

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Connect America Fund) WC Docket No. 10-90
Sandwich Isles Communications, Inc.) CC Docket No. 96-45
Petition for Waiver of the Definition of "Study
Area" Contained in Part 36, Appendix-Glossary
and Sections 36.611 and 69.2(hh) of the
Commission's Rules)
Sandwich Isles Section 214 Authorization) WC Docket No. 16-405

ORDER

Adopted: March 13, 2017

Released: March 13, 2017

By the Acting Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) adopts procedures to provide interested parties limited access to proprietary or confidential information that has been or may be filed with respect to the Universal Service Administrative Company ("USAC") investigation proceeding concerning Sandwich Isles Communications, Inc.'s ("Sandwich Isles") receipt of universal service fund ("USF") support (hereinafter, "USAC Investigation Proceeding") and three related proceedings, as defined below, which, if released to competitors or those with whom the Submitting Party or a Third-Party Interest Holder does business, would allow those persons to gain a significant competitive advantage or an advantage in negotiations. We are mindful of the sensitive nature of certain information, and the importance of meaningful public participation in these proceedings. The Bureau finds that allowing limited access to competitively sensitive materials pursuant to the procedures set forth in this Sandwich Isles Protective Order allows the public (through appropriate representatives) to do so while also protecting competitively sensitive information from improper disclosure and use.

2. Accordingly, sensibly balancing the public and private interests involved, the Bureau concludes that these procedures serve the public interest and adopting them "best conduce[s] to the proper dispatch of the Commission's business and to the ends of justice." We therefore will make available to interested parties, pursuant to this Sandwich Isles Protective Order, proprietary or confidential information filed in the USAC Investigation Proceeding or in any of the proceedings related to: (1) the 2005 waiver Sandwich Isles received to be treated as an incumbent local exchange carrier serving the Hawaiian Home Lands for purposes of receiving universal service support; (2) Sandwich Isles'

1 The term "USAC Investigation Proceeding" refers to Sandwich Isles Communication, Inc., WC Docket No. 10-90, Order, FCC 16-167 (rel. Dec. 5, 2016) (Sandwich Isles Improper Payments Order), and any documents filed with respect to the Sandwich Isles Improper Payments Order in WC Docket No. 10-90.

2 47 U.S.C. § 154(j).

3 See Sandwich Isles Communications, Inc. Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary and Sections 36.611 and 69.2(hh) of the Commission's Rules, CC Docket No. 96-45, Order, 20 FCC Rcd 8999 (WCB 2005).

Commission authorizations;⁴ and (3) whether Sandwich Isles' exclusive license to serve the Hawaiian Home Lands conflicts with Section 253(a) of the Communications Act⁵ (collectively, the "Related Proceedings").

3. The Bureau has previously adopted protective orders in WC Docket No. 10-90 and CC Docket No. 96-45,⁶ including a protective order governing the terms and conditions of access to proprietary or confidential documents governing access to certain highly sensitive cost models and other competitively sensitive materials filed in WC Docket No. 10-90 (*Third Protective Order*).⁷ This Sandwich Isles Protective Order makes no changes to any other protective order adopted in WC Docket No. 10-90 or CC Docket No. 96-45 and does not apply to the USAC Investigation Proceeding or the Related Proceedings.

4. *Definitions.* As used herein, capitalized terms not otherwise defined in this Sandwich Isles Protective Order shall have the following meanings:

"Acknowledgment" means the Acknowledgment of Confidentiality attached as Appendix B hereto.

"Competitive Decision-Making" means a person's activities, association, or relationship with any of his or her clients involving advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or in a business relationship with the Submitting Party or with a Third-Party Interest Holder.

"Confidential Information" means information that is not otherwise available from publicly available sources and that is subject to protection under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Commission's implementing rules.

"Counsel" means In-House Counsel and Outside Counsel of Record.

"Document" means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person.

⁴ See Wireline Competition Bureau Seeks Comment on Initiating Proceedings to Revoke Sandwich Isles Communications, Inc.'s Commission Authorizations, WC Docket No. 16-405, Public Notice, DA 17-168 (rel. Feb. 14, 2017) (seeking comment on why the Commission should not initiate proceedings against Sandwich Isles to revoke its Commission authorizations).

⁵ *Wireline Competition Bureau Seeks Comment on the Department of Hawaiian Home Lands Request for Guidance on Whether Sandwich Isles Inc.'s Exclusive License to Serve the Hawaiian Home Lands Conflicts with Section 253(a) of the Communications Act*, WC Docket No. 10-90, CC Docket No. 96-45, Public Notice, DA-17-135 (WCB 2017).

⁶ See, e.g., *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Second Supplemental Protective Order, 27 FCC Rcd 1503 (Wireline Comp. Bur. 2012); *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Second Protective Order, 27 FCC Rcd 1494 (Wireline Comp. Bur. 2012); *Developing a Unified Intercarrier Compensation Regime; Establishing Just and Reasonable Rates for Local Exchange Carriers; Connect America Fund; High-Cost Universal Service Support; A National Broadband Plan for Our Future*, CC Docket No. 01-92, WC Docket Nos. 07-135, 10-90, 05-337, GN Docket No. 09-51, Supplemental Protective Order, 26 FCC Rcd 12795 (Wireline Comp. Bur. 2011).

⁷ *Connect America Fund, et al.*, CC Docket No. 01-92, WC Docket Nos. 07-135, 10-90, 05-337, GN Docket No. 09-51, Third Protective Order, 27 FCC Rcd 10276 (Wireline Competition & Wireless Telecommunications Bur. 2012) (*Third Protective Order*). The *Third Protective Order* superseded the First Protective Order. *Developing a Unified Intercarrier Compensation Regime; Establishing Just and Reasonable Rates for Local Exchange Carriers; Connect America Fund; High-Cost Universal Service Support; A National Broadband Plan for Our Future*, CC Docket No. 01-92, WC Docket Nos. 07-135, 10-90, 05-337, GN Docket No. 09-51, Protective Order, 25 FCC Rcd 13160 (Wireline Comp. Bur. 2010) (*First Protective Order*).

“Highly Confidential Information” means information that is not otherwise available from publicly available sources; that the Submitting Party has kept strictly confidential; that is subject to protection under FOIA and the Commission’s implementing rules; that the Submitting Party claims constitutes some of its most sensitive business data which, if released to competitors or those with whom the Submitting Party does business, would allow those persons to gain a significant advantage in the marketplace or in negotiations; and that it is described in Appendix A to this Protective Order, as the same may be amended from time to time.

“In-House Counsel” means an attorney employed by a party to this proceeding or employed by an affiliated entity and who is actively engaged in the conduct of this proceeding, provided that such attorney is not involved in Competitive Decision-Making. (In this regard, an In-House Counsel’s employer is considered his or her client.)

“Outside Counsel of Record” or “Outside Counsel” means the attorney(s), firm(s) of attorneys, or sole practitioner(s), as the case may be, representing a party in this proceeding, provided that such attorneys are not involved in Competitive Decision-Making. The term “Outside Counsel of Record” includes any attorney representing a non-commercial party in this proceeding, including government agencies, provided that such attorney is not involved in Competitive Decision-Making.

“Outside Consultant” means a consultant or expert retained for the purpose of assisting Counsel or a party in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making. The term “Outside Consultant” includes any consultant or expert employed by a non-commercial party in this proceeding, including government agencies, provided that such consultant or expert is not involved in Competitive Decision-Making.

“Outside Firm” means a firm, whether organized as a partnership, limited partnership, limited liability partnership, limited liability company, corporation or otherwise, of Outside Counsel or Outside Consultants.

“Redacted Confidential Document” means a copy of a Stamped Confidential Document where the Confidential Information has been redacted.

“Redacted Highly Confidential Document” means a copy of a Stamped Highly Confidential Document where the Highly Confidential Information has been redacted.

“Reviewing Party” means a person who has obtained access to Confidential Information (including Stamped Confidential Documents) or Highly Confidential Information (including Stamped Highly Confidential Documents) pursuant to paragraphs 9 or 154 of this Sandwich Isles Protective Order.

“Stamped Confidential Document” means any document, or any part thereof, that contains Confidential Information, including any Confidential Information submitted pursuant to any of the protective orders adopted in WC Docket No. 10-90, and that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) “CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER BEFORE THE FEDERAL COMMUNICATIONS COMMISSION,” unless the Commission determines, *sua sponte* or by request pursuant to paragraph 6 of this Protective Order or Sections 0.459 or 0.461 of its rules, that any such document is not entitled to confidential treatment. By designating a document a “Stamped Confidential Document,” a Submitting Party signifies and represents that it contains Confidential Information.

“Stamped Highly Confidential Document” means any document, or any part thereof, that contains Highly Confidential Information and that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) “HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER BEFORE THE FEDERAL COMMUNICATIONS COMMISSION,” unless the Commission determines, *sua sponte* or by request pursuant to paragraph 6 of this Protective Order or sections 0.459 or 0.461 of its rules, that any such

document is not entitled to highly confidential treatment. By designating a document a “Stamped Highly Confidential Document,” a Submitting Party signifies and represents that it contains Highly Confidential Information.

“Submitting Party” means a person or entity who submits a Stamped Confidential Document or a Stamped Highly Confidential Document.

“Support Personnel” means employees of a Reviewing Party’s Outside Firm and third-party contractors and employees of third-party contractors who are assisting in this proceeding, provided such persons are involved solely in performing clerical or ministerial functions with regard to documents and information connected with this proceeding, including performing one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding.

“Third-Party Interest Holder” means a person who is not a Submitting Party who has a confidentiality interest in Confidential Information or Highly Confidential Information that is submitted under this Protective Order.

5. *Effect of Designation of Information as Confidential.* By designating documents and information as Confidential under this Sandwich Isles Protective Order, a Submitting Party will be deemed to have submitted a request that the material not be made routinely available for public inspection under the Commission’s rules.⁸

6. *Designation of Information as Highly Confidential.* A Submitting Party may designate as Highly Confidential only those types of information described in Appendix A. If a Submitting Party believes that the descriptions contained in Appendix A should be revised, the Submitting Party shall submit a request to amend Appendix A along with a supporting explanation. To the extent the request is granted, an amended Appendix A will be issued. In addition, before a Submitting Party may designate particular documents or information as Highly Confidential, it must receive the written approval of the Commission staff, which, based on the Submitting Party’s representations, will make a preliminary determination whether the proposed designation meets the requirements set forth in this Protective Order. By designating documents and information as Confidential or Highly Confidential under this Protective Order, a Submitting Party also will be deemed to have submitted a request that the material not be made routinely available for public inspection under the Commission’s rules.⁹

7. *Challenge to Designation.* Any person wishing to challenge the designation of a document, portion of a document or information as Confidential or Highly Confidential must file such a challenge at the Commission and serve it on the Submitting Party and any known Third-Party Interest Holders. The Submitting Party and any Third-Party Interest Holders must file any reply within five business days, and include a justification for treating the information as Confidential or Highly Confidential, as appropriate.¹⁰ The documents and information challenged will continue to be accorded confidential treatment until the Commission acts on the request and any timely motion for a judicial stay has been acted upon.¹¹ Any decision on whether the materials should be accorded confidential treatment does not constitute a resolution of the merits concerning whether such information would be released publicly by the Commission upon an appropriate request under our rules implementing the FOIA.¹²

⁸ See 47 C.F.R. §§ 0.459(a), 0.459(a)(3).

⁹ See 47 C.F.R. §§ 0.459(a), 0.459(a)(3).

¹⁰ See 47 C.F.R. § 0.459(b).

¹¹ See 47 C.F.R. § 0.459(g), 0.461(i).

¹² See 47 C.F.R. §§ 0.459(h), 0.461.

8. *Submission of Stamped Confidential Documents and Stamped Highly Confidential Documents.* A Submitting Party shall submit to the Secretary's Office one copy of each Stamped Confidential Document and each Stamped Highly Confidential Document it seeks to file and an accompanying cover letter. Before doing so, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in any such Stamped Confidential Document or Stamped Highly Confidential Document. Each page of the Stamped Confidential Document or Stamped Highly Confidential Document shall be stamped "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER BEFORE THE FEDERAL COMMUNICATIONS COMMISSION" or "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER BEFORE THE FEDERAL COMMUNICATIONS COMMISSION" as appropriate. The accompanying cover letter also shall contain this legend. In addition, with respect to each Stamped Confidential Document and each Stamped Highly Confidential Document submitted, the Submitting Party shall also file through the Commission's Electronic Comment Filing System ("ECFS") a copy of the respective Redacted Confidential Document or Redacted Highly Confidential Document and an accompanying cover letter.¹³ Each Redacted Confidential Document or Redacted Highly Confidential Document shall have the same pagination as the Stamped Confidential Document or Stamped Highly Confidential Document from which it is derived. Each page of the Redacted Confidential Document or Redacted Highly Confidential Document and the accompanying cover letter shall be stamped "REDACTED – FOR PUBLIC INSPECTION." To the extent that any page of the filing contains both Confidential Information or Highly Confidential Information and non-confidential information, only the Confidential Information and Highly Confidential Information may be redacted and the page of the unredacted filing shall clearly distinguish among the Confidential Information, the Highly Confidential Information and the non-confidential information. In addition, two copies of each Stamped Confidential Document or Stamped Highly Confidential Document and the accompanying cover letter shall be delivered as directed by Commission staff. Filers may contact the Wireline Competition Bureau at (202) 418-1500 if additional direction is needed. Any Confidential Information previously filed pursuant to another protective order in WC Docket No. 10-90 and filed with respect to the USAC Investigation Proceeding are hereby deemed compliant with this paragraph.

9. *Copying Sensitive Documents.* If, in the reasonable judgment of the Submitting Party, a Stamped Highly Confidential Document contains information so sensitive that copying of it should be restricted, the Submitting Party may mark the document with the legend "Additional Copying Restricted." Subject to the provisions for access to information in electronic format in paragraph 12, each Outside Firm shall receive only one copy of the document and no more than two additional copies, in any form, shall be made. Application for relief from this restriction against further copying may be made to the Commission, with notice to Counsel of Record for the Submitting Party, which will be granted only for cause.

10. *Procedure for Obtaining Access to Confidential and Highly Confidential Information.* Access to Highly Confidential Information (including Stamped Highly Confidential Documents) is limited to Outside Counsel of Record, Outside Consultants, their employees and employees of their Outside Firms, and Support Personnel. Any person other than Support Personnel seeking access to Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information and Highly Confidential Information subject to this Sandwich Isles Protective Order shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of this Protective Order and file the Acknowledgment electronically with the Commission. A copy of the Acknowledgment shall also be delivered to the relevant Submitting Party through its Counsel of Record and to any known Third-Party Interest Holders through counsel so that it is received at least five business days prior to such person's

¹³ If a party is not able to submit a copy of the Redacted Confidential Document or Redacted Highly Confidential Document via ECFS, it must file two copies of the Redacted Confidential Document or Redacted Highly Confidential Document with the Secretary's Office along with the appropriately stamped cover letter.

reviewing or having access to the Submitting Party's Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information or Highly Confidential Information. Where there are multiple Submitting Parties or Third-Party Interest Holders, a copy of the Acknowledgment must be served on each within the time period stated above.

11. *Procedure for Objecting to the Disclosure of Confidential Information and Highly Confidential Information to a Potential Reviewing Party.*¹⁴ Each Submitting Party and Third-Party Interest Holder shall have an opportunity to object to the disclosure of its Confidential Information or Highly Confidential Information to any person seeking to review that information pursuant to this Protective Order. A Submitting Party or Third-Party Interest Holder must file any such objection at the Commission and serve it on Counsel for the person seeking access within three business days after receiving a copy of that person's Acknowledgment. Persons filing Acknowledgments shall not have access to Confidential Information or Highly Confidential Information before the period for filing objections has passed, unless both the Submitting Party and any known Third-Party Interest Holders waive this requirement. If a Submitting Party files additional documents containing Confidential Information or Highly Confidential Information, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in the information before filing the additional documents. The Submitting Party shall file any objection to the disclosure of that additional Confidential Information or Highly Confidential Information to any Reviewing Party before or contemporaneous with the filing, and any Third-Party Interest Holder shall file any such objection as promptly as practicable. Until any timely objection is resolved by the Commission in favor of the person seeking access and, if a motion for a judicial stay is timely filed, until such a motion is acted upon, a person subject to an objection shall not have access to the relevant Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information or Highly Confidential Information. If an objection is not timely filed with the Commission, the Commission will nonetheless consider the objection and retains its discretion to prohibit further access to Confidential Information or Highly Confidential Information by the Reviewing Party until the objection is resolved.

12. *Review of Stamped Confidential Documents and Stamped Highly Confidential Documents.* A Submitting Party shall make available for review the Stamped Confidential Documents and Stamped Highly Confidential Documents of such party at the offices of the party's Outside Counsel of Record or, if the Submitting Party does not have Outside Counsel of Record, at the offices of such party's In-House Counsel. A Reviewing Party shall be provided the following alternatives: (1) a Reviewing Party shall be provided adequate opportunity to inspect the documents on site; (2) a Reviewing Party may inspect the documents on site with the ability to request copies, at cost, of some or all of the documents; or (3) a Reviewing Party may request a complete set of the documents at cost, allowing two business days after the request is made for receipt of the copies. If a Reviewing Party plans

¹⁴ This paragraph describes the procedure for objecting to a specific individual being permitted to review Confidential and Highly Confidential Information pursuant to this Protective Order. The procedure for objecting to specific Confidential or Highly Confidential Information being reviewed by *any* individual pursuant to the Protective Order (in other words, for requesting that certain information be entirely withheld from review under the Protective Order) is set forth in *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 15-149, Order, 30 FCC Rcd 10360, 10374, para. 26 (2015). As stated there, where such an objection is timely made, we will not require that the information at issue be disclosed under the Protective Order until the Commission resolves the objection, and if a timely motion for judicial stay is filed, until the court rules upon the stay motion. An objection ordinarily will first be ruled upon by the Bureau. If the Bureau rejects the objection, the objecting party will be provided 10 business days to file an Application for Review with the Commission; if an Application for Review is not filed within that time, the Confidential or Highly Confidential Information shall be made available to the Reviewing Party. If an Application for Review is timely filed and is denied by the Commission, the objecting party will be provided 10 business days to seek a judicial stay of the Commission's Order; if a motion for stay is not filed within that time, the Confidential or Highly Confidential Information shall be made available to the Reviewing Party.

on requesting a complete set of documents, it is encouraged to make such a request at the time it submits the Acknowledgment to allow it the opportunity to begin reviewing the documents at the end of the five-day period referred to in paragraph 6. All copies of documents that are removed from the Submitting Party's office must be returned or destroyed in accordance with the terms of paragraphs 13 or 23, whichever is applicable.

13. *Review of Confidential and Highly Confidential Information in Electronic Format.* If a person has been granted access to Stamped Confidential Documents or Stamped Highly Confidential Documents pursuant to this Sandwich Isles Protective Order that person may request one copy of information contained, recorded, or electronically stored on a CD-ROM, DVD, flash drive, portable hard drive or similar electronic storage device. The disk or other medium containing Confidential Information or Highly Confidential Information in electronic format shall be physically sent to the person; but that person may electronically transmit such information to another person that has authorized access to such information pursuant to this Sandwich Isles Protective Order. Such information shall be transmitted in an encrypted fashion that protects the Confidential Information or Highly Confidential Information from unauthorized disclosure. A Reviewing Party may temporarily load onto a computer the information in electronic format. Once loaded onto a computer, any files containing Confidential Information or Highly Confidential Information shall be password protected immediately. The Confidential Information or Highly Confidential Information may be stored on a computer for the duration of the proceeding. All files containing Confidential Information or Highly Confidential Information shall be deleted from the computer no later than when proceedings at the Commission are complete. The original disk or other storage medium shall be stored securely and a record kept of any persons given access to it.

14. *Use of Confidential and Highly Confidential Information.* Persons obtaining access to Confidential Information (including Stamped Confidential Documents) and Highly Confidential Information (including Stamped Highly Confidential Documents) under this Sandwich Isles Protective Order shall use the information so obtained solely for the preparation and conduct of the USAC Investigation Proceeding and the Related Proceedings before the Commission and any subsequent judicial proceedings arising directly from those proceedings and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings. Should the Commission rely upon or otherwise make reference to any Confidential or Highly Confidential Information in its orders in these proceedings, it will do so by redacting any Confidential Information or Highly Confidential Information from the public version of the order and by making the unredacted version of the order available only to a court and to those persons entitled to access to Confidential Information or Highly Confidential Information under this Sandwich Isles Protective Order.

15. *Permissible Disclosure.* A Reviewing Party may discuss and share the contents of Confidential Information or Highly Confidential Information with another Reviewing Party, with Support Personnel, as appropriate, and with the Commission and its staff. A Submitting Party's Confidential Information or Highly Confidential Information may also be disclosed to employees and Counsel of the Submitting Party, and a Third-Party Interest Holder's Confidential Information and Highly Confidential Information may be disclosed to employees and Counsel of the Third-Party Interest Holder.

16. *Filings with the Commission.* A party making a filing in the USAC Investigation Proceeding or the Related Proceedings that contains Confidential Information or Highly Confidential Information shall submit to the Secretary's Office one copy of the filing containing Confidential Information or Highly Confidential Information (the "Confidential Filing") and an accompanying cover letter. The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses Confidential Information shall be clearly marked "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses Highly Confidential Information shall be clearly marked "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION.” The accompanying cover letter shall also contain the appropriate legend. The Confidential Filing shall be made under seal and will not be placed in the Commission’s public file. The party shall submit a copy of the filing in redacted form (i.e., containing no Confidential or Highly Confidential Information (the “Redacted Confidential Filing”)) to the Commission via ECFS.¹⁵ The Redacted Confidential Filing and the accompanying cover letter shall be stamped “REDACTED – FOR PUBLIC INSPECTION.” The cover letter accompanying the Redacted Confidential Filing shall state that the Party is filing a redacted version of the filing. Each Redacted Confidential Filing shall have the same pagination as the Confidential Filing from which it is derived. To the extent that any page of the Confidential Filing contains any Confidential Information or Highly Confidential Information and non-confidential information, only the Confidential Information or Highly Confidential Information may be redacted and the page of the unredacted Confidential Filing shall clearly distinguish among the Confidential Information, the Highly Confidential Information and the non-confidential information. Two copies of each Confidential Filing and the accompanying cover letter must be delivered as directed by Commission staff, and one copy must be served on the relevant Submitting Party. Parties should not provide courtesy copies of pleadings containing Confidential Information or Highly Confidential Information to Commission staff unless the Bureau so requests, and any such courtesy copies shall be submitted under seal. Filers may contact the Wireline Competition Bureau at (202) 418-1500 if additional direction is needed.

17. *Non-Disclosure of Confidential Information and Highly Confidential Information.* Except with the prior written consent of the Submitting Party, or as provided under this Sandwich Isles Protective Order, Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information or Highly Confidential Information shall not be disclosed further.

18. *Protection of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, and Highly Confidential Information.* A Reviewing Party shall have the obligation to ensure that access to Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information and Highly Confidential Information is strictly limited as prescribed in this Sandwich Isles Protective Order. A Reviewing Party shall have the further obligation to ensure that Confidential Information and Highly Confidential Information are used only as provided in this Sandwich Isles Protective Order.

19. *Requests for Additional Disclosure.* If any person requests disclosure of Confidential Information or Highly Confidential Information outside the terms of this Sandwich Isles Protective Order, such a request will be treated in accordance with sections 0.442 and 0.461 of the Commission’s rules.¹⁶

20. *Client Consultation.* Nothing in this Sandwich Isles Protective Order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information or Highly Confidential Information to which they have access under this Protective Order; *provided, however,* that in rendering such advice and otherwise communicating with such clients, Counsel shall not disclose Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information or Highly Confidential Information.

21. *No Waiver of Confidentiality.* Disclosure of Confidential Information or Highly Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information or Highly Confidential Information. Reviewing Parties, by viewing this material, agree:

¹⁵ If a party is not able to submit a copy of the Redacted Confidential Filing via ECFS, it must file two copies of the Redacted Confidential Filing with the Secretary’s Office along with the appropriately stamped cover letter, as described in this paragraph.

¹⁶ 47 C.F.R. §§ 0.442, 0.461.

(1) not to assert any such waiver; (2) not to use Confidential Information or Highly Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Confidential Information or Highly Confidential Information by a Submitting Party shall not be deemed a waiver of any privilege or entitlement provided that the Submitting Party takes prompt remedial action.

22. *Subpoena by Courts, Departments, or Agencies.* If a court, or a federal or state department or agency issues a subpoena for or orders the production of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, or Highly Confidential Information that a party has obtained under the terms of this Sandwich Isles Protective Order, such party shall promptly notify each relevant Submitting Party and each known Third-Party Interest Holder of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that each Submitting Party and each known Third-Party Interest Holder has sufficient opportunity to oppose such production prior to the production or disclosure of any Stamped Confidential Document, Stamped Highly Confidential Document, Confidential Information or Highly Confidential Information.

23. *Violations of the Protective Order.* Should a Reviewing Party violate any of the terms of this Sandwich Isles Protective Order, such Reviewing Party shall immediately convey that fact to the Commission and to the relevant Submitting Parties and known Third-Party Interest Holders. Further, should such violation consist of improper disclosure of Confidential Information or Highly Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Sandwich Isles Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information or Highly Confidential Information in this or any other Commission proceeding. Nothing in this Sandwich Isles Protective Order shall limit any other rights and remedies available to the Submitting Party or any Third-Party Interest Holder at law or in equity against any person using Confidential Information or Highly Confidential Information in a manner not authorized by this Sandwich Isles Protective Order.

24. *Termination of Proceeding.* The provisions of this Sandwich Isles Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of these proceedings and any administrative or judicial review, or as otherwise directed by the Bureau, Reviewing Parties shall destroy or return to the Submitting Party Stamped Confidential Documents and Stamped Highly Confidential Documents and all copies of the same. No material whatsoever derived from Confidential Information and Highly Confidential Information may be retained by any person having access thereto, except Outside Counsel and Outside Consultants may retain, under the continuing strictures of this Sandwich Isles Protective Order, two copies of pleadings (one of which may be in electronic format) prepared in whole or in part by that party that contain Confidential Information or Highly Confidential Information, and one copy of orders issued by the Commission or Bureau that contain Confidential Information or Highly Confidential Information. All Reviewing Parties shall certify compliance with these terms and shall deliver such certification to Counsel for the Submitting Party and file such certification with the Commission not more than three weeks after conclusion of this proceeding. Such certification shall be made pursuant to 28 U.S.C. § 1746 and is subject to 18 U.S.C. § 1001. The provisions of this paragraph regarding retention of Stamped Confidential Documents and Stamped Highly Confidential Documents and copies of the same and Confidential Information and Highly Confidential Information shall not be construed to apply to the Commission or its staff.

25. *Authority.* This Order is issued pursuant to Sections 4(i), 4(j) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 403, Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91, 0.291,¹⁷ and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Acting Chief, Wireline Competition Bureau

¹⁷ 47 U.S.C. § 155(c).

APPENDIX A**Highly Confidential Information and Documents**

As specified in paragraph 5 of this Sandwich Isles Protective Order, only information and documents set forth in this Appendix and that otherwise meet the definition of Highly Confidential Information or Highly Confidential Documents may be designated as Highly Confidential. This Appendix will be updated as necessary.

1. Information that details the terms and conditions of or strategy related to a Submitting Party's most sensitive business negotiations or contracts (*e.g.*, marketing, service or product agreements, agreements relating to potential mergers and acquisitions, and comparably sensitive contracts).
2. Information that discusses specific steps that will be taken to integrate companies or discussions of specific detail or disaggregated quantification of merger integration benefits or efficiencies (including costs, benefits, timeline, and risks of the integration).
3. Information that discusses in detail current or future plans to compete for a customer or specific groups or types of customers (*e.g.*, business or wholesale customers), including specific pricing or contract proposals, pricing strategies, product strategies, advertising or marketing strategies, future business plans, procurement strategies, technology implementation or deployment plans and strategies (*e.g.*, engineering capacity planning documents), plans for handling acquired customers, and human resources and staffing strategies.
4. Information that discloses the identity or characteristics of specific customers or of those a company is targeting or with whom a company is negotiating (including identifying information about specific customer facilities, information about customers' levels of demand, and information regarding pricing proposals).
5. Information that provides granular information about a Submitting Party's current or future costs, revenues, marginal revenues, market share or customers.
6. Detailed information describing or illustrating how a Submitting Party analyzes its competitors, including sources and methods used in these analyses, any limits on use of these analyses or data, and how such analyses or data are used.
7. Information that provides revenues broken down by customer type (*e.g.*, business) and zip code or market area (*e.g.*, CMA/MSA/RSA, DMA, state, regional cluster).
8. Information that discusses in detail the number or anticipated changes in the number of customers or amount of traffic, including churn rate data, broken down by zip code or market and detailed information about why customers discontinue service.
9. Information that provides detailed or granular engineering capacity information or information about specific facilities such as maps of network facilities.
10. Information that provides detailed technical performance data and test results.

APPENDIX B**Acknowledgment of Confidentiality****WC Docket No. 10-90, CC Docket No. 96-45, and WC Docket No. 16-405**

I am seeking access to [] only Confidential Information or [] Confidential and Highly Confidential Information.

I hereby acknowledge that I have received and read a copy of the foregoing Sandwich Isles Protective Order in the above-captioned proceedings, and I understand it.

I agree that I am bound by the Sandwich Isles Protective Order and that I shall not disclose or use Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information or Highly Confidential Information except as allowed by the Sandwich Isles Protective Order.

I acknowledge that a violation of the Sandwich Isles Protective Order is a violation of an order of the Federal Communications Commission. I further acknowledge that the Commission retains its full authority to fashion appropriate sanctions for violations of this Sandwich Isles Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential or Highly Confidential Information in this or any other Commission proceeding.

I acknowledge that nothing in the Protective Order limits any other rights and remedies available to a Submitting Party at law or in equity against me if I use Confidential or Highly Confidential Information in a manner not authorized by this Protective Order.

I certify that I am not involved in Competitive Decision-Making.

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained as a result of the Sandwich Isles Protective Order is due solely to my capacity as Counsel or Outside Consultant to a party or as an employee of Counsel, Outside Consultant, or Outside Firm, and I agree that I will not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that Stamped Confidential Documents and Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of the Sandwich Isles Protective Order and to ensure that there is no disclosure of Confidential Information or Highly Confidential Information in my possession, in the possession of those who work for me, or in the possession of other Support Personnel, except as provided in the Protective Order.

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Stamped Confidential and Highly Confidential Documents and Confidential and Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Sandwich Isles Protective Order.

Executed this ___ day of _____, 20__.

[Name]
[Position]
[Firm and if Counsel, Party represented]
[Telephone]