



PUBLIC NOTICE

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ALL UNIVERSAL SERVICE HIGH-COST SUPPORT RECIPIENTS ARE REMINDED THAT SUPPORT MUST BE USED FOR ITS INTENDED PURPOSE

WC Docket No. 10-90

WC Docket No. 14-58

The Commission reminds all eligible telecommunications carriers (ETCs) that receive support from the Universal Service Fund's high-cost mechanisms (whether legacy high-cost program support or Connect America Fund support) of their obligations to use such support only for its intended purposes of maintaining and extending communications service to rural, high-cost areas of the nation.¹ Expenditure of legacy high-cost or Connect America support for any other purpose is misuse and may subject the recipient to recovery of funding, suspension of funding, enforcement action by the Enforcement Bureau pursuant to the Communications Act of 1934 or our rules, and/or prosecution under the False Claims Act.²

Universal service support to high-cost rural areas, whether under legacy high-cost or Connect America Fund support mechanisms, is designed to ensure that consumers in rural high-cost areas have access to modern communications networks capable of providing voice and broadband services, both fixed and mobile, at rates that are reasonably comparable to those in urban areas. The legacy high-cost and Connect America Fund support programs fulfill these goals by allowing eligible carriers who serve these areas to recover some of their costs from the federal Universal Service Fund.

Under federal law, high-cost support provided to an ETC must be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."³ Pursuant to Commission rule, an annual certification to that effect must be filed, and support shall be provided in the subsequent year only to the extent the required certification has been filed.⁴

Corporate operations expense represents roughly 15 percent of total costs assigned to the loop for rate-of-return cost companies.⁵ While ETCs are eligible to receive support to recover a portion of their

¹ 47 U.S.C. § 254(e); 47 C.F.R. § 54.7. Connect America support includes Connect America Fund Intercarrier Compensation replacement support received pursuant to section 54.304. 47 C.F.R. § 54.304.

² 31 U.S.C. §§ 3729-3733.

³ 47 U.S.C. § 254(e).

⁴ 47 C.F.R. § 54.314. State public utility commissions are required to file the required certification with USAC and the Commission to the extent they have jurisdiction over ETCs operating within their borders. ETCs not subject to state jurisdiction are required to file the certification themselves. The annual certification is due October 1st.

⁵ See Universal Service Fund 2014 Submission of 2013 Study Results by the National Exchange Carrier Association, Inc, available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/Monitor/usf14af.zip; see also Letter from Gerard J. Duffy, WTA Regulatory Counsel, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, Att. A at 1 (filed May 29, 2015).

costs relating to corporate operations,⁶ those expenses must fall within the scope of the statutory requirement that support be used for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

A related issue concerns the expenses that rate-of-return carriers may include in their “revenue requirement,” which goes ultimately to the rates charged to end users. Just as carriers must not use USF funds for inappropriate expenses, we remind rate-of-return carriers that section 65.450 of our rules prohibits them from including expenses in their revenue requirements unless such expenses are “recognized by the Commission as necessary to the provision” of interstate telecommunications services.⁷ The Commission likewise takes seriously any inclusion of inappropriate expenses for recovery by ratepayers, and will take appropriate steps to ensure that expenses are used and useful and prudently incurred.

We note that the Commission continues to look at methods of limiting expenses to reasonable levels, with a primary focus on corporate operations expenses that are excessive. We intend to take further action to ensure that high-cost funding is used for its intended purposes, and that ratepayers of rate-of-return carriers are not made to subsidize excessive expenditures.

With the above points in mind, we encourage state commissions to look carefully at the information provided to them in advance of the annual certification and to report any areas of concern to the Commission for further investigation and potential enforcement action. The following is a *non-exhaustive* list of expenditures that are not necessary to the provision of supported services and therefore may not be recovered through universal service support:

- Personal travel;
- Entertainment;
- Alcohol;
- Food, including but not limited to meals to celebrate personal events, such as weddings, births, or retirements;
- Political contributions;
- Charitable donations;
- Scholarships;
- Penalties or fines for statutory or regulatory violations;
- Penalties or fees for any late payments on debt, loans or other payments
- Membership fees and dues in clubs and organizations;
- Sponsorships of conferences or community events;
- Gifts to employees; and
- Personal expenses of employees, board members, family members of employees and board members, contractors, or any other individuals affiliated with the ETC, including but not limited to personal expenses for housing, such as rent or mortgages.

ETCs should take all necessary steps to ensure that they and their agents, contractors, consultants, and representatives scrupulously adhere to the rules governing legacy high-cost and Connect America Fund program support. ETCs face significant consequences for rule violations that result in carriers obtaining funds to which they are not entitled, or misuse of funding received, or other abuses of the high-cost or Connect America Fund support mechanisms.

⁶ Corporate operations expenses are capped under the Commission’s high-cost support mechanism rules. See 47 C.F.R. §§ 54.1308(a)(4)(ii)(A)-(C) (limiting corporate operating expense for purposes of High Cost Loop Support (HCLS)); 47 C.F.R. § 54,901(c)(1)-(2) (limiting corporate operating expense for purposes of Interstate Common Line Support (ICLS)).

⁷ 47 C.F.R. § 65.450.

For additional information on this proceeding, contact Suzanne Yelen (Suzanne.Yelen@fcc.gov) of the Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

Action by the Commission on October 8, 2015: Commissioners Clyburn and O’Rielly issuing a joint statement and Commissioner Pai issuing a separate statement.

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**JOINT STATEMENT OF
COMMISSIONERS MIGNON L. CLYBURN AND MICHAEL O'RIELLY**

Re: *Connect America Fund*, WC Docket No. 10-90, *ETC Annual Reports and Certifications*, WC Docket No. 14-58.

Today's public notice helps ensure that scarce consumer dollars are targeted to only costs directly related to deploying and providing service. The illustrative examples contained within the public notice do not meet that test. Our role is to ensure that any expenses recovered through the consumer-supported federal high-cost universal service program or consumer rates are tied to the provision of service. To be clear, the vast number of providers are good actors and would never take advantage of the system, but there are unfortunate examples to the contrary and spending on outrageous items has occurred. We therefore support today's public notice to remind all providers of expenditures that should not be supported by universal service.

We remain concerned that certain expenses not related to the provision of service, such as for artwork and cafeterias, may oddly be permitted under certain readings of our rules. These decades-old precedents, created under very different circumstances, must be realigned to reflect the Commission's more recent reforms. We believe it is appropriate for the Commission to initiate a proceeding to address these issues in the coming months.

**STATEMENT OF
COMMISSIONER AJIT PAI**

Re: *Connect America Fund*, WC Docket No. 10-90, *ETC Annual Reports and Certifications*, WC Docket No. 14-58.

There's no question that the American people should not be expected to pay for the "personal travel," "entertainment," "alcohol," and "personal expenses of . . . family members of employees and board members of telecommunications carriers."¹ The question is why the FCC has turned a blind eye to such conduct for so long.

Since 2002, Sandwich Isles Communications has collected \$242,489,940 from the federal Universal Service Fund to serve no more than 3,659 customers.² During that same time, Albert Hee, the owner of Sandwich Isles's parent company Waimana Enterprises and affiliate ClearCom, apparently used the company as his family's personal piggy bank. For example, the companies apparently paid \$96,000 so that Hee could receive two-hour massages twice a week; \$119,909 for personal expenses, including family trips to Disney World, Tahiti, France, and Switzerland and a four-day family vacation at the Mauna Lani resort; \$736,900 for college tuition and housing expenses for Hee's three children; \$1,300,000 for a home in Santa Clara, California for his children's use as college housing; and \$1,676,685 in wages and fringe benefits for his wife and three children.³

That's not all. When the FCC last looked at Sandwich Isles's corporate expenses, our staff found that it was spending \$5,460,973 more on corporate operations each year than similarly sized companies, with significant management and leasing fees to affiliated companies (like Waimana and ClearCom) that benefited Hee and his family.⁴

On top of all that, seven years ago, Sandwich Isles dropped a \$1.9-million-a-year lease it had with an independent undersea cable network in favor of a \$15-million-a-year lease for a cable network built by ClearCom and owned by Paniolo LLC.⁵ Unsurprisingly, Paniolo is itself owned by Blue Ivory LLC, which is wholly owned by Blue Ivory Hawaii Corporation, which in turn is owned by private trusts of Hee's three children.⁶ What is worse, Sandwich Isles appears to no longer be paying what it owes to Paniolo—yet is still collecting payments from other rural telephone companies as if it were.⁷

What a disgrace.

Thankfully, the U.S. Attorney's Office in Hawaii this summer secured a federal conviction of Hee for "corruptly interfering with the Internal Revenue Service in the calculation and collection of his

¹ *Public Notice* at 2.

² See USAC, Funding Disbursement Search for Sandwich Isles, *available at* <http://www.usac.org/hc/tools/disbursements/default.aspx>; 2013 NECA Report, *available at* <http://go.usa.gov/3uPt4>.

³ U.S. Department of Justice, U.S. Attorney's Office, District of Hawaii, *Honolulu Businessman Convicted of Tax Charges* (July 13, 2015) (*Department of Justice Press Release*), *available at* <http://go.usa.gov/3uPeh>.

⁴ See *Connect America Fund, Sandwich Isles Communications, Inc. Petition for Waiver of Section 54.302 of the Commission's Rules*, WC Docket No. 10-90, Order, 28 FCC Rcd 6553, 6559–61, paras. 15–18 (Wireline Comp. Bur. 2013) (*Sandwich Isles Waiver Denial*).

⁵ See *Sandwich Isles Communications, Inc. Petition for Declaratory Ruling*, WC Docket No. 09-133, Declaratory Ruling, 25 FCC Rcd 13647, 13649, 13654, paras. 5, 18 (Wireline Comp. Bur. 2010) (*Sandwich Isles Paniolo Order*).

⁶ See *Sandwich Isles Waiver Denial*, 28 FCC Rcd at 6556, para. 7.

⁷ See National Exchange Carrier Association Petition for Clarification And/Or Declaratory Ruling, WC Docket No. 09-133 (Feb. 6, 2015).

taxes, and with filing six false individual tax returns.”⁸ One can only assume that this Public Notice, as well as the recent suspension of USF payments to Sandwich Isles, was a reaction to that conviction.

But it shouldn’t take a criminal conviction to spur a federal agency to protect the public fisc. For five years, the agency has been sitting on an application for review that would deny Sandwich Isles the millions of dollars it has been receiving to pay off the Paniolo Cable and line the pockets of Hee’s children.⁹ And for five years, we’ve known of Hee’s penchant for self-dealing and skill at pocketing taxpayer dollars. I hope my colleagues will agree that a full investigation of Sandwich Isles and its untoward finances is in order, along with immediate action to recover whatever funds we can for the American taxpayer. It is time for the taxpayer-funded party to end.

⁸ See *Department of Justice Press Release*.

⁹ The application for review challenges a 2010 order that authorized Sandwich Isles to profit an additional \$6.5 million each year for its self-dealing. See *Sandwich Isles Paniolo Order*, 25 FCC Rcd at 13662, para. 29. One of the first draft items I read as a Commissioner would have addressed that application for review. Based on the record compiled by the Commission at that time, I immediately instructed my staff to push to eliminate that funding. For some reason, the item was pulled from circulation and has never resurfaced.