



PUBLIC NOTICE

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DA 17-242

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WIRELINER COMPETITION BUREAU PLACES USAC REPORT ON SANDWICH ISLES AND SANDWICH ISLES RESPONSE TO USAC REPORT INTO THE RECORD, SUBJECT TO PROTECTIVE ORDER

WC Docket No. 10-90; WC Docket No. 16-405; CC Docket No. 96-45

By this Public Notice, we hereby notify Sandwich Isles Communications, Inc. (Sandwich Isles) and all interested parties that the Wireline Competition Bureau (Bureau) intends to place into the record in WC Docket No. 10-90, WC Docket No. 16-405, and CC Docket No. 96-45 the following items containing Highly Confidential Information, subject to the *Sandwich Isles Protective Order*:¹

- Memorandum from Universal Service Administrative Company to FCC Wireline Competition Bureau, Investigation of Sandwich Isles Communications, Inc. (May 13, 2016) (USAC Report); and
- Response of Sandwich Isles Communications to the Universal Service Administrative Company Final Audit Report, June 13, 2016 (Sandwich Isles Response to USAC Report).

The Bureau also intends to make available the unredacted *Sandwich Isles Improper Payments Order*² pursuant to the *Sandwich Isles Protective Order*.

As set forth in the *Sandwich Isles Protective Order*, persons seeking to review the unredacted versions of these materials may do so only for purposes of participating in proceedings with respect to (i) the Universal Service Administrative Company (USAC) investigation concerning Sandwich Isles receipt of universal service fund (USF) support (USAC Investigation); (ii) 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;³ (iii) Sandwich Isles' Commission authorizations;⁴ and

¹ *Connect America Fund, 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*, WC Docket Nos. 10-90, 16-405, CC Docket No. 96-45, DA 17-241, Sandwich Isles Protective Order, (WCB 2017) (*Sandwich Isles Protective Order*).

² *Sandwich Isles Communications Ins.*, WC Docket No. 10-90, 31 FCC Rcd 12999 (2016) (*Sandwich Isles Improper Payments Order*). Under the *Sandwich Isles Protective Order*, the redacted *Sandwich Isles Improper Payments Order* is a Redacted Highly Confidential Document.

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).

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 (WCB

(iv) whether Sandwich Isles' exclusive license to serve the Hawaiian Home Lands conflicts with section 253(a) of the Communications Act⁵ (collectively, the "Related Proceedings"). Pursuant to the *Sandwich Isles Protective Order*, outside persons participating or intending to participate in the proceeding who are not involved in competitive decision-making activities and who have signed the Acknowledgment of Confidentiality attached to the *Sandwich Isles Protective Order* may review the unredacted *Sandwich Isles Improper Payment Order*, USAC Report and Sandwich Isles Response to the USAC Report pursuant to the terms contained in the *Sandwich Isles Protective Order*. We emphasize that persons seeking to review one or more of these documents must have adequate protections in place to prevent improper use or disclosure of the information.

We find that the USAC Report and the Sandwich Isles Response to the USAC Report comprise privileged or confidential trade secrets or commercial or financial information and that they are exempt from release under FOIA.⁶ FOIA exemption 4 protects matters that are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."⁷ The FCC's rules identify "[i]nformation submitted in connection with audits, investigations and examinations of records pursuant to 47 USC § 220," as records that fall within the scope of exemption 4.⁸ The USAC Report contains information that USAC, as the Commission's designee, received in response to an audit. The Sandwich Isles Response to the USAC Report contains privileged or confidential trade secrets or commercial or financial information and as a result, are exempt from release under FOIA.⁹ The unredacted portions of the *Sandwich Isles Improper Payments Order* also contain privileged or confidential trade secrets or commercial or financial information that are exempt from release under FOIA.¹⁰

Affected parties have until **March 20, 2017** to oppose disclosure of the unredacted *Sandwich Isles Improper Payments Order*, USAC Report, or the Sandwich Isles Response to the USAC Report pursuant to the terms contained in the *Sandwich Isles Protective Order*. If the Bureau receives no opposition from affected parties by **March 20, 2017**, the Bureau will place the USAC Report and the Sandwich Isles Response to the USAC Report into the record subject to the safeguards contained in the *Sandwich Isles Protective Order*. If disclosure is opposed, the procedures set forth in 47 CFR § 0.461(i) shall apply.

In addition, as stated in the *Sandwich Isles Protective Order*, affected parties will have three (3) business days after the filing of an Acknowledgment of Confidentiality to object to the release of the data to a particular person who requests permission to review it. Once the Acknowledgment of Confidentiality is filed in the record, parties should notify Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, at Charles.Tyler@fcc.gov of the request to receive the unredacted

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 47 CFR § 0.457(d)(1)(iii).

⁷ 5 U.S.C. § 552(b)(4).

⁸ 47 CFR § 0.457(d)(1)(iii).

⁹ *Id.*

¹⁰ *Id.*

Sandwich Isles Improper Payments Order, USAC Report, and/or Sandwich Isles Response to the USAC Report.

This action is taken pursuant to sections 4(i) and 310(d) of the Communications Act, 47 U.S.C. §§ 154(i), 310(d), section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, and its effective upon its adoption.

For further information, please contact Rebekah Douglas, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7931 or via email at Rebekah.Douglas@fcc.gov.

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