Original

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Blanca Telephone Company	)	**CC Docket No. 96-45**
	)	
Seeking Relief From the June 2, 2016	)	
Letter Issued by the Deputy Managing	)	
Director Which Seeks to Enforce an	)	
Interpretation of the Commission's Rules	)	
Regarding the Use of USF High Cost	)	
Funding for the Purpose of Operating a	)	
Rural Mobile Cellular Telephone System	)	
During the 2005-2010 Time Period	)	

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Federal Communications Commission
Office of the Secretary

To: The Secretary
ATTN: The Commission

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THIRD MOTION FOR LEAVE TO SUPPLEMENT
EMERGENCY APPLICATION FOR REVIEW

Blanca Telephone Company
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Introduction

Blanca Telephone Company (Blanca), by its attorney, pursuant to 47 C.F.R. § 1.41, § 1.106(b)(2)(i) (changed circumstances or recent event requires supplement), § 1.106(f) (authorizing requests to supplement pleadings), and § 1.115(g)(1) (recent events or changed circumstances since last filing), hereby seeks leave to supplement its June 16, 2016 Emergency Application for Review, or its June 24, 2016 Petition for Reconsideration in the event the Commission denies Blanca's exhaustion waiver request found at Application for Review, page 4. As discussed in the Petition for Reconsideration, at 1 n. 1, it appears that the Commission denied Blanca's exhaustion waiver request which necessitated the need to file the Petition for Reconsideration.[1] In support whereof, the following is respectfully submitted:

Submission of Case Materials in CC Docket No. 96-45

Several days after Blanca filed its March 30, 2017 *Second Motion for Leave to Supplement Emergency Application for Review and Notice of Discontinuation of KNKQ427/KNKR288 Cellular Service*, its fourth pleading in this matter, Blanca was contacted by the Office of Managing Director and instructed for the first time to file case materials in CC Docket No. 96-45 (Federal-State Joint Board on Universal Service).[2] Upon searching the nearly 1/4 million documents in CC Docket No.

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[1] The Petition for Reconsideration is a reformatted version of the Application for Review to meet the filing requirements applicable to reconsideration petitions filed under § 1.106 and it was filed in response to the Commission's suggestion in a letter that Blanca's waiver request had been denied. Otherwise, the two pleadings are substantially similar. However, other than suggesting that Blanca's waiver request had been denied, the Commission has not provided any further guidance regarding Blanca's administrative exhaustion waiver request.

[2] Upon receiving the instruction to submit documents into CC Docket No. 96-45 undersigned counsel inquired about filing procedures and whether Blanca's previously filed pleadings and the Commission's letters in this case, including the June 2, 2016 Letter imposing the forfeiture against Blanca, would be uploaded into the Docket because they are not currently part of the Docket and they do not reference CC Docket No. 96-45. Counsel has not yet received a response so counsel is filing the instant pleading in paper form through the Secretary's Office and uploading a copy into (continued...)

96-45 undersigned counsel found information regarding two Commission USF decisions which were issued after Blanca had filed its June 16, 2016 *Emergency Application for Review*. Consideration of those two decisions in the context of the instant proceeding would serve the public interest.

The Two December 2016 Sandwich Isle Cases

On December 5, 2016 The FCC issued two USF rule violation decisions involving a Hawaiian local exchange company: *In the Matter of Sandwich Isles Communications, Inc., Order*, FCC 16-167 (finding various USF rule violations from 2002-2015 and seeking a forfeiture of $27+ million for USF funds "erroneously" paid to Sandwich Isles during that period (¶ 95)); and *In the Matter of Sandwich Isles Communications, Inc., Waimana Enterprises, Inc., Albert S.N. Hee, Notice of Apparent Liability for Forfeiture and Order*, FCC 16-165 (imposing a $49+ million forfeiture for falsely certifying the accuracy of the USF data provided to the Commission/NECA during the years 2010-2013 (¶¶ 46-47, 55, 59, 79, 81)). The Commission's December 6, 2016 *Daily Digest*, Vol. 35 No. 234 (Attachment page 1 of 4) states that "Sandwich Isles Communications must repay the USF and may pay fines totaling over $76 million for apparent violations related to USF compensation."

The associated *Sandwich Isles News Release* (Attachment page 4 of 4) cites *MCI v. FCC*, 515 F.2d 385 (D.C. Cir. 1974) for the proposition that "This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action." *MCI* holds that release of the full text of a Commission action, and not news release, constitutes "public notice" for purposes of seeking judicial review. 515 F.3d at 395, 397. *MCI* does not hold that FCC news releases are "unofficial" FCC pronouncements and most certainly the Court was not authorizing, encouraging, or excusing erroneous public statements issued by government agencies. The quoted statement taken from the *Daily Digest* stating that both *Sandwich Isles* orders constitute

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[2](...continued)
the ECFS docket.

"fines" expresses the "common sense" view that forcing a company to forfeit money to the government against its will upon entry of rule violation findings is a "fine." 515 F.3d at 397.

Blanca has previously referenced the Commission's October 15, 2015 *Public Notice* (FCC 15-133), and the *Sandwich Isle* proceeding referenced in that *Public Notice*, to show a listing of USF misuses/abuses and to discuss that the June 2, 2016 Letter Order at issue instantly does not assert that Blanca had engaged any similar abuses. Moreover, Blanca pointed out that the purported violations asserted against Blanca consist of Blanca's provision of the "mobile" services explicitly acknowledged and authorized in that *Public Notice*. *See e.g, Emergency Application for Review* at 7.[3] Blanca also referenced the *Sandwich Isle* matter because Chairman Pai, then Commissioner Pai, was properly bewildered by the fact that the FCC had been "sitting" on the *Sandwich Isles* case for more than five years. *Petition for Writ of Prohibition*, page 3, D.C. Cir. 16-1216, filed June 29, 2016.[4] Because the *Sandwich Isles* forfeiture cases were previously referenced in this proceeding, and because those cases now impose monetary penalties without regard to the statute of limitations, and because the *Sandwich Isles* cases are "the Commission's first enforcement action in the high-cost program," *News Release*, Attachment page 3 of 4, consideration of the *Sandwich Isles* matter in this case would serve the public interest.

The Blanca and *Sandwich Isles* Case Fact Patterns Differ Substantially

On the whole the *Sandwich Isles* cases have significant factual differences from Blanca's situation which render them readily distinguishable from the instant matter. First, *Sandwich Isles*

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[3] FCC 16-165, ¶ 2, the Commission found that the carrier "failed to comply with the Commission's Rules by using high-cost support for purposes other than 'the provision, maintenance, and upgrading of facilities and services for which the support is intended.'" Blanca used its USF money to provide telecom services to its high cost subscribers in rural Southern Colorado.

[4] The Office of Managing Director's June 22, 2016 letter to the undersigned indicated that Blanca's *Emergency Application for Review* would be acted upon "expeditiously."

concerns continuing violations of the Commission's rules which violations were ongoing at the time the *Sandwich Isles* orders were issued. FCC 16-165 ¶ 80 & n. 232. By contrast, Blanca had ceased its questioned accounting practices, revided accounting reports, returned money to the USF, and settled the accounting matter years before the June 2 Letter Order was issued. *Emergency Application for Review*, at 16 & n. 15.

Second, the Commission determined in *Sandwich Isles* FCC 16-167 ¶ 95 that the USF money was "erroneously" paid to the defendant carrier. In Blanca's case, the USF money was not erroneously paid to Blanca, it was paid to Blanca under circumstances in which Blanca had "clean hands" – Blanca had plainly disclosed that it was using the USF money to support its rural mobile/wireless system. *Emergency Application for Review*, at 12 n. 8. In fact, USF money was paid to Blanca for several years even while Blanca was being audited. The Commission plainly allows USF support for mobile telecom systems and the payments to Blanca were not the product of "error." *Motion for Leave to Supplement Emergency Application for Review* (*First Supplement to Emergency Application for Review*), filed December 19, 2016, at 6.

Third, the Commission issued a Notice of Apparent Liability for Forfeiture in *Sandwich Isles*, FCC 16-165, but failed to do so in Blanca's case. Blanca has previously argued that it is entitled to a hearing on the rule violations, but the Commission has denied Blanca its hearing right. *Emergency Application for Review* at 9. Moreover, as previously discussed, the Commission is barred by the one year statute of limitations from conducting such a rule violation hearing in Blanca's case. *Emergency Application for Review*, at 16; *First Supplement to Emergency Application for Review*, at 3-8.

Fourth, the USF rule violations in *Sandwich Isles* were apparently so clear that the investigation was "based on the results of an extensive investigation extending over nine months." FCC 16-167 ¶ 1. Blanca, on the other hand, was investigated by at least seven different agencies

over the course of 8 years before the FCC "put pen to paper." *Emergency Application for Review*, at 24. Whatever problem the FCC thinks that it eventually found with Blanca's accounting was neither clear, nor obvious, nor even reasonably discernible – it took the FCC ***years*** reach the 2013 NECA settlement and even more years to issue the June 2 Letter Order. The FCC's dilatory action was not a product of any deception, stalling, nor attempted concealment by Blanca: the Commission admits that Blanca has "clean hands." *First Supplement to Application for Review*, at 2.

Fifth, debt recovery might be an appropriate remedy in *Sandwich Isles* because the findings indicate that the USF money was disbursed in reliance upon fraudulent/false statements. FCC 16-165. ¶¶ 46-47, 55, 59, 79, 81. Under those circumstances title to the USF money might not have been properly conveyed to the carrier. In Blanca's case, title to the USF money properly passed to Blanca years ago in light of Blanca's "clean hands." *First Supplement to Application for Review*, at 6-8. Because Blanca obtained legal title to the USF money, assertion of the debt recovery procedure against Blanca is improper and is at odds with the underlying "debt" collection purpose of the Debt Control Improvement Act of 1996 (DCIA). The USF money became Blanca's property years ago, that money is not a "debt" owed by Blanca to the Federal government.

Statute of Limitations

Blanca's December 19, 2016 *First Supplement to Emergency Application for Review*, pages 3-8, discusses/opposes the potential application of three Commission theories regarding the inapplicability of the statute of limitations to USF rule violation adjudications which the Commission might assert against Blanca which were expressed by the Commission in two post-June 2 Letter Order cases: 1) the action is an equitable remedy; 2) Congress did not clearly bar Commission recovery action; and 3) the Commission can recover "erroneously" paid money without any time limitation. In the *Sandwich Isles* cases the Commission offers a fourth theory: when there is a "continuing violation" the statutes of limitations do "not begin to run until the violation is

cured." FCC 16-165 ¶ 80 & n. 232. In Blanca's case there is no finding of continuing rule violation entered against Blanca. Even if continuing violation findings had been entered against Blanca, those violations were necessarily terminated more than one year before issuance of the June 2 Letter Order when, in 2013, Blanca returned USF money and revised accounting forms to settle the FCC's accounting concern. *Emergency Application for Review*, at 16 n. 15.[5]

The 2015 Wisconsin District Court Decision

Blanca cited 5th Circuit and 10th Circuit courts of appeals cases and argued that USF money is not properly recovered under the DCIA because receipt of USF money does not create a Federal debt, the USF is not funded with Federal money, the USF is not administrated by the Federal government, nor do agencies which disburse the USF money perform a governmental function. *First Supplement to Emergency Application for Review*, at 15-16. The Commission prefers a district court case from the 7th circuit, *United States ex rel. Todd Heath v. Wisconsin Bell, Inc.*, 111 F.Supp.3d 923 (E.D. Wis. 2015), *interlocutory appeal denied* (2016). It is respectfully submitted that the Commission's reliance upon that district court case, which choice creates a conflict with two other Federal circuit courts, is misplaced. *Sandwich Isles*, FCC 16-167, ¶ 95. First, the Commission's rationale for preferring the Wisconsin district court case because it is "the most recent precedent under the statute pertaining to the definition of federal funds" is not a reasoned analysis regarding case merits. Moreover, the Commission fails to explain how recency is a better attribute than age with regard to judicial precedent. The Commission's approach encourages law to become a rapidly shifting sand dune rather than something which is fixed and reliable.

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[5] The *Sandwich Isles* cases do not assert that the statute of limitations is tolled by the fraud or false statements. But should that become the Commission's fifth theory for ignoring the statute of limitations in USF recovery efforts, the June 2 Letter Order enters no findings of false statement against Blanca and the General Counsel agrees that Blanca has "clean hands." *First Supplement to Emergency Application for Review*, at 6-7.

Second, Wisconsin district court case is not a merits determination, it is an interlocutory 12(b)(6) motion to dismiss decision in which the government representative's factal allegations are accepted "as true" for purposes of ruling on the motion. *United States ex rel Heath*, 111 F.Supp.3d at 926. With all due respect, the district court case has precedential value in other 12(b)(6) motion to dismiss cases in the Eastern District of Wisconsin, but the precedential value of an interlocutory motion to dismiss decision, lined up against two circuit court merits decisions, seems to be a weak reed especially where one of the circuit decisions was issued by one of the potential reviewing courts in this case.

Third, the district court determined that "a financial loss to the government does not require a direct loss to the Treasury. . . . there must be a sufficiently close nexus between the two such that a loss to the [Fund] is effectively a loss to the [government]." *United States ex rel Heath*, 111 F.Supp. at 927. However, while the District Court finds that "the nexus between the Fund and the government is sufficiently close," the district court failed to how a loss to the USF was "effectively" a loss to the government notwithstanding a "nexus between the Fund and the government." The point is not to show a link between a fund and the government, the point is to show a link between the purported improper payments and an "effective[] loss to the government." *United States ex rel Heath* fails to explain how payments from the USF affects the US Treasury by a single penny.

United States ex rel Heath misreads or misapplies three cases in support of its assertion that showing a "nexus between the Fund and the government" also shows an "effective" loss to the government. A) *United States ex rel. Yesudian v. Howard Univ.* 153 F.3d 731 (D.C. Cir. 1998): while Howard University is a private institution of higher education, 80% of its funding comes from money appropriated by the Federal government, 153 F.3d at 739, and stealing money from Howard effectively steals money from the US Treasury because Congress must decide whether to appropriate more money for Howard to make it whole. The Court stated that the False Claims Act is intended

to protect the US Treasury by protecting "recipients of Federal funds." 153 F.3d at 739.

B) *United States ex rel. Luther v. Consolidated Industries, Inc.*, 720 F. Supp. 919 (N.D. Ala. 1989): an 11th Circuit case involved US Department of Defense spending, and money drawn from the US Treasury, as affected by "two subcontracts under government prime contracts." 720 F. Supp. at 921. The issue in the case is whether a statutory forfeiture of $5000 to $10000 applies upon the mere submission of a false claim to a Defense contractor even if the false claim is not paid. The Government has a legitimate interest in discouraging the submission of false claims even if they are unpaid, but the case ultimately swirls around Defense contracts and payments out of the US Treasury.

C) *United States ex rel. Shank v. Lewis Enterprises, Inc.*, 2006 U.S. Dist. LEXIS 27794 (S.D Ill. May 3, 2006): another 7th Circuit case, but this one is unpublished and, therefore, of questionable precedential value. In any event, the funding of the pertinent coal miner hearing aid program "under the Coal Act has been found to constitute a tax and, under the administration of the Coal Act, constitutes federal funds." Once again, false claims on the pool of money effectively steals money from the US Treasury since a portion of the money pool came from the US Treasury.

If the Commission had examined three cases cited in the district court's decision it would have discovered a direct Federal connection to the money at issue in each case. Blanca appreciates the fact that it is bad public policy if the government allows someone to take USF money to buy vacation houses and otherwise to misspend USF money with impunity. However, it is also bad public policy to subject a small family owned telephone company with admitted "clean hands" to nearly a decade of audits and enforcement actions to punish that family and company for using USF money to provide wireless/mobile and fixed services in a very rural, high cost part of America. It is long past the point that the Commission should have concluded that Blanca's use of USF money to provide telecommunications services in rural Southern Colorado is exactly what the USF was

created to accomplish.

Common Carrier Obligation Not to Discontinue Service

As a final matter, *Sandwich Isles*, FCC 16-167, ¶ 59 states that an exchange carrier "has ongoing obligations to its customers, under both the Communications Act and Commission rules, to continue to provide interstate telecommunications services and may not discontinue service without the Commission's express authorization." On March 30, 2017 Blanca filed its *Second Motion for Leave to Supplement Emergency Application for Review and Notice of Discontinuation of KNKQ427/KNKR288 Cellular Service* to inform the Commission that Blanca had discontinued service of its Cellular system. Unlike wireline carriers, wireless carriers like Blanca are able to terminate service upon 30 prior written notice to subscribers without obtaining prior Commission approval.[6] Blanca provided at least two written subscriber service termination notices. Moreover, beginning in late 2015 Blanca orally notified Commission licensing and public safety staff about the cellular system's precarious financial and physical condition and of Blanca's intent to discontinue service. Furthermore, while roaming partner notification is not required by the rules, it is noted that Verizon, which manages the two co-channel Colorado cellular systems which are adjacent to Blanca's system and which provided the vast bulk of roaming traffic over Blanca's system, has known about Blanca's intent to discontinue service since Fall 2015. Verizon was instrumental in forcing Blanca to discontinue operations by threatening to bring legal action against Blanca if Blanca assigned the cellular licenses to the neighboring co-channel carrier. That license assignment would have not only kept the cellular system operating, it would have also paved the way for

[6] The Commission long ago adopted a free entry/exit policy with regard to CMRS services and also preempted state regulation of wireless common carrier services. *In the Matter of Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, 10 FCC Rcd 8844, 8846, 8872 (FCC 1995).

institution of E911 services in the area. *Second Motion for Leave to Supplement Emergency Application for Review and Notice of Discontinuation of KNKQ427/KNKR288 Cellular Service*, at 4-5.

Respectfully submitted,
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THE FOLLOWING ITEMS ARE DATED AND RELEASED TODAY:

PUBLIC NOTICES

Report No: 48875 Released: 12/06/2016. BROADCAST ACTIONS. MB DOC-342397A1.pdf DOC-342397A2.txt

Report No: 28875 Released: 12/06/2016. BROADCAST APPLICATIONS. MB DOC-342396A1.pdf DOC-342396A2.txt

Released: 12/06/2016. PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS COMMENT ON REGION 19 (NEW ENGLAND) 700 MHZ REGIONAL PLAN AMENDMENT. (DA No. 16-1347). (Dkt No 02-378) PSHSB Seeks Comment on Region 19 700 MHz Plan Amendment. Comments Due: 01/05/2017. PSHSB . Contact: John Evanoff. Action by: PSHSB DA-16-1347A1.doc DA-16-1347A1.pdf

Released: 12/06/2016. DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF FPL FIBERNET, LLC AND NEXTERA FIBERNET, LLC TO CROWN CASTLE INTERNATIONAL CORP. (DA No. 16-1352). (Dkt No 16-394). Comments Due: 12/20/2016. Reply Comments Due: 12/27/2016. WCB . Contact: Myrva Freeman at (202) 418-1506 or Gregory Kwan at (202) 418-1191 DA-16-1352A1.docx DA-16-1352A1.pdf

* * * * *

ADDENDA: THE FOLLOWING ITEMS, RELEASED DECEMBER 5, 2016, DID NOT APPEAR IN DIGEST NO. 233:

NEWS RELEASES

FCC ORDERS USF OVERPAYMENT RECOVERY AND PLANS FINE TOTALING $76M. Sandwich Isles Communications must repay the USF and may pay fines totaling over $76 million for apparent violations related to USF compensation. It also will stop charging ratepayers inflated charges for a submarine cable. News Release. (Dkt No 10-90). Adopted: 12/05/2016 WCB EB DOC-342429A1.docx DOC-342429A1.pdf

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PUBLIC NOTICES

Released: 12/05/2016. DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER OF CONTROL OF SIPSTATION, INC. AND ROCKBOCHS INC. TO SANGOMA U.S., INC. (DA No. 16-1351). (Dkt No 16-11). WCB . Contact: Gregory Kwan at (202) 418-1191 DA-16-1351A1.docx DA-16-1351A1.pdf

Released: 12/05/2016. WIRELINE COMPETITION BUREAU ANNOUNCES UPCOMING LOCAL NUMBER PORTABILITY ADMINISTRATOR TRANSITION OUTREACH AND EDUCATION PLAN WEBCAST. (DA No. 16-1350). (Dkt No 09-109 07-149 95-116). WCB . Contact: Marilyn Jones at (202) 418-2357, email: Marilyn.Jones@fcc.gov or Sanford Williams at (202) 418-1508, email: Sanford.Williams@fcc.gov DA-16-1350A1.docx DA-16-1350A1.pdf

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TEXTS

SANDWICH ISLES COMMUNICATIONS, INC. This NAL charges Sandwich Isles with violating the Commission's accounting rules and methods, and submitting and certifying inaccurate data used to obtain millions of dollars in improper high-cost support payments; proposes $50m fine. Action by: the Commission. Adopted: 12/05/2016 by NAL. (FCC No. 16-165). EB FCC-16-165A1.pdf

SANDWICH ISLES COMMUNICATIONS, INC. The Commission takes action to protect the Universal Service Fund from waste, fraud and abuse based on the results of USAC's investigation into high-cost support received by Sandwich Isles Communications, Inc. from 2002 to June 2015. (Dkt No. 10-90). Action by: the Commission. Adopted: 12/05/2016 by ORDER. (FCC No. 16-167). WCB FCC-16-167A1.pdf FCC-16-167A2.docx FCC-16-167A2.pdf

AT&T APPLICATION FOR REVIEW; SANDWICH ISLES COMMUNICATIONS, INC. PETITION FOR DECLARATORY RULING MEMORANDUM OPINION AND ORDER. Granting an Application for Review filed by AT&T Inc. on a prospective basis and denying a Petition for Reconsideration filed by Sandwich Isles Communications, Inc. (Dkt No. 09-133). Action by: By the Commission; Commr. O'Rielly approving in part and concurring in part. Adopted: 12/05/2016 by MO&O. (FCC No. 16-166). WCB . Contact Kristine Fargotstein FCC-16-166A1.docx FCC-16-166A1.pdf

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For Immediate Release

FCC ORDERS RECOVERY OF OVERPAYMENTS, PLANS TO FINE SANDWICH ISLES FOR UNIVERSAL SERVICE FUND VIOLATIONS

Commission Concludes the Company Obtained Improper Reimbursements from the Universal Service Fund High-Cost Program

WASHINGTON, December 5, 2016 – The Federal Communications Commission today voted to take multiple actions against Sandwich Isles Communications, which provides phone and broadband service to customers on Hawaiian Home Lands, for violations and apparent violations related to Universal Service Fund (USF) support. As a result, the company will be required to repay over $27 million in improper payments of universal service support. In addition, following an investigation by the FCC's Enforcement Bureau, the Commission has proposed more than $49 million in fines against the company for apparent violations of rules relating to the high-cost program.

"Accounting and accountability go hand in hand," said FCC Enforcement Bureau Chief Travis LeBlanc. "We take our duty seriously to ensure that providers submit true and accurate data to support their requests for federal funds. Any company that fails to do so will be held accountable."

Sandwich Isles has ongoing obligations to its customers, under both the Communications Act and Commission rules, to continue to provide interstate telecommunications services and may not discontinue service without the Commission's express authorization.

The first order issued by the FCC requires Sandwich Isles to refund $27,270,390 in improper payments of universal service support. This order concludes that the company violated the Commission's high-cost program rules. The USF high-cost program is designed to ensure that consumers in rural and other high-cost areas have access to modern communications networks. The order acts on the findings from a Universal Service Administrative Company investigation.

Second, following an investigation by the FCC's Enforcement Bureau's Universal Service Fund Strike Force, the Commission has announced a proposed fine of $49,598,448 on Sandwich Isles, its parent company Waimana Enterprises, and its former controlling owner Albert Hee for apparent violations impacting the high-cost program. Sandwich Isles is charged with violating the Commission's accounting rules and methods, and submitting and certifying inaccurate data used to obtain millions of dollars in improper high-cost support payments. This is the Commission's first enforcement action in the high-cost program.

In addition, the Commission modified a previous agency ruling regarding payments made by Sandwich Isles for use of a submarine cable built and operated by its own corporate affiliate, Paniolo LLC. This order directs the National Exchange Carrier Association to no longer allow the company's inclusion of excessive expenses in its revenue requirement.

A proposed fine, formally called a Notice of Apparent Liability for Forfeiture, details the Commission's allegations of unlawful conduct and proposes a monetary forfeiture for such conduct. The description of today's action and the apparent violations are allegations, and the parties will have a chance to respond before any final action is taken. Members of the public who have information related to this matter may provide it at https://consumercomplaints.fcc.gov/.

The Commission adopted the Order (FCC 16-167) on December 5, 2016. Commissioners Clyburn and Pai issuing a joint statement; Commissioner O'Rielly approving in part and concurring in part.

The Commission adopted the Memorandum Opinion and Order (FCC 16-166) on December 5, 2016. Commissioner O'Rielly approving in part and concurring in part.

The Commission adopted the Notice of Apparent Liability (FCC 16-165) on December 5, 2016. Commissioner O'Rielly approving in part and concurring in part.

The Order is available here: https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-167A1.pdf

The Memorandum Opinion and Order is available here:
https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-166A1.pdf

The Notice of Apparent Liability is available here:
https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-165A1.pdf

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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1974)

Certificate of Service

I hereby certify that I have this 10th day of April 2017 served a copy of the foregoing *Third Motion for Leave to Supplement Emergency Application for Review* by First Class United States Mail, postage prepaid, upon the following:

Mark Stephens
Managing Director
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Timothy E. Welch