

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Sandwich Isles Communications, Inc.)	
Petition for Waiver of Section 54.302 of the)	
Commission’s Rules)	

ORDER

Adopted: May 10, 2013

Released: May 10, 2013

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we deny a petition filed by Sandwich Isles Communications, Inc. (Sandwich Isles or Company) for “a waiver of the universal service and intercarrier compensation reform rules,” including a ten year waiver of section 54.302 of the Commission rules, which established a \$250 per line per month cap on high-cost universal service support (\$250 cap).¹ We conclude that Sandwich Isles has failed to show good cause for a waiver at this time. In particular, Sandwich Isles seeks a waiver that would allow it to retain a number of significant and wasteful expenses, totaling many millions of dollars, including significant payments to a number of affiliated and closely-related companies. Indeed, Sandwich Isles’ corporate expenses are 623 percent greater than the average for companies of similar size with the highest corporate operations expenses. Against this backdrop, Sandwich Isles has stated that it plans to reduce certain expenses, but it has failed to do so, instead merely submitting plans for reductions in the future.² Meanwhile, if the company were to restructure its operations as it has suggested, it should be able to meet its obligations for the foreseeable future. Sandwich Isles may file a new petition for waiver in the future, once it is able to restructure its operations in an appropriate manner that allows it to reduce unreasonable expenses.

II. BACKGROUND

2. In the *USF/ICC Transformation Order*, the Commission comprehensively reformed universal service funding for high-cost, rural areas, adopting fiscally responsible, accountable, incentive-based policies to preserve and advance voice and broadband service while ensuring fairness for consumers who

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, at 1 (filed December 30, 2011) (Petition); *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*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011); 47 C.F.R. § 54.302.

² *See* Letter from Frederick M. Joyce, Counsel to Sandwich Isles, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Mar. 25, 2013) (March 25th Letter); Letter from Frederick M. Joyce, Counsel to Sandwich Isles, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Apr. 8, 2013) (April 8th Letter).

pay into the universal service fund.³ Among other things, the Commission imposed a presumptive per line cap of \$250 per month on total high-cost universal service support for all eligible telecommunications carriers and found that support in excess of the \$250 cap should not be provided without further justification.⁴ Consistent with the Commission's goal to provide reasonable transitions so that companies affected by reform have time to adapt to changing circumstances,⁵ the Commission phased in the \$250 cap over three years.⁶ From July 1, 2012 through June 30, 2013, carriers were to receive no more than \$250 per line per month plus two-thirds of the difference between their uncapped per-line amount and \$250. From July 1, 2013 through June 30, 2014, carriers shall receive no more than \$250 per line per month plus one-third of the difference between their uncapped per-line amount and \$250. Beginning July 1, 2014, carriers shall receive no more than \$250 per line per month.

3. The Commission also reformed high-cost loop support (HCLS) by adopting a benchmark rule to moderate the expenses of rate-of-return carriers with very high costs compared to their similarly situated peers, while further encouraging other rate-of-return carriers to invest and thereby advance broadband deployment.⁷ The new rule responded to problematic incentives and inequitable distribution of support created by the prior rules, under which some carriers with high costs could receive reimbursement from the universal service fund for up to 100 percent of their marginal expenditures on loop costs. The Commission adopted the benchmark rule to reverse these incentives and address these problems by, for the first time, placing reasonable overall limits separately on capital and operating expenses eligible for reimbursement through HCLS and redistributing freed-up HCLS to carriers that stay within these limits to encourage new broadband investment. The Commission delegated to the Wireline Competition Bureau (Bureau) the authority to adopt and implement a specific methodology within the parameters set forth by the Commission, which the Bureau did in the *HCLS Benchmarks Implementation Order*.⁸

4. In the *Sixth Order on Reconsideration*, the Commission reconsidered some aspects of the benchmark rule to limit capital and operating expenses for HCLS.⁹ Specifically, the Commission directed the Bureau to develop a regression methodology that will generate a single total loop cost cap for each study area beginning in 2014.¹⁰ As an interim measure toward a single cost cap, the Commission summed capital and operating expense caps generated by the Bureau's current methodology for purposes of calculating HCLS support in 2013.¹¹ The Commission also modified the phase-in of the benchmarks for

³ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17670, para. 11.

⁴ *Id.* at 17765, para. 274.

⁵ *Id.* at 17671, para. 11.

⁶ *Id.* at 17765, para. 275.

⁷ See *id.* at 17741-47, paras. 210-26.

⁸ See *id.* at 17743-44, paras. 214, 217; *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Order, 27 FCC Rcd 4235 (Wireline Comp. Bur. 2012) (*HCLS Benchmarks Implementation Order*); see also *Connect America Fund et al.*, WC Docket Nos. 10-90, 05-337, Sixth Order on Reconsideration and Memorandum Opinion and Order, 28 FCC Rcd 2572, 2576-85, paras. 8-36 (2013) (*Sixth Order on Reconsideration*) (addressing, in part, petitions for reconsideration and applications for review of the *HCLS Benchmarks Implementation Order*).

⁹ See *Sixth Order on Reconsideration*.

¹⁰ See *id.* at 2581-83, paras. 24-28.

¹¹ See *id.* at 2583-84, para. 29.

2013 to provide carriers additional time to adjust to the changes.¹² Finally, the Commission reconsidered the requirement that the benchmark regression be rerun annually, and delegated consideration of the frequency for running the regression analysis to the Bureau.¹³

5. To prevent disruption to consumers as the rules in the *USF/ICC Transformation Order* are phased in, the Commission permitted “any carrier negatively affected by the universal service reforms . . . to file a petition for waiver.”¹⁴ Generally, the Commission’s rules may be waived if good cause is shown.¹⁵ In the *USF/ICC Transformation Order* and in the *Fifth Order on Reconsideration*, the Commission provided guidance “to potential applicants of the circumstances that would be persuasive and compelling grounds for grant of a waiver . . . to assist potential applicants in effectively formulating their waiver petitions.”¹⁶ For example, the Commission found that one compelling factor would be whether consumers would, absent a waiver, be at “significant risk of losing access to a broadband-capable network that provides both voice as well as broadband today.”¹⁷ In delegating to the Bureau the authority to approve or deny all or part of requests for waiver,¹⁸ the Commission indicated that it did not anticipate granting waiver requests routinely or for “undefined duration[s].”¹⁹ The Commission provided guidance on the types of information that would be relevant for such waiver requests and delegated authority to the Bureau and the Wireless Telecommunications Bureau to rule on such requests.²⁰

III. SANDWICH ISLES’ PETITION

6. On December 30, 2011, Sandwich Isles filed a petition for a ten year waiver of the universal service rules, including section 54.302 of the Commission rules, which established the \$250 cap, phased in over three years. Sandwich Isles received \$25,107,678 in universal service fund (USF) support in 2011 to serve approximately 2439²¹ lines, at over \$858 per line per month.²² Sandwich Isles is an incumbent

¹² See *id.* at 2584, para. 30.

¹³ See *id.* at 2576, para. 8.

¹⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17839-40, paras. 539, 540. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission’s rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

¹⁵ 47 C.F.R. § 1.3.

¹⁶ *Connect America Fund et al.*, WC Docket No 10-90 et al., Fifth Order on Reconsideration, 27 FCC Rcd 14549, 14556-57, para. 19 (2012) (*Fifth Order on Reconsideration*). See *USF/ICC Transformation Order*, 26 FCC Rcd at 17839-42, paras. 539-44.

¹⁷ *Fifth Order on Reconsideration*, 27 FCC Rcd at 14557, para. 21.

¹⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17840, 17842, paras. 540, 544.

¹⁹ *Id.* at 17766, para. 278.

²⁰ *Id.* at 17840-42, paras. 542, 544.

²¹ The National Exchange Carrier Association (NECA) reports that as of year-end 2011, Sandwich Isles had 2,439 loops. See NECA, Universal Service Fund Data: NECA Study Results, 2012 Report (filed Sept. 28, 2012), available at <http://www.fcc.gov/web/iatd/neca.html> (2012 NECA Report).

local exchange carrier that was designated as an eligible telecommunications carrier (ETC) in 1997.²³ Sandwich Isles' affiliate relationships and corporate organization structure are as follows: Sandwich Isles Communications, Inc., a Hawaii corporation, is a subsidiary of Waimana Enterprises, Inc., (Waimana), and Mr. Albert S.N. Hee is the President of both companies.²⁴ Sandwich Isles is also affiliated with ClearCom, Inc., (ClearCom), a Hawaii corporation and competitive local exchange carrier.²⁵

7. Further, Sandwich Isles has a contractual relationship with Paniolo Cable Network (Paniolo), a closely-related company.²⁶ Although Sandwich Isles contends that Paniolo is a non-affiliated entity, we note that it is owned by Blue Ivory, LLC, which in turn is wholly owned by Blue Ivory Hawaii Corporation. Blue Ivory Hawaii Corporation is held equally by the private trusts of the three children of Mr. Hee.²⁷

8. According to Sandwich Isles, by virtue of a license granted to it by the State of Hawaii Department of Hawaiian Home Lands (DHHL), it assumed the obligation to provide all wireline communication services on the Hawaiian Home Lands.²⁸ Sandwich Isles contends that the State of Hawaii placed obligations solely on Sandwich Isles for the deployment of communications infrastructure in unserved areas of the Hawaiian Home Lands.²⁹ Sandwich Isles also asserts that the State of Hawaii has tremendous cost barriers that have curtailed communications infrastructure deployment, and that the Company has deployed a statewide transport and switching communications platform with the help of Rural Utilities Service and commercial financing.³⁰

9. Sandwich Isles states that only a portion of the planned 20,000 home sites on the Hawaiian Home Lands have been completed and occupied.³¹ According to Sandwich Isles, as a result of the slow pace of development on the Hawaiian Home Lands, it has a relatively small number of access lines. As of December 2011, Sandwich Isles had 2,439 lines.³² Sandwich Isles also states that because substantial

(Continued from previous page) _____

²² Federal Communications Commission Response to House Committee on Energy and Commerce USF Data Request, 6-2 (July 9, 2012), *available at* http://transition.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/2012responses.pdf.

²³ Sandwich Isles was designated an ETC on May 14, 1997, and the Company's tariff became effective on December 17, 1997. Petition at 12.

²⁴ *See In re Hawaiian Telecom Communications, Inc.*, Debtor, Case No. 08-02005 (Bankr. Hawaii), Declaration of Albert S.N. Hee (June 12, 2009).

²⁵ *See* Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, FCC to Albert S.N. Hee, President, Sandwich Isles, WC Docket No. 10-90 and WT Docket No. 10-208, at 2 (June 6, 2012) (June 6th Letter); *see also* Letter from Frederick M. Joyce, Counsel for Sandwich Isles, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208, at App. Item 3 (Organizational Chart), Attach. (filed Apr. 16, 2012) (April 16th Letter). **REDACTED**.

²⁶ **REDACTED**. *See* Letter from Frederick M. Joyce, Counsel for Sandwich Isles, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208, at 13 (filed July 2, 2012) (July 2nd Letter).

²⁷ July 2nd Letter at 12; *see also* June 6th Letter at 2 n.5.

²⁸ Petition at iii. According to Sandwich Isles, the Hawaiian Home Lands consist of approximately 70 non-contiguous parcels, which total 203,500 acres on six islands. *Id.* at 9.

²⁹ *Id.* at iv. As discussed below, Hawaiian Telcom, Inc. disputes this claim. *See infra* para. 9.

³⁰ Petition at v.

³¹ *Id.* at iv, 17.

³² *See* 2012 NECA Report, *available at* <http://www.fcc.gov/wcb/iatd/neca.html>.

infrastructure is needed to serve its small subscriber base, the Hawaiian Home Lands per household costs are high, but that such costs should be reduced as the Company's subscriber and access line counts increase.³³ Sandwich Isles also argues that because the DHHL recognizes the Company as the exclusive provider of wireline communication services, there is no reasonable expectation that an alternative provider will replace its service.³⁴ Finally, Sandwich Isles states that "[b]ecause [its] current support level exceeds [the] cap by a material amount, it will, absent timely waiver, . . . be forced into insolvency without justification and with the result that residents of the Hawaiian Home Lands will no longer be assured of continuation of voice and broadband service."³⁵ The Bureau sought comment on Sandwich Isles' Waiver Petition on January 10, 2012.³⁶ The United States Telecom Association (USTelecom) opposes the Petition, arguing that Sandwich Isles has not demonstrated good cause sufficient to justify the waiver.³⁷ According to USTelecom, it is unreasonable to expect those contributing to the Universal Service Fund to pay for facilities on Hawaiian Home Lands home sites that will not be used in the near future, or indefinitely.³⁸ Furthermore, USTelecom argues that Sandwich Isles fails to request a necessary amount above the cap, but instead requests the continuation of the full amount of its current level of support, without presenting any evidence of necessity, as required by the Commission's rules.³⁹ Hawaiian Telcom, Inc. (HTI) also filed comments raising certain concerns.⁴⁰ HTI contends that Sandwich Isles has not fairly characterized HTI's history of service to rural parts of the state and that it overstates its own importance as a service provider to Hawaiian Home Lands.⁴¹ HTI claims that it provided service throughout the Hawaiian Home Lands long before Sandwich Isles received permission to provide service and continues to do so today.⁴² HTI further argues that Sandwich Isles is not the only service provider authorized in the Hawaiian Home Lands, asserts that it is the carrier of last resort for the entire state of Hawaii, and states that it can and will continue to serve all rural areas of Hawaii, including the Hawaiian Home Lands.⁴³ Alexicon Telecommunications Consulting (Alexicon) filed reply comments in support of Sandwich Isles request.⁴⁴ On April 16, and July 2, 2012, Sandwich Isles filed supplemental information in response to the Bureau's March 13, and June 6, 2012 letters seeking additional information.⁴⁵

³³ Petition at 17.

³⁴ *Id.* at 5.

³⁵ *Id.* at 3.

³⁶ See *Wireline Competition Bureau Seeks Comment on Sandwich Isles Communications, Inc. Petition for Waiver of Universal Service and Intercarrier Compensation Reform Rules*, WC Docket No. 10-90 and WT Docket No. 10-208, Public Notice, 27 FCC Rcd 206 (Wireline Comp. Bur. 2012).

³⁷ Comments of United States Telecom Association, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Feb. 9, 2012) (USTelecom Comments).

³⁸ *Id.*

³⁹ *Id.* at 3.

⁴⁰ Comments of Hawaiian Telcom, Inc., WC Docket No. 10-90 and WT Docket No. 10-208 (filed Feb. 9, 2012) (HTI Comments).

⁴¹ *Id.* at 1.

⁴² *Id.* at 2-3.

⁴³ *Id.* at 3.

⁴⁴ Reply Comments of Alexicon, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Feb. 24, 2012).

⁴⁵ See Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, FCC to Albert S.N. Hee, President, Sandwich Isles, WC Docket No. 10-90 and WT Docket No. 10-208 (Mar. 13, 2012); April 16th Letter; June 6th Letter; July 2nd Letter.

10. On June 26, 2012, Sandwich Isles filed a separate request for stay or interim relief, requesting that the Commission stay application of the \$250 cap and maintain the Company's current level of support pending review of Sandwich Isles' Petition.⁴⁶ Sandwich Isles claims that it will suffer "unnecessary financial hardship . . . from a material reduction in its high cost support" absent interim relief and that there will be no harm to the Commission's regulatory goals if the requested relief is granted.⁴⁷

11. On February 28 and April 2, 2013, Sandwich Isles met with the Bureau to discuss Sandwich Isles' plans to engage in measures to reduce its expenses.⁴⁸

IV. DISCUSSION

12. We deny Sandwich Isles' request for waiver of the Commission's rules.⁴⁹ In the *Fifth Order on Reconsideration*, the Commission reiterated its commitment "to providing support that is sufficient but not excessive."⁵⁰ As the Commission made clear, in the waiver context, this commitment includes a focus on the financial operations of a waiver applicant, including its "operating expenses" and "the size and nature of payments made to affiliated companies."⁵¹ With this in mind, we conclude that Sandwich Isles has certain expenses that appear grossly excessive and unreasonable. In particular, Sandwich Isles has spent millions of dollars with affiliated and related entities for services that appear unrelated to the provision of a broadband-capable network. Universal service is a finite resource paid for by consumers and businesses across the country, and should not be used to support unreasonable or excessive costs. Granting a waiver in these circumstances would be inappropriate and unfair to consumers and businesses that support the universal service fund.

13. As discussed in greater detail below, some of the unreasonable expenses, totaling many millions of dollars, include:

⁴⁶ Letter from Frederick M. Joyce, Counsel to Sandwich Isles, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208 (filed June 26, 2012) (Stay Request).

⁴⁷ *Id.* at 2.

⁴⁸ See March 25th Letter; April 8th Letter.

⁴⁹ In demonstrating whether a waiver is warranted, the petitioner bears the burden of pleading specific facts and circumstances that would make the general rule inapplicable, *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971), and of "demonstrat[ing] that [its] arguments are substantially different from those which have been carefully considered at the rulemaking proceeding," *Industrial Broadcasting Co. v. FCC*, 437 F.2d 680, 683 (D.C. Cir. 1970).

⁵⁰ *Fifth Order on Reconsideration*, 27 FCC Rcd at 14557, para. 22 and n.42 (internal quotation omitted); see also 47 U.S.C. §§ 254(b)(1),(4)-(5), (d), (e); *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620-21 (5th Cir. 2000) ("The agency's broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service"); *Qwest Communications Int'l, Inc. v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005) ("excessive subsidization arguably may affect the affordability of telecommunications services, thus violating the principle in § 254(b)(1)") (citing *Qwest Corp. v. FCC*, 258 F.3d 1191, 1200 (10th Cir. 2001)); *Rural Cellular Assn. v. FCC*, 588 F.3d 1095, 1102 (D.C. Cir. 2009) (explaining that, in assessing whether universal service subsidies are excessive, the Commission "must consider not only the possibility of pricing some customers out of the market altogether, but the need to limit the burden on customers who continue to maintain telephone service").

⁵¹ *Fifth Order on Reconsideration*, 27 FCC Rcd at 14558, para. 22.

- Corporate operations expenses that are 623 percent greater than the average for similar companies with the highest corporate operations expenses. On a per loop basis Sandwich Isles' corporate operations expenses averaged approximately \$224 per month; this compares to the monthly average, for the next five companies with the *highest* corporate operations expenses in Sandwich Isles' peer group of approximately \$31 per loop per month.
- Payments of over **REDACTED** between 2009-2011 to Waimana, Sandwich Isles' parent company, for providing services to Sandwich Isles for the performance of **REDACTED**.⁵² These payments remain ongoing.
- Payments to an affiliated entity, ClearCom, for use of abandoned water mains, which have resulted in payments of over **REDACTED** between 2009 and 2011.

We cannot conclude that a waiver is appropriate to allow federal high-cost universal service funds to continue to be paid to Sandwich Isles while it continues to incur such excessive expenses at current levels. Nor has Sandwich Isles persuaded us that its expenses are necessary in order to maintain a broadband-capable network that provides both voice as well as broadband to Sandwich Isles' approximately 2,500 subscribers.⁵³

14. Although Sandwich Isles recently stated that it plans to reduce certain expenses, we cannot evaluate the reasonableness of future expenses until after reductions have been implemented.⁵⁴ Indeed, Sandwich Isles has not filed updated financials indicating whether other expenses would increase as a result of eliminating or reducing transactions with affiliated and closely related entities. Accordingly, we conclude that Sandwich Isles has failed to show good cause and demonstrate that the waiver is necessary and in the public interest. If and when Sandwich Isles has reduced such expenses and needs additional relief, it may refile its request for a waiver.

A. Corporate Operations

15. Sandwich Isles' corporate operations expenses appear disproportionately high as compared to its peers.⁵⁵ Corporate operations expense categories include salaries, legal expenses, consulting fees, audit expenses, insurance, and, as further discussed below, management fee payments.⁵⁶ Based on data provided by NECA, companies with 2,000 to 3,000 loops have median corporate operations expenses of

⁵² April 16th Letter at 20.

⁵³ See *Fifth Order on Reconsideration*, 27 FCC Rcd at 14557, para. 20. NECA reports that as of year-end 2011, Sandwich Isles had 2,439 loops. See *supra* n.21. Pursuant to the Commission's rules, Sandwich Isles' 2013 support is based on 2011 cost data filed with the Bureau on September 28, 2012. See 2012 NECA Report.

⁵⁴ See March 25th Letter; see also April 8th Letter.

⁵⁵ Corporate operations expenses include the costs of performing executive and planning activities, and general and administrative activities, described in narratives for individual accounts. These costs also include the costs of supervision, office support and training for these activities. See 47 C.F.R. § 32.5999.

⁵⁶ See Petition at Exh. B (Sandwich Isles Summary of Corporate Operating Expenses). We note that for USF purposes, Sandwich Isles is limited by Commission rule to eligible corporate operations expenses of \$1,026,399 for purposes of calculating high-cost support. See *id*; see also 47 C.F.R. § 36.621(a)(4). Despite the fact that over \$5 million of Sandwich Isles' corporate operations expenses are not eligible to be included in calculating high-cost support, such significant corporate operations expenses appear excessive, and undermine Sandwich Isles' long term viability.

\$814,975, or approximately \$27 per loop per month.⁵⁷ By contrast, as of year-end 2011, Sandwich Isles had 2,439 loops and corporate operations expenses of \$6,554,263—\$224 per loop per month.⁵⁸ In fact, for the next five companies in Sandwich Isles’ peer group with the highest corporate operations expenses, the average total corporate operations expenses were \$1,093,290 for an average of 2,968 loops—\$31 per loop; Sandwich Isles corporate operations expenses are nearly seven times this average.⁵⁹ Stated differently, Sandwich Isles’ per-loop corporate operations expenses were 623 percent greater than the average for similarly sized peers with the highest corporate operations expenses.⁶⁰ Even recognizing the “unique geographic challenges” of serving Hawaii,⁶¹ we conclude that these expenses far exceed any reasonable level.

B. Payments to Affiliates and Related Companies

16. A significant amount of Sandwich Isles’ expenses consist of many millions of dollars paid to certain affiliated companies, and one closely-related company. As described below, based on the information in the record to date, these payments appear excessive, and therefore unreasonable.⁶² Before we will consider granting a waiver, Sandwich Isles should reduce such expenses, whether by restructuring its operations and financial arrangements with its affiliates, or should obtain similar services (to the extent these services are needed) from unaffiliated entities at competitive rates or through full-time Sandwich Isles employees, to bring its expenses to reasonable levels, and reduce its dependency on federal high-cost USF support.⁶³

17. *Waimana*. Sandwich Isles has made payments to Waimana which have totaled over **REDACTED** between 2009 and 2011.⁶⁴ Waimana provides **REDACTED**.⁶⁵ Of particular concern, Sandwich Isles’ payments to Waimana have significantly increased in recent years, without any explanation for the need for additional services.⁶⁶ For example, its payments to Waimana were approximately **REDACTED**.⁶⁷ We are not convinced that the significant payments to Waimana are warranted for the services provided by Waimana to Sandwich Isles. And, as noted above, the record does not explain whether and how those services changed during this period, in a manner that sufficiently justifies the increased payments. In addition, we are concerned that Sandwich Isles’ payments to

⁵⁷ See 2012 NECA Report. 2013 support is based on 2011 cost data, as reflected in the 2012 NECA Report.

⁵⁸ *Id.*

⁵⁹ *See id.*

⁶⁰ *See id.*

⁶¹ *Sandwich Isles Communications, Inc. Petition for Declaratory Ruling*, WC Docket No. 09-133, Declaratory Ruling, 25 FCC Rcd 13647, 13654-55, paras. 19-20 (Wireline Comp. Bur. 2010) (*Sandwich Isles Declaratory Ruling*).

⁶² *See infra* paras. 17-20.

⁶³ *See supra* n.50. Although Sandwich Isles filed a proposed cost reduction plan, in its April 8th Letter, to address certain aspects of its unreasonable expenses, that filing does not: (1) provide updated financials to analyze the impact of these proposals, (2) explain whether other expenses would increase, (3) propose any immediate reductions to the expenses outlined herein, or (4) address whether the proposed expense reductions are permanent. *See generally* April 8th Letter.

⁶⁴ April 16th Letter at App. 11, Attach.

⁶⁵ April 16th Letter at 20.

⁶⁶ **REDACTED**. April 16th Letter at 20.

⁶⁷ *Id.* at 20 -21.

Waimana for these services may be redundant services its own employees perform or are capable of performing.⁶⁸

18. *ClearCom*. Sandwich Isles has made over **REDACTED** in payments to its affiliate ClearCom, for the use of some abandoned water mains in Honolulu. ClearCom also provides **REDACTED**.⁶⁹ Of particular concern, ClearCom leases abandoned water mains from the Board of Water Supply for the City and County of Honolulu (Board of Water Supply), which it currently provides portions of to Sandwich Isles.⁷⁰ Sandwich Isles paid approximately **REDACTED** these abandoned water mains from 2009-2011.⁷¹ The agreement between ClearCom and Sandwich Isles gives Sandwich Isles the right to **REDACTED**.⁷² According to Sandwich Isles, the abandoned water mains serve as **REDACTED**.⁷³ None of the other entities providing broadband service in Honolulu indicate they use the water mains. **REDACTED**.⁷⁴ While ClearCom leases **REDACTED** of mains, Sandwich Isles currently uses **REDACTED** of those water mains and plans to use **REDACTED**.⁷⁵ Thus, for use of this fraction of the abandoned water mains, Sandwich Isles appears to be paying both significant amounts of money and a significant portion of ClearCom's lease costs.

19. *Other Issues and Concerns*. In 2007, Sandwich Isles entered into with Paniolo an **REDACTED** lease to receive telecommunications transport services at a cost of over **REDACTED** during the period of the lease.⁷⁶ These payments increase over time yet they do not include costs for engineering, insurance, operation, and maintenance costs, for which Sandwich Isles also is responsible.⁷⁷ The expenses associated with the Paniolo agreement are considered transport and switched access, not common line loop costs, and therefore are not recoverable through the universal service fund for loop costs, except to the extent permitted as part of intercarrier compensation recovery consistent with the *Sandwich Isles Declaratory Ruling* and the Commission's *USF/ICC Transformation Order*. Nevertheless, we are concerned that the Paniolo-related costs may undermine Sandwich Isles' overall financial viability. To that end, Sandwich Isles has stated that it has **REDACTED**.⁷⁸ As noted above, if the Company were to refile its waiver Petition after reducing its expenses and reorganizing its operations,

⁶⁸ Between 2009 and 2011, Sandwich Isles reports that it employed a number of well-compensated persons, such as **REDACTED**. See April 16th Letter at Attachment to Appendix Item 10.

⁶⁹ See July 2nd Letter at 11 (listing special projects).

⁷⁰ See April 16th Letter at 16.

⁷¹ *Id.* at 17. **REDACTED**. *Id.*

⁷² See *id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ See *id.*

⁷⁶ See *Sandwich Isles Declaratory Ruling*; July 2nd Letter at Paniolo Lease Schedule A. In 2010, Sandwich Isles' base lease costs were approximately \$15 million annually. See *Sandwich Isles Declaratory Ruling*, 25 FCC Rcd at 13649, para. 5.

⁷⁷ *Sandwich Isles Declaratory Ruling*, 25 FCC Rcd at 13649, para. 5 n.19. Prior to the construction of Paniolo, Sandwich Isles paid \$1.9 million annually to HTI for similar transport services. See *id.* at 13654, para. 18. As noted above, in 2010, Sandwich Isles' base lease costs for the Paniolo system were approximately \$15 million annually. *Id.* at 13649, para. 5. Based on the terms of the lease, between 2013 and 2015, Sandwich Isles will pay Paniolo approximately **REDACTED**. See July 2nd Letter at Paniolo Lease Schedule A.

⁷⁸ See April 8th Letter at 1.

we will look more closely at the Paniolo-related and other expenses, to determine their overall reasonableness.

20. Another issue of concern is insurance costs, specifically the **REDACTED**.

C. Consumer Impact

21. Finally, if the Company were to reduce its expenses and reorganize its operations, as highlighted above including the Paniolo-related expenses, the Company should continue to have positive cash flow in the near term, and be cash balance positive for an even longer period of time.⁷⁹ Sandwich Isles has taken measures to reduce its **REDACTED**⁸⁰ and it appears that the company has **REDACTED** to meet its obligations, including **REDACTED**.⁸¹ If this analysis proves to be incorrect, Sandwich Isles could petition the Bureau for interim relief, if it can show that it has begun adequate progress toward reducing its expenses as proposed.

D. Future Consideration and Request for Stay

22. As noted above, because we cannot sufficiently determine the reasonableness of Sandwich Isles expenses *following* the proposed reductions, *before* such reductions are made, unless and until those reductions occur, we find that grant of a waiver to Sandwich Isles would not be in the public interest.⁸² However, the Company may pursue a waiver in the future, once it is able to complete the restructure of its operations in a manner that allows Sandwich Isles to lower its costs and reduce its dependence on high-cost USF support.⁸³

23. Finally, we deny Sandwich Isles' request for a stay of section 54.302 for the same reasons that we deny its limited waiver of section 54.302. In addition, we deny the request for a stay because we find that Sandwich Isles' request did not demonstrate in its request for stay that it would suffer irreparable harm in the absence of a stay.⁸⁴ At best, Sandwich Isles makes a vague claim that it will experience "unnecessary financial hardship" without describing what that financial hardship is, or how it constitutes irreparable harm to the Company.⁸⁵

V. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 254, and sections

⁷⁹ See March 25th Letter at 6.

⁸⁰ See April 8th Letter at 1.

⁸¹ See March 25th Letter at 6.

⁸² See *supra* para. 13.

⁸³ If Sandwich Isles reduces expenses, the Bureau would still need to analyze whether good cause exists to grant a waiver.

⁸⁴ A showing of irreparable injury is a critical element in justifying a request for stay of an agency order. See *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) ("Our frequently reiterated standard requires plaintiffs seeking an injunction to demonstrate that irreparable injury is *likely* in the absence of an injunction"); see also *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (denying requests for stay after considering only irreparable harm).

⁸⁵ See Stay Request at 1.

0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that this order IS ADOPTED.

25. IT IS FURTHER ORDERED that the petition for a ten year waiver of section 54.302 of the Commission's rules, 47 C.F.R. § 54.302, filed by Sandwich Isles Communications, Inc. IS DENIED as described herein.

26. IT IS FURTHER ORDERED that the petition for stay, filed by Sandwich Isles Communications, Inc., IS DENIED as described herein.

27. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Chief
Wireline Competition Bureau