

CC 96-45

ACCEPTED/FILED

JAN 15 2013

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE
FORM 159

Federal Communications Commission
Office of the Secretary

Approved by OMB
306n-0589
Page No. 1 of 1

(1) LOCKBOX #
979091

SPECIAL USE ONLY

SECTION A - PAYER INFORMATION

(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card)
Sandwich Isles Communications, Inc.

(3) TOTAL AMOUNT PAID (U.S. Dollars and cents)
\$7,990.00

(4) STREET ADDRESS LINE NO. 1
1003 Bishop Street

(5) STREET ADDRESS LINE NO. 2
Suite 2700

(6) CITY
Honolulu

(7) STATE
HI

(8) ZIP CODE
96813

(9) DAYTIME TELEPHONE NUMBER (include area code)
1-888-995-7274

(10) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) REQUIRED

(11) PAYER (FRN)
0001-5140-90

FEDERAL USE ONLY

IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)
COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(13) APPLICANT NAME
Sandwich Isles Communications, Inc.

(14) STREET ADDRESS LINE NO. 1
1003 Bishop Street

(15) STREET ADDRESS LINE NO. 2
Suite 2700

(16) CITY
Honolulu

(17) STATE
HI

(18) ZIP CODE
96813

(19) DAYTIME TELEPHONE NUMBER (include area code)
1-888-995-7274

(20) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) REQUIRED

(21) APPLICANT (FRN)
0001-5140-90

FEDERAL USE ONLY

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) CALL SIGN/OTHER ID

(24A) PAYMENT TYPE CODE
BEA

(25A) QUANTITY

(26A) FEE DUE FOR (PTC)
\$7,990.00

(27A) TOTAL FEE
\$7,990.00

FEDERAL USE ONLY

(28A) FCC CODE 1

(29A) FCC CODE 2

(23B) CALL SIGN/OTHER ID

(24B) PAYMENT TYPE CODE

(25B) QUANTITY

(26B) FEE DUE FOR (PTC)

(27B) TOTAL FEE

FEDERAL USE ONLY

(28B) FCC CODE 1

(29B) FCC CODE 2

SECTION D - CERTIFICATION

CERTIFICATION STATEMENT

I, **FR252012W** certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief

SIGNATURE

DATE

1/23/12

SECTION E - CREDIT CARD PAYMENT INFORMATION

MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____

ACCOUNT NUMBER _____

EXPIRATION DATE _____

I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described.

SIGNATURE _____

DATE _____

November 29, 2012

VIA U.S. BANK

Federal Communications Commission
c/o U.S. Bank – Government Lockbox # 979091
SL-MO-C2-GL
1005 Convention Plaza, St. Louis, MO 63101
(Attention: FCC Government Lockbox)

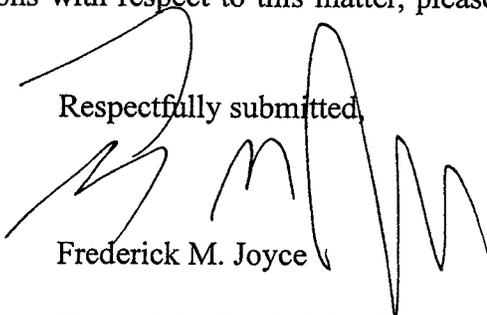
Re: **Sandwich Isles Communications, Inc.**
Petition for Expedited Study Area Waiver; Petition for Waiver of
the Definition of Average Schedule Company
CC Docket No. 96-45

To Whom It May Concern:

On behalf of Sandwich Isles Communications, Inc. (“SIC”), transmitted herewith are an original and four (4) copies of the above-referenced petition. As further detailed therein, SIC request that the Commission waive the definition of “study area” contained in the Appendix-Glossary of Part 36 of the FCC’s rules to include all of the Hawaiian Home Lands (“HHL”) within SIC’s study area. A grant of this study area waiver would be the necessary regulatory predicate before SIC could acquire any third party carrier lines or exchanges within the HHL. A check made payable to the FCC in the amount of \$7,990.00 is enclosed to cover the requisite filing fee.

Please date-stamp the extra copy of this filing, and return it to us in the enclosed envelope. Should you have any questions with respect to this matter, please do not hesitate to contact the undersigned.

Respectfully submitted,



Frederick M. Joyce

Counsel for Sandwich Isles Communications, Inc.

Enclosures

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

In the Matter of

Sandwich Isles Communications, Inc.

**Petition for Waiver of the Definition of
"Study Area" of the Appendix-
Glossary of Part 36 of the
Commission's Rules**

CC Docket No.: 96-45

PETITION FOR EXPEDITED STUDY AREA WAIVER

Sandwich Isles Communications, Inc. ("SIC" or "Petitioner"), through its attorneys, and pursuant to Section 1.3 of the Federal Communications Commission's ("FCC" or "Commission") Rules, 47 C.F.R. §1.3, hereby requests a waiver of the definition of "study area" contained in the Appendix—Glossary of Part 36 of the Commission's Rules. In particular, SIC requests that its current study area be modified to include all of the Hawaiian Home Lands ("HHL") within SIC's study area. A grant of this study area waiver would be the necessary regulatory predicate before SIC could acquire any third party carrier lines or exchanges within the HHL.

Additionally, SIC seeks the usual and customary waivers of Section 69.3(e)(11) of the Commission's Rules concerning participation in the National Exchange Carrier Association ("NECA") carrier common line tariff (to include any lines acquired from other carriers in the HHL in the NECA pool). To the extent necessary, SIC also seeks a waiver of Section 69.605(c) of the FCC's Rules to remain an average schedule company after the acquisition of any lines and exchanges in the HHL that are not already served by SIC.

SIC also seeks waiver of certain FCC rules so that it may receive immediate federal high-

cost universal service support and enhanced Lifeline and Link-Up support for any lines acquired from other carriers in the HHL. Specifically and to the extent necessary, SIC seeks waiver of Sections 36.611, 36.612, 69.2 and 69.3 of the Commission's Rules. Waiver of Sections 36.611 and 36.612 of the FCC's Rules would enable SIC to receive immediate high-cost loop support payments based on projected costs until historical costs become available for the acquired lines. In addition, SIC requests waiver of Sections 54.301(b), 54.314(d), and 54.903(a)(3) of the FCC's Rules to allow it to receive immediate local switching support (LSS) and interstate common line support (ICLS) for these lines.

Petitioner has requested these waivers so that it may acquire local telephone lines and exchanges ("the Exchanges") from other carriers that currently provide service to customers located in the HHL. As explained in detail herein and in other FCC proceedings, SIC has been granted a unique and exclusive license to provide telecommunications services to the HHL. Accordingly, it would be appropriate and in the public interest to amend SIC's study area to include within it all the territories covered in the HHL.¹

I. STREAMLINED PROCEDURES ARE WARRANTED

Petitioner submits that this request should be processed under the new Streamlined Study Area Waiver Process rules that were adopted by the FCC in its *USF/ICC Transformation Order*, 27 FCC Rcd. 17663 at ¶¶ 266-267 (Nov. 18, 2011). The Commission is requested to review and approve this Petition expeditiously. The facts and circumstances supporting grant are similar in material respects to those involved in waiver requests that have previously been approved by the FCC.² Prompt Commission approval will enable Petitioner to focus time and resources on the

¹ SIC's study area code is 623021.

² See, e.g., *Dickey Rural Telephone Cooperative, et al. and Citizens Telecommunications Company of North Dakota, Joint Petition for Waiver of Definition of "Study Area" Contained in the Part 36, Appendix-Glossary of the Commission's Rules, Petition for Waiver of Sections 61.41(c) and (d), 69.3*

Exchanges to be served immediately following the purchase transaction.

The waiver requests that are included in this Petition are of the sort that are “routinely included in petition for study area waiver” and are “routinely granted” by the FCC. *Id.* Consequently, the waivers requested herein should be “deemed granted” on the 60th day following publication of this waiver request and expiration of the comment period. *Id.*

II. BACKGROUND

SIC is a cost study, rural, incumbent local exchange carrier ("ILEC") that currently owns and operates approximately 3,000 access lines in eleven (11) exchanges in the State of Hawaii. To the best of SIC's knowledge, there is only one other ILEC that provides service to other customers within the HHL, Hawaiian Telephone Company, Inc. ("HTI").

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 SIC's parent company, Waimana Enterprises Incorporated ("Waimana"). Exhibit One, attached hereto.

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 December 23, 2004 letter from the DHHL verifying that SIC has been issued an "exclusive license by the State of Hawaii, Department of Hawaiian Home Lands (DHHL) on May 9, 1995 to provide telecommunications services on trust lands we

(e)(11) and 69.605(c), Order, 17 FCC Rcd 16881 (Wir. Comp. Bur. 2002) ("Dickey Rural Order"); *Petition for Waivers Filed by Baltic Telecom Cooperative, Inc., et al., Concerning Sections 69.3(e)(11), 69.3(i)(4), 69.605(c) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules*, Memorandum Opinion & Order, 12 FCC Rcd 2433 (Acc. Aud. Div. 1997) ("Baltic Order").

administer.”

At the time the License was awarded to Waimana, HTI was providing (and continues to provide) service to some HHL residents. Upon granting of the License to Waimana, HTI effectively lost its status as the carrier of last resort (“COLR”) on the HHLs. According to the exclusive authorization terms of the License, SIC is now the COLR for all of the HHL.

In 1995, the Public Utilities Commission of the State of Hawaii (“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 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 HHL. The Hawaii Attorney General held that a public utility may not acquire any HHL through eminent domain proceedings, notwithstanding the right of eminent domain generally granted to public utilities under Hawaii law. In short, the only telecommunications carrier today that is “licensed” to provide telecommunications services to the HHL is SIC. Consequently, a grant of this waiver request, to include all of the HHLs within SIC’s study area, would be consistent with and is essentially required under Hawaii law.

III. THIS WAIVER MEETS THE NEW STANDARDS

As will be discussed in greater detail below, all of the factors that the Commission evaluates for a study area waiver under its new regulatory requirements should apply to SIC’s waiver request: (1) relevant state authorities, including the HPUC and the Hawaiian Homes Commission (“HHC”), are unlikely to object to the proposed modifications to SIC’s study area;

and, (2) the public interest will be served by granting the waiver.

The FCC's evaluation of the public interest in this case should readily pass the new standards: (1) the number of telephone lines in question here is quite small (less than 7,000), and, all of them are already located within SIC's exclusively licensed HHL territory; (2) the projected universal service fund costs per line will be in line with costs that typically apply to services offered in insular areas; and (3) a grant of this waiver will facilitate the overall reduction of costs by taking advantage of economies of scale, that is, reduction in per line costs due to the addition of lines to SIC's established telephone network. Indeed, the quality of services offered to all customers throughout the HHL will almost assuredly improve while their monthly costs will remain the same or go down.

The more general standards for obtaining a waiver of the FCC's rules also apply in this case. The FCC may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *See, e.g., Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). Moreover, the FCC may take into account considerations of "hardship, equity, or more effective implementation of overall policy on an individual basis." *Sacred Wind Communications*, 21 FCC Rcd. 9227 at ¶ 4 (Wire. Comp. Bur., 2006), *citing WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972). The extraordinarily unique facts surrounding SIC's study area and this waiver request, and the sound policy objectives that would be accomplished by bringing all HHL telephone lines into SIC's study area, warrant granting the requested waivers of the FCC's rules.

IV. WAIVER OF THE STUDY AREA DEFINITION IS WARRANTED.

Petitioner seeks a waiver of the frozen study area definition. Part 36 of the Commission's Rules "freezes" the definition of "study area" to the boundaries that were in existence on

November 15, 1984. Although that rule was adopted to prevent a carrier from segregating territories artificially to maximize high cost support,³ the Commission has recognized that changes "that result from the purchase or sale of exchanges in arms-length transactions" do not necessarily raise the concerns which prompted the freeze.⁴ Moreover, in SIC's case, the subject lines have previously been found as a matter of Hawaii law to be covered within SIC's exclusively licensed territory, that is, the HHLs. *See, Exhibit One.* Consequently, a grant of this waiver, to include all telephone lines within the HHL in SIC's study area, does not raise any regulatory concerns and meets the FCC's criteria for a waiver.

A. State Regulatory Approvals.

As explained in the forgoing "Background" section, DHHL has already granted SIC an exclusive license to be the COLR and exclusive wireline service provider throughout the HHLs. No further action would be required from the DHHL to authorize the expansion of SIC's study area to include within it any third party carrier lines that already exist in the HHLs.

Moreover, the H PUC has already 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), Exhibit Two. That exclusive authority arises under Section 207(c)(1) of the Hawaiian Homes Commission Act of 1920. Consequently, as a matter of Hawaii law, HPUC approval would not be needed to expand SIC's study area to include those areas within the HHL where SIC does not

³ *See MTS and WATS Market Structure, Amendment of Part 67 of the Rules and Establishment of a Joint Board, Recommended Decision & Order, 57 RR 2d 267, ¶ 65 (1984).*

⁴ *See, e.g., Alltel Corporation Petition for Waiver of Section 36.1250, Sections 36.154(e)(1) and (2), and the Definition of "Study Area" contained in Part 36, Appendix-Glossary of the Commission's Rules, Memorandum Opinion and Order, 5 FCC Rcd 7505, ¶ 7 (Com. Carr. Bur. 1990).*

already provide service. Indeed, Hawaii law essentially prohibits the HPUC from taking any actions that would preclude SIC from expanding its study area to include these other service areas within the HHL.

This is the same approval and authorization process that the FCC followed when it originally granted SIC its own study area in 1998. There, the FCC acknowledged that SIC's authorization to provide telephone services "on HHL" came from the license authorization granted by the DHHL. *See Sandwich Isles Communications*, 13 FCC Rcd. 2407 at ¶5 (Acct. Div., February 3, 1998). SIC's authorization to provide telecommunications services "within and between the HHL throughout Hawaii" came from an interLATA and intrastate authorization granted by the HPUC. *Id.*

In addition, the DHHL previously supported SIC's original request for a Study Area Waiver. *See Exhibit Two*. The justifications cited by the DHHL in that proceeding apply with equal force to this request for revisions to SIC's Study Area: "The provision of modern, reliable telecommunications infrastructure and services is important to our [the DHHL's] mission to rehabilitate our beneficiaries. These services impact quality of life – health, education, personal safety; and serve as a platform for economic development." *Id.*

Notwithstanding these laws and precedents that rest jurisdiction over SIC with the DHHL, SIC has contacted the HPUC to notify it of its intentions in filing this study area waiver request. Neither the HPUC nor the HHC has expressed any objection to a grant of this waiver request. SIC will provide a courtesy copy of this Petition to the HPUC and the HHC to ensure that they will have the opportunity to submit comments to the FCC should either be so inclined. The Public Notice procedures that the FCC had adopted under the new streamlined review procedures will ensure that the HPUC and HHC will have ample time to submit comments in this proceeding

should either be so inclined.

B. Granting the Waiver is in the Public Interest.

The modification of SIC's study area to include all lands within the HHL will promote the public interest because it will provide these customers with improved services at the same or at lower costs than they currently pay, from a locally-based and Hawaiian-owned carrier that specializes in meeting the communications needs of the rural communities it serves. SIC is a special carrier, authorized by law to provide services to Native Hawaiians in the HHL. A grant of this waiver will allow these Native Hawaiian customers to receive services from a Native Hawaiian carrier that is uniquely attuned to their service and economic needs.

In addition, a grant of this waiver request is consistent with the statutory purpose behind the License. A grant of this waiver will, as intended by the License, fulfill the purpose of advancing the rehabilitation and welfare of Native Hawaiians by ensuring the availability of reliable and robust telecommunications infrastructure. As stated by the DHHL when it supported SIC's original Study Area Waiver, the expansion of SIC's services into areas previously unserved by SIC will enhance educational, economic, cultural, health and safety opportunities for those Native Hawaiians living and working on HHLs. *See Exhibit Three.*

SIC intends to provide high quality telecommunications services to all telephone lines located throughout the HHL and to improve the existing network where necessary. Most of these customers that are brought onto SIC's network will almost immediately see improvements in the quality and scope of services to be provided to them. Many of these customers currently obtain service over a "Plain Old Telephone Service" network consisting of copper wires and traditional switches. By contrast, SIC previously invested millions of dollars in an extensive fiber broadband network, providing fiber to the home throughout much of the HHL, supplemented by wireless

services and other advanced technologies. These improvements will significantly enhance the quality and reliability of services available to these customers, while in many instances extending high-speed digital transmission capabilities to customers who previously were unable to receive such services. SIC will continue the provision of excellent service quality and customer service to subscribers within the exchange areas where it intends to purchase these lines and it will provide these services at affordable and competitive prices.

With respect to the specific public interest criteria that the FCC adopted in the *ICC Reform Order*, all of them are met in this case. With respect to the first factor, the number of telephone lines at issue here is relatively small. There are less than 7,000 telephone lines extant in the HHL that are not already served by SIC.

Concerning the second factor, the projected universal service fund costs per line, since the *ICC Reform Order* has capped universal service support at \$3,000 per line per year, there will be no adverse impact on overall fund subsidies. Pursuant to the revisions made to Section 54.305 of the FCC's rules in the *ICC Reform Order*, there is no possibility that the acquisition by SIC of any lines within the HHL would be contrary to the public interest. Going forward, SIC would receive the lesser of either the same support that any acquired lines or exchanges would otherwise receive before the transaction, or, support based on the acquired lines' actual costs. See *ICC Reform Order* at ¶¶ 268-271; 47 C.F.R. § 54.305(b). Although SIC does have pending before the FCC a request for waiver of the *ICC Reform Order*'s per line caps, given that any lines acquired by SIC within the HHL (either before or after agency action on that waiver) would be subject to the rule's "per line cost analysis," this public interest factor will be honored.

And although the *ICC Reform Order* would appear to have eliminated the prior "parent trap" problem with respect to the acquisition of telephone lines from a larger carrier, to the extent necessary SIC requests that the FCC waive that regulation, to ensure that any lines included in

SIC's amended and revised study area are eligible for federal subsidies. That would appear to be the regulatory premise behind the revisions to the "parent trap" rule.

Finally, the third prong of the new public interest standard – whether a grant of a study area waiver would result in consolidation of study areas that facilitates reduction in costs by taking advantage of the economies of scale – would be met when SIC acquires additional lines or exchanges throughout the HHL. A grant of this waiver will facilitate the overall reduction of costs of phone service in Hawaii in general and within the HHL in particular, by taking advantage of economies of scale, that is, per line costs will be reduced due to the addition of lines to SIC's established telephone network. Indeed, the quality of services offered to all customers throughout the HHL will almost assuredly improve while their monthly costs will remain the same or go down.

Since the inception of the Rural Utilities Service-approved SIC network construction plan for the HHLs, SIC has borrowed and invested millions of dollars on telecommunications infrastructure to serve more than 3,000 access lines throughout Kauai, Oahu, Molokai, Maui, Lanai and Hawaii Island with an additional 1,000 lots ready to be connected. SIC now provides homesteaders with access to local and long distance telephone service as well as high speed Internet access. To accomplish all of this, SIC had to: (i) install 504 miles of terrestrial and undersea fiber optic conduit consisting of nearly 26,000 miles of fiber strands connecting the isolated parcels and islands, (ii) construct 24 remote Digital Loop Carrier ("DLC") sites on six islands, (iii) build 12 Central Offices that house 12 switches and DLCs on five islands, and (iv) erect nine microwave towers with 12 dishes and seven radios on two different islands. These are all sunk costs, necessary to provide this full range of services throughout some of the most geographically diverse and difficult territories that any one carrier serves in the United States. By expanding SIC's study area to include the remaining lines that are located throughout the HHLs,

SIC will be able to significantly reduce its per line costs, and take advantage of economies of scale. The basic network infrastructure is already in place and is ready to take on these additional customers. For all these reasons, a grant of this study area waiver request would meet the FCC's public interest standards.

**V. WAIVER OF SECTION 69.3(e)(11) OF
THE COMMISSION'S RULES IS WARRANTED.**

SIC also requests a waiver of Section 69.3(e)(11) of the FCC's Rules, if necessary, in order to continue to allow it to use NECA as its tariff pool administrator. Section 69.3(e)(11) requires that any changes in NECA common line tariff participation resulting from a merger or acquisition of telephone properties are to be made effective on the next annual access tariff filing effective date following the merger or acquisition. Thus, Section 69.3(e)(11) of the FCC's Rules may preclude SIC from participating in the NECA common line tariff until the next annual access tariff filing effective date following the consummation of any line acquisitions. If the rule is not waived, this would require SIC to file interstate tariffs and to assume the costs and administrative burdens associated with that process for some period of time.

Moreover, the inclusion of the relatively small number of acquired access lines in the NECA carrier common-line tariffs would represent a minimal increase in NECA common line pool participation and would not unduly increase the complexity of administering the LTS program.⁵ In light of the fact that SIC is a very small carrier, and that the administrative and financial burdens that could result in the absence of a waiver are great, SIC requests a waiver of Section 69.3(e)(11) to the extent necessary for it to add acquired lines and exchanges to its current study area and include them

⁵ See, e.g., *Saddleback Communications and Qwest Corporation*, Order, 16 FCC Rcd 21159, 21166 (Acc. Pol. Div. 2001) (Commission granted waiver of Section 69.3(e)(11) for the acquisition of approximately 2700 access lines).

in the NECA pools upon the closing of those acquisitions.⁶

**VI. WAIVER OF SECTION 69.605(c) OF
THE COMMISSION'S RULES IS WARRANTED**

To the extent necessary, SIC also seeks a waiver of Section 69.605(c) of the FCC's Rules, so that it may remain an average schedule company after the acquisition of these lines and exchanges from HTI. To the extent necessary, SIC also seeks waiver of certain FCC rules so that it may receive immediate federal high-cost universal service support and enhanced Lifeline and Link-Up support for any lines acquired from other carriers in the HHL. Specifically and to the extent necessary, SIC seeks waiver of Sections 36.611, 36.612, 69.2 and 69.3 of the Commission's Rules. Waiver of Sections 36.611 and 36.612 of the FCC's Rules would enable SIC to receive immediate high-cost loop support payments based on projected costs until historical costs become available for the acquired lines. In addition, SIC requests waiver of Sections 54.301(b), 54.314(d), and 54.903(a)(3) of the FCC's Rules to allow it to receive immediate local switching support (LSS) and interstate common line support (ICLS) for these lines.

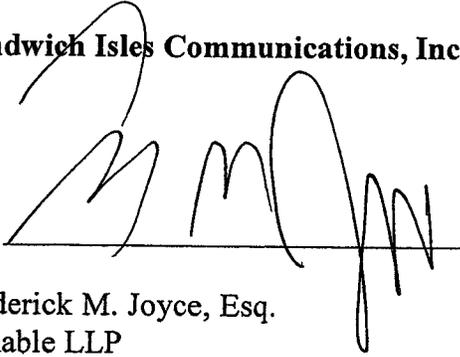
⁶ SIC will request NECA to provide a statement for the record that it does not object to the addition of these lines to the pool.

CONCLUSION

The actions requested herein by the Petitioners are generally comparable to requests routinely granted by the Commission for similarly situated carriers. Moreover, the public interest and the interests of the affected HHL customers warrant a grant of this petition. Therefore, good cause having been shown, SIC respectfully requests that this Petition be granted on an expedited basis, thereby allowing affected customers to benefit from the proposed revisions to SIC's study area as soon as possible.

Respectfully submitted,

Sandwich Isles Communications, Inc.

By: 

Frederick M. Joyce, Esq.
Venable LLP
575 7th Street, N.W.
Washington, D.C. 20004

Its Attorneys

Date: November 29, 2012

EXHIBIT 1

BUREAU OF CONVEYANCE

MAY 12 1995 32
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), BHCA, 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.

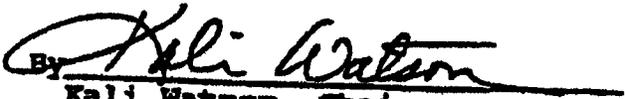
24. SINGULAR/PLURAL. The singular or plural depends on its appropriate use.

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

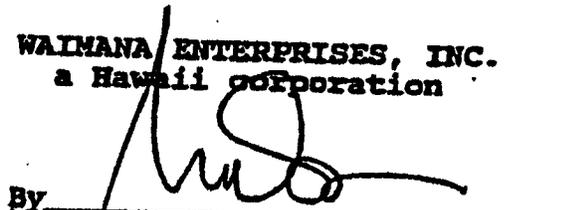
By 
Kali Watson, Chairman
Hawaiian Homes Commission

LICENSOR

Approved as to form:


Deputy Attorney General
State of Hawaii

WAIMANA ENTERPRISES, INC.
a Hawaii corporation

By 
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

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

EXHIBIT 2

LINDA LINGLE
GOVERNOR
STATE OF HAWAII



STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
P.O. BOX 1879
HONOLULU, HAWAII 96805

MICAH A. KANE
CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEN HENDERSON
DEPUTY TO THE CHAIRMAN
KAULANA H. PARR
EXECUTIVE ASSISTANT

December 23, 2004

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Ms. Dortch:

Re: AAD 97-82: Sandwich Isles Communications, Inc., Petition for Study Area Waiver

Sandwich Isles Communications, Inc. (SIC) was issued an exclusive license by the State of Hawaii, Department of Hawaiian Home Lands (DHHL) on May 9, 1995 to provide telecommunications services on the trust lands we administer.

Additionally, on May 14, 1997, DHHL designated SIC an eligible telecommunications carrier (ETC) under Section 214 of the 1996 Communications Act within our Hawaiian home lands properties. Subsequent to our initial designation and in response to the FCC issuing further qualifying rules, DHHL reconfirmed its ETC designation for SIC on June 2, 1998.

We now understand the FCC in the above referenced docket is requiring SIC to petition for a Study Area Waiver. For purposes of granting that waiver, DHHL fully supports SIC continuing to provide telecommunications services on Hawaiian home lands (HHL) and reaffirms its exclusive license issued in 1995.

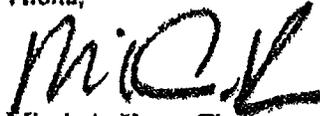
Hawaiian home lands are held in trust for the benefit of native Hawaiians. They consist of over 70 non-contiguous parcels totaling over 200,000 acres located on the 6 major Hawaiian Islands. The provision of modern, reliable telecommunications infrastructure and services is important to our mission to rehabilitate our beneficiaries. These services impact quality of life - health, education, personal safety; and serve as a platform for economic development. Prior to issuing SIC the license, there were many beneficiaries living on HHL that did not have phone service due to the high cost either they or DHHL would have to pay to install the infrastructure.

Ms. Marlene H. Dortch
December 23, 2004
Page 2

Today these beneficiaries enjoy the same service that is available in urban areas. Additionally, SIC is now investing tens of millions of dollars to pay for the communications infrastructure in the areas DHHL is currently developing.

SIC has been able to provide this service without contributions in aid of construction from either DHHL or its beneficiaries. This has allowed DHHL to utilize the funds it previously would be required to spend to install communications infrastructure to fulfill our mission.

Aloha,



Micah A. Kane, Chairman
Hawaiian Homes Commission

cc: Sandwich Isles Communications, Inc.

EXHIBIT 3

AIN J. CAYETANO
GOVERNOR



OFFICE COPY RECEIVED
SEP 20 1995

Ans'd.....

YUKIO NAITO
CHAIRMAN

JOHN P. SPIERLING
COMMISSIONER

DENNIS R. YAMADA
COMMISSIONER

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

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