

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

In the Matter of)	
Sandwich Isles Communications, Inc.)	WC Docket No. 10-90
Petition for Waiver of the Universal Service)	WT Docket No. 10-208
And Intercarrier Compensation Rules.)	

To: Chief, Wireline Competition Bureau

REPLY COMMENTS

Sandwich Isles Communications, Inc. (“SIC”), through its attorneys and pursuant to the Federal Communications Commission’s January 10, 2012 Public Notice, hereby submits these Reply Comments with respect to its above-captioned Petition for Waiver (“Petition”).¹ In its Petition, SIC seeks a waiver of certain aspects of the FCC’s recently adopted Universal Service and intercarrier reform rules, including a waiver of new FCC Rule Section 54.302, which would otherwise impose a \$250 per line per month cap on Universal Service support for SIC’s local study area.

Summary of Comments

Only two parties submitted comments to the FCC: the United States Telecom Association (USTA) and Hawaiian Telcom, Inc. (HTI). Neither party contends that SIC’s rule waiver petition should be denied. Based upon its review of SIC’s redacted Petition, which deletes confidential financial data, USTA contends that the waiver request requires “further information and representations” before it can meet the public interest standard. USTA Comments at 2. HTI

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

has no objection whatsoever to SIC's request for a waiver; rather, HTI objects to the manner in which SIC "characterized HTI's history of service to rural parts of the state [of Hawaii]" in the Petition. HTI Comments at 1. SIC will respond to each of these comments in this Reply.

I. SIC's Petition Meets the FCC's Standards for a Rule Waiver

Since USTA is not privy to the extensive cost and financial data that SIC submitted to the FCC in its rule waiver request, it is perhaps understandable that USTA would conclude that the publicly-available Petition "does not appear to establish sufficient grounds" for a waiver of the new USF support cap. This issue need not be debated at length. SIC has already submitted substantial cost and financial data to the FCC under seal for purposes of the agency's evaluation of the Petition. Should the FCC require additional cost and financial data, SIC would of course provide that information to the agency. It is not for third parties to decide what amount of factual data is necessary to support an FCC rule waiver.

Moreover, historic data concerning prior USF support for SIC's local study area is surely not something that USTA needed to bring to the FCC's attention. *Cf.* USTA Comments at 4. USTA's recitation of these facts merely underscores the basic premise of SIC's Petition: there have always been, and likely will be for some period of time, unique cost situations in some parts of the United States that warrant variations from the "average" per line cost support. The obvious example happens to be the Hawaiian Home Lands, where per line supports have historically been higher than typical subsidies in the continental United States, for good reasons.

USTA seems to harbor a broader objection to the very notion that *any* carrier might request a waiver of the new USF per line cap. *See* USTA Comments at 3 ("the application of the monthly per line cap is a reasonable exercise of Commission authority" and "it would also be

unfair to other rate-of-return companies to grant the terms of the requested waiver”). Yet, in addition to ample case precedents that support SIC’s rule waiver request, the Commission expressly anticipated that a small group of eligible carriers would qualify for a waiver of the new limits on high cost support.

The fact is that when it first proposed the idea of a per line cap, the FCC suggested that the cap would apply only “in the *continental United States.*” *Connect America Fund*, “Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking,” 26 FCC Rcd. 4554, 4626 (February 4, 2011) (“NPRM”) (emphasis added). Indeed, at that time the FCC explicitly stated that it would consider a categorical exception for any proposed cap on annual per line support for “carriers serving Tribal lands in addition to carriers operating outside of the continental United States.” *Id.* at ¶ 211. In short, as originally proposed, carriers serving study areas in the Hawaiian Islands would have been automatically exempt from the per line support cap.

In the recent ICC reform *Report and Order* that adopted a cap on annual per line support, the FCC made further allusions to imposing the cap only “in the continental United States.” See *Connect America Fund*, “Report and Order and Further Notice of Proposed Rulemaking,” WC Docket No. 10-90, *et seq.*, FCC 11-161, ¶ 272 (November 18, 2011) (“*ICC Reform Order*”). Inexplicably, the *ICC Reform Order* is simply silent on this question of whether there should be a categorical exemption for carriers serving Tribal lands or operating outside the continental United States. Nevertheless, it is reasonable to assume that the FCC had SIC and a handful of other carriers in mind when it contemplated limiting the per line support cap to only the “continental United States.”

Indeed, in the *ICC Reform Order* the FCC expressly stated that a small group of carriers

serving “extremely remote and high-cost service territories” would have “legitimate reasons” to receive “extremely high support amounts per line.” *Id.* ¶ 278. The FCC encouraged these carriers to “file a petition for waiver or adjustment of the cap using the process we set forth below.” *Id.* That is precisely what SIC did when it filed its Petition.

USTA’s comments about SIC’s unusually high costs do not undermine the merits of the Petition; they simply state the obvious. *See* USTA Comments at 4. SIC’s per line supports have historically been high because its costs have historically been high. The service mission of SIC is also quite unique; that mission is derived from express Congressional and state-imposed statutory mandates that encompass not just telecommunications and broadband services, but a broad emphasis on socio-economic development for the Hawaiian Home Lands. *See* SIC Petition at 7-9 (citing the Hawaiian Homes Commission Act). For these and other reasons set forth in detail in SIC’s Petition, the scope and costs of providing service throughout SIC’s study area are virtually unique in the United States. For reasons recognized by the FCC over the years, and restated in the very order that adopted an annual cap on high cost supports, the unique requirements of the Hawaiian Home Lands warrant a continuation of Universal Service cost support at a level higher than what is proposed in the *ICC Reform Order*.

Precisely because SIC’s situation is so unique, and because SIC’s customer base is relatively small, USTA’s professed concern that a grant of this Petition will somehow adversely impact *all* carriers throughout the United States is hyperbolic and untrue. *Cf.* USTA Comments at 3 (a grant of the waiver would be “unfair to other rate-of-return companies”). A grant of the Petition will not undermine the national Universal Service program. Rather, a grant of the Petition would be consistent with the unique costs and service attributes found exclusively in

SIC's service area, as recognized by the FCC throughout this rulemaking proceeding. A grant of the Petition would be a prudent exercise of agency discretion and the waiver procedures that the FCC adopted in the *ICC Reform Order*. See *ICC Reform Order* ¶¶278-79.

II. HTI and the Hawaiian Home Lands

HTI has no objection to SIC's waiver request in particular, which is not surprising given that it previously requested a similar waiver of certain high cost support rules. See *ICC Reform Order* ¶¶ 154-55 (footnotes omitted). Rather, HTI takes exception to certain observations made in SIC's Petition, which HTI apparently interprets as intended to impugn HTI's service reputation. This debate is only of tangential relevance to SIC's request for a rule waiver; but, to the extent that HTI has raised these issues, SIC will reply so that the FCC's record will be accurate. SIC did not intend to cast aspersions on HTI's overall service record; nevertheless, HTI's retelling of the recent history of telecommunications in the Hawaiian Home Lands is not complete.

A. SIC's Exclusive License Authority in the HHL

The question of which entity is authorized to provide telecommunications services to the Hawaiian Home Lands is really not open to dispute. Pursuant to "License Agreement No. 372" (the License), an exclusive license was awarded by the Department of Hawaiian Home Lands (DHHL) on May 9, 1995 to Waimana Enterprises, Inc. (Waimana). A copy of the License is attached hereto as Exhibit One. Waimana was granted an exclusive right and privilege to build, construct, repair, maintain and operate a broad band telecommunications network to serve all lands under the administration and jurisdiction of the DHHL. That authorization was subsequently assigned in part to SIC, a wholly-owned subsidiary of Waimana, for purposes of the

wireline voice requirements of the License. Attached hereto as Exhibit Two is a copy of a June 2, 1998 letter from the DHHL verifying these facts.

At the time the License was awarded to Waimana, HTI was providing (and continues to provide) service to some Hawaiian Home Lands residents. Upon granting of the License to Waimana, HTI effectively lost its status as the carrier of last resort (COLR) on the Hawaiian Home Lands. According to the “exclusive authorization” terms of the License, SIC is now the COLR for all of the Hawaiian Home Lands. Further, the License also contains a provision permitting SIC to take over existing service from HTI on the Hawaiian Home Lands.

While HTI’s commitment to serving “all of Hawaii” is to be commended, and it is true that HTI continues to provide service to a small number of customers that they had served prior to the License being granted to Waimana, nevertheless, HTI’s Comments are misleading with respect to relevant legal issues. For instance, it is misleading for HTI to argue that the Hawaii Public Utilities Commission (HPUC) has not released HTI from its COLR obligations on the Hawaiian Home Lands. *Cf.* HTI Comments at 5. The fact is that HPUC has not “released” HTI from any regulatory obligations because the HPUC lacks legal authority to take any such actions with regard to the Hawaiian Home Lands.

In 1995, the HPUC clarified in writing that only the “Hawaiian Homes Commission has the power to grant licenses and easements for telephone lines and other utility services.” *See* State of Hawaii Public Utilities Commission letter (September 20, 1995), attached hereto as Exhibit Three. That exclusive authority arises under Section 207(c)(1) of the Hawaiian Homes Commission Act of 1920. This finding is supported by the Hawaii Attorney General Opinion No. 60-77, which addressed whether public utilities have the ability to use their power of eminent

domain to obtain easements for utility services on Hawaiian Home Lands. The Hawaii Attorney General held that a public utility may not acquire any Hawaiian Home Lands through eminent domain proceedings, notwithstanding the right of eminent domain generally granted to public utilities under Hawaiian law. In short, the only telecommunications carrier today that is “licensed” to provide telecommunications services to the Hawaiian Home Lands is SIC.

Notwithstanding HTI’s comments to the contrary, it is also true that SIC’s communications network was the first to be built and provide service to certain areas of the Hawaiian Home Lands that previously lacked service. *Cf.* HTI Comments at 2. One of the main reasons for a grant of the License to Waimana/SIC was the utter lack of telecommunications services in certain parts of the Hawaiian Home Lands. Following the issuance of that License, SIC became the first carrier to provide services in certain areas that previously had no telecommunications services at all.

B. Native Hawaiians

HTI also discusses the role it plays in providing telecommunications services to “Native Hawaiians.” HTI Comments at 5-7. HTI’s reference to Hawaiians is somewhat misleading; however, because it does not acknowledge that there is a legal distinction between a “Native Hawaiian” and a “native Hawaiian.” A “native Hawaiian” under the Hawaiian Homes Commission Act is any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands prior to 1778. *See* Section 201(a)7) of Hawaiian Homes Commission Act. A “Native Hawaiian,” by contrast, is any Hawaiian descendant, blood quantum is immaterial. Put differently, a native Hawaiian is also a Native Hawaiian; but being a Native Hawaiian does not necessarily mean you are a native Hawaiian.

According to the Hawaiian Homes Commission Act, the beneficiaries of Hawaiian Home Lands' status, rights and privileges must be "native Hawaiians." Because of that legal requirement, SIC's Petition is quite accurate when it states that it is the only carrier that is legally authorized to "serve native Hawaiians residing on HHL." SIC Petition at 7; *cf.* HTI Comments at 6.

C. Other Service Providers in the HHL

HTI also takes exception to SIC's description of the failure of other RLECs on the Hawaiian Home Lands, intimating that the absence of "exclusive service territory" was not a factor in the demise of TelHawaii. *Compare* HTI Comments at 6, *with*, SIC Petition at 10. Mindful that HTI only recently emerged from a two-year long bankruptcy proceeding, and that it has seen substantial revenue losses over the years due to competitive forces, it is difficult to understand why HTI would challenge the self-evident premise that an absence of geographic exclusivity can be particularly problematic for rural carriers in Hawaii. *See In re Hawaiian Telecom Communications, Inc.*, Case No. 08-02005 (Bankr. D. Haw. 2010); *see also*, Bloomberg News, "Hawaiian Telecom Exits Bankruptcy with Lower Debt, Sheds Carlyle Interest," October 28, 2010 <www.bloomberg.com/news/print/2010-10-29>.

The fact remains that TelHawaii's inability to obtain an exclusive service territory was a significant factor in its bankruptcy and failure. This RLEC's inability to obtain an exclusive territory in the geographic area granted by HPUC hindered its ability to obtain low interest loans from governmental entities, such as the Rural Utilities Service; without this exclusive authorization TelHawaii could not borrow sufficient funds to build its own infrastructure. TelHawaii's failed attempt to acquire HTI's legacy infrastructure was largely due to that carrier's

prior inability to obtain alternative financing.

When all is said and done, HTI's recent restructuring and financial set-backs and its attempt to obtain waivers of the FCC's high cost support rules speak far more loudly than any other comments submitted in this proceeding. The difficulties that HTI has faced are surely comparable to SIC's difficulties; but, HTI has a far larger customer base and far greater financial resources to withstand recent economic issues, market forces and the unique and inherent difficulties of building and maintaining a state-of-the-art telecommunications network in Hawaii. Accordingly, it is reasonable to assume that as a practical matter HTI could not possibly object to a grant of SIC's rule waiver request.

Conclusion

For the foregoing reasons, and for reasons stated in its Petition, SIC respectfully requests that the Bureau grant the Petition for Waiver. The public interest warrants that the FCC grant SIC a waiver or exemption of certain aspects of the FCC's recently adopted Universal Service and intercarrier reform rules, including a waiver of new FCC Rule Section 54.302, which would otherwise impose a \$250 per line per month cap on Universal Service support for SIC's local study area.

Respectfully submitted,

Sandwich Isles Communications, Inc.

By: /ss/ Frederick M. Joyce

Frederick M. Joyce
Its Attorney

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Wasgton, DC 20004
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Date: February 24, 2012

EXHIBIT ONE
(License Agreement)

BUREAU OF CONVEYANCE

DATE MAY 12 1995 TIME 3:20
DOCUMENT NO. 95-064

STATE OF HAWAII

DEPARTMENT OF HAWAIIAN HOME LANDS

LICENSE AGREEMENT NO. 312

THIS LICENSE made and entered into this 9th day of May, 1995, by and between the State of Hawaii, DEPARTMENT OF HAWAIIAN HOME LANDS, whose place of business is 335 Merchant Street, Honolulu, Hawaii 96813, and whose mailing address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter referred to as "LICENSOR," and WAIMANA ENTERPRISES, INCORPORATED, a native Hawaiian corporation (Federal I.D. No. 99-0263871), whose principal place of business and mailing address is 1001 Bishop Street, Pauahi Tower, Suite 1520, Honolulu, Hawaii 96813, hereinafter referred to as "LICENSEE."

W I T N E S S E T H T H A T:

LICENSOR, pursuant to the authority granted to it by Section 207(C)(1)(A), HHCA, is authorized to grant licenses as easements for railroads, telephone lines, electric power and light lines, gas mains and the like;

LICENSOR, pursuant to the provisions under Section 10-4-22, Title 10, State of Hawaii, Department of Hawaiian Home Lands, Administrative Rules 1981, as amended (DHHL Administrative Rules), may grant licenses for public purposes for any length of term subject to revert to LICENSOR upon termination or abandonment, on such terms and conditions as may be prudently and reasonably set by the LICENSOR;

LICENSOR, pursuant to the provisions under Section 10-4-21, DHHL Administrative Rules, may allow the rental for licenses to be nominal should the use benefit LICENSOR or its native Hawaiians beneficiaries;

LICENSOR determines that the LICENSE established herein is essential in order to provide broad band telecommunication services of all types (including but not limited to local, intrastate, interstate and international telephone; video on demand; interactive communication; cable television; medical and educational links; and electronic data transmission) to LICENSOR'S lands in a timely manner;

FURTHER, LICENSOR determines that the issuance of this LICENSE established herein is essential for LICENSEE to obtain necessary funds needed to construct and operate the necessary telecommunications infrastructure;

LICENSOR believes and intends that the issuance of this Exclusive "Benefit" LICENSE will also fulfill the purpose of advancing the rehabilitation and the welfare of native Hawaiians.

NOW THEREFORE, LICENSOR, in consideration of the services to be provided by LICENSEE, and the terms, conditions and covenants herein contained on the part of LICENSEE to be kept, observed and performed, hereby grants and issues to LICENSEE, and its legal successors and assigns, the exclusive right and privilege to build, construct, repair, maintain and operate a broad band telecommunications network including poles, overhead and/or underground lines, appliances, microwave and/or other types of equipment over, across, under and throughout all lands under the administration and jurisdiction of LICENSOR, and its legal successors and assigns, including the right to trim and keep trimmed any vegetation, shrubbery, bushes or trees in the way of its lines and appurtenances, and including also the right of entry upon the easement area and adjoining land of LICENSOR for the construction, maintenance, operation and removal of LICENSEE'S line and appurtenances over, across and under the LICENSE area.

TO HAVE AND TO HOLD the same unto LICENSEE, its legal successors and assigns, in perpetuity, commencing on May 1, 1995, unless sooner terminated as hereinafter provided, LICENSOR agreeing and LICENSEE understanding that the nominal rental of ONE AND NO/100 DOLLARS (\$1.00) for the entire term is waived.

AND LICENSEE hereby covenants with LICENSOR, each for itself and not for the other that:

1. INITIAL DEMONSTRATION PERIOD. BOTH PARTIES agree to allow LICENSEE an initial period of not more than FIVE (5) YEARS in which LICENSEE shall demonstrate satisfactory performance of the applicable terms and conditions contained in this License. LICENSEE shall demonstrate financial capability to complete the initial project within ONE (1) YEAR from date of the LICENSE. Financial capability may be demonstrated by providing a bond, letter of credit, corporate guarantee, bank loan commitment letter, loan approval from a government agency or other similar instrument in the amount of the telecommunications construction. When LICENSEE has demonstrated its ability to fund, install and operate the telecommunications network for the selected project, the remaining provisions, terms and conditions of this LICENSE shall automatically take effect. No other action shall be required from either party.

2. NEW CONSTRUCTION TELECOMMUNICATION INFRASTRUCTURE COSTS. LICENSEE agrees to construct and install all telecommunications infrastructure on LICENSOR'S lands at LICENSEE'S cost for all new construction to include but not limited to residential, agricultural, pastoral, commercial

and/or industrial subdivisions developed after January 1, 1996 in the LICENSE area at LICENSEE'S cost. In the alternative, LICENSEE at its option, may choose to reimburse LICENSOR for all costs to install telecommunications infrastructure provided the telecommunications infrastructure is installed to LICENSEE'S specifications.

3. EXISTING TELECOMMUNICATIONS INFRASTRUCTURE.

LICENSOR agrees to sell and LICENSEE agrees to purchase at LICENSOR'S cost and/or install telecommunications infrastructure on LICENSOR'S land at LICENSEE'S cost including but not limited to all existing residential, agricultural, pastoral, commercial and/or industrial subdivisions. If the existing infrastructure is not owned by the LICENSOR, LICENSEE shall have the option, to be exercised in LICENSEE'S sole discretion, to either purchase or install new telecommunications infrastructure. After LICENSEE activates the existing and/or new telecommunications infrastructure, LICENSOR agrees not to allow any other telecommunications provider to use any remaining telecommunications infrastructure to continue to provide or initiate service on LICENSOR'S lands.

4. ACCESS TO TELECOMMUNICATIONS INFRASTRUCTURE.

LICENSEE shall make available to LICENSOR the use of all available telecommunications equipment and services then under LICENSEE'S control at LICENSEE'S cost. LICENSOR'S use under this paragraph shall be limited to emergency, public and official purposes only.

5. LEVEL OF TELECOMMUNICATION SERVICES.

LICENSEE shall provide at a minimum the same level of telecommunication service being provided in adjacent areas not subject to this LICENSE. LICENSEE shall use its best effort to provide a higher level of telecommunication service than that being provided in adjacent areas not subject to this LICENSE. LICENSEE shall not provide a lower level of service than that level being provided in adjacent areas not subject to the LICENSE unless LICENSOR shall agree in writing.

6. COST OF TELECOMMUNICATIONS SERVICES.

LICENSEE shall provide to the beneficiaries of LICENSOR living in areas subject to this LICENSE, telecommunications services at a cost less than or equal to the cost for comparable services being provided in adjacent areas not subject to this LICENSE. LICENSEE shall not charge beneficiaries living in the LICENSE area more for telecommunication services than being charged in adjacent areas not subject to this LICENSE unless LICENSOR consents in writing.

7. JOB TRAINING/EDUCATION.

LICENSEE agrees to expend an amount equal to at least one-half percent (1/2%) of LICENSEE'S annual net profit for job training and/or educational

opportunities for beneficiaries of LICENSOR each year. For purposes of demonstrating compliance with this paragraph, LICENSEE agrees to allow LICENSOR access to LICENSEE'S financial statement, provided, that all material and information will be kept strictly confidential.

8. EMPLOYMENT. LICENSEE agrees to offer employment opportunities to qualified beneficiaries of LICENSOR.

9. CAPITAL EXPENDITURES/CONTRACTS. LICENSEE agrees to utilize qualified companies controlled or owned by beneficiaries of LICENSOR provided such beneficiary company is qualified to perform the terms of the contract and such beneficiary company's bid price is not more than 5% higher than the lowest bid from an equally qualified non-beneficiary company.

10. TAXES. During the term of this LICENSE, LICENSEE shall pay when due, all real property taxes and any other assessments, including all charges for utility services, which shall, during the term of this LICENSE, be lawfully charged, assessed, imposed, or become due and payable upon or on account of the licensed premises and the improvements now on or hereafter erected thereon.

11. DUE CARE AND DILIGENCE. LICENSEE shall use due care and diligence in the operation and maintenance of the premises and shall keep the grounds and improvements in good and safe condition and repair.

12. INDEMNITY. LICENSEE shall, to the extent permitted by law, indemnify and hold harmless, LICENSOR, from any and all claims and demands against LICENSOR for any loss or damage or injury or death to persons or property resulting from, or in any way connected with, the condition or use of the premises covered by this LICENSE not caused by the negligence of LICENSOR, their agents, servants or employees acting within the scope of their employment, and from and against all damages, costs, counsel fees, or liabilities incurred or brought thereon.

13. ASSIGNMENTS. Except as expressly provided in this LICENSE, this LICENSE is not transferable. At no time during the term of this LICENSE, shall LICENSEE assign, mortgage or pledge its interest in this LICENSE or its interest in the improvements now or hereafter erected on the premises without the prior written consent of LICENSOR, which consent will not be withheld unreasonably.

14. CONDEMNATION. If at any time the premises across which this LICENSE extends, or any part thereof, shall be condemned or taken for any public project by a governmental authority, LICENSEE shall have the right to claim and recover from the condemning authority, but not from LICENSOR, such

compensation as is payable for the LICENSE and LICENSEE'S improvements, if any, used in connection with this LICENSE, which shall be payable to LICENSEE as its interests appear.

15. ABANDONMENT. In the event the easement area hereby granted shall be abandoned or shall remain unused for a continuous period of one year, all rights granted hereunder shall terminate, and LICENSEE will remove its equipment and improvements and restore the land as nearly as is reasonably possible to the condition existing immediately prior to the signing of this License. Failure of LICENSEE to remove its equipment and improvements and to restore the land within 90 days after notification to do so from LICENSOR by certified mail at LICENSEE'S last known address, will constitute a breach of this LICENSE and LICENSOR may thereafter remove LICENSEE'S equipment and improvements and restore the land to a condition similar to that existing immediately prior to the signing of this LICENSE and LICENSEE will reimburse LICENSOR for all reasonable costs in connection with the removal and restoration.

16. RELOCATION. If LICENSOR determines that the continued exercise of the easement rights granted herein constitutes an undue interference with a subdivision or other development of the land over which the granted easement crosses, LICENSOR shall have the right to terminate the easement granted to the extent necessary to eliminate such interference; provided, that it shall grant to LICENSEE without payment of any monetary consideration, a substitute easement of similar width within the reasonable vicinity to permit LICENSEE to effect relocation of any facility or portion thereof, installed, placed or constructed on the easement area at LICENSEE'S own cost and expense, which substitute easement shall be subject to the same terms and conditions as this LICENSE contains.

17. CONSTRUCTION OF IMPROVEMENTS. LICENSEE shall undertake no construction until LICENSOR has reviewed and approved the plans. All buildings or structures or other major improvements of whatever kind that LICENSEE constructs or erects on the premises shall remain the property of LICENSEE and LICENSEE shall have the right, prior to termination of this LICENSE, or within such additional period as LICENSOR in its reasonable discretion may allow, to remove its property from the premises; provided that in the event LICENSEE shall fail to so remove such property within thirty (30) days after written notice to remove, LICENSOR may at its option retain the property or remove the same and charge the cost of removal and storage, if any, to LICENSEE.

18. MAINTENANCE OF PREMISES. During the term of this LICENSE, LICENSEE shall repair and maintain all improvements heretofore and hereafter erected upon the premises, including all glass, water and gas plumbing, electrical wiring, and all

other fixtures in or on the premises with all necessary reparations and amendments whatsoever; shall keep the premises and all improvements thereon in a strictly clean and sanitary condition, and shall comply with all laws, ordinances, rules and regulations of the Federal, State, County or municipal governments that are applicable to the premises and improvements; and shall allow LICENSOR or its agents, at all reasonable times, free access to the premises for the purpose of examining the same or determining whether the conditions herein are being fully observed and performed, and shall make good at its own cost and expense all defects within sixty (60) days after receipt of written notice by certified mail to the last known address of LICENSEE.

19. BREACH. If LICENSEE shall substantially fail to observe or perform any of the conditions herein contained and on its part to be observed or performed and such failure or lack of substantial compliance shall continue for sixty (60) days after the receipt by certified mail or written notice of such failure to the address of LICENSEE, or if LICENSEE shall abandon the premises, then and in any such event LICENSOR may, at its option, cancel this LICENSE Agreement and, thereupon, take immediate possession of the premises, allowing LICENSEE reasonable time to remove its property therefrom, without prejudice to any remedy or right of action that LICENSOR may have against LICENSEE.

20. RIGHT OF ENTRY. LICENSOR and its duly authorized representatives shall have the right to enter the Premises at all times for the purposes of conducting its own inspection and to ensure that LICENSEE is in compliance with the provisions of this LICENSE.

21. WAIVER. That notwithstanding any provision contained herein to the contrary, wherever applicable, LICENSOR may for good cause shown, extend the time for compliance and/or waive any of the terms, conditions and covenants contained herein that LICENSEE, must observe and perform.

22. SEVERABILITY. Whenever possible each provision of this LICENSE shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this LICENSE should be prohibited or invalidated under applicable law or for any other reason whatsoever, such provision shall not invalidate any other portion of this License.

23. DEFINITION. The word "premises", when it appears herein, includes and shall be deemed to include the lands described above and improvements whenever and wherever erected or placed thereon.

24. SINGULAR/PLURAL. The singular or plural depends on its appropriate use.

25. AGREEMENT. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first above written.

Approved by the HHC
at its meeting held on
December 20, 1994

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By Kali Watson
Kali Watson, Chairman
Hawaiian Homes Commission

Approved as to form:

LICENSOR

LUKE [Signature]
Deputy Attorney General
State of Hawaii

WAIMANA ENTERPRISES, INC.
a Hawaii corporation

By [Signature]
Albert S.N. Hee, President

LICENSEE

STATE OF HAWAII)
CITY AND COUNTY OF HONOLULU) ss

On this 9th day of May, 19 95,
before me personally appeared Albert S.N. Hee, to me personally
known, who, being by me duly sworn, did say that he is the
President of Waimana Enterprises, Inc., a Hawaii corporation,
and that the instrument was signed on behalf of the corporation
and he acknowledged the instrument to be the free act and deed
of the corporation.

LS

Frank J. [Signature]
Notary Public, State of Hawaii
My commission expires: 12/27/95

EXHIBIT TWO
(DHHL June 2, 1998 letter)

BENJAMIN J. CAYETANO
GOVERNOR
STATE OF HAWAII



KALI WATSON
CHAIRMAN
HAWAIIAN HOMES COMMISSION

JOBIE M. K. M. YAMAGUCHI
DEPUTY TO THE CHAIRMAN

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P. O. BOX 1879
HONOLULU, HAWAII 96805

June 2, 1998

Universal Service Administrative Co.
100 South Jefferson Road
Whippany, New Jersey 07981

Dear Madam/Sir:

SUBJECT: Reconfirmation of Sandwich Isles Communications,
Inc. Designation as an Eligible Telecommunication
Carrier

This letter is to reconfirm that the Department of Hawaiian Home Lands of the State of Hawaii ("DHHL") has designated Sandwich Isles Communications, Inc. ("SIC") as an Eligible Telecommunications Carrier ("ETC") under the Telecommunications Act of 1996.

The United States Congress enacted the Hawaiian Homes Commission Act on July 9, 1921 (the "Act") and established the Hawaiian home lands trust. At the time of statehood in 1959, the Hawaiian Homes Commission Act was incorporated into the Hawaii State Constitution and the Department of Hawaiian Home Lands was created to manage the trust and carry out the mission as intended under the Act.

The Act gave exclusive land use powers to the Hawaiian Homes Commission ("HHC") and exempted Hawaiian home lands ("HHL") from the authority of the Governor, allowing the HHC to operate independently of many state and county regulations. Public utilities cannot service HHL without permission of the HHC and cannot exercise the power of eminent domain on HHL.

The HHC issued an exclusive license agreement to Waimana Enterprises, Inc. on May 9, 1995, to build, construct, repair, maintain and operate a broad band

telecommunications network on HHL. The License was partially assigned to SIC on January 15, 1996. By such License and partial assignment, the HHC, a state commission with the authority on HHL, designated SIC as an eligible telecommunications carrier under Section 214 of the Act within the properties of HHL on May 14, 1997.

At the time of our May 14, 1997 designation, the Federal Communication Commission ("FCC") had not issued its rules in regards to the qualifications of a ETC. Since that time, however, the FCC has issued its rules. Therefore, we confirm that SIC qualifies as a ETC under the rules, because it offers the following services:

- voice grade access to the public switched network;
- access to free of charge "local usage" defined as an amount of minutes of use of exchange service;
- dual tone multi-frequency signaling or its functional equivalent;
- single-party service or its functional equivalent;
- access to emergency services;
- access to operator services;
- access to interexchange service;
- access to directory assistance; and
- toll limitation services for qualifying low-income consumers.

SIC offers these services by either using its own facilities or a combination of its facilities and the resale of services of another facilities based carrier. Additionally, SIC advertises the availability of, and the prevailing prices for the list of universal services throughout HHL.

Moreover, SIC pursuant to the License, partial assignment, and under the terms specified by its lender, provides voice grade local exchange access utilizing its facilities-based network. SIC offers single party touch-tone service,

Universal Service Administrative Co.
June 2, 1998
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access to operator services and directory assistance, and access to local usage free of usage changes. SIC has implemented 911 and enhanced 911 systems. In addition to standard subscriber notification and public notice procedures, SIC ensures that the availability of its services is well known among the residents of HHL. SIC does offer toll blocking, but has requested an extension of time to offer toll control because of technical feasibility.

Accordingly, we reconfirm SIC designation as a ETC by DHHL.

Should you have any questions, please call Linda Chinn, Acting Branch Manager, at (808) 587-6432.

Aloha,



KALI WATSON, Chairman
Hawaiian Homes Commission

c: Members of the Hawaiian Homes Commission
Waimana Enterprises, Inc./Sandwich Isles
Communications, Inc.

EXHIBIT THREE
(Hawaii PUC September 20, 1995 letter)

AIN J. CAYETANO
GOVERNOR



STATE OF HAWAII
PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
465 S. KING STREET, #103
HONOLULU, HAWAII 96813

OFFICE COPY RECEIVED
SEP 20 1995

Ans'd.....

YUKIO NAITO
CHAIRMAN

JOHN P. SPIERLING
COMMISSIONER

DENNIS R. YAMADA
COMMISSIONER

September 20, 1995

Albert S.N. Hee
Sandwich Isles Communications, Inc.
Pauahi Tower, Suite 1520
1001 Bishop Street
Honolulu, Hawaii 96813

Dear Mr. Hee:

Your letter of September 1, 1995, requests responses to two questions. The questions stem from responses made by the Hawaii Public Utilities Commission's Chief Counsel, Clay Nagao, to questions raised by Mr. Ken B. Chandler of the U.S. Department of Agriculture. We respond to the questions as follows.

Your first question is whether the PUC agrees that the Hawaiian Homes Commission has the power to authorize a public utility to provide service on its lands. Our response is that, pursuant to section 207(c)(1) of the Hawaiian Homes Commission Act of 1920, it appears that the Hawaiian Homes Commission has the power to grant licenses and easements for telephone lines and other utility services.

Your second question is whether the PUC agrees that public utilities do not have the ability to use their power of eminent domain to obtain easements for utility services on Hawaiian Homes lands. Our response is that, pursuant to the State of Hawaii Attorney General's opinion no. 60-77, it appears that a public utility may not acquire any Hawaiian Homes land through eminent domain proceedings, in spite of the right of eminent domain granted to public utilities by Hawaii Revised Statutes section 101-4.

I hope these responses will clarify any confusion that may have been generated by Mr. Nagao's July 18, 1995, letter to Mr. Chandler.

Very truly yours,

A handwritten signature in black ink, appearing to read "Yukio Naito".

Yukio Naito
Chairman

YN:CN:ac

CERTIFICATE OF SERVICE

I, Lula Robinson, a legal assistant in the law firm of Venable LLP, hereby certify that on this 24th day of February, 2012, a copy of the foregoing Reply Comments was filed with the FCC's electronic filing system and served on the following by electronic mail:

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Diane Griffin Holland, Counsel
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Pamela Arluk, Asst. Div. Chief
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/ss/ Lula Robinson
Lula Robinson