Filed: 03/26/2019

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Sandwich Isles Communications, Inc.,)	
	Petitioner,)	
)	
V.)	No. 19-1056
)	
Federal Communications Commission			
and United States of America,)	
	Respondents.)	

MOTION TO DISMISS AND TO DEFER FILING OF THE RECORD

The Federal Communications Commission moves to dismiss this case because the petition for review was not timely filed. The Commission also moves to defer filing of the record until the Court rules on the motion to dismiss.

Sandwich Isles Communications, Inc. has petitioned for review of two FCC orders: *Sandwich Isles Communications, Inc.*, 31 FCC Rcd 12999 (2016) (*Improper Payments Order*), and *Sandwich Isles Communications, Inc.*, FCC 18-172 (released Jan. 3, 2019) (*Reconsideration Order*).

In the *Improper Payments Order*, the FCC determined that Sandwich Isles had improperly received millions of dollars in payments from the federal universal service high-cost support mechanisms. The Commission directed the Universal Service Administrative Company to recover these improper payments from Sandwich Isles. *Improper Payments Order* ¶ 2. The *Improper Payments Order* was released on December 5, 2016. Sandwich Isles filed a timely petition for

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reconsideration of that order on January 4, 2017. The Commission denied the petition for reconsideration in the Reconsideration Order, which was released on January 3, 2019.

Pursuant to the Hobbs Act, "[a] petition for judicial review to challenge a final order of the Commission must be filed 'within 60 days after its entry." Cellular Telecommc'ns & Internet Ass'n v. FCC, 330 F.3d 502, 504 (D.C. Cir. 2003) (CTIA) (quoting 28 U.S.C. § 2344). This "statutory time limit is jurisdictional." Ibid.

As Sandwich Isles acknowledges, the period for seeking judicial review of the FCC's orders commenced with the release of the Reconsideration Order on January 3, 2019. See Petition at 2 ("the limitations period for [Sandwich Isles] to file a petition for review" of the orders "was triggered on January 3, 2019"). The 60-day filing window closed on March 4, 2019. Sandwich Isles filed its petition for review one day later, on March 5, 2019. Because Sandwich Isles failed to file its petition within the statutory filing period, this Court is "constrained to dismiss the untimely petition for review for want of jurisdiction." CTIA, 330 F.3d at 504.

¹ See also 47 C.F.R. § 1.4(b)(2) (the period for seeking review of a "nonrulemaking" document "released by the Commission" begins to run on the document's "release date").

Respectfully submitted,

Thomas M. Johnson, Jr. General Counsel

David M. Gossett Deputy General Counsel

Jacob M. Lewis Associate General Counsel

/s/James M. Carr

James M. Carr Counsel

Federal Communications Commission Washington, DC 20554 (202) 418-1740

March 26, 2019

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

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CERTIFICATE OF FILING AND SERVICE

I, James M. Carr, hereby certify that on March 26, 2019, I filed the foregoing Motion to Dismiss and to Defer Filing of the Record with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the electronic CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

s/ James M. Carr

James M. Carr Counsel

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