

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554



DA 12-893

June 6, 2012

Mr. Albert S.N. Hee
President
Sandwich Isles Communications, Inc.
1003 Bishop Street, 27th Floor
Honolulu, Hawaii 96813

Re: 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

Dear Mr. Hee:

The Wireline Competition Bureau of the Federal Communications Commission is continuing to evaluate the petition of the Sandwich Isles Communications, Inc. (Sandwich Isles) for waiver of section 54.302 of the Commission's rules, which establishes a total limit on high-cost universal service support of \$250 per line per month.¹ In the *USF/ICC Transformation Order*, the Commission established the \$250 per line per month limit as part of its fiscally responsible reform of the universal service fund and mandated that the limit be phased in over three years. The Commission permitted affected carriers to seek a waiver of that restriction by providing specific information in its petition and also required any requesting carrier to provide additional information as requested by staff.²

The Bureau has reviewed the information Sandwich Isles provided with its petition, the record received in response to the petition,³ and Sandwich Isles' response to the Bureau's March 13, 2012 letter seeking additional information.⁴ Together, these materials raise additional questions regarding Sandwich Isles' projected revenues and expenses.

¹ 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 Dec. 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, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*); 47 C.F.R. § 54.302.

² *USF/ICC Transformation Order*, 26 FCC Rcd at 17842, para. 543.

³ *See* Comments of Hawaiian Telcom, Inc., WC Docket No. 10-90 and WT Docket No. 10-208 (filed Feb. 9, 2012); Comments of US Telecom, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Feb. 9, 2012).

⁴ *See* Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, to Albert N. Hee, President, Sandwich Isles Telecommunications, Inc., WC Docket No. 10-90 and WT Docket No. 10-208 (Mar. 13, 2012); Letter from Frederick M. Joyce, Counsel for Sandwich Isles

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In particular, the overwhelming majority of Sandwich Isles’ expenses – many millions of dollars – consist of significant payments to a number of affiliated companies, including ClearCom, Waimana, [REDACTED], and Paniolo,⁵ each of which appears to be owned and/or operated by Mr. Hee, CEO of Sandwich Isles, or his family members. In its initial waiver filing and in its submissions since, Sandwich Isles has failed to be forthcoming regarding its affiliates, the finances of these affiliates, the basis of Sandwich Isles’ payments to these affiliates, and the details of Sandwich Isles’ agreements with these companies. As a result, the Bureau still lacks basic information necessary to evaluate these affiliate transactions. The Bureau reminds Sandwich Isles that, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.⁶ Accordingly, it is incumbent on Sandwich Isles to be as forthcoming as possible so that the Bureau has necessary and complete information before it when acting on the waiver petition.

Moreover, the information available to us raises significant questions about whether Sandwich Isles could be obtaining the services it receives from its affiliates at much lower rates from unaffiliated sources. These affiliate payments also appear to reflect very significant and unexplained corporate expenses, and raise concerns that Sandwich Isles may be using universal service funds to cross-subsidize competitive services outside of its service territory.

Accordingly, the Bureau requests additional information related to these issues. This additional information is necessary for the Bureau to complete its analysis of whether there is good cause to grant the requested waiver.

Please provide full and complete responses to the following questions:

1. In its response to the Bureau letter, Sandwich Isles projects revenues and operating expenses for the period 2012 through 2016. Please detail the major components of Sandwich Isles’ projected revenues and operating expenses for each of the projected years.
 - a. Please separately identify projected revenue, if any, for HCLS, ICLS, Connect America Fund ICC/CAF Recovery, Access Recovery Charges, intercarrier compensation showing separately cost recovery from NECA pools related to the Paniolo network and other cost recovery from NECA pools, revenues from leasing the Paniolo cable to other users, and any other major components of projected revenues. Please also provide projected customer revenues for each year by type of service.
 - b. Please separately identify detailed projected operating expenses in each of the following expense categories, including but not limited to:

Communications to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Apr. 16, 2012) (Apr. 16 Response).

⁵ See *Streamlined Submarine Cable Landing License Applications Accepted for Filing*, Report No. SCL-00083S, Public Notice (rel. March 25, 2009) (noting that control of Paniolo was transferred to Blue Ivory on March 31, 2008 and that “Blue Ivory is wholly owned by and controlled by Blue Ivory Hawaii Corp.”, which “is held equally by three private trusts, the Adrienne H.R. Hee Irrevocable Trust, the Breanne E.R. Hee Irrevocable Trust, and the Charlton E.R. Hee Irrevocable Trust.”).

⁶ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

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- i. Plant specific
 1. Paniolo lease expense⁷
 2. Payments to each affiliate of Sandwich Isles
 3. Payments to non-affiliates
 - ii. Plant Non-specific
 1. Payments to each affiliate of Sandwich Isles
 2. Payments to non-affiliates
 - iii. Corporate operations
 1. Waimana management fee
 2. [REDACTED]
 3. Payments to ClearCom, if any
 4. Payroll/Labor
 5. Other
2. Payments to [REDACTED] Insurance Company, [REDACTED] from 2008 to 2011. Provide details for all insurance policies purchased [REDACTED] for those years, including type of insurance and premiums. Please provide copies of all insurance contracts and agreements [REDACTED]. Please provide information regarding any activities to seek insurance from other companies since 2008, including the name of the company, type of insurance and the quoted premium.
3. During 2010, Sandwich Isles [REDACTED] its affiliate ClearCom, which was recorded as Corporate Operations Expense. Provide details on the nature and purpose of this expense. In addition, please provide copies of all contracts or agreements, if any, between Sandwich Isles and ClearCom.
4. Provide the name, position, and annual compensation of the ten highest paid employees of ClearCom and [REDACTED] for 2009, 2010, and 2011. In addition to salary, include as part of compensation any benefits, dividends, increases in equity, sales of equity, or any other non-salary forms of compensation.
5. Provide details on the ownership of Paniolo, including the names of all owners, the percentage ownership of each, and the relationship to the owner of Sandwich Isles. In 2009, in addition to lease payments, Sandwich Isles paid [REDACTED] to the Paniolo Network. Please specify the reason for [REDACTED], the financial justification for the [REDACTED], the extent to which the [REDACTED] are useful to any other entity, and the contractual potential for recovery of the [REDACTED] in the event of a change in the contract between Sandwich Isles and Paniolo. Please provide copies of all contracts and agreements between Sandwich Isles and Paniolo.

⁷ We note that Sandwich Isles projects payments from Sandwich Isles to Paniolo for the years 2012 to 2016 of approximately [REDACTED] annually for expenses found by the Bureau not to be "used or useful" for provision of service to the Hawaiian homelands. See Apr. 16 Response at 14; *Sandwich Isles Communications, Inc., Petition for Declaratory Ruling*, WC Docket No. 09-133, Declaratory Ruling, 25 FCC 13647, 13650, para. 9 (Wireline Comp. Bur. 2010).

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6. Please provide detailed financial statements for Waimana, ClearCom, and [REDACTED] for the years 2007 through 2011. Indicate any other entities for whom Waimana and ClearCom provide management services and, in the cases of any individuals who work on more than one project, the percentage of time and expense allocated between Sandwich Isles and other projects. In addition, provide copies of the employment agreements of the top four executives of Waimana and each of its affiliates. Please quantify the percentage of compensation for each of these executives that were allocated to or otherwise recovered from Sandwich Isles in 2009, 2010, and 2011.

7. In its response to the Bureau letter, Sandwich Isles projected approximately [REDACTED] additional average capital expenditure (capex) each year for the years 2012 through 2016. Please provide the number of new voice customers and the number of new broadband customers for each of the past three calendar years. Please detail the major components of Sandwich Isles' additional projected capex for each of the projected years. Please separately identify additional projected capex in each of the following categories:
 - a. Transport: (a) capex, if any, associated with the Paniolo network, (b) capex, if any, associated with the water mains, and (c) other transport-related capex, if any;
 - b. Loop: (a) capex, if any, associated with the addition of new customers in the study area, (b) capex, if any, associated with the maintenance of loops for the existing customers in the study area, and (c) other loop-related capex, if any;
 - c. Other, if any.

8. Sandwich Isles uses abandoned water mains from ClearCom, Inc., which leases the abandoned water mains from the Board of Water Supply for the City and County of Honolulu.⁸ Please quantify the amount of abandoned water mains utilized in ClearCom's network (excluding the usage in Sandwich Isles' network) in terms of miles used, customers served, and revenue earned. Please provide copies of any agreements between Sandwich Isles and ClearCom and the lease agreement between the Board of Water Supply and ClearCom for the abandoned water mains.

9. Sandwich Isles did not list Sandwich Isles Wireless as an affiliate in either its initial petition or in its response to the Bureau's March 13, 2012 letter. Please provide information about the ownership of Sandwich Isles Wireless. In addition, please provide information on the nature of relationship, payments, and investments (if any) for the periods 2009 through 2012 (year-to-date) between Sandwich Isles Communications and Sandwich Isles Wireless. In addition, please provide documentation showing how Sandwich Isles Wireless will have sufficient funds to meet its 5-year build-out obligations to the Hawaiian Public Utilities Commission

⁸ HB 2267, HD 1, Relating to Issues of Special Purpose Revenue Bonds to Assist ClearCom, Inc., in the Development of Broadband Infrastructure in Hawaii, Session 2012 (Feb. 23, 2012) (statement of Albert S.N. Hee, President of ClearCom, Inc. to the House Committee on Finance, Hawaii State Legislature); *available at* http://www.capitol.hawaii.gov/session2012/Testimony/HB2267_HD1_TESTIMONY_FIN_02-23-12_3_PDF.

SB 2236, HD 1 Relating to Information Technology, Session 2012 (Mar. 28, 2012) (statement of Ed Pukini, Regional Vice President, Mid-State Consultants to the House Committee on Finance, Hawaii State Legislature), *available at* http://www.capitol.hawaii.gov/session2012/Testimony/SB2236_HD1_TESTIMONY_FIN_03-28-12_1_PDF

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without federal high-cost universal service support. Please provide documentation showing Sandwich Isles Wireless's current and planned access to spectrum, including any contracts with other providers to resell their service.

10. We note that Sandwich Isles has stated that it is "subject to competition from multiple mobile wireless carriers and to digital voice service provided by a cable company."⁹ Please provide a list of Sandwich Isles' competitors (both wireline and wireless) and indicate to what extent those competitors overlap Sandwich Isles' study area.

If Sandwich Isles believes that any information or documents responsive to this letter be treated in a confidential manner, it may file the information in accordance with the Bureau's *Protective Order* in this proceeding.¹⁰

If you have any questions please call Gary Seigel at (202) 418-0879.

Sincerely,

Sharon E. Gillett
Chief, Wireline Competition Bureau
Federal Communications Commission

cc: Frederick M. Joyce
Counsel for Sandwich Isles
Venable, LLP

⁹ Letter from Frederick M. Joyce, Counsel for Sandwich Isles Communications to Patricia Quartey, FCC (dated Jan. 23, 2012).

¹⁰ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Protective Order, 25 FCC Rcd 13160 (Wireline Comp. Bur. 2010).