Before The
Federal Communications Commission
Washington, DC 20554

In the Matter of Sandwich Isles Communications, Inc., Waimana Enterprises, Inc., Albert S. N. Hee	File No.: EB-1HD-15-0019603 NAL/Acct. No.: 201732080004 FRN: 0001514090

COMMENTS OF WAIMANA ENTERPRISES INC.
TO NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

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INTRODUCTION

Waimana Enterprises Inc. ("WEI") submits the following comments in response to the Notice of Apparent Liability ("NAL") issued by the Federal Communications Commission ("FCC") dated December 5, 2016 and served on WEI on December 14, 2016. The NAL has been issued in complete violation of WEI's Constitutional guaranty that it will not be deprived of property without due process of law. Due process at a minimum requires fair notice before a decision is made, an opportunity to participate meaningfully, to present evidence and to cross examine witnesses; and the right to have its case decided by a neutral, detached decision-maker. None of this has been provided to WEI. WEI only received notice that any claim against it was even under consideration on December 14, 2016, after the FCC had already made up its mind and issued the NAL.

Moreover, the underlying basis of the NAL is completely lacking in merit. The Universal Service Administrative Company ("USAC")/FCC investigation revealed no waste, no fraud and no abuse. The only thing the investigation revealed was, at most, a good-faith disagreement among accountants on whether certain expenses should be submitted for reimbursement to the National Exchange Carrier Association ("NECA") or to the Universal

Service Fund ("USF"). SIC's independent accountants, GVNW (who are experts in this field), say the expense was properly submitted to USF; and that's the way GVNW does it for all of GVNW's other clients, without objections from USAC or the FCC. USAC/FCC claim it should have been submitted for reimbursement by NECA. This technical disagreement among accountants does not warrant any penalty; much less the harsh penalty purported to be imposed by the NAL. Moreover, it certainly reflects no wrongdoing whatsoever by WEI.

BACKGROUND

WEI was incorporated in 1988, and engaged in numerous business activities and transactions before SIC ever existed or was even conceived. One of WEI's primary activities was developing privately owned utility power plants. Each power plant was created by a separate single purpose subsidiary; often because such a structure was required for financing. (No lender wants the power plant that it's loaning against to be imperiled by problems that may occur with different activities not involved in the loan).

SIC was not created until a number of years after WEI had existed and been involved in a number of business ventures. Sometime in 1990, the Hawaii State Department of Hawaiian Home Lands ("DHHL"), approached WEI seeking help with their telephone/communications issues. DHHL's problem was that the local telephone company was not interested in providing service to the Hawaiian Home Lands because the properties are remote, not-contiguous and spread over several different islands. WEI studied the problem and found that there were federal programs designed by Congress to help offset the cost of providing utility services to rural areas such as the Hawaiian Home Lands. Moreover, although this problem had existed for decades, and Hawaii's ratepayers had contributed millions of dollars into these programs for decades, Hawaii had never, up to that time, received any benefit from these funds.

At the request of DHHL, SIC was formed to provide telecommunications services to the unserved and underserved DHHL property in the State of Hawaii. Once again, a new, single-purpose entity made sense to separate the new telecommunication business from WEI's past ventures and any potential liabilities that could arise from them. WEI invested years developing a plan and getting the regulatory and contractual approvals etc. to be able to participate in the Rural Utility Service ("RUS")/FCC programs for bringing rural communications services to Hawaiian Home Lands. This standard privately owned utility model allows for each project to be operated and kept financially separate including liabilities while allowing management to work on each project. WEI followed this model and incorporated SIC as the special purpose company to handle the regulated portion of communications, at that time, voice. WEI has never applied for nor agreed to be a regulated utility. The FCC does not have any regulatory oversight nor has it exercised regulatory oversight over WEI or its activities. WEI has never participated in any of the regulatory matters involving SIC.

1. **WEI has been denied Due Process of Law**

This proceeding under 47 C.F.R. 1.80(f), does not satisfy WEI's right under the Fifth Amendment to the United States Constitution, to due process of law. The structure of 47 C.F.R. 1.80(f), as applied to WEI (an unregulated corporation that has had no participation in any previous proceedings before the FCC), violated virtually every one of the fundamental requirements of due process. Accordingly, the U.S. Constitution precludes the FCC proceeding against WEI under the present proceedings.

a. **WEI Is A Separate Person Under the Law With Its Own Distinct Due Process Rights**

It is well recognized that a corporation, like WEI, is a separate person under the eyes of the law, with its own separate Constitutional rights. Citizens United v. Federal Election Com'n,

558 U.S. 310, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010). WEI enjoys the right to due process, which has not been met in this proceeding.

No legal authority, anywhere in the United States, authorizes the piercing of WEI's corporate veil for enforcement of a money judgment merely by the recitation that the corporation was the owner of a different corporation and some of its officers and/or directors overlapped at some times. In fact, all legal authorities in all jurisdictions hold that this is **not** enough to enable such piercing. Yet, this is exactly what the NAL attempts to do.

Before any liability can be imposed against WEI, WEI is entitled to a trial on the merits applying the appropriate state-law legal standard for piercing of the corporate veil. Because the instant proceeding is wholly deficient on this regard, it violates WEI's due process rights. No legal authority empowers the FCC to simply enter a judgment against WEI without such process. The authorities cited in the NAL do not change this fundamental rule of law.

b. WEI Never Received Notice that any action against it was even under consideration

WEI received absolutely no notice that any action against it was even being considered, until December 14, 2016. Notice of the claims against it and an opportunity to meaningfully participate in the proceedings against it is a critical component of due process. "When protected interests are implicated, the right to some kind of [notice of a] prior hearing is paramount." Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 5481 (1972). WEI received no notice of any kind until December 14, 2016 when it was served with the finished NAL making numerous findings against WEI. WEI has had no opportunity to contest any of these findings. Indeed, before December 14, 2016 WEI had no knowledge that any claims of any kind were even being considered against it.

Nor can the "notice" that was given on December 14, 2016 satisfy WEI's right to due process. Due process requires that notice be given so the recipient has "**the opportunity to be heard at a meaningful time** and in a meaningful manner." Ralls Corp. v. Committee on Foreign Inv. in U.S., 758 F.3d 296, 318 (DC Cir. 29014). WEI has been denied any notice that would enable meaningful participation at a meaningful time. The decision was already made well before December 14, 2016, when WEI first received any notice of it at all.

This minimal opportunity to submit "comments", on relatively short notice, after USAC/FCC has spent a year or more assembling its case and formulating its decision against WEI does not cure the lack of notice provided to WEI. Notice is required so that the recipient has an opportunity to **meaningfully** participate and present evidence. That opportunity has been denied WEI and can only be cured by a trial (or equivalent) before a detached, independent fact-finder.

c. WEI Was Never Given An Opportunity to Present Evidence

The NAL purports to hold WEI liable for "egregious misconduct", "widespread scope of improper conduct", "systematic disregard for … Rules", "inaccurate cost study data" and "falsely certifying the accuracy of that data." Moreover, the Regulation under which this proceeding is brought requires proof of "willfull or repeated" failure to comply with the law or the Rules. 47 C.F.R. 1.80. These are very serious allegations being made against WEI, an entity that FCC does not even regulate. The FCC has already determined that WEI has "apparent liability" without receiving any evidence from WEI whatsoever and without WEI having the opportunity to examine evidence against it nor to call witnesses or cross examine the witnesses against it. If the FCC is going to pursue such claims, WEI's Constitutional right to due process mandates that WEI be provided a proper opportunity to present evidence.

d. WEI Has Been Denied An Opportunity to Confront Witnesses Against It

"In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." Goldberg v. Kelly, 397 U.S. 254, 269,90 S.Ct. 1011, 25 L.Ed.2d 287 (1970). WEI has been afforded no opportunity to confront and cross-examine any witness. This is an essential component of due process which is completely lacking in the procedure the FCC has employed against WEI in this case. By the NAL, the FCC has attempted to impose a $49 million judgment against WEI with less "due process" than anyone in America receives to defend a parking ticket! WEI has been shown absolutely no evidence that WEI engaged in any improper conduct, much less "willful and repeated" improper conduct. And the NAL itself contains no such evidence against WEI. Before any "forfeiture" is ordered against WEI, WEI is entitled to see any evidence the FCC has against WEI and to an opportunity to cross examine its accusers.

e. WEI Has Been Denied A Detached Neutral Decision-Maker

Perhaps most egregiously, WEI has been denied any sort of a detached, neutral decision-maker to hear the evidence. It is axiomatic that "[a] fair trial in a fair tribunal is a basic requirement of due process." Caperton v. A.T. Massey Coal Co., Inc., 556 U.S. 868, 129 S.Ct. 2252, 2259 173 L.Ed.2d 1208 (2009). Through the NAL, the FCC attempts to impose a $49 million sanction against WEI with no (1) advance notice of the proceeding; (2) no detached neutral fact-finder; (3) no opportunity to confront adverse witnesses; and (4) no opportunity to review and comment on the evidence – if any -- presented against it. The procedure that has been employed here does not stand up to due process scrutiny.

f. The Opportunity to "Comment" After the FCC Has Already Made Up Its Mind Does Not Satisfy WEI's Due Process Rights

The serious deficiencies described above in the procedure the FCC has employed are not cured by the fact that on December 14, 2016, WEI was given the opportunity to "comment" on the NAL after the FCC had already rendered its "apparent" decision. The authorities are clear that in order to satisfy the right to due process, a party must be given a "meaningful" opportunity to participate at a meaningful point in the proceeding. Here, there has been no such opportunity where the decision was already made before notice was given. Moreover, there is still no opportunity to cross examine witnesses or satisfy the other important aspects of due process.

2. The NAL Attempts To Use A Disagreement Among Accountants To Support A Money Judgment Against WEI

Almost the entire liability of WEI[1] is premised on the fact that **somebody other than WEI** made a certification that FCC has concluded was not correct: "submitting and certifying inaccurate data submitted in annual cost studies"; "misclassified costs relating to its cable and wire facilities." Not a single one of these certifications was made by WEI. Indeed, not a single one of these certifications was made by any officer, director or employee of WEI. There is absolutely no evidence that WEI had any involvement of any kind with the computation of any data submitted to USAC or the FCC. The record contains no evidence of any participation of WEI in any of the alleged wrongdoing on which the NAL is based. WEI's Constitutional guaranty that it will not be deprived of property without due process of law therefore precludes any judgment against WEI.

a. Almost All Of The Amount The NAL Concludes Was Improperly Paid Is the Result Of A Good Faith Accounting Disagreement Between SIC's Accountants And USAC's Accountants.

[1] Over $26 million of the $27 million in liability.

Of the amount the NAL alleges was improperly paid to SIC[2], **over 96%**[3] is attributable to a disagreement among the accountants over whether certain telephone lines were properly categorized, **by the independent accountants hired by SIC**, as "Category 1" lines. This is a highly technical matter of interpretation of the rules and in some cases requires a good deal of interpretation. The record of this case reveals no role of WEI in categorizing anything. Hence, there is no basis at all to impose liability, in any amount, against WEI based on the accountants' disagreement about what "classification" was proper for certain lines.

WEI submits that the Order FCC 16-167 and the NAL do not analyze this question in any detail because to do so would reveal that FCC and USAC are simply wrong when they accuse WEI of "persistent misconduct", "widespread scope of improper conduct" and "systematic disregard for the high-cost program Rules." Whatever might be said about SIC, these accusations against WEI are completely unfounded.

The declaration of James Rennard that was submitted to the FCC in early January of 2016 details why SIC's independent accountants treated those lines as category 1, and in virtually every case continue to believe that the lines have been accounted for properly. The Declaration of Jeffrey Smith, also submitted in January, confirms that the classifications were done the same way they are done for every other utility regulated by the FCC. Part of the problem (which the FCC ignores—because they cannot justify their position) is that there is always a "lag period" between the time the expense of constructing/installing the line occurs and the time subscribers are connected to it. At the time it is being constructed, there are obviously no subscribers connected to it, but it would normally be categorized as Category 1 because there is good faith expectation that subscribers will connect after the line is constructed. This is why

[2] $27,270,390
[3] $26,320,270. NAL page 15

every utility accounts for Category 1 lines in this fashion in their early development. And indeed, for each of the Category 1 lines that is the subject of this case (except 2) that was the case. Subscribers were connected to them after they were constructed. Mr. Rennard confirms in his declaration:

> "USAC's conclusion that there were no subscribers on those "routes" during certain time periods was factually incorrect. The GVNW Report attached documentation from SIC demonstrating that each of these loops had active subscribers during the time period that USAC contended they did not... USAC and the FCC provide no evidence to the contrary"

Rennard Declaration Paragraph 8.

> "Of the eight "routes" (segments), six of them served subscribers in the same year the plant was placed in service…. Each of these "routes" (segments) had subscriber lists provided as evidence supporting the analysis…. The remaining two "routes" (segments) were completed and placed in service in accordance with the rules in Part 32. The first of these was placed in service in 2005 and included in account 2410…. While there were delays beyond SIC's control in turning up customers until 2008, the investment remained in account 2410 since the plant was in service and SIC's continuing expectation was that customers would be added imminently."

Rennard Declaration Paragraph 9

> The second of these two remaining "routes" (segments) … facilities were ready for use and placed in service in 2004 but the first customer was not turned up until 2006. Again, the delay in turning up customers was due to factors beyond SIC's control but the expectation was that these facilities would be serving customers imminently. In both of these latter cases, SIC's expectation that these facilities would be utilized was reasonable based on the facts and circumstances and evidence presented.

Rennard Declaration Paragraph 9.

So the only question here is whether GVNW accounted for the Category 1 lines correctly until the time that subscribers connected to them. GVNW insists that they did. GVNW insists

that this is the way the standard rules and procedures call for them to be treated. And this was what was done in this case. Rennard Declaration and Jeffrey Smith Declaration.

Thus, 96% of the basis for the NAL is a dispute between USAC's accountants and GVNW, who in good faith believed, and still believe, they categorized the lines correctly.

USAC began its "audit/investigation" in mid-2015 with the representation that they would be finished by the end of 2015. By the end of December USAC had conducted over 20 conference calls with SIC's accounting staff and other personnel; and reviewed many thousands of pages of accounting records. They found no waste; no fraud; and no abuse. But for some reason, they didn't close the audit. They kept searching despite the fact that they had found nothing. Eventually, well into 2016 USAC alleged that SIC had erred in the way it categorized new Category 1 lines. As GVNW's CEO, Jeffrey Smith, explains, however, USAC in essence changed the rules in order to find some wrongdoing on the part of SIC:

> The categorization done by GVNW was done pursuant to the same rules as each of GVNW's other telephone-company clients. The classifications were made in good faith and consistent with GVNW's understanding of all applicable rules.
>
> 6. With respect to USAC's conclusion that, "certain routes of cable were inappropriately allocated to Category 1", GVNW applied the same rules to categorize this cable investment as it uses for all of its clients, and the same rules that are accepted by USAC and the FCC when other rural telephone companies are examined.

Jeffrey Smith Declaration, Paragraphs 5 and 6.

Obviously, WEI did nothing wrong in connection with the cost studies, since they were performed by SIC's accountants, supported by SIC personnel and the accountants (GVNW) to this day believe they were done correctly. Obviously, this good faith disagreement among accountants gives no basis to justify a monetary forfeiture against WEI.

b. FCC And USAC Cannot Be Allowed To Apply Different Rules To SIC Than Are Applied to All The Other Companies They Regulate

As is made clear by the Smith and Rennard declarations, USAC and the FCC have changed the rules in order to impose liability on SIC. Obviously, they can't do this, as SIC is entitled to be judged by the same standard (and governed by the same rules) as every other rural telecommunications company. More importantly, WEI certainly cannot have any liability where the only basis for finding liability against SIC is a new, unprecedented, standard imposed for the first time by USAC and the FCC (and applied to no one except SIC). At a minimum, due process requires that the persons imposing this new standard be put under oath and subjected to cross examination on why they think they're entitled to enforce this new rule.

c. SIC's Accountants Treated These Lines As USF. Although USAC Has Concluded That They Were Not USF The Matter Is Far From Clear

Another important aspect of this issue – that the FCC deliberately ignores – is that SIC had no motive to deliberately miscategorize the lines. Even if the lines had been categorized as the FCC alleges was required, they would still have been reimbursed at approximately $21 million to $23 million. Thus, SIC would have received nearly the same amount in reimbursements over the 10 year period regardless of whether the lines were properly categorized as Category 1 or as a different category:

> the FCC's conclusions rely on a new interpretation, if not a misunderstanding, of how separations rules work**. Importantly, the argument that SIC was "scheming to receive more support than it was entitled" is undermined by the fact that SIC would have received, according to my estimates, $21.3 - $23.3 million of additional support from the NECA pools and, subsequent to reforms adopted in 2011, from CAF-ICC**. This would have substantially offset, if not exceeded even the overstated overpayment computed in the USAC Final Audit Report.

Rennard Declaration at Paragraph 13 (emphasis added).

Thus, there was no incentive and no motivation to misrepresent. The amount of money SIC would get over the ten year period was about the same regardless of the categorization. It was just a question of whether the reimbursement would have come from USF or from NECA/CAF-ICC. Thus, there was no motive to misrepresent, and there is no evidence that anything was misrepresented. This certainly provides no basis for a money judgment against SIC's parent, WEI, which had no participation in any of this.

d. The FCC's Strange Interpretation Of The Statute Of Limitations

There is a four (4) year statute of limitations applicable to these proceedings. 28 U.S.C. §1658(a). Yet, FCC purports to go back more than ten years to get the large liability they are seeking from SIC (and without authority attempting to impose on WEI).

As is discussed above, if the lines had been classified as FCC and USAC claim, they would be reimburseable from NECA for almost the same amount SIC received from USF. But it's too late to submit most of the costs to NECA for reimbursement, since most of the charges were submitted more than four (4) years ago and are therefore barred by the statute of limitations.

Although SIC is bound by the statute of limitations, USAC and FCC have hatched a theory that they are not. The NAL goes back over ten years (despite the fact that there have been past USAC audits that never raised this issue) regardless of the statute of limitations. This further highlights the gross unfairness of this entire proceeding and draws additional emphasis to the fact that WEI has done nothing to warrant award of a forfeiture against it. Obviously, the same statute of limitations applies both ways; and the correct determination is that anything that occurred more than four (4) years ago cannot be considered at this time.

e. SIC Has Been Audited By USAC Several Times Before And There Never Was Any Concern Raised About The Way SIC's Accountants, GVNW,

Categorized The Lines

Another unusual aspect of this proceeding is the fact that SIC – as a highly regulated telecommunications company -- is audited regularly and repeatedly, including several prior audits by USAC itself. In all of the prior audits, nobody has ever previously raised any concern about the way the Category 1 lines were classified. Had this issue been raised at an appropriate time, it could – and would – have been addressed. Again, there is no basis to blame WEI for the fact that the countless audits of SIC did not raise this accounting issue until USAC attempted to change the rules in 2016. Additionally, the fact that USAC performed audits that found nothing wrong places further emphasis on the fact that it would be improper to go beyond the statute of limitations at this time. Finally, the fact that USAC audted, and was satisfied with, SIC's books multiple times further confirms that WEI has no responsibility for anything alleged in the NAL.

3. Nothing In The NAL Justifies Imposing Any Penalty On WEI

The NAL states the basis for the forfeiture as follows:

> "failing to keep its accounts records and memoranda in a manner prescribed by the Commission"[4]; "submitting and certifying inaccurate data submitted in annual cost studies"[5]; "misclassified costs relating to its cable and wire facilities"[6]; "USAC determined that SIC had classified certain interexchange C&WF as exchange C&WF in contravention of Section 36.152(a)(1) which provides that Category 1 facilities include facilities between local central offices and subscriber premises"[7]; "USAC identified multiple routes that were not served during certain years"[8]; USAC determined that SIC received $26,230,270 in improper payments from the Fund based on its misclassification of certain C&WF as Category 1"[9]; "failing to maintain its accounts, records and memoranda as prescribed by the Commissioin, as well as several

[4] Page 2 paragraph 2
[5] Id.
[6] Page 2 paragraph 3
[7] Page 14, paragraph 34.
[8] Id.paragraph 35
[9] Page 15 paragraph 36

> provisions of the commission's Rules"[10]; "failed to keep its accounts, recors and memorandum consistent with the Commission's Rules"[11]; "Miscategorized business expenses and regulated costs"[12]; "misclassified its C&WF costs in violation of Parts 32 and 36 of the Commisson's Rules"[13]; "submitting inaccurate cost study data and falsely certifying the accuracy of that data"[14];
> "In assigning costs as Category 1 C&WF to routes that did not serve subscriber premises, SIC acted in contravention of Section 36.154(a)"[15]; "Each year, from at least 2003 through 2013, SIC submitted and certified the accuracy of information contained in its cost studies"[16]; "SIC submitted inaccurate cost data related to Category 1 C&WF"[17]; "SIC nevertheless certified as to the accuracy of the data contained in its annual cost studies."[18]

WEI never performed a cost study; never certified a cost study; and never gave any incorrect information to the FCC. Although Albert Hee was at certain times an officer and director of WEI, he never performed a cost study; and never certified a cost study to USAC or the FCC. Hence, there simply are no grounds to impute liability to WEI for any of the "conduct" alleged in the Order against SIC. Neither WEI nor any officer or director or owner of WEI ever did anything that is the basis of the allegations in the NAL.

4. The Authorities Cited in the NAL Do Not Support A Money Judgment Against WEI

The authorities cited in the NAL do not support the imposition of a money judgment against WEI. Of course, the FCC has authority to regulate the conduct authorized by the licenses it awards. Thus, in General Telephone Company of the Southwest vs. U.S.A. and FCC, 449 F.2d 846 (5th Cir. 1971) an FCC rule prohibited telephone companies from providing CATV service.

[10] Page 17 paragraph 46
[11] Id.
[12] Id.
[13] Id.
[14] Id.
[15] Page 19 paragraph 52
[16] Id. paragraph 55
[17] Page 20 paragraph 61.
[18] Page 21 paragraph 61

The FCC obviously had the power to prohibit the telephone company from providing the prohibited service through a subsidiary or affiliate. No money judgment was awarded against anyone. In Transcontinental Gas Pipe Line v. Federal Energy Regulatory Commission, 998 F.2d 1313 (5th Cir. 1993) the National Gas Act required sale of gas at a defined price. The regulated company violated the law by selling gas – through subsidiaries -- at prices that violated the law. In Capital Telephone v. FCC, 498 F.2d 734, 738 (D.C. Cir. 1974). Capital Telephone and its owner each applied for certain bandwidth for the paging business. The FCC recognized that it would not make separate awards of bandwidth to both the company and its owner as this would create a competitive advantage over the rival companies that only submitted a single bid. Similarly, in making licensing decisions, the FCC considers the past conduct of the principals of the applicant. The FCC can and should consider whether the principal of an applicant was previously involved in improper activity with another company. Mansfield Journal v. FCC, 180 F.2d 28 (D.C. Cir. 1950). None of these cases have anything to do with "piercing" the corporation in order to impose a large money judgment on an unregulated parent.

The NAL also cites In the Matter of Improving Pub Safety Communications in the 800 Mhz Band, 25 F.C.C. Rcd 13874 (F.C.C. 2010). However, review of the text of that order does not support the NAL at all. The Order discusses whether or not *a court* could impose liability on a parent company "depends on factual determinations" regarding the parent and subsidiary. (Paragraph 32). Moreover, the order goes on to state:

> Enterprise liability does not seek to make a parent corporation liable for the actions of its subsidiary but rather recognizes in appropriate cases that the parent is **liable for its own actions as part of the overall enterprise**. (emphasis added)

This is precisely the point. Unlike the parties in these cases, WEI's "own actions" are nonexistent. The NAL does not cite a single action by WEI, its officers, directors or employees

that give rise to any liability under the NAL. There is thus no basis for imposition of liability against WEI.

The point in the Public Safety case that "the parent is liable for its own actions" not for those of the subsidiary, is most important in considering the In the Matter of Telseven LLC, Patrick Hines, 31, F.C.C. Rcd. 1629 (F.C.C. 2016) in which Mr. Hines was Teleseven LLC's sole owner, sole director, sole officer, sole manager and sole employee; and he executed and signed all transactional documents. Id. at Paragraph 10. Under these circumstances, he was held liable for the forfeiture because **his own actions** supported the forfeiture.

In contrast, in this case there is not a single action of WEI that that could possibly justify a forfeiture. SIC has its own employees. SIC's employees signed the "certifications" that the NAL seeks to punish (although, as indicated above there is a serious question whether anybody should be punished). Hence, the Teleseven case is so completely different from the facts of this case it provides no basis on which to impose monetary liability against WEI.

5. Albert Hee Has Already Been Punished For the Matters That Were The Subject Of His Criminal Trial. It Violated WEI's Right to Due Process, And It Violates The Prohibition on Double Jeopardy For the FCC To Attempt to Use That Criminal Verdict To Further Punish WEI

The NAL contains a lengthy discussion of the criminal trial of Albert Hee. This discussion is irrelevant to any issue before the FCC and to any claims raised by the NAL.

SIC was thoroughly audited by the Internal Revenue Service (IRS) and no charges were ever filed against SIC. WEI was thoroughly audited by the IRS and no charges ever lodged against WEI. Several charges were made against Mr. Hee relating solely to payments by WEI that the jury concluded were "income" to Mr. Hee. WEI has not been found to have done anything wrong despite the fact that it was audited extensively by the IRS.

The criminal proceedings against Mr. Hee have absolutely no bearing on any issue related to the NAL. The statements in the NAL about the criminal proceedings are utterly irrelevant.

6. All Information About Transactions involving SIC and WEI Was Provided To The FCC/USAC In Connection With The Audit

As a privately held company, WEI's financial statements are not public. However, SIC has all details of any transactions between SIC and WEI. Hence, in the audit of SIC, the FCC and USAC had all information, justification, and detail related to every expenditure by SIC including anything SIC paid to WEI. FCC and USAC needed nothing else in order to properly and completely audit SIC. In order to audit SIC, an auditor does not need – and is not entitled to -- copies of the financial statements of everyone SIC does business with. FCC and USAC have all of the information on any transaction between SIC and Waimana because SIC has that detail and FCC and USAC are entitled to it. There is no justification for them to receive anything else.

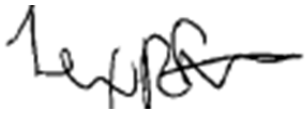
CONCLUSION

This proceeding against WEI is wrong on every level. The NAL violates WEI's right to due process, as WEI has been deprived of any procedures necessary for a money judgment to be entered against it. The NAL cites absolutely no evidence of any wrongdoing by WEI at all. WEI is a separate company. It pre-existed SIC by nearly a decade. It is a common business practice of a company like WEI for each of its ventures to be undertaken through a separate single-purpose entity. Many lenders require this kind of structure. The sole basis cited in the NAL is certain "certifications" made by SIC. All of the evidence indicates that those certifications were made by SIC personnel who had no role with WEI at all. There is no evidence that any WEI officer, director or employee had any role in any cost study or certification. This record provides no basis for the proposed judgment against WEI.

Moreover, the declarations on file with the Commission show that the NAL is based almost entirely on a dispute between accountants regarding the highly technical question of when a telephone line is properly categorized as "category 1." But even more importantly there was no incentive to mis-categorize, because the amount of reimbursement would have been nearly the same regardless of which category the lines were placed into.

For each of these reasons, the NAL against WEI is baseless and no order against WEI should be entered.

Dated: Honolulu, Hawaii February 2, 2017.



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