



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

August 21, 2017

The Honorable Colleen Hanabusa
U.S. House of Representatives
422 Cannon House Office Building
Washington, D.C. 20515

Dear Representative Hanabusa:

Thank you for your June 20, 2017 inquiry regarding communications service to the Hawaiian Home Lands residents and the Commission's oversight of the Universal Service Fund (USF) high-cost program. Your letter also included questions about Sandwich Isles Communications, Inc. (SIC). I share your concerns regarding the viability of the telephone and broadband network that serves these communities, and I want to emphasize that the Commission is committed to continued service for the residents of the Hawaiian Home Lands.

SIC is a wholly owned subsidiary of Waimana Enterprises, Inc. (Waimana). SIC receives business services from Waimana and several affiliate companies owned and/or controlled by Albert Hee and three separate irrevocable trusts for the benefit of Albert Hee's three adult children, Adrienne Hee, Breanne Hee, and Charlton Hee (Hee Children Trusts). SIC is a recipient of support from the high-cost universal service support program. In March 2015, Albert Hee was indicted for tax fraud. At Hee's trial substantial evidence was presented that called into question SIC's use of high-cost funds for their intended purposes.

The Universal Service Administrative Company (USAC) serves as the administrator of the federal universal service support mechanisms, pursuant to Commission oversight, and is responsible for the day-to-day administration of the high-cost program.¹ High-cost support recipients, such as SIC, must follow longstanding rules put in place to protect the universal service fund against waste, fraud and abuse. High-cost recipients must use universal service support for the provision, maintenance, and upgrading of the facilities and services for which the support is intended.² SIC was designated as an eligible telecommunications carrier (ETC) by the Hawaii Public Utilities Commission (HPUC), and as such HPUC is the state commission that oversees SIC.

Answers to each of the specific questions raised in your letter are set forth below.

- (1) *What USF funds have been paid to SIC in the nearly two (2) years since the suspension of payments by USAC?*

Since the suspension of payments in July 2015, no high-cost USF funds have been paid to SIC. Last December, after considering the evidence before it, the FCC found that between 2002-

¹ In general, USAC is charged with collecting and distributing universal service funds. See 47 CFR §§ 54.701(a), 702(b).

² See 47 USC § 254(e); 47 CFR § 54.314.

2015, SIC received at least \$27.2 million in unauthorized support. Below is a brief timeline of major events over the last two years concerning SIC. As you will see, USAC and Commission staff have given SIC numerous opportunities to present evidence in support of its claims to USF support.

On July 28, 2015, at the direction of the FCC's Office of Managing Director in consultation with staff of the Wireline Competition Bureau (the Bureau), USAC suspended high-cost funding to SIC pending completion of a further investigation and other measures to ensure that any funding provided is used solely in a manner consistent with FCC's rules and policies.³ The suspension came on the heels of Albert Hee's indictment for tax fraud.

On August 5, 2015, the Bureau directed USAC to investigate whether SIC received any improper payments from the federal high-cost support program from 2002 to June 2015. The Bureau directed USAC to develop a factual record that would enable the Commission to evaluate whether to lift or modify the hold on SIC's high-cost support. The Bureau also directed USAC to determine whether the high-cost support could be provided going forward with any assurance that SIC would comply with the FCC's rules.

From August 2015 through May 2016, USAC and Commission staff held weekly meetings by telephone with SIC to ask questions and request documentation relevant to the investigation. In the USAC Report, USAC notes that SIC was responsive to most, but not all, of the requests for information. USAC shared a draft report of its findings with the Bureau and with SIC and gave SIC the opportunity to respond.

On May 13, 2016, after considering SIC's response to the draft report, USAC finalized its report and submitted the final report to the Bureau and to SIC. USAC also provided SIC with a copy of the final report. In that report, USAC identified eight rule violations by SIC and at least \$27.2 million in overpayments to SIC from the high-cost program.⁴

On June 13, 2016, SIC provided the Bureau with its comments to the USAC Report.⁵ SIC sought modification and reduction of the total net monetary effect calculated by USAC and conceded to \$4.1 million in overpayments.

On December 5, 2016, after consideration of the USAC report, the SIC response, and other information, the Commission adopted the *SIC Improper Payments Order* and concluded that SIC improperly received payments in the amount of at least \$27.2 million from the federal high-cost program from 2002 to June 2015.⁶ Also on December 5, 2016, the Commission issued a *Notice of Apparent Liability for Forfeiture Order*, which proposed fines against SIC, Waimana and Albert Hee of more than \$49.5 million and found that SIC apparently violated section 220 of

³ Section 54.707 authorizes USAC to "suspend or delay . . . support amounts provided to a carrier if the carrier fails to provide adequate verification . . . upon reasonable request, or if directed by the Commission to do so." 47 CFR § 54.707.

⁴ In calculating recovery amounts for excessive management fees, the FCC directed USAC to disallow the management fees exceeding \$1,237,355, which is the average amount of the comparable entities average management fees for 2012, 2013 and 2014, and apply that approach for each year, from 2002 to 2015.

⁵ See SIC Comments, WC Docket No. 10-90, <https://www.fcc.gov/ecfs/filing/10324148406873> (filed Mar. 16, 2017) (SIC Response).

⁶ See *SIC Improper Payments Order*, 31 FCC Rcd at 13000, para. 2.

the Communications Act, by failing to keep SIC's accounts, records, and memoranda in the manner prescribed by the FCC's rules.⁷ The Commission also found that SIC apparently violated sections 69.601(c) and 69.605(a) of the FCC's rules by submitting and certifying inaccurate data included in annual cost studies for cost study years 2002 through 2013 that were used in calculating high-cost support.⁸

On January 4, 2017, SIC petitioned the FCC to reconsider and set aside the *SIC Improper Payments Order*.⁹ The United States Telecom Association (USTelecom) filed an opposition urging the Commission to deny SIC's request on the basis that all the facts raised in the SIC Petition were previously considered and found unpersuasive by the FCC when it adopted the *SIC Improper Payments Order*.¹⁰

(2) *Is it correct that SIC was certified by the Hawaii Public Utilities Commission ("PUC") as an Eligible Telecommunications Company ("ETC") at the time USF funds were suspended in 2015 and they remain eligible for the receipt of 2015 funds?*

Yes, SIC was an ETC certified by the HPUC when the Commission suspended SIC's USF funding in 2015; however, SIC does not remain eligible for receipt of 2015 USF support.

Carriers that receive high-cost support must provide annual certifications stating that the entity is compliant with its public interest obligations.¹¹ State commissions must annually certify that all federal high-cost support provided to carrier(s) designated by those state commissions was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.¹²

On September 28, 2015, the HPUC issued an order finding that "there remains uncertainty as to whether all federal high-cost support provided to [SIC] . . . was used and will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, pursuant to 47 C.F.R. § 54.314(a)."¹³ The HPUC concluded that it could not

⁷ *Sandwich Isles Communications, Inc., Waimana Enterprises, Inc., Albert S.N. Hee*, File No.: EB-15-00019603 NAL/Acct. No.: 201732080004 FRN: 0001514080, Notice of Apparent Liability for Forfeiture and Order (2016) (*SIC NAL*).

⁸ *See id.* at para. 2.

⁹ SIC also filed comments in response to the *SIC NAL*. *See* SIC Comments, WC Docket No. 10-90 (filed Feb. 6, 2017).

¹⁰ USTelecom Comments, WC Docket No. 10-90, at 3-4 (Feb. 16, 2017).

¹¹ 47 CFR § 54.303.

¹² *See* 47 USC § 254(e); 47 CFR § 54.314.

¹³ Hawaii Public Utilities Commission, *Instituting a Proceeding to Investigate Whether Designated Eligible Telecommunications Carriers Participating in the High-Cost Program of the Universal Service Fund Should be Certified by the Commission Pursuant to 47 Code of Federal Regulations § 54.314(a)*, Decision and Order No. 33167, Docket No. 2015-0083 at 29 (Sept. 28, 2015) (2015 HPUC Order). Section 54.314(a) states, in relevant part, that a state must file an annual certification with USAC and the Commission "that all federal high-cost support provided to such carriers within that State was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 CFR § 54.314(a).

make the necessary certification required under section 54.314(a) of the FCC's rules for the high-cost support provided to SIC in the preceding calendar year (2014) or the coming calendar year (2016).¹⁴

On September 30, 2016, the HPUC issued another order consistent with its prior action.¹⁵ The HPUC concluded that it could not make the necessary certification required for the high-cost support provided to SIC in the preceding calendar year (2015) or the coming calendar year (2017).¹⁶ SIC sought reconsideration of this decision.

On May 19, 2017, the HPUC issued a denial of SIC's Motion for Reconsideration of the September 2016 order. Thus, SIC does not remain eligible for the receipt of 2015 USF funds.

(3) *Following the suspension of USF funds in 2015, what is the total amount of USF funds withheld from SIC in calendar year 2015?*

For calendar year 2015, the Commission held SIC's high-cost support in the amount of \$7.8 million, which reflects the period from July 2015 to December 2015. However, the amount of high-cost funding SIC should receive is currently in dispute.

(4) *Since the date USF funds were suspended to SIC, has the FCC recalculated the amount of USF funds that would be due to SIC to maintain and operate the telephone and broadband network for calendar year 2015?*

Since July 28, 2015, the day USAC suspended further distribution of high-cost funds to SIC, USAC and Commission staff have worked diligently to calculate the proper amount of high cost support that SIC should receive if it became compliant with program rules. To make that determination, the FCC has directed SIC to provide revised cost studies and other information. The Commission and USAC are still working with SIC to obtain all the information required to make this determination.

(5) *Has the FCC undertaken an economic analysis to determine what effect, if any, the suspension of U[SF] funds to SIC may have upon the continued provision of communications service to native Hawaiians residing on Hawaiian Home Lands?*

Since suspension of high-cost USF support to SIC, Commission staff has worked diligently to determine what effect, if any, the suspension may have upon the continued provision of communications services to Hawaiian Home Land residents. During the pendency of the investigation and the related proceedings, SIC has continued to provide service and, under the Commission's Rules, SIC cannot discontinue, reduce, or impair customer telephone service without authorization of the FCC.¹⁷

¹⁴ 2015 HPUC Order at 30.

¹⁵ Hawaii Public Utilities Commission, *Instituting a Proceeding to Investigate Whether Designated Eligible Telecommunications Carriers Participating in the High-Cost Program of the Universal Service Fund Should be Certified By the Commission Pursuant to 47 Code of Federal Regulations § 54.314(a)*, Decision and Order No. 33955, Docket No. 2016-0093, at 19 (Sept. 30, 2016) (2016 HPUC Order).

¹⁶ 2016 HPUC Order at 19.

¹⁷ See 47 USC §§ 214(a) & (e)(3).

I appreciate your interest in this matter. Please let me know if I can be of further assistance.

Sincerely,



Ajit V. Pai