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August 26, 2010

EX PARTE

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

RE: Sandwich Isles Communications, Inc. Petition for Declaratory Ruling, WC Docket No. 09-133; A National Broadband Plan for Our Future, GN Docket No. 09-51

Dear Ms. Dortch:

The record developed in this proceeding over the past year makes clear that the Commission cannot grant Sandwich Isles' petition to compel NECA to include in its cost pool the costs associated with leasing an entire new undersea cable network.¹ While there is a real need for more fundamental reform of the intercarrier compensation system and related universal service program, the Commission should not compound the problems in the meantime, and instead should deny Sandwich Isles' petition and close this matter.

This situation is a rare example of where the existing safeguards actually worked. Costs included in the NECA pool, which are used to determine access rates in the NECA tariffs, are typically not subject to meaningful scrutiny. NECA's required analysis as to whether those costs are just and reasonable based on the "used and useful doctrine and its associated prudent expenditure standard" is largely invisible to those carriers (e.g., IXC's and wireless carriers) that must pay access charges to NECA LECs.² And indeed, it is highly unusual for NECA to actually reject a carrier's proposed costs in way that ever becomes public.

Sandwich Isles' latest contention that NECA has no choice but to include the carrier's costs in the NECA tariff, thereby forcing the customers of other carriers to pay the entire cost of

¹ Petition for Declaratory Ruling, Sandwich Isles Communications, Inc., WC Docket No. 09-133 (filed June 26, 2009).

² *Establishing Just and Reasonable Rates for Local Exchange Carriers*, Notice of Proposed Rulemaking, 22 FCC Rcd 17989, n.147 (2007) (citations omitted).

the new Sandwich Isles undersea fiber network, is wrong. *See* White Paper of Sandwich Isles Communications, Inc. in Support of Inclusion of its Undersea Cable Costs in the NECA Pool, pgs. 37-38 (June 3, 2010). If the NECA cost review process means anything, then the Commission must defer to NECA's refusal to include clearly exorbitant costs such as the expenses associated with Sandwich Isles' undersea cable network. As the Commission's designated agent for these purposes, NECA's role—its most important function—is to review LEC data and to exclude costs that violate the Commission's "used and useful" and "prudent expenditure" standards. *See Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Processes, Consideration of NECA's Incentive Compensation Plan*, Report and Order and Order to Show Cause, 10 FCC Rcd 6243, ¶¶ 5, 36, 40 (1995) (directing NECA to, among other things, "correct any data that it reasonably believes do not comply with [Commission] rules."). NECA has fully explained³ its rationale for excluding the Sandwich Isles undersea cable network costs in this instance, and filings by Hawaiian Telecom also make clear that existing undersea cable capacity in Hawaii is sufficient to meet voice and data needs in the state. *See, e.g.*, Letter from Suzanne Yelen, counsel to Hawaiian Telecom, to Marlene Dortch, FCC, WC Docket No. 09-133 (Aug. 11, 2010) (correcting Sandwich Isles statements and observing that there are four undersea cables serving the Hawaiian Islands).

Moreover, apart from its current effort to draw even more support from the Commission's intercarrier compensation and universal service systems, among carriers with a material number of lines Sandwich Isles continues to receive the largest amount of per-line high cost universal service support in the country. In 2009 Sandwich Isles served just under 2,200 lines and received approximately \$24 million in high cost support—nearly \$11,000 per line. *See* Federal Communications Commission Response to United States House of Representatives Committee on Energy and Commerce Universal Service Fund Data Request of June 15, 2010, Part 3 – Largest Per-Line Subsidies, by Study Area, at 1 (available at <http://energycommerce.house.gov/documents/20100708/Request3.pdf>).

There is no basis to grant Sandwich Isles' request. The Commission should deny the petition. Should you have any questions, please contact me.

Sincerely,



cc: Austin Schlick
Diane Griffin Holland
Al Lewis
Jenny Prime
Pam Arluk
Lynne Engledow

³ *See, e.g.*, Reply Comments of NECA (Sept. 10, 2009).