

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

In the matter of)	
)	
Hawaiian Telcom, Inc.)	
)	WC Docket No. 08-4
Petition for Waiver of Sections 54.309 and)	
54.313(d)(vi) of the Commission's Rules)	

COMMENTS OF SANDWICH ISLES COMMUNICATIONS, INC.

Sandwich Isles Communications, Inc. (“Sandwich Isles”) files its comments on the Hawaiian Telcom, Inc. (“Hawaiian Telcom”) Petition in accordance with the Commission’s Public Notice released January 18, 2008, DA 08-131. Hawaiian Telcom asks for a five-year waiver of the Universal Service Fund rules that would allow it to determine its eligibility for High Cost Model Support by comparing its costs to the national cost benchmark on a wire center rather than study area average basis.

I INTEREST OF SANDWICH ISLES

Sandwich Isles provides telephone service to a study area that consists of most of the Hawaiian Home Lands (“HHL”). Sandwich Isles began operations in 1997 and functions as an incumbent local exchange carrier for access charge and universal service purposes pursuant to waivers granted by the Common Carrier Bureau, and its successor, the Wireline Competition Bureau.¹ Sandwich Isles is licensed and obligated to serve the

¹ *Sandwich Isles Communications, Inc., Petition for Waiver of Section 36.611 of the Commission’s Rules and Request for Clarification, Order, 13 FCC Rcd 2407 (CCB 1998); GTE Hawaiian Telephone Company, Inc., application for Review of a Decision by the Common Carrier Bureau, Memorandum Opinion and Order, 19 FCC Rcd 22268*

HHL by the Department of Hawaiian Home Lands (DHHL), and is subject to regulation by the Hawaii Public Utilities Commission (“HPUC”), which designated it as an Eligible Telecommunications Carrier. Because the great majority of its study area is in sparsely populated rural areas scattered over six islands in the state of Hawaii, Sandwich Isles is uniquely situated to comment on Hawaiian Telcom’s Petition. Sandwich Isles and its subscribers would benefit from improvements in communications service in the rural areas of the state outside of its study area through increased ability to communicate with family, social and business affiliates, as well as emergency services.² Any waiver granted, however, must be so constructed that any increase in Universal Service Support to Hawaiian Telcom does not reduce the support available to rural telephone companies in general and Sandwich Isles in particular.³

II Sandwich Isles Generally Agrees with Hawaiian Telcom’s Description of the Difficulties and Expense of Providing Telephone Service to Rural Areas of an Insular State

(2004); *Sandwich Isles Communications, Inc., Petition for Waiver of the Definition of “Study Area” Contained in Part 36, Appendix-Glossary and Sections 36.611 and 69.2(hh) of the Commission’s Rules*, Order, 20 FCC Rcd 8999 (WCB 2004). *applic. rev. pending*. Sandwich Isles study area consists of all of the 203,000 acres of the HHL, except the small portion which was receiving telephone service from GTE, Hawaiian Telecom’s predecessor, in 1997. The excluded portions of the HHL are mainly in the Honolulu area.

² Although residence in the HHL is restricted to native Hawaiians, as the Petition points out (n. 36), large numbers of native Hawaiians live outside of the HHL in the Hawaiian Telcom study area. Strictly speaking, however, there is no subset of native Hawaiians not qualified by descent to seek residence in the HHL, because eligibility is limited to persons who come within the legal definition of the term “native Hawaiian.” Pub. L. No 67-34, 42 Stat. 108 (1921); *Rice v. Cayetano*, 528 U.S. 495,507 (2000).

³ Hawaiian Telcom estimates that grant of the Petition would entitle it to receive approximately \$6 million from the high cost model funding mechanism. Petition at 23. This estimate is apparently a quarterly number, since it is stated to be 0.5 percent of the total high cost fund of \$1.14 billion, which is a quarterly number. Petition at note 42. Because the *US West/Eagle* one percent test uses an annual estimate, a comparable estimate for Hawaiian Telcom appears to be \$24 million.

A. The Physical and Demographic Features of Hawaii Present Unique Challenges

Sandwich Isles has been constructing its telephone system on the HHL for over 10 years and has experienced all of the challenges described in the Petition and some additional issues related to the unique status of the HHL.⁴ Hawaiian Telcom is thus generally correct in pointing out the substantial difference in operating costs between Honolulu, where the majority of its subscribers reside and the remainder of the inhabited islands. Hawaiian Telcom also correctly points out the financial and operational difficulties of serving new developments, which become built out and inhabited over an extended period of time.⁵

Sandwich Isles serves upward of 69 non-contiguous areas scattered across six volcanic islands separated by ocean channels almost two miles deep in some locations.. Serving these areas requires overcoming extreme construction challenges with commensurate high cost. Among the requirements are preparation of environmental studies, multiple governmental agency approvals, cultural consideration and coordination efforts, construction mobilization planning and shipment of equipment and materials to the islands 2600 miles from the mainland, placing underground fiber optic facilities in sand, volcanic rock, across vast ravines, etc.

B. Modern, High Quality Communications Are Critical for Rural Hawaii

Sandwich Isles also concurs in the importance to the rural population of adequate access to emergency services, the importance of creating a broadband capable

⁴ Petition, pp 6-15. Sandwich Isles described the HHL and its relationship with DHHL at length in its 2004 Petition for waiver of the definition of “study area, *see* n.2, *supra*. Sandwich Isles has not reviewed the confidential portions of the Petition and therefore has no comment on those factual assertions.

⁵ Petition at 14.

infrastructure, and in the strategic importance of the state's location. Sandwich Isles has no knowledge of, and makes no comment on the adequacy of the due diligence Hawaiian Telcom undertook prior to acquiring Verizon Hawaii, the price paid, or Hawaiian Telcom's financial status or ability to make the necessary investments to bring service in the rural areas of the state in its study area up to modern standards.⁶ Sandwich Isles does, however, recognize that the current non-rural high cost support system necessarily assumes that non-rural companies are able to provide comparable service and rates in rural areas through financing internal to their study area.

III THE PETITION ILLUSTRATES WHY THE COMMISSION SHOULD RECOGNIZE THAT HAWAII IS AN "INSULAR" AREA WITHIN THE MEANING OF SECTION 254

Sandwich Isles has previously proposed that the Commission should recognize that the State of Hawaii is an "insular" area within the meaning of Section 254(b)(3) of the Communications Act.⁷ Hawaii should be considered insular first because of the obvious geographic fact that it is entirely insular, and isolated from the continental United States by much greater distances than several other insular areas. Hawaii should also be

⁶ The Petition (n. 36) states that a grant would not impact support currently provided to Sandwich Isles, but also states that the relief requested "is not limited in scope to the geographic areas or customers for which [Sandwich Isles] receives support" rather, the area Hawaiian Tel are "more expansive than what is covered by the waiver previously granted to [Sandwich Isles]." Read literally, this statement would imply that Hawaiian Tel intends to offer service within Sandwich Isles' study area and to receive USF support for such service. Sandwich Isles assumes, however, that this footnote to the Petition is simply an inadvertent misstatement. The discussion in the Petition (p.23) of the estimated impact on the USF, for example, appears to be based on Hawaiian Telcom's existing lines. If this assumption is incorrect, and Hawaiian Telcom intends to overbuild Sandwich Isles facilities with USF support or otherwise, then Sandwich Isles would vigorously oppose grant of the Petition. The Commission should make clear in any waiver grant that such waiver does not entitle Hawaiian Telcom to overbuild Sandwich Isles facilities.

⁷ Comments of Sandwich Isles Communications, Inc., Telalaska, Inc. and Yukon Telephone Company, Inc., CC Doc. No. 96-45, Sep. 30, 2005.

accorded insular treatment because of the characteristics described in Hawaiian Telcom's Petition that result in a more challenging environment to provide service in rural areas. Congress used the term "insular" to emphasize the areas where universal service support is most needed. The Commission should adopt and apply its rules accordingly.⁸

IV THE PROBLEM OF HIGH COST RURAL AREAS OF NON-RURAL CARRIERS SHOULD BE PART OF THE COMPREHENSIVE REFORM OF USF, HOWEVER THE COMMISSION ACTS ON THIS PETITION

Although the Petition describes accurately challenges to the provision of universal service in Hawaii and other remote insular areas, the basic problem with the Commission's high cost recovery rules that utilize state wide average cost has been apparent for some time.⁹ The Commission has now issued three related Notices of Proposed Rulemaking ("NPRM") to consider comprehensive reform of its Universal Service rules, however none of these directly address the issues on remand from the 10th Circuit.¹⁰ The Commission has the obvious alternative of addressing the Hawaiian

⁸ The 1996 Act does not define "insular" but provides no indication that Congress meant to exclude Hawaii from the definition. In its initial USF decision, the Commission defined "insular" to exclude states that are islands, largely on the basis of usage in other statutes. *Federal State Joint Board on Universal Service*, First Report and Order, 12 FCC Rcd 8997 (1997) The Commission subsequently sought comment on the issue, but has not revised the definition. *Federal-State Joint Board on Universal Service Deployment of Subscribers in Unserved and Underserved Areas Including Tribal and Insular Areas*, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21117 (1999), Twelfth Report and Order, 15 FCC Rcd 12208 (2000).

⁹ The United States Court of Appeals for the 10th Circuit has twice found the Commission's rules do not meet the requirements of Section 254 of the Act. *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001); *Qwest Corp. v. FCC*, 398 F.3d 1222 (10th Cir. 2005) ("*Qwest II*") ("FCC relied on an erroneous or incomplete construction in defining statutory terms and crafting the funding mechanism for non-rural high-cost support.")

¹⁰ *High-Cost Universal Service Support*, *Federal State Joint Board on Universal Service*, WC Doc. No. 05-337, CC Doc. No. 96-45, Notice of Proposed Rule Making, FCC 08-22, Rel. Jan. 29, 2008. *See also under same caption and date*, FCC 08-4 and 08-5 and Recommended Decision, FCC 07J-4 (Joint Board on Universal Service) Rel. Nov.

Telcom as a stand alone item or in these NPRMs and/or the 10th Circuit remand.

Sandwich Isles preference in this regard is that this matter be considered as part of the current NPRMs and overall Universal Service reform, and urges the Commission to proceed expeditiously on all pending USF matters.

V CONCLUSION

In the course of its 10 year history of building a modern telecommunications system in its study area comprising most of the Hawaiian Home Lands, Sandwich Isles Communications, Inc. has experienced the same challenges that Hawaiian Telecom describes it is now facing in attempting to provide modern, reliable service to the rural areas of its portion of the state. Sandwich Isles subscribers would benefit from improved communications in rural areas outside the Hawaiian Homelands because they would have increased access to the surrounding communities and emergency services. The Petition demonstrates, *inter alia*, why the Commission should recognize Hawaii as an “insular” area for purposes of Section 254 of the Act.

The specific failings of the non-rural USF rules to support Hawaiian Telcom’s rural exchanges are a microcosm of a long-standing concern facing non-rural carriers. Whether it proceeds to address this Petition individually or in the context of its multiple pending proceedings considering reform of the Universal Service rules, the Commission should act expeditiously.

20, 2007. The Joint Board acknowledged (para. 42) that Commission action on remand of *Qwest II* could result in an increase in federal support for non-rural carriers.

Respectfully submitted

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February 19, 2008

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