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December 3, 2015

DEC - 3 2015

James Arden Barnett, Jr.

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

Federal Communications Commission  
Office of the Secretary

T (202) 344-4695  
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Re: Emergency Petition for Review, WC Docket Nos. 09-133 and 10-90; CC Docket No. 96-45

Dear Ms. Dortch:

On behalf of Sandwich Isles Communications, Inc., please find submitted herewith an original and four copies of an Emergency Petition for Review in the above referenced dockets for filing. I am providing an additional copy with the request that it be stamped and returned to me.

Please let me know if you have any questions. With best wishes, I am

Sincerely yours,



James Arden Barnett, Jr.  
Rear Admiral, USN (Retired)

Enclosure

cc: Jonathan Sallet, General Counsel  
Gerard J. Duffy  
Carol Matthey

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DEC - 3 2015

Federal Communications Commission  
Office of the Secretary

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Emergency Petition of )  
Sandwich Isles Communications, Inc. )  
for Resumption of Payments )  
Terminated by Unauthorized Order )

cc Docket No. 96-45  
WC 09-133 AND 10-90  
To: The Full Commission

EMERGENCY PETITION FOR REVIEW

Sandwich Isles Communications, Inc. ("SIC") hereby submits this Emergency Petition seeking (1) immediate rescission of the Commission's unauthorized and unlawful directive to the Universal Service Administrative Company ("USAC") to suspend High Cost Program support to SIC beginning with disbursements due July 2015; and (2) immediate restoration and disbursement to SIC of all support payments USAC has withheld dating back to July 2015.

As grounds for this Emergency Petition, SIC submits that the Commission's suspension directive is unlawful for two reasons. First, the suspension violated the Commission's own regulations governing Universal Service and the High Cost Program. No regulation permits the Commission or USAC to suspend support payments to an eligible telecommunications carrier ("ETC") pending the outcome of an audit without any prior finding that the ETC violated High Cost Program rules, which is what the Commission ordered USAC to do here. Second, the suspension denied SIC due process of law, in violation of the Fifth Amendment, because it was imposed without providing SIC prior notice of any purported violation of the Commission's regulations or an adequate opportunity to challenge the suspension either before or after it took effect. The Commission has pointed to no evidence that SIC violated any of its rules. Rather, it has ordered an audit to determine *if* there was a violation. The Commission's unconstitutional conduct has put SIC in an impossible, Alice in Wonderland position: "execution first, trial later."

The Commission's unauthorized actions will soon deprive SIC of a sixth consecutive month of High Cost Program support. The inevitable, looming consequence will be to require SIC to shut down its operations and discontinue providing essential telecommunications services to residents of the Hawaiian Homelands. Maintaining the suspension without reimbursing SIC support payments dating to July 2015, in other words, will soon cause substantial harm to native Hawaiians, the intended beneficiaries of the High Cost Program, and frustrate the purpose of the Universal Service Fund.

Under these exigent circumstances, and given the strength of SIC's showing that the suspension exceeds the Commission's legal authority and violates SIC's constitutional due process rights, the Commission should consider this Emergency Petition immediately, rescind the suspension of support payments to SIC forthwith, and direct USAC to disburse to SIC all support payments that it has withheld dating back to July 2015.

Given the risk that the suspension presents to SIC's continuing ability to provide vital communications services to residents of the Hawaiian Homelands, SIC will take all necessary actions to vindicate its rights, including seeking immediate judicial review, if the Commission does not promptly grant the relief requested.

### **Background**

SIC is an ETC that receives support under the High Cost Program to provide essential telecommunications services to remote, hard-to-access and expensive-to-serve Hawaiian Homelands. SIC has been using High Cost Program support to deliver these essential services to native Hawaiian residents of the Hawaiian Homelands for over fifteen (15) years.

On August 7, 2015, USAC informed SIC that the Commission had directed it to suspend SIC's High Cost Program support beginning with July 2015 disbursements. *See* USAC Aug. 7,

2015 Letter, attached as **Exhibit A**. In its one page letter, USAC cited the Commission's concern that SIC had paid management fees to Waimana Enterprises, Inc., and that these management fees might somehow be connected to Mr. Albert Hee's conviction for tax fraud for failing to report as income \$4 million in personal expense payments he had received from Waimana. *Id.* Mr. Hee's conviction for failing to report income did not establish either that SIC's payment of management fees to Waimana was unwarranted or that any management fees or any of Mr. Hee's personal expenses were reimbursed out of High Cost Program support payments. Nonetheless, the Commission appears to have assumed that Mr. Hee's conviction raised questions of some nature about whether SIC was using High Cost Program funds solely to provide, maintain or upgrade the facilities or services for which the funds were intended. *Id.* To answer those questions, the Commission directed USAC to initiate an audit of SIC. *Id.*

But the Commission went much further. Notwithstanding the fact that it did not yet have any answers to its questions, it directed USAC to suspend support payments to SIC "pending completion of a further investigation"—*i.e.*, the audit—"and possibly other ameliorative measures to ensure that any USF support provided is used solely in a manner consistent with Commission rules and policies." *Id.* The Commission thus denied SIC its right to participate in the High Cost Program prior to any finding that SIC violated Program rules and prior to any hearing or other proceeding in which SIC could formally defend itself. USAC commenced the audit on August 13, 2015, a week after the suspension was imposed, with a letter requesting documents from SIC.

SIC does not challenge USAC's right to audit SIC's expenses, including payments SIC has made to Waimana and Waimana affiliates. To the contrary, SIC has cooperated with the audit and has provided USAC with extensive information about its use of High Cost Program

support. But the slow pace and recent expansion of the audit in the face of the suspension now presents an existential threat to SIC and, correspondingly, a threat to the continued provision of services to SIC's customers, who are the intended beneficiaries of the High Cost Program. Therefore, while SIC will continue to cooperate with the audit, it can no longer permit the suspension of the final six months of its 2015 support payments to go unchallenged. That is especially so since the suspension and accompanying audit have led the Hawaii Public Utilities Commission to delay the certification required for SIC to receive High Cost Program support for next year, beginning in January 2016. *See* Hawaii Public Utilities Commission Decision and Order No. 33167 (Sept. 28, 2015), attached as **Exhibit B** (finding certification of SIC to be "premature," despite SIC's compliance with all Annual Certification Requirements, because the suspension and audit have created "uncertainty" about whether SIC will use Program support only for the provision, maintenance and upgrading of facilities and services for which the support is intended). The deferral of SIC's 2016 certification is exacerbating the harm the Commission's unlawful suspension order is already causing SIC.

### **Argument**

#### **I. The Suspension of SIC Is Unauthorized Because the Commission Failed to Follow Its Own Regulations Governing Suspension of an ETC from the High Cost Program.**

The Commission's Universal Service regulations permit suspension of a High Cost Program ETC in only two circumstances. Neither circumstance is present here. The Commission's proffered reason for the suspension—the pendency of an audit to determine whether High Cost Program rules were violated—does not justify suspension under any Commission rule. Nor did the Commission otherwise find that any of the grounds for suspension

recognized by its regulations existed at the time of its directive to USAC. The suspension, therefore, was and remains unauthorized and unlawful.

47 C.F.R. § 54.8(b) sets forth the first potential justification for suspending a High Cost Program ETC. It provides that “the Commission shall suspend and debar a person for any of the causes in paragraph (c) of this section using procedures established in this section, absent extraordinary circumstances.” Paragraph (c) provides:

Causes for suspension and debarment are conviction of . . . attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, and other fraud or criminal offense arising out of activities associated with or related to . . . the high-cost support mechanism . . . .

This rule does not authorize the Commission to suspend an ETC for the reason invoked here—the pendency of an audit initiated to determine whether the ETC has violated a program requirement. Indeed, neither the August 7 notice nor any other public Commission statement invokes Section 54.8 as the basis for the suspension or cites any criminal or civil judgment against SIC. *See Ex. A.* The Commission thus has not triggered the suspension process established by Section 54.8.

Moreover, the Commission could not have suspended SIC under Section 54.8 had it been properly invoked. Under that Section, the criminal conviction of a person other than SIC—here, Albert Hee—may not furnish grounds for suspending support to SIC. Mr. Hee was found guilty of failing to report as income and pay taxes on personal expenses paid from Waimana. Mr. Hee’s conviction was not a conviction of SIC—the recipient of High Cost Program support—and it did not establish that the fees SIC paid to Waimana were unwarranted or unearned or that they were traceable to the High Cost Program in the first place. The legality of SIC’s actions under Universal Service Fund rules simply was not at issue in the prosecution of Mr. Hee for failure to

comply with the tax laws. Because SIC has never been convicted of a crime, or found liable in civil proceedings, for conduct related to the High Cost Program, Section 54.8 could not justify the suspension of SIC.

In addition, even if the Commission had purported to suspend SIC under Section 54.8, its actions still would have been unauthorized because it would not have followed the required procedures. To properly initiate a suspension under Section 54.8, the Commission would have had to inform SIC of the specific High Cost Program rules SIC allegedly violated. 47 C.F.R. § 54.8(e)(2). But the Commission could not satisfy that requirement here because it had—and still has—no such information. The Commission ordered the audit for the purpose of determining *whether or not* SIC had violated High Cost Program rules.

For all of these reasons, SIC's purported suspension is not authorized under Section 54.8 of the Commission's rules.

The second permissible justification for suspension of a High Cost Program ETC under the Universal Service regulations is found in 47 C.F.R. § 54.707, entitled "Audit Controls." Section 54.707 authorizes USAC to establish audit procedures for Universal Service Fund ETCs and permits USAC, either on its own or at the direction of the Commission, to suspend Universal Service Fund ETCs for failing to comply with audit requests. In pertinent part, Section 54.707 provides:

The Administrator [USAC] shall establish procedures to verify discounts, offsets, and support amounts provided by the universal service support programs, and may suspend or delay discounts, offsets, and support amounts provided to a carrier if the carrier fails to provide adequate verification of discounts, offsets, or support amounts provided upon reasonable request, or if directed by the Commission to do so.

At the time of the suspension, SIC had not failed to provide USAC any information USAC had requested. In fact, at the time of the suspension, USAC had not even requested

information, as it had not yet begun its audit; the notice of the suspension was *simultaneous* with the notice of the audit. Because Section 54.707 does not authorize suspension without USAC *first* making a “reasonable request” for “adequate verification” from an ETC and furnishing the ETC an opportunity to respond, it did not authorize the suspension of SIC here. Nor would it justify the suspension even now. From their weekly status calls with SIC counsel and from SIC’s rolling production of thousands of documents over the past three months, USAC and Commission staff know that SIC has cooperated with the USAC audit and has provided all information requested by USAC to verify its support amounts.

In sum, the suspension of SIC was unlawful because the Commission failed to follow its own regulations in ordering it. *See, e.g., Vitarelli v. Seaton*, 359 U.S. 535, 535 (1959); *United States v. Nixon*, 418 U.S. 683, 696 (1974). Simply put, no regulation authorizes the Commission to suspend support payments to an ETC pending completion of an audit without any prior finding that the ETC violated High Cost Program rules.

**II. The Suspension Deprived SIC of Its Constitutional Right to Due Process of Law Because It Was Imposed without Adequate Notice and without a Meaningful Opportunity for a Hearing.**

As the D.C. Circuit has held repeatedly, the Due Process Clause of the Fifth Amendment requires federal agencies to establish and adhere to standards and procedures, including furnishing notice, an opportunity to be heard and findings, before debarring government contractors. *Gonzalez v. Freeman*, 334 F.2d 570, 579 (D.C. Cir. 1964). “Absent such procedural regulations and absent notice, hearing and findings . . . , the debarment is invalid; to reach any other conclusion would give rise to serious constitutional issues.” *Id.* (citing *Greene v. McElroy*, 360 U.S. 474, 507-508 (1959); *Bland v. Connally*, 293 F.2d 852 (D.C. Cir. 1961); *Davis v. Stahr*, 293 F.2d 860 (D.C. Cir. 1961)). The same requirements apply to the suspension of government

contractors. *See, e.g., Horne Bros. v. Laird*, 463 F.2d 1268, 1270-71 (D.C. Cir. 1972) (“While we may accept a temporary suspension for a short period, not to exceed one month, without any provision for according [an opportunity for the contractor to confront his accusers and to rebut the ‘adequate evidence’ against him], that cannot be sustained for a protracted suspension.”) (citing *Gonzalez*). Indeed, the requirement that agencies establish standards and procedures for suspension, provide adequate notice of the suspension and the reasons for it, and allow contractors a sufficient opportunity to respond is firmly established in the regulations by which all federal agencies must abide. *See* 48 C.F.R. § 9.407-3.

These principles ensuring procedural fairness apply with equal force to an agency’s efforts to suspend an entity from participating in programs like the Universal Service Fund’s High Cost Program. Under the Due Process Clause, an agency may not suspend an entity from participating in an agency program prior to holding a hearing unless (1) the agency properly notifies the entity of the specific reasons for the adverse action and (2) after the adverse action, the agency promptly provides the entity with a due process hearing in which the entity has a full opportunity to challenge the deprivation of its rights. The Commission itself recognized these due process rights when it adopted the notice and hearing procedures set forth in Section 54.8 of its regulations.

Here, the Commission denied SIC each of the two critical components of due process: the right to receive notice of the specific conduct purportedly justifying the suspension and a prompt opportunity for a hearing to refute the charges against it.

A. *The Commission Failed to Provide SIC Adequate Notice of a Proper Justification for the Suspension.*

In the August 7 notice, USAC did not inform SIC what it purportedly did to violate Commission rules. To the contrary, at the Commission’s directive, USAC suspended SIC’s

support pending an investigation of *whether* SIC violated Commission rules by using support payments for unauthorized purposes. Without informing SIC which rules it purportedly violated, or even whether it violated *any* rule, the Commission deprived SIC of the opportunity to prepare a meaningful response to the notice. SIC simply does not and cannot know how to defend itself.

By suspending an ETC statutorily entitled to “predictable” and “sufficient” support, 47 U.S.C. § 253(b)(5), providing no notice of the cause of the suspension and initiating an audit to determine after-the-fact if the ETC violated agency rules, the Commission violated the most fundamental principles of due process. Consequently, the Commission has unlawfully denied SIC five months of support—support that is the very reason for the High Cost Program’s existence. Before long, the continued withholding of support will require SIC to shut down its operations and discontinue delivering essential telecommunications services to the native Hawaiian residents of the hard-to-access, remote Hawaiian Homelands.

The references in the August 7 notice to Mr. Hee’s failure to report the payment of personal expenses from Waimana as income, and to “concerns” that SIC may have used High Cost Program support for unauthorized purposes, do not cure the notice’s constitutional deficiencies. Again, the notice does not specify any suspension-justifying conduct by SIC, the recipient of High Cost Program support. As discussed above, while the notice references Mr. Hee’s conviction and USAC’s *forthcoming* audit of SIC to determine *whether* SIC violated High Cost Program rules, it does not state that SIC violated the rules, does not identify which rules SIC purportedly violated, and does not specify how SIC purportedly violated the rules or why the purported violation warranted suspension. Indeed, making those determinations is the express purpose of the audit. *See Ex. A* (“[T]he FCC has directed USAC to initiate this suspension 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 Commission rules and policies.”). Therefore, the August 7 letter’s reference to Mr. Hee’s conviction and the Commission’s resulting concerns does not provide SIC constitutionally adequate notice of the specific conduct that justifies the suspension.

B. *The Commission Did Not Give SIC the Opportunity to Be Heard Before Directing USAC to Impose the Suspension.*

The Commission has failed to provide SIC with a fair process for challenging whatever High Cost Program rules—thus far undisclosed—it believes SIC may have violated. There was no opportunity for a hearing prior to the suspension of SIC’s right to receive support under the High Cost Program and no mechanism for obtaining the prompt hearing and quick decision required by the Due Process Clause to ensure that SIC is not forced to shut down its operations while awaiting the outcome. These failures of constitutional dimension were an inevitable by-product of the Commission’s decision to suspend SIC before obtaining the information necessary to determine whether SIC had done anything wrong. A meaningful, constitutionally adequate due process hearing is simply impossible when the Commission deprives an ETC of its right to High Cost Program support pending an investigation of rule violations and thus without first informing the ETC of the specific charges against it.

In contrast to how the Commission barreled ahead here under a bootleg procedure not recognized by its own rules, certain provisions in the Universal Service regulations demonstrate the minimum degree of procedural protection that the Due Process Clause requires an agency to provide an ETC facing suspension. As explained above, Section 54.8 does not permit suspension unless there has been a prior *judicial* determination of guilt or liability arising from the use of program funding. 47 C.F.R. §§ 54.8(b) – (c). Even when a prior judicial determination has been made, Section 54.8 still requires not only express written notice of the

reasons for the suspension, but the opportunity to challenge the suspension at a promptly convened hearing. 47 C.F.R. §§ 54.8(e)(3)-(5). Similarly, Section 54.707 does not authorize suspension unless USAC has *first* made a reasonable request for adequate verification of an ETC's support payments and, despite being given the opportunity, the ETC refuses to provide it. 47 CFR § 54.707.

No similar, constitutionally compliant process was followed here. The Commission directed USAC to suspend support payments to SIC without any preliminary finding that SIC violated Commission regulations and without providing SIC any opportunity to show promptly that it has not. Having denied SIC this rudimentary constitutional right, the Commission must cease withholding High Cost Program support from SIC and must restore all of the support it has directed USAC to withhold since July.

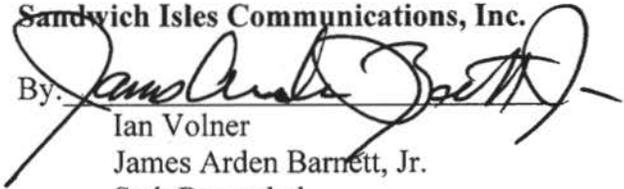
#### **Relief Requested**

Based on the strength of SIC's showing that the suspension exceeds the Commission's legal authority and violates SIC's constitutional due process rights, and due to the exigent circumstances created by the duration of the USAC audit, the Commission should consider this Emergency Petition immediately, rescind the suspension of High Cost Program support payments to SIC forthwith, and direct USAC to disburse to SIC all support payments that it has withheld dating back to July 2015.

Given the risk that the suspension presents to SIC's continuing ability to provide vital communications services to native Hawaiian residents of the Hawaiian Homelands, SIC will take all necessary actions to vindicate its rights, including seeking immediate judicial review, if the Commission does not promptly grant the relief requested.

Respectfully submitted,

**Sandwich Isles Communications, Inc.**

By: 

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Date: December 3, 2015

# EXHIBIT A

# USAC

Universal Service Administrative Company®

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*Via Email*

August 7, 2015

Ms. Abby Tawarahara, Controller  
Sandwich Isles Communications, Inc.  
77-808 Kamehameha Hwy.  
Mililani, HI 96789

Re: Sandwich Isles Communications, Inc.

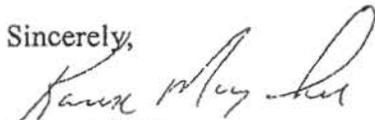
Dear Ms. Tawarahara:

The Universal Service Administrative Company (USAC) is writing to inform you that USAC has been directed by the Federal Communications Commission (FCC or Commission) to suspend Sandwich Isles Communications, Inc. (Sandwich Isles), study area code 623021, High Cost Program support beginning with the disbursements which were due July 2015.

Mr. Albert S.N. 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 is a concern for the FCC and USAC given management fees paid by Sandwich Isles to its parent, Waimana Enterprises, Inc. (Waimana), that are recovered through the High Cost Program support mechanisms. The basis of the conviction was Mr. Hee's failure to report as income \$4 million in personal expense payments received from Waimana. The conviction and the facts surrounding the case have brought into sharper focus questions about the nature of many of Sandwich Isles' expenses as well as whether Sandwich Isles' affiliate transactions are consistent with FCC rules and policies that govern the Universal Service Fund (USF) and High Cost Program as set forth in 47 C.F.R. Part 54, Subpart E and 47 C.F.R. § 32.27. Accordingly, the FCC has directed USAC to initiate this suspension 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 Commission rules and policies.

If you have any questions, please contact me at (202) 772-0200.

Sincerely,



Karen Majcher  
Vice President, USAC High Cost Program

cc: Fredrick M. Joyce, Esq.

# **EXHIBIT B**

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

----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. 2015-0083

DECISION AND ORDER NO. 33167

PUBLIC UTILITIES  
COMMISSION

2015 SEP 28 P 12:10

FILED

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

----In the Matter of---- )  
 )  
PUBLIC UTILITIES COMMISSION ) Docket No. 2015-0083  
 )  
Instituting a Proceeding to ) Order No. **33167**  
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). )  
\_\_\_\_\_ )

DECISION AND ORDER

The objective of this docket is for the commission to:

(1) determine whether the eligible telecommunications carrier ("ETC") Parties<sup>1</sup> have each sufficiently complied with the annual ETC requirements ("Annual Certification Requirements") established by the commission in Decision and Order No. 30932,

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<sup>1</sup>The "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"). See Order No. 32752 Initiating Investigation, filed ' on April 7, 2015, ("Order Initiating Investigation") at 4-5. No persons moved to intervene or participate without intervention in this docket. See Hawaii Administrative Rules ("HAR") § 6-61-57(3).

filed on December 28, 2012, in Docket No. 2011-0052 ("Order No. 30932"); 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") (i.e., HTI, SIC, Mobi, 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, consistent with Title 47 of the Code of Federal Regulations ("C.F.R.") § 54.314(a) ("§ 54.314(a) certification").

I.

Background

On April 7, 2015, the commission instituted this investigation to determine whether State designated ETCs participating in the high-cost support program of the USF should be certified by the commission in 2015, pursuant to 47 C.F.R. § 54.314(a).<sup>2</sup> As the commission noted in that order,

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<sup>2</sup>See Order No. 32752 Initiating Investigation ("Order Initiating Investigation" or "Order No. 32752") at 1.

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, maintenance, and upgrading of facilities and services for which the support is intended.<sup>3</sup>

In its Order Initiating Investigation, the commission established procedural deadlines for this proceeding, based on certain FCC filing deadlines, including the October 1, 2015 federal deadline for state certification of USF high-cost support program recipients.<sup>4</sup>

The ETC Parties each subsequently filed (1) their annual certification requirements ("ACR") reports; (2) responses to the Consumer Advocate's July 6, 2015 information requests ("IRs"); and (3) copies of their annual reporting requirements consistent with 47 C.F.R. § 54.313(i).

The Order Initiating Investigation established July 24, 2015, as the deadline for the Parties to file responses to

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<sup>3</sup>Order Initiating Investigation at 2. See also 47 C.F.R. § 54.314(a).

<sup>4</sup>On April 28, 2015, 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 this docket. See Protective Order No. 32816, filed on April 28, 2015.

issued IRs. On July 31, 2015, the Consumer Advocate filed a Motion for Enlargement of Time to File Statement of Position ("Motion for Enlargement"), wherein it stated that it had received from SIC, only "partial responses" to its IRs, on July 27, 2015.<sup>5</sup> On August 12, 2015, the commission issued Order No. 33070, Granting Motion for Enlargement of Time to File Statement of Position ("Order No. 33070").<sup>6</sup> Thereafter, the Consumer Advocate timely filed its Statement of Position ("SOP"). On August 20, 2015, SIC, Pa Makani, and Mobi filed their responses to the Consumer Advocate's SOP.

In its SOP, the Consumer Advocate concludes: that HTI and Mobi have provided sufficient information to justify their certification as state designated ETCs participating in the high-cost support program of the federal USF for 2015, pursuant to 47 C.F.R. § 54.314(a); and that additional information is necessary to adequately support the certification of SIC and Pa Makani.<sup>7</sup>

For the reasons which follow, the commission, by this Decision and Order: (1) determines that HTI and Mobi have each

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<sup>5</sup>Consumer Advocate's Motion for Enlargement at 3.

<sup>6</sup>Order No. 33070 extended the following deadlines: Simultaneous Statements of Position deadline extended to August 17, 2015; and Simultaneous Reply Statements of Position deadline extended to August 20, 2015.

<sup>7</sup>Consumer Advocate's SOP at 3.

sufficiently complied with the annual ETC certification requirements referenced above; (2) certifies to the FCC and the USAC that HTI and Mobi have 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); (3) determines that SIC and Pa Makani have each complied with the annual ETC certification requirements; and (4) determines that due to uncertainty regarding whether SIC and Pa Makani have 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), that certification to the FCC and the USAC cannot be made at this time.

## II.

### Discussion

In Order No. 30932, the commission adopted the Annual Certification Requirements for State designated ETCs participating in the high-cost program of the USF.<sup>8</sup> 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

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<sup>8</sup>These 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.

commission's formerly adopted ETC certification requirements in "Decision and Order No. 22228," filed on January 17, 2006, in Docket No. 05-0243.

The Annual Certification 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 Paragraphs 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.