

**Testimony of  
Albert S.N. Hee, President  
Sandwich Isles Communications, Inc.**

**Before the House Committee on Natural Resources  
Subcommittee on Indian and Alaska Native Affairs**

***Update from tribal leaders and tribal telecommunications providers on the implementation of  
the Federal Communications Commission's rule on the Universal Service Fund***

**June 18, 2013**

Chairman Young and distinguished members of the Subcommittee, thank you for holding this hearing to address the impacts of the Federal Communications Commission's (FCC) Connect America Fund/ Transformation Order (Order) on native communities across the country. My name is Al Hee and I am President of Sandwich Isles Communications, Inc. (SIC), the only Rural Local Exchange Carrier (RLEC) serving Hawaii's indigenous people on Hawaiian Home Lands (HHL), Hawaii's "tribal lands", which were created by Congress through the Hawaiian Homes Commission Act of 1921 (HHCA). It is especially an honor for me to sit before you, as I am also a beneficiary of the HHCA. Thank you for this opportunity to share the devastating impacts the FCC's Order will have on the native Hawaiians who have come to rely on advanced telecommunications service since 1995.

A year ago I testified before this Subcommittee that the FCC's Order would have *unintended* devastating impacts to Tribal areas. Today I am here to correct myself and inform this Subcommittee that the devastating impacts are *intentional* and do not comply with Congressional mandates covering Federal Trust responsibilities for Native Peoples nor the Congressional mandate expressed in the 1996 Telecommunications Act<sup>1</sup> contained in the Order itself, "*It is the Commission's statutory obligation to maintain the USF consistent with that mandate and to continue to support the nation's telecommunications infrastructure in rural, insular, and high-cost areas.*"<sup>2</sup> [emphasis added]. I make this statement based on the recently concluded waiver petition process Sandwich Isles endured for the past eighteen months.

The Order knowingly reduces Sandwich Isles Universal Service support by over **50%**. This is not including the unplanned **26-35%** reduction from NECA since the Order, the latest of which was made with 3 day notice over the Memorial Day week end. Despite extensive testimony before Congress and this Subcommittee and the Order's language that ". . . *we believe that rate-of-return carriers on the whole will have a stronger and more certain foundation from which to operate, and, therefore, continue to serve rural parts of America.*"<sup>3</sup> the expectation that a company can absorb a **70 percent plus revenue reduction** and have a stronger and more certain foundation from which to continue to provide service is ridiculous.

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<sup>1</sup> 47 USC section 254

<sup>2</sup> Transformation Order FCC 11-161; Nov. 18, 2011; para 10.

<sup>3</sup> Id. para 291

The Order specifically puts forth a Waiver process to address carriers such as Sandwich Isles, “. . . we permit any carrier negatively affected by the universal service reforms we take today to file a petition for waiver. . . .<sup>4</sup>”. In December 2011, Sandwich Isles filed its waiver petition. The waiver petition was based entirely on our inability to meet the legally incurred obligations made under the previous rules which allowed the deployment of a voice and broadband capable network. Sandwich Isles’ waiver petition did not include any future obligations to complete the RUS pre-approved and FCC acknowledged<sup>5</sup> network. As a RLEC serving Insular Tribal lands, the rules call for “. . . complete review of petitions from providers serving Tribal lands and insular areas within 45 days of the record closing<sup>6</sup>. . .” The waiver petition process cost Sandwich Isles over \$2M in outside consultants. Our waiver petition was denied in May 2013, 498 days after it was filed. During that time, the reductions in Universal Service support were implemented.

Sandwich Isles’ reduction in Universal Service support and denial of its waiver petition is contrary to the expressed goal contained in the Order to, “. . . support broadband-capable networks as an express universal service principle<sup>7</sup>. . . [and] Universal service support should be directed where possible to networks that provide advanced services as well as voice services<sup>8</sup>.” The authority to support broadband is based on a Congressional mandated requirement for, “. . . the Commission to “determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion” and, if . . . it is not, to “take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting completion in the telecommunications market”<sup>9</sup>

When Sandwich Isles began operations in the mid 1990’s, it was cheaper to install fiber optic cable to provide voice services than copper wire. Sandwich Isles as well as RUS were widely criticized for doing this alleging that despite the economics; we were deploying a broadband capable network rather than one capable of only providing voice. Now that the rules have caught up with the necessity of deploying such a network, Sandwich Isles is being penalized for having deployed a broadband-capable network with the net result being denying a rural, insular, high cost Tribal area advanced telecommunications capability.

The Order does not support Congressional mandates in part because of how it is implemented. The Commission has delegated the implementation of the Order to the Bureaus. While this is not unusual, the Commission has also granted unfettered discretion to the bureaus in not only how to implement the Order but also which sections have precedence. Delegation of discretion has elevated the authority of the bureaus to a policy making level. The denial of Sandwich Isles’ waiver petition is telling. Despite the inflammatory language used in the denial, everything

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<sup>4</sup> Id. para 539

<sup>5</sup> Sandwich Isles filed its total network plan with the FCC when applying for its Study Area Waiver. That Study Area Waiver was approved with the FCC acknowledging the cost of the network.

<sup>6</sup> Transformation Order FCC 11-161; Nov. 18, 2011; para 544

<sup>7</sup> Id. para 17

<sup>8</sup> Id. para 65

<sup>9</sup> Id. para 66

Sandwich Isles has done is within the previous and existing rules. Additionally, compliance with the rules is audited at least once a year and Sandwich Isles has never received any feedback from the FCC that we were not in compliance.

In denying our waiver petition, the bureau used its discretion to ignore the section of the Order requiring action within a specified period of time. It further used its discretion to ignore the fact that Sandwich Isles and its affiliates were operating in complete compliance with the rules. It chose to focus on the new ownership information required by the rules, yet ignored Sandwich Isles was in compliance with the only applicable ownership rules which limit foreign ownership and define affiliates as having common ownership. The bureau used its discretion to ignore the sections of the Order implementing Congressional intent regarding continuing to support broadband capable networks and predictable and sufficient support to insular, high cost rural areas and chose to focus on new sections of the Order alleging waste and abuse using innuendo rather than fact. The bureau used its discretion to ignore the fact that Hawaiian Telcom *chose not* to serve Hawaiian Home Lands and instead focused on the fact that they *could* have. The bureau used its discretion to compare our operating expenses to other companies with the same number of lines rather than compare our operating expenses with other companies with similar operating difficulties. It further chose to ignore the fact that their regression analysis, the purpose of which was “. . . to estimate appropriate levels of capital expenses and operating expenses for each incumbent rate-of-return study area and limit expenses falling above a benchmark based on this estimate.<sup>10</sup>” found our operating expenses were within the acceptable benchmark. The bureau used its discretion to ignore the section of the Order to “. . . ensure that the overall size of the Fund is kept within budget by maintaining total funding for rate-of-return companies at approximately \$2 billion per year – approximately equal to current levels – while transitioning . . . to deployment of modern high-speed networks . . .<sup>11</sup>” would not be violated by granting our waiver petition since Sandwich Isles’ waiver petition was to keep its Universal Service support at its current level to pay for its already deployed modern high-speed fiber optic network.

Each Federal agency including the FCC is responsible for ensuring that their actions that affect Tribal areas enhance, protect and improve conditions for the native communities. Communications services like broadband, wireless communications and radio aren’t just valuable as a means to deliver entertainment and diversions. They are vital platforms for community-building, cultural preservation, and the promotion of public health, education and economic opportunity in Native Nations.<sup>12</sup> The Order does not contain any provisions that specifically address support for the deployment of fiber optic broadband networks in Tribal areas. In implementing the new Order, the FCC seems to have forgotten the reason this universal service program exists. There are and always will be high cost areas that the incumbent exchange carriers will not serve regardless of the technology. It will always be more costly and less profitable to serve Tribal areas.

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<sup>10</sup> Id. para. 212

<sup>11</sup> Id. para. 195

<sup>12</sup> FCC Chairman Genachowski FCC Notice of Inquiry (NOI) In the Matter of Improving Communications Services for Native Nations (CG Docket No. 11-41) March 2, 2011.

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Without Congressional action directing the FCC to insure implementation of the rules comply with Congressional intent in regards to the trust responsibilities with native peoples as well as the 1996 Telecommunications Act, the delegation of authority and discretion to the bureaus will result at the very least in unequal and arbitrary compliance and at the worst outright defiance of Congressional intent and the denial of modern telecommunications service to Tribal areas.