report was served on DHHL and OHA. See Pa Makani's Report, Certificate of Service.

⁴⁶See SIC's and Pa Makani's FCC Form 481, individually filed on August 12, 2016, in this docket (2016,0093, 2016-0120, 2016-0121 (Consolidated)).

⁴⁷The information is included in SIC's Report at 6-7, and in Pa Makani's Report at 5.

received, in response to Reporting Requirements B(4)(1) through B(4)(3).⁴⁸

Finally, the companies included as part of their reports, certification statements by: (1) SIC's President, Janeen Ann Olds; and (2) Pa Makani's Manager, Breanne Hee.

2.

Use of Federal High-Cost Support

As established in Order No. 33638, the commission must also determine whether to provide to the FCC and the USAC the certifications required under 47 C.F.R. § 54.314(a) as they relate to SIC and Pa Makani. While SIC and Pa Makani have filed their certification reports and other required documents as discussed above, the commission emphasizes, as it has in the past, that "the [Annual] Reporting Requirements do not wholly comprise the criteria used to determine whether certification is to be granted to a USF high-cost support program participant."⁴⁹

Specifically, in Order No. 33167, the commission determined that despite SIC's and Pa Makani's compliance with the

⁴⁸The information is included in SIC's Report at 8-10; Pa Makani's Report at 6-10; and SIC's and Pa Makani's confidential Attachments filed on August 12, 2016. Additionally, certain requirements were provided or elaborated on in SIC's and Pa Makani's responses to the Consumer Advocate's IRs.

⁴⁹Order No. 33167 at 21.

Annual Reporting Requirements, there remained uncertainty as to whether all federal high-cost support provided to SIC and Pa Makani was used and would be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, pursuant to 47 C.F.R. § 54.313(i).⁵⁰ Due to this uncertainty, the commission concluded that pending completion of the USAC IAD's examination pursuant to 47 C.F.R. § 54.314(a), certification of SIC and Pa Makani as a USF high-cost ETC at that time was premature.⁵¹

In Order No. 33167, the commission further recognized that if the USAC IAD's examination was completed by December 2015, it was possible that the resulting report could assist the

⁵⁰In Order No. 33167, the commission referenced the USAC's August 7, 2015 letter to SIC, wherein the USAC noted Mr. Hee's conviction for federal tax fraud, under 26 U.S.C. §§ 7212(a) and 7206(1), by a federal jury in the United States District Court for the District of Hawaii. The USAC explained that the basis of the conviction was Mr. Hee's failure to report as income \$4 million in personal expense payments received from Waimana Enterprises, Inc., SIC's parent company. In its letter, the USAC also indicated that it would be suspending SIC's High Cost Program support, beginning with disbursements due July 2015, pursuant to the FCC's direction. The suspension was thereafter initiated, pending completion of a further investigation and possible other ameliorative measures to ensure that any USF support provided is used solely in a manner consistent with the FCC's rules and policies. The USAC's Internal Audit Division ("IAD") thereafter commenced certain factual inquiries of SIC for the data years 2002 to 2015, and estimated the investigation and examination to be completed by December 2015.

⁵¹Order No. 33167 at 28-29.

commission in resolving the above-referenced uncertainty. The commission also recognized the circumstances germane to the docket, as well as to SIC and Pa Makani, and as such, acknowledged its option to file § 54.314(a) certifications to the FCC and USAC on a quarterly basis, for the remaining three quarters in 2016, in accordance with 47 C.F.R. § 54.314(d).⁵²

The USAC IAD's examination was not completed by December 2015, and SIC's and Pa Makani's 47 C.F.R. § 54.314(a) certification status remained unchanged with the opening of Docket No. 2016-0093. Upon SIC and Pa Makani's motion to intervene in Docket No. 2016-0093, the commission issued Order No. 33849, by which it granted SIC and Pa Makani intervenor status, consolidated Docket No. 2016-0120 and Docket No. 2016-0121 with Docket No. 2016-0093, and modified procedural steps and filing deadlines, thereby essentially extending the opportunity for SIC and Pa Makani to resolve the above-referenced uncertainty.⁵³

⁵²Order No. 33167 at 29.

⁵³In addition to extending the filing deadlines in this docket (Docket No. 2016-0093, Docket No. 2016-0120, Docket No. 2016-0121 (Consolidated)), to allow for the submission of, among other things, the USAC IAD's report, the commission ordered SIC and Pa Makani to file with the Consumer Advocate and the commission, a report addressing the following issues: (1) SIC's and Pa Makani's ability to provide telecommunications service in light of Mr. Hee's conviction ("Report Issue No. 1"); (2) whether any of the expenses that were deemed to be "personal expenses" and not properly expensed as business-related from Mr. Hee's criminal trial were in fact either USF or Rural Utilities Service monies ("Report Issue No. 2"); and (3) the effect the reduced payments

On August 12, 2016, SIC and Pa Makani timely filed their Report Pursuant to Order No. 33849 ("Report"). With respect to Report Issue Nos. 1 and 3, SIC and Pa Makani state that "[n]either SIC's nor SIW's ability to provide telecommunications services has been altered or affected by the conviction."⁵⁴ They add that over the past year, SIC has increased the number of phone lines in service.⁵⁵ Moreover, even though Pa Makani has never received any federal High Cost Program support,⁵⁶ and SIC has not received High Cost Program support for approximately one year, SIC and Pa Makani state that "neither the USAC investigation nor the reduction of disbursement from USAC [has] impaired the telecommunications services provided by SIC and SIW."⁵⁷

Regarding Report Issue No. 2, SIC states that it conducted its own analysis and calculated that approximately \$4,000 in personal expenses were inadvertently recovered by SIC from USF monies.⁵⁸ However, while the commission has reviewed

from the USAC will have on SIC's and Pa Makani's continued ability to provide telecommunications services to its customers ("Report Issue No. 3").

⁵⁴Report at 2.

⁵⁵Report at 2.

⁵⁶Consumer Advocate Supplemental SOP at 5.

⁵⁷Report at 2.

⁵⁸Report at 3-4.

SIC's analysis, in the absence of the USAC IAD's report, the commission does not have access to an independent report concerning this issue. Moreover, without the USAC IAD's report, the commission is unable to comparatively evaluate the reasonableness of SIC's analysis. Given that the USAC IAD will be issuing a report, it would be unreasonable for the commission to reach a conclusion with respect to whether certification is in the public interest prior to receiving and reviewing that report.

More specifically, the commission concludes that the results of the investigation and audit are necessary for the commission to make a determination with respect to the following requirements as set forth in Order No. 30932:

3. In addition to the information provided on its progress report pursuant to 47 C.F.R. § 54.313(a)(1):
 - a. Identify all capital, operating and maintenance expenditures for which the carrier has received universal high-cost support for the previous calendar year, broken down to the wire centers or census blocks, as appropriate. . . .
 - c. For the coming calendar year, identify all anticipated capital, operating, and maintenance expenditures on projects that the carrier plans to seek federal high-cost support for, broken down to the wire center level or census block, as appropriate. . . .⁵⁹

⁵⁹Order No. 30932 at 11-12.

The commission observes that the Consumer Advocate has concluded that "it is premature to make a decision regarding certification for SIC and SIW."⁶⁰ The Consumer Advocate stated that the USAC investigation must be completed first to assist with determining whether there were any inappropriate expenditures of funds in 2015, and that the investigation will facilitate the commission's determination of whether the funds will be properly utilized in 2017.⁶¹ As explained by the Consumer Advocate, "the IAD audit findings will be instructive in assessing whether SIC and SIW have implemented the appropriate remedies and measures to assuage any concerns about possible future transgressions."⁶² The commission agrees with these conclusions.

Thus, it is clear that the USAC IAD's report is essential to the resolution of the outstanding uncertainty. However, there is no evidence in this record that the FCC or the USAC have completed their investigation and/or audit relating to whether USF funds collected by SIC were properly used in the past and will be used by SIC and Pa Makani in 2017 for their intended purpose.⁶³ In fact, according to SIC and SIW, the investigation by the USAC

⁶⁰Consumer Advocate Supplemental SOP at 12.

⁶¹Consumer Advocate Supplemental SOP at 12.

⁶²Consumer Advocate Supplemental SOP at 12.

⁶³Consumer Advocate Reply SOP at 3.

has not concluded, and a final audit report has not been issued. SIC and SIW state that, to the best of their knowledge, "there are no further pending requests or issues from the FCC and/or USAC related to the investigation[,]” and that “[t]o date, SIC has not received an audit report from the FCC.”⁶⁴ Despite this deficit, SIC and Pa Makani request that the commission, at the very least, grant them a tentative certification, provided that all conditions set forth by the FCC and USAC as part of an interim support agreement, or any agreement to restart the disbursement of high-cost support to SIC, are met.⁶⁵ SIC and Pa Makani submit that a tentative certification will allow the FCC and USAC to distribute funds as soon as an agreement is reached.⁶⁶ However, at this point, SIC and Pa Makani have not provided any interim support agreement for the record, even though the Consumer Advocate gave SIC and Pa Makani the opportunity to produce the agreement.⁶⁷

⁶⁴SIC's and Pa Makani's Response to CA-IR-10b, filed on August 23, 2016.

⁶⁵SIC and Pa Makani SOP at 7.

⁶⁶SIC and Pa Makani SOP at 8.

⁶⁷By Order No. 33849, the commission extended the deadline dates for the Parties' issuance of IRs to each other, and for the Parties' responses to the IRs. The interim support agreement was not provided by SIC and/or Pa Makani, despite the Consumer Advocate's issuance of CA-IR-10, asking SIC and Pa Makani to provide copies of all filings or letters made with or received from the FCC and/or the USAC, relating to: the investigation; the annual certification of SIC and Pa Makani; and universal

Moreover, the commission agrees with the Consumer Advocate that "SIC and SIW [have] not offered: 1) any evidence that establishes a precedent for [their] proposal; 2) a thorough and descriptive explanation of the process for [their] proposal in terms of how the Commission would tentatively authorize certification; and subsequently, how that tentative certification might be changed to a 'regular' certification; 3) evidence that the FCC and USAC would accept a tentative certification as sufficient justification to release funds; and 4) sufficient time to analyze this proposal."⁶⁸ Finally, the commission observes that SIC and Pa Makani offer no legal support for their request for tentative certification.

The proposal proffered by SIC and Pa Makani would, if accepted, result in certification preceding the prospective and anticipated events discussed above. However, it is axiomatic that until such events have actually occurred, there is no way to anticipate or predict what the ultimate outcome will be. In such circumstances, the appropriate steps and measures cannot be evaluated and/or performed to ensure that certification of SIC and Pa Makani is consistent with the public interest.

support that each carrier received for 2015, or may receive for 2016 and 2017.

⁶⁸Consumer Advocate Reply SOP at 4.

Stated differently, the commission cannot make a determination based on hoped-for or anticipated outcomes which may or may not come to pass.

Based on the foregoing reasons, the commission concludes that it would not be in the public interest to certify SIC and Pa Makani as high-cost ETCs at this time.

C.

Summary of Findings and Conclusions

Based on its review of the entire record, the commission finds and concludes that (1) HTI has sufficiently complied with the Annual Reporting Requirements adopted by the commission in Decision and Order No. 30932; and (2) there is no uncertainty as to whether all federal high-cost support provided to HTI was used and will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, pursuant to 47 C.F.R. § 54.314(a). As such, the commission concludes that HTI should be certified by the commission as a USF high-cost ETC.

The commission finds and concludes that (1) Mobi has not sufficiently complied with the Annual Reporting Requirements adopted by the commission in Decision and Order No. 30932; and (2) there is uncertainty as to whether all federal high-cost support provided to Mobi was used and will be used only for the

provision, maintenance, and upgrading of facilities and services for which the support is intended, pursuant to 47 C.F.R. § 54.314(a). Accordingly, the commission concludes that certification of Mobi by the commission as a USF high-cost ETC cannot be made at this time.

The commission further finds and concludes that despite SIC's and Pa Makani's compliance with the Annual Reporting Requirements, there remains uncertainty as to whether all federal high-cost support provided to SIC and Pa Makani was used and will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, pursuant to 47 C.F.R. § 54.314(a). Accordingly, the commission concludes that certification of SIC and Pa Makani by the commission as USF high-cost ETCs cannot be made at this time.⁶⁹

⁶⁹The commission recognizes that, pursuant to its Order Initiating Investigation at 2-3, it must act on or before October 1, 2016, for ETCs to receive high-cost support in the first, second, third, and fourth quarters of the succeeding year.

Thus, if the certification is filed after the October 1, 2016 deadline, ETCs will not be eligible to receive USF high-cost support for all quarters in 2017. The commission, as warranted, may file § 54.314(a) certifications to the FCC and USAC on a quarterly basis, for the remaining three quarters in 2017, in accordance with 47 C.F.R. § 54.314(d).

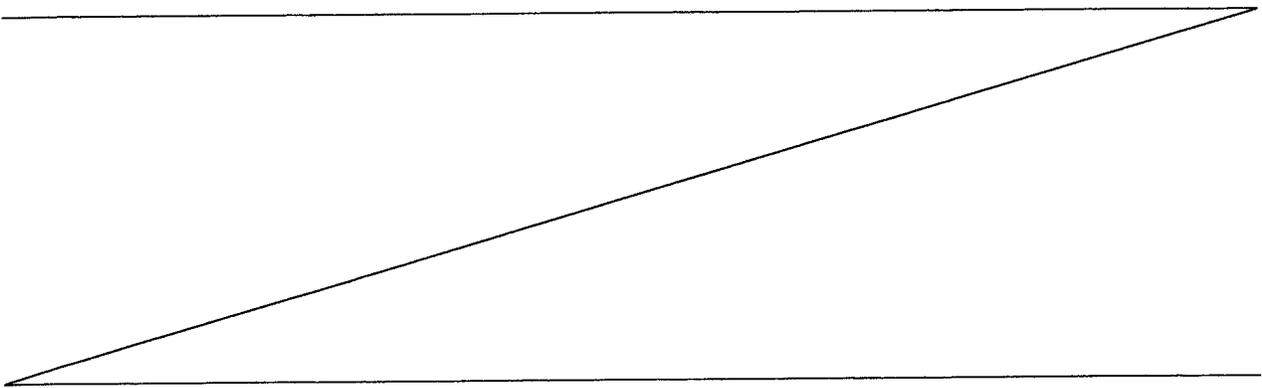
III.

Orders

THE COMMISSION ORDERS:

1. Certification pursuant to 47 C.F.R. § 54.314(a), that all federal high-cost USF support provided to HTI was used in the preceding calendar year and will be used in the coming calendar year, only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, is hereby provided to the FCC and the USAC.

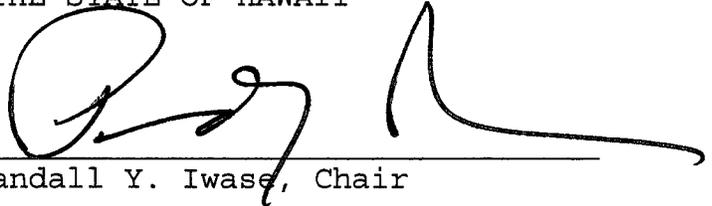
2. As discussed in this Order, certification to the FCC and the USAC pursuant to 47 C.F.R. § 54.314(a), that all federal high-cost USF support provided to Mobi, SIC, and Pa Makani was used in the preceding calendar year and will be used in the coming calendar year, only for the provision, maintenance, and upgrading of facilities and services for which the support is intended cannot be made at this time. Therefore, the commission cannot conclude that such certification would be in the public interest.

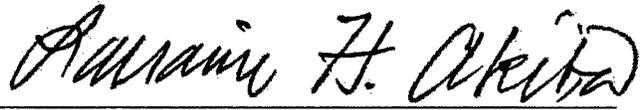


3. This docket is closed unless ordered otherwise by the commission.

DONE at Honolulu, Hawaii SEP 30 2016.

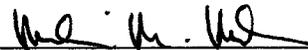
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Randall Y. Iwase, Chair

By 
Lorraine H. Akiba, Commissioner

By 
Thomas C. Gorak, Commissioner

APPROVED AS TO FORM:


Melissa M. Mash
Commission Counsel

2016-0093, 2016-0120, 2016-0121.ljk

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail,
postage prepaid, and properly addressed to the following parties:

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