

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Universal Service Reform – Mobility Fund)	WC Docket No 10-208
)	
Petition of Sandwich Isles Communications, Inc.)	
For Waiver of Section 54.302 of the)	
Commission’s Rules)	

COMMENTS OF HAWAIIAN TELCOM, INC.

Hawaiian Telcom, Inc. (“HTI”) hereby comments on the above-captioned petition by Sandwich Isles Communications, Inc. (“SIC”) for waiver of Section 54.302 of the Commission’s rules in order to receive high-cost universal service support in excess of \$250 per line per month (the “Petition”).¹

I. INTRODUCTION

HTI neither supports nor opposes the Petition, but files these comments to correct the record where it concerns universal service in the state of Hawaii. SIC has not fairly characterized HTI’s history of service to rural parts of the state, which has always included the Hawaiian Home Lands. The petition also overstates SIC’s importance as a service provider in the Hawaiian Home Lands, given HTI’s appointed role as carrier of

¹ *Wireline Competition Bureau Seeks Comment on Sandwich Isles Communications, Inc. Petition for Waiver of Universal Service and Intercarrier Compensation Reform Rules*, FCC Public Notice, WC Docket No. 10-90, WT Docket No. 10-208 (DA 12-30, rel. Jan. 10, 2012).

last resort (“COLR”) for the entire state. HTI respectfully offers these comments to provide a more accurate and complete picture of telecommunications and broadband in Hawaii today.

II. HTI’S SERVICE TO RURAL HAWAII IS WELL DOCUMENTED

The Petition is incorrect in stating that SIC’s facilities were built before any other telecommunications service provider offered voice service in the Hawaiian Home Lands. Petition at 3. HTI is the incumbent local exchange carrier (“ILEC”) and COLR for the entire state of Hawaii. HTI and its predecessor-ILECs therefore have continuously offered service throughout the state of Hawaii, including throughout the Hawaiian Home Lands, long before SIC received permission to provide service in certain portions of the Hawaiian Home Lands. In fact, SIC’s FCC waiver authority to receive federal high-cost support in the Home Lands calculated on the same basis as if SIC were an ILEC² was expressly limited to those areas that were not already being served by HTI. Thus, the Petition also is wrong in implying that, but for that FCC Waiver, basic telecommunications service never would have been provided in the Hawaiian Home Lands. Petition at 4-5. In fact, as HTI documented at the time the waiver was granted, HTI already was providing service to customers in the Hawaiian Home Lands, and HTI continues to do so today.³

² *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 (Wireline Competition Bur. 2005), application for review pending (the “FCC Waiver”).*

³ *Hawaiian Telcom Communications, Inc. Application for Review in CC Docket No. 96-45 (filed June 15, 2005) at 7-10 (documenting service in the Hawaiian Home Lands by*

As discussed further in Section III, below, SIC is not the only service provider authorized in the Hawaiian Home Lands, nor does it have a unique charter to provide service to Native Hawaiians. With appropriate support mechanisms and a regulatory environment that encourages investment, HTI can and will continue to serve the needs of the entire state, including the Hawaiian Home Lands and all other rural areas of Hawaii.⁴

HTI and its predecessors have been responsible for deploying facilities on request throughout the state since the Nineteenth Century. Under the terms of HTI's state charter, it is permitted to recover its reasonable costs, but federal and state regulations have restricted the rates HTI may charge. HTI's network in remote and sparsely populated areas was supported by revenues from the densely populated Honolulu market, until competition in the urban market made internal subsidies increasingly unsustainable. Historically, HTI received zero high-cost support, and after its predecessor was required to convert its interstate rates to price cap regulation, the company's ability to recover its

HTI and its predecessor-in-interest GTE Hawaiian Telephone Company, and confirming that HTI served more customers in the Hawaiian Home Lands than SIC); Reply of Hawaiian Telcom Communications, Inc. in CC Docket No. 96-45 (filed July 13, 2005), Affidavit of Daniel Masutomi (documenting the continuing requests for service received by HTI in the Hawaiian Home Lands, and the company's fulfillment of those service requests, between 1997 and 2005). *See also* Comments of Hawaiian Telcom MergerSub, Inc. in CC Docket No. 96-45 (filed Feb. 8, 2005) (noting that the Commission had found that the exchanges covered by SIC's waiver petition were within HTI's study area, and that the Common Carrier Bureau had ignored evidence that the Hawaiian Home Lands were, in fact, served by HTI's predecessor), *citing* FCC October 2004 Memorandum Opinion and Order granting an Application for Review of a Common Carrier Bureau waiver, *In the Matter of GTE Hawaiian Telephone Company, Inc. Application for Review of a Decision by the Common Carrier Bureau*, AAD 97-82, 19 FCC Rcd 22268, 22272 (2004).

⁴ In addition to the extensive documentation HTI already has provided the FCC, HTI includes herewith an affidavit of Daniel Masutomi, HTI's Director of Network Planning & Technology, explaining the company's public commitment to rural service in Hawaii and in the Hawaiian Home Lands. *Affidavit of Daniel Masutomi*, Attachment A.

costs from its end-users and access customers was even more severely restricted. These developments necessarily led to under-investment in the highest-cost areas of the state.⁵

HTI has provided this Commission with extensive documentation of its facilities throughout the state, as well as the challenges of serving the highest-cost parts of the state in the current regulatory environment. HTI has made the case for targeting additional investment to support HTI's voice and broadband services in the underserved parts of the state. Contrary to SIC's statement that HTI cannot reasonably be expected to expand its services throughout the state, Petition at 5, as HTI previously stated, it is committed to expanding its voice and broadband capabilities commensurate with adequate support for the highest-cost parts of the state.⁶

Notwithstanding this well-documented need for additional support in the rural parts of the state, HTI has been and continues to be a rural service provider. SIC claims that HTI has not adequately invested in facilities capable of reaching the outer islands of the state. Petition at 5, 18. However, HTI has invested approximately \$20 million per year in terrestrial and undersea fiber optic cable and microwave facilities to support voice and to expand its broadband services to the Neighbor Islands. Most recently, HTI established fiber connections to the islands of Molokai and Lanai to enhance broadband

⁵ See, e.g., *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking in WC Docket No. 10-90 *et al.*, FCC 11-161, para. 636 & n. 1048 (rel. Nov. 18, 2011) (*USF/ICC Transformation Order*); *Connect America Fund et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking in WC Docket No. 10-90 *et al.*, 26 FCC Rcd 4554, 4654-55 (2011); Federal Communications Commission, *Connecting America: The National Broadband Plan*, at 152 (rel. Mar. 16, 2010).

⁶ See *Hawaiian Telecom, Inc. Petition for Waiver of Sections 54.309 and 54.313(d)(vi) of the Commission's Rules*, WC Docket No. 08-4 (filed Dec. 30, 2007), *petition denied*, *USF/ICC Transformation Order*, para. 155.

availability to those communities. HTI also has deployed fiber-based backhaul facilities to wireless cell sites throughout the Neighbor Islands, to increase broadband and voice capabilities for CMRS carriers serving these areas.

HTI always has been committed to serving all of Hawaii, including the most rural areas. No one is more aware than HTI of the demands of reaching the farthest-flung corners of the state. As discussed below, HTI serves many Native Hawaiians today, within and outside the Hawaiian Home Lands, and its network already extends to all the Neighbor Islands.⁷

III. SIC HAS NO EXCLUSIVE ROLE IN SERVING THE NATIVE HAWAIIAN POPULATION

Another error in SIC's Petition concerns the nature of SIC's authority to provide telecommunications service in the Hawaiian Home Lands. Contrary to the implications of the Petition, SIC is not an exclusive service provider either in the Hawaiian Home Lands or within the subset of properties covered by SIC's FCC Waiver. Petition at 5. As documented before this Commission in other proceedings, HTI is charged by the Hawaii Public Utilities Commission (the "HPUC") with *statewide* COLR responsibilities, including service to the Hawaiian Home Lands. No other agency has authority to modify that role, and neither the FCC nor the HPUC has curtailed HTI's obligations in the wake

⁷ In the early 1990s, when HTI's predecessor offered only multi-party service in certain locations, the vast majority of HHL developments were within the Base Rate Area (BRA) boundaries under the ILEC tariff, and no HHL properties were part of the Rural Service Plan in the HPUC order that directed the ILEC to upgrade all customers to single-party service. *Affidavit of Daniel Masutomi*, Attachment A.

of SIC's FCC Waiver.⁸ Thus, the statement (Petition at 7) that "no other wireline provider of voice or broadband communications including the cable operator in Hawaii can legally serve native Hawaiians residing on HHL" is false. HTI can and does serve Native Hawaiians residing in the Hawaiian Home Lands, and has the necessary legal authority to do so.⁹ The Commission recognized this in limiting SIC's FCC Waiver to those parts of the Hawaiian Home Lands that HTI was not already serving as of the date SIC filed its petition for waiver.¹⁰

Further, the Petition is misleading when it implies that TelHawaii's inability to obtain an exclusive service territory caused it to fail. Petition at 10. In fact, TelHawaii could not bring telecommunications service to its PUC-assigned territory in rural Hawaii because it did not overbuild GTE HawTel's network but rather tried to force the sale of those facilities at net book value – a sale that the courts decided was not required by state

⁸ As SIC admits, the DHHL is an agency of the State of Hawaii, administering state lands. Petition at 7. The DHHL has no authority under state or federal law to authorize telecommunications service providers. The Petition misleadingly states that the Hawaiian Home Lands have "separate and distinct status" (Petition at 5) but in fact they are less "separate" than other Tribal Lands recognized under U.S. law as exempt from state authority. The Hawaiian Home Lands are part of the state of Hawaii – not sovereign Tribal lands. Thus, without authority from the state, SIC could not become an exclusive service provider in the Hawaiian Home Lands. *Cf.* Petition at 5-6. Moreover, SIC cites *no* authority indicating that the Home Lands ever were carved out of HTI's study area under federal and state law. SIC's assertion that "only the HHC can authorize a carrier to install facilities on the HHL" (Petition at 7) is the subject of ongoing legal disputes before federal and state authorities, and by no means a settled issue.

⁹ *Affidavit of Daniel Masutomi*, Attachment A.

¹⁰ *FCC Waiver*, 20 FCC Rcd at 9005. Indeed, SIC itself acknowledges that it was not GTE's unwillingness or inability to provide service in the Hawaiian Home Lands, but the *cost* of providing service in the absence of federal subsidies, that made it more attractive for residents to purchase service from SIC than from GTE. Petition at 14, 18.

law.¹¹ The TelHawaii experience in no way diminishes HTI's ability and intention to continue serving the entire state, with or without competition.

Finally, SIC mischaracterizes the "beneficiaries of the Hawaiian Home Lands trust" as if they depend on SIC for critical telecommunications and broadband services. Petition at 2. This is misleading for two reasons. First, as HTI has well documented before this Commission, most Native Hawaiians do not live in the Hawaiian Home Lands. So, even if SIC were the only service provider in those areas, the Native Hawaiian population SIC would reach there would be far outstripped by the Native Hawaiian population living in other parts of the state.¹² Second, as explained above, HTI remains ready, willing and able to deliver advance voice and broadband telecommunications, and continue to operate, maintain and upgrade its network throughout the state, consistent with its obligations under the Communications Act and state law. HTI believes that even the FCC's ambitious goals of universal voice and broadband deployment can be achieved throughout Hawaii, provided support is specific, predictable and sufficient for this purpose, as required by the Communications Act.¹³

¹¹ *GTE Hawaiian Telephone Company Inc. v. PUC of the State of Hawaii and TelHawaii, Inc.*, Findings of Fact, Conclusions of Law and Order, Civ. No. 97-4372-10 (Hawaii First Cir. 1999).

¹² *See, e.g.*, Letter from Karen Brinkmann, Counsel to Hawaiian Telcom, Inc., to Marlene H. Dortch, FCC Secretary, regarding *Connect America Fund et al.*, CC Dockets 01-92 *et al.* (filed Oct. 21, 2011) (noting that 92 percent of Native Hawaiians reside outside the Hawaiian Home Lands).

¹³ 47 U.S.C. §254.

IV. CONCLUSION

HTI respectfully requests that the Commission's record in this proceeding reflect an accurate history of service deployment in rural Hawaii and HTI's role in serving the Hawaiian Home Lands.

Respectfully submitted,

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