

**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	)	WT Docket No. 10-208
	)	
Sandwich Isles Communications, Inc.	)	
Petition for Waiver of the Commission’s	)	
Rules Implementing Reform of	)	
Universal Service Support and	)	
Intercarrier Compensation for	)	
Rate-of-Return Carriers	)	

**COMMENTS OF  
THE UNITED STATES TELECOM ASSOCIATION**

This submission by USTelecom<sup>1</sup> is in response to the Federal Communications Commission’s (Commission) request for comments on a petition for waiver of 47 C.F.R. 54.302 (Petition) filed by Sandwich Isles Communications, Inc. (Sandwich Isles).<sup>2</sup> Sandwich Isles seeks a waiver of the Commission’s newly adopted universal service and intercarrier compensation reform rules, which establish a total limit on universal service support of \$250 per month per line, beginning July 1, 2012.<sup>3</sup> While USTelecom supports the provision of sufficient support to provide service to high-cost areas, and is particularly sensitive to the challenges of serving tribal areas, USTelecom respectfully

---

<sup>1</sup> USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

<sup>2</sup> Sandwich Isles Communications, Inc. Petition for Waiver of Section 54.302 of the Commission’s Rules, WC Docket No. 10-90 and WT Docket No. 10-208 (filed December 30, 2011); *see also Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, (rel. Nov. 18, 2011) (*USF/ICC Transformation Order and FNPRM*).

<sup>3</sup> *Id.*

requests that the Sandwich Isles Petition not be granted without further information and representations – which, as discussed below, are necessary to meet the Commission’s standards for waiver in this proceeding.

**I. The Sandwich Isles Petition Does Not Appear to Establish Sufficient Grounds for Waiver of Section 54.302**

The information provided in the non-redacted portions of the Sandwich Isles petition does not demonstrate good cause sufficient to justify the Commission waiving section 54.302 of its rules.<sup>4</sup> Sandwich Isles includes in its Petition a lengthy history of its creation and of the provision of telecommunications in Hawaii, which is of little direct relevance to the Commission’s consideration of the waiver request.

Of actual relevance, however, is the admission in the Petition that “[o]nly a portion of the planned 20,000 home sites on the Hawaiian Home Lands have been completed and occupied.”<sup>5</sup> While it is certainly reasonable for a provider to anticipate future development and build out accordingly, it is unreasonable for those contributing to the Universal Service Fund to pay to build facilities that will not be used in the near future, or potentially forever. In addition, this is not the sole example of Sandwich Isles seeking to obtain more facilities than required for a reasonable level of service. The Commission issued a Declaratory Ruling<sup>6</sup> on September 29, 2010, finding that based on its analysis and relevant Commission precedent, only 50 percent of Sandwich Isles lease costs for inter-island cable were for facilities determined to be “used and useful” and appropriate for inclusion in the NECA pool.

---

<sup>4</sup> 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a regulation where the particular facts make strict compliance inconsistent with the public interest. See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

<sup>5</sup> See Petition at page iv.

<sup>6</sup> See Declaratory Ruling, *In the Matter of Sandwich Isles Communications, Inc. Petition for Declaratory Ruling*, WC Docket No. 09-133, rel. September 29, 2010.

In its decision in *Alenco*, the Fifth Circuit Court of Appeals noted “[t]he agency’s broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service.”<sup>7</sup> Particularly when applied to the facts in the instant Petition, the application of the monthly per line cap is a reasonable exercise of Commission authority under *Alenco*. Given the budget established in the USF/ICC Transformation Order for the high-cost universal service fund, and the amount of that budget allocated to rate-of-return companies, it would also be unfair to other rate-of-return companies to grant the terms of the requested waiver while squeezing support to other rate-of-return companies that have invested responsibly.

## **II. The Petition Neither Requests a Necessary Amount Above the Cap Nor Justifies the Ten-Year Term for the Waiver**

Contrary to the cautions put forth by the Commission, the Petition asks for a complete waiver of the rule, which would result in continuation of the full amount (or potentially more) of its current level of support, and does not provide any justification for its request for a ten-year term for the waiver. First, the waiver is contrary to the Commission’s guidance that even if a carrier can demonstrate the need for funding above the \$250 per-line monthly cap, it is only entitled to the amount above the cap it can show is necessary, not the amount it was previously receiving.<sup>8</sup> No such evidence of necessity is specified. Second, the Petition contradicts the Commission’s expectation that carriers would need to re-validate any need for support above the cap periodically, rather than

---

<sup>7</sup> *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 614 (5th Cir. 2000).

<sup>8</sup> See para. 278, *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 11-161, (rel. Nov. 18, 2011) (*USF/ICC Transformation Order*).

attain a waiver of unlimited duration.<sup>9</sup> Specifically, the Petition requests a ten-year waiver<sup>10</sup> of the rule, which would result in a high-cost subsidy amount over four times that which the Commission decided was fiscally responsible. The Commission established a limit of \$3,000 per line per year on the amount of high-cost universal service support received in a particular study area. That cap was based on the goal of ensuring fiscally responsible universal service reform.<sup>11</sup> According to Commission data,<sup>12</sup> in 2010 Sandwich Isles was receiving \$12,371 per year per line (\$1,030.92 per month) in high-cost subsidies supporting 2,068 lines. The Commission estimates that as a result of its reforms the cap will affect 12 study areas serving approximately 5,000 customers, so Sandwich Isles represents over 40 percent of the above-cap lines in the nation. It would be imprudent for the Commission to grant a waiver addressing such a significant portion of very high-cost lines without regular consideration of whether the waiver is necessary.

---

<sup>9</sup> Id.

<sup>10</sup> See Petition at page 3.

<sup>11</sup> See para. 273, *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 11-161, (rel. Nov. 18, 2011) (*USF/ICC Transformation Order*).

<sup>12</sup> See *Federal Communications Commission Response to United States House of Representatives Committee on Energy and Commerce Universal Service Fund Data Request of June 22, 2010, Report 5, Largest Per-Line High-Cost Subsidies, by Study Area*.

### III. Conclusion

USTelecom respectfully requests that the Sandwich Isles Petition not be granted until additional information is provided. In particular, good cause is not shown for granting the waiver for the term and amount requested. In addition to considering the particular interests of Sandwich Isles, the Commission must take into account the public interest, which in this case includes both consumers who are the ultimate contributors to the Universal Service Fund and other rate-of-return companies whose support could be negatively impacted by grant of the waiver.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION



By: \_\_\_\_\_

David Cohen  
Jonathan Banks

Its Attorneys

607 14<sup>th</sup> Street, NW, Suite 400  
Washington, D.C. 20005  
202-326-7300

February 9, 2012