

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

In the Matter of)	
)	
The Connect America Fund)	WC Docket No. 10-90
)	
Sandwich Isles Communications, Inc. Petition for)	CC Docket No. 96-45
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

**MEMORANDUM OPINION AND ORDER
AND ERRATUM**

Adopted: December 28, 2017

Released: December 28, 2017

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau ("Bureau") responds to the Motion to Revise Protective Order ("SIC Motion to Revise") and to the Objection to Disclosure of Information Pending Resolution of its Motion to Revise Protective Order ("SIC Objection") filed by Sandwich Isles Communications, Inc. ("SIC").¹ While we find that the overall intent of the *SIC Protective Order* is clear, upon review of SIC's concerns, we also find that by correcting five drafting errors in the *SIC Protective Order* we can harmonize the language used throughout to describe the proceedings covered by the *SIC Protective Order*. Having done so, we reject SIC's assertions that the scope of the *SIC Protective Order* is unclear, that it has no meaningful application, and that it creates a process that makes it impossible for SIC to object to the disclosure of documents. We therefore grant, to the limited extent provided herein, SIC's Motion to Revise the *SIC Protective Order*.² Accordingly, we also dismiss the SIC Objection.

II. BACKGROUND

2. On March 13, 2017, we adopted the *SIC Protective Order* and released the *SIC Public Notice* announcing the Bureau's intent to place certain documents into the dockets of four proceedings subject to the *Protective Order*.³ The *SIC Protective Order* adopted procedures that allow interested parties limited

¹ Sandwich Isles Communications, Inc., Motion to Revise Protective Order, WC Docket Nos. 10-90, 16-405, CC Docket No. 96-45, filed March 21, 2017 (SIC Motion to Revise); Sandwich Isles Communications, Inc., Objection to Disclosure of Information Pending Resolution of its Motion to Revise Protective Order, WC Docket Nos. 10-90, 16-405, CC Docket No. 96-45, filed Apr. 13, 2017 (SIC Objection).

² *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, 32 FCC Rcd 1854, Sandwich Isles Protective Order (WCB 2017) (*SIC Protective Order* or *Protective Order*).

³ *Id.*; see also *Wireline Competition Bureau Places USAC Report on Sandwich Isles and Sandwich Isles Response to USAC Report into The Record, Subject to Protective Order*, WC Docket Nos. 10-90, 16-405, CC Docket No. 96-45, 32 FCC Rcd 1866, 1866-67, Public Notice (WCB 2017) (*SIC Public Notice* or *Public Notice*).

access to proprietary or confidential information that has been or may be filed in the Commission's proceeding regarding the Universal Service Administrative Company ("USAC") investigation concerning SIC's receipt of Universal Service Fund ("USF") support (the "USAC Investigation Proceeding").⁴ It also covers access to proprietary or confidential information filed in three related Commission proceedings: (1) the proceeding regarding the 2005 waiver SIC received to be treated as an incumbent local exchange carrier serving the Hawaiian Home Lands for purposes of receiving universal service support;⁵ (2) the proceeding regarding whether SIC should be permitted to continue to hold Commission authorizations;⁶ and (3) the proceeding regarding whether SIC's exclusive license to serve the Hawaiian Home Lands conflicts with section 253(a) of the Communications Act.⁷ Each of the four proceedings involves Commission action relating to SIC, and SIC and the public have full notice of those proceedings.

3. The *SIC Public Notice* identified three unredacted documents that the Bureau planned to place into the dockets of the four proceedings: (1) an audit report by USAC regarding payments made to SIC from the Universal Service Fund, dated May 13, 2016 (USAC Report); (2) SIC's response to the USAC Report, dated June 13, 2016 (Sandwich Isles Response to USAC Report); and (3) the unredacted version of the Commission's *SIC Improper Payments Order*, released December 5, 2016.⁸ Each of these documents contains proprietary or confidential information, and, therefore, pursuant to the *SIC Protective Order*, they were made available to interested parties to review only for purposes of participating in the four proceedings.⁹ In adopting the *SIC Protective Order*, we balanced the sensitive nature of the information with the importance of meaningful public participation in all four proceedings and concluded that providing limited access to the information pursuant to the procedures provided in the *Protective Order* was in the public interest.¹⁰

4. SIC filed a motion to revise the *SIC Protective Order*. In its motion, SIC "does not object to the inclusion in the record in the newly designated Docket 16-405 of documents filed with USAC or the Commission relating to the USAC audit" that is the subject of the *SIC Improper Payments Order*, and "it does not object to the intent of the March 13 Order [the *SIC Protective Order*] which is to allow parties with a legitimate and bona fide interest in the proceeding access to that record through a Protective Order."¹¹ SIC argues, however, that the *SIC Protective Order* and the accompanying *SIC Public Notice* (1) fail to define the scope of material subject to protection; (2) establish procedures that have no meaningful application; and (3) set up a process that makes it impossible for SIC to object to disclosure of documents.¹² SIC later filed a document objecting to the disclosure of any information to any third-party until the SIC Motion to Revise Protective Order is "adjudicated and a legally-compliant protective order

⁴ *SIC Protective Order*, 32 FCC Rcd at 1854, para. 1.

⁵ 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).

⁶ See *Wireline Competition Bureau Seeks Comment on Initiating Proceedings to Revoke Sandwich Isles Communications, Inc.'s Commission Authorizations*, Public Notice, DA 17-168 (WCB 2017).

⁷ *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). See also *SIC Protective Order*, 32 FCC Rcd at 1854, para. 2.

⁸ *SIC Public Notice*, 32 FCC Rcd at 1866. See also *Sandwich Isles Communications Inc.*, WC Docket No. 10-90, 31 FCC Rcd 12999 (2016) (*SIC Improper Payments Order*).

⁹ *SIC Protective Order*, 32 FCC Rcd at 1854-55, paras. 1-2.

¹⁰ *Id.*

¹¹ SIC Motion to Revise at 1.

¹² See SIC Motion to Revise at 1-2.

is entered and adopted by the Commission.”¹³ SIC recognizes that AT&T, the Department of Hawaiian Home Lands (DHHL), and the National Exchange Carrier Association (NECA) each filed an Acknowledgment pursuant to the *SIC Protective Order*; however, SIC argues that of those three, the only “legitimate interested party” is DHHL.¹⁴ Nevertheless, SIC states that it provided AT&T and DHHL with unredacted copies of the May 13, 2016 USAC Audit Report and SIC’s Response to the USAC Report.¹⁵

III. SCOPE OF THE PROTECTIVE ORDER

5. SIC first argues that the *Protective Order* is internally inconsistent, because paragraph 14 states that persons obtaining access to information pursuant to the *Protective Order* may use that information “solely for the preparation and conduct of the USAC Investigation Proceeding and the Related Proceedings,” while paragraph 3 states that the *Protective Order* “does **not** apply to the USAC Investigation Proceeding or the Related Proceedings.”¹⁶ SIC acknowledges, however, that the word “not” in paragraph 3 of the *Order* may be a typographical error.

6. In fact, there is a drafting error in paragraph 3 of the *Protective Order* and we take this opportunity to correct it. WC Docket No. 10-90 and CC Docket No. 96-45 are both large dockets dealing with general universal service funding issues and the Connect America Fund. In connection with some of the issues posed in those dockets, the Commission has adopted various protective orders. It was not appropriate to use those protective orders, which were meant to govern access to confidential information submitted regarding other issues and that have been signed on to by many parties, to govern the small part of the dockets relating specifically to SIC. Accordingly, the Bureau adopted a separate protective order regarding the four Related Proceedings, and paragraph 3 of the *SIC Protective Order* was intended to convey the point that the *SIC Protective Order* - and not the prior protective orders - would govern access, in these four proceedings, to the materials particularly related to SIC. By contrast, the existing protective orders continue to govern access to and use of confidential information submitted in WC Docket No. 10-90 and CC Docket 96-45 regarding the other issues that are part of those dockets.

7. However, some words were inadvertently omitted from paragraph 3 of the *SIC Protective Order*, leading to the inconsistency SIC identifies. We therefore revise the last sentence in paragraph 3 of the *SIC Protective Order* to read “This Sandwich Isles Protective Order makes no changes to the *Third Protective Order* or any other protective order previously adopted in WC Docket No. 10-90 or CC Docket No. 96-45, and those previously adopted protective orders do not apply to the Related Proceedings.”¹⁷ With this correction, we resolve SIC’s complaint. Also, we correct two other typographical errors in the *SIC Protective Order*, in paragraph 4, misidentifying the proper internal cross-references.¹⁸

8. SIC next argues that the *SIC Protective Order* is ambiguous because it refers to “Related Cases” and that the term is nowhere defined.¹⁹ SIC is incorrect. The *Protective Order* does not use the

¹³ See SIC Objection at 1; see also generally *Sandwich Isles Communications, Inc.*, WC Docket No. 10-90, Order, 31 FCC Rcd 12999 (2016) (*SIC Improper Payments Order*)

¹⁴ SIC argues there is ambiguity over whether NECA Acknowledgment was also an Acknowledgment for Hawaiian Telecom, Inc. However, NECA’s counsel later filed a corrected Acknowledgment to clarify the intent was not to file an Acknowledgment on behalf of Hawaiian Telecom, Inc. See SIC Objection at 3; see also Corrected NECA Acknowledgment.

¹⁵ See SIC Objection at 3.

¹⁶ SIC Motion to Revise at 2 (quoting *SIC Protective Order*; emphasis in original).

¹⁷ See Appendix A.

¹⁸ In the definition of “Reviewing Party,” the phrase “pursuant to paragraphs 9 or 154” should read “pursuant to paragraphs 10 or 15.” See Appendix A.

¹⁹ SIC Motion to Revise at 2-3. The phrase “Related Cases” does not appear in the *SIC Protective Order* but the phrase “Related Proceedings” does. We assume that this is the phrase to which SIC is referring.

term “Related Cases.” It does use the term “Related Proceedings,” which it clearly defines to include “the USAC Investigation Proceeding and 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;²⁰ (2) Sandwich Isles’ Commission authorizations;²¹ and (3) whether Sandwich Isles’ exclusive license to serve the Hawaiian Home Lands conflicts with section 253(a) of the Communications Act²² (collectively, the “Related Proceedings”).”²³ Indeed, the very first paragraph of the *SIC Protective Order* clearly explains that the *Protective Order* governs access to any 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.”²⁴ Additionally, the *SIC Public Notice* clearly defined the term “Related Proceedings” to refer to the same four proceedings – the USAC Investigation Proceeding together with those same three proceedings.²⁵

9. We recognize that there is a minor inconsistency in our use of the term “Related Proceedings” in the *SIC Protective Order*, however, which we correct here. As discussed, in the *SIC Protective Order*, the term “Related Proceedings” is initially defined to include the three proceedings listed above together with the USAC Investigation Proceeding.²⁶ However, the *SIC Protective Order* later uses the term to refer only to the three proceedings listed above, while separately mentioning the USAC Investigation Proceeding.²⁷ In this Order and going forward, we will use the definition of the term “Related Proceedings” as intended, to refer to all four related proceedings related to: (1) the USAC Investigation Proceeding, (2) the 2005 waiver SIC received to be treated as an incumbent local exchange carrier serving the Hawaiian Home Lands for purposes of receiving universal service support, (3) SIC’s Commission authorizations, and (4) whether Sandwich Isles’ exclusive license to serve the Hawaiian Home Lands conflicts with Section 253(a) of the Communications Act. We therefore also revise paragraphs 3, 14 and 16 of the *SIC Protective Order* to replace the phrase “USAC Investigation Proceeding and the Related Proceedings” with the term “Related Proceedings.”²⁸ While we make these changes, we emphasize that the substance and intent of both the *SIC Protective Order* and the *SIC Public Notice* were clear and consistent in describing the *SIC Protective Order* as applying to all four proceedings. Moreover, the *SIC Public Notice* is clear that the three documents identified in the *Public Notice* have been placed into the

²⁰ 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).

²¹ 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).

²² *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*, Public Notice, DA 17-135 (WCB 2017).

²³ *SIC Protective Order*, 32 FCC Rcd at 1854-55, para. 2.

²⁴ *Id.* at 1854, para. 1.

²⁵ See *SIC Public Notice*, 32 FCC Rcd at 1866-67.

²⁶ *Id.* at 1854-55, para. 2.

²⁷ *Id.* at 1855, 1860, paras. 3, 14, 16.

²⁸ See Appendix A.

record in each of the four proceedings. We therefore reject SIC's argument that the scope of the *SIC Protective Order* is "undefined and unintelligible."²⁹

10. We also reject SIC's suggestion that the *SIC Protective Order* "would arguably include the FCC Decision *In the Matter of AT&T Application for Review; Sandwich Isles Communications, Inc., Petition for Declaratory Ruling*, WC Docket No. 09-133 (Dec. 5, 2016)."³⁰ That proceeding is not mentioned in the text of either the *SIC Protective Order* or the *SIC Public Notice*, nor is that docket listed in the caption of either the *SIC Protective Order* or the *SIC Public Notice*. Moreover, that docket has its own protective order.³¹

11. Likewise, SIC's attempt to bolster its argument of uncertainty about what proceedings are covered by the *SIC Protective Order* by claiming that the *Public Notice* fails to identify the "newly created Docket that ostensibly deals with the issues raised in Paragraph 58 of the FCC 16-167"³² is nonsensical. As a preliminary matter, the FCC 16-167 item is the *SIC Improper Payments Order*, and Paragraph 58 directs the Bureau to seek public comment on SIC's 2005 Study Area Waiver, a proceeding in existing WC Docket Nos. 10-90 and 96-45.³³ However, the newly created docket, WC Docket No. 16-405, relates to the Bureau's proceeding regarding revocation of SIC's Commission authorizations and was opened in response to Commission direction under the *SIC NAL*.³⁴ Moreover, the dockets and proceedings referred to in the *SIC Public Notice* and the *SIC Protective Order* are exactly the same, and both include the issues of Paragraph 58 of the *SIC Improper Payments Order* and revocation of Commission authorizations pursuant to the *SIC NAL*.³⁵

12. Additionally, SIC's apparent concern that the *SIC Protective Order* or the *Public Notice* implicitly extended any of the pleadings cycles in the relevant proceedings is misplaced.³⁶ The *SIC Protective Order* contains language regarding future participation in the Related Proceedings, because the pleading cycle in the proceeding regarding whether SIC should be permitted to continue to hold Commission authorizations was still open when the *SIC Protective Order* was adopted.³⁷

13. SIC's request that the *SIC Protective Order* be amended to specify "what documents in what docket are protected" and to make clear that "documents in the record that are not covered by the Protective Order are subject to the full protections of the Freedom of Information Act" is also

²⁹ SIC Motion to Revise at 3.

³⁰ *Id.* at 2-3.

³¹ The SIC Paniolo lease proceeding in WC Docket No. 09-133 adopted a protective order at the joint request of SIC and NECA in August of 2009. See *Sandwich Isles Communications, Inc. Petition for Declaratory Ruling*, WC Docket No. 19-133, Protective Order, 24 FCC Rcd 11004 (WCB 2009).

³² SIC Motion to Revise at 3.

³³ See *SIC Improper Payments Order*, 31 FCC Rcd at 13016-17, para. 58. See also *Wireline Competition Bureau Seeks Comment on the 2005 Waiver that Allows Sandwich Isles to be Treated as an Incumbent Local Exchange Carrier For Purposes of Receiving High-Cost Universal Service Support*, Public Notice, 31 FCC Rcd 13326 (Dec. 20, 2016)(*SIC Waiver PN*).

³⁴ See *Wireline Competition Bureau Seeks Comment on Initiating Proceedings To Revoke Sandwich Isles Communications, Inc.'s Commission Authorizations*, Public Notice, 32 FCC Rcd 1362 (Feb. 4, 2017)(*SIC Authorizations PN*). See also *Sandwich Isles Communications, Inc., Waimana Enterprises, Inc., Albert S.N. Hee*, Notice of Apparent Liability for Forfeiture and Order, 31 FCC Rcd 12947, 12974, para. 84 (2016) (*SIC NAL*).

³⁵ Compare *SIC Public Notice*, 32 FCC Rcd at 1866-67, *SIC Protective Order*, 32 FCC Rcd at 1854-55 (identifying the same four proceedings and listing WC Docket Nos. 10-90, 16-405 and CC Docket No. 96-45).

³⁶ See SIC Motion to Revise at 6.

³⁷ See *SIC Authorizations PN* (establishing Comment Date of March 16, 2017 and Reply Comment Date of March 31, 2017).

misplaced.³⁸ First, the purpose of the *SIC Protective Order* is to adopt the procedure for providing interested parties limited access to proprietary or confidential information that has been or may be filed in the docket(s) for purposes of participating in the Related Proceedings covered by the *SIC Protective Order*.³⁹ Its purpose is not to specifically identify each of the documents that are covered.⁴⁰ Second, the *SIC Protective Order* provides that those documents, and that information, may be used in the proceedings but otherwise must be protected and kept confidential; it may not be made public.⁴¹ By contrast, the Commission's Freedom of Information Act (FOIA) regulations, including sections 0.459 and 0.461 of the Commission's rules, govern the *public* release of information (termed "public inspection" by the rules), including information that the person submitting it has designated as confidential, regardless of its intended use.⁴² In short, the *SIC Protective Order* maintains the confidentiality of materials and governs their use in the Related Proceedings, while our FOIA rules are concerned with whether information claimed to be confidential should be released to the general public. Further, the *SIC Protective Order* specifically provides that by designating information as Confidential or Highly Confidential, the submitting party will be deemed to have made a request under the Commission's FOIA regulations that the information not be made available for public inspection.⁴³ The *SIC Protective Order* and the Commission's FOIA regulations therefore work in concert.

IV. THE PROTECTIVE ORDER'S PROCEDURES

14. SIC argues that the *SIC Protective Order* is "unworkable," because the Bureau, rather than a party, submitted documents into the record, including a document created by SIC.⁴⁴ While the *SIC Protective Order* contemplates that ordinarily the owner of documents will be the party submitting them, that is not always the case. For example, the Commission has, in appropriate cases, entered documents of one proceeding into a different proceeding so that confidential information originally filed in the first proceeding could be used in the second proceeding. In the *SIC Public Notice*, the Bureau announced that it was submitting into the records of the Related Proceedings three documents: one authored by USAC, one authored by SIC and one authored by the Commission itself. All three were marked as confidential when they were originally submitted to the Commission or released by the Commission. The *SIC Public Notice* explicitly stated that they contain Highly Confidential Information and the *SIC Protective Order* governs access to Highly Confidential Information and provides that it must remain non-public. Accordingly, SIC's "FOIA protections" have been maintained.⁴⁵ Although we think that the matter is clear, to assuage SIC's concerns, we will state here that the documents described in the *SIC Public Notice* are to be treated as Stamped Highly Confidential Documents pursuant to the *SIC Protective Order*.

³⁸ SIC Motion to Revise at 3-4. See also 47 C.F.R. §§ 0.459 (Requests that materials or information submitted to the Commission be withheld from public inspection), 0.461 (Requests for inspection of materials not routinely available for public inspection).

³⁹ *SIC Protective Order*, 32 FCC Rcd at 1854-55, paras. 1-2.

⁴⁰ While the *SIC Public Notice* identified three documents containing Highly Confidential Information that the Bureau specifically placed into the record of the Related Proceedings, the *Protective Order* contemplates that there could be other and future documents covered by its terms. *Id.* at 1854, para. 1 (stating "...information that has been or may be filed..."). See also SIC Public Notice, 32 FCC Rcd at 1866.

⁴¹ The *Protective Order* also provides procedures for the Commission to determine whether the documents and information have properly been designated as confidential, and to remove that designation if they have not been.

⁴² The rules provide that information designated as confidential will not be released publicly unless the Commission rules that the information is not subject to protection under FOIA or releasing it is nonetheless in the public interest.

⁴³ See *SIC Protective Order*, 32 FCC Rcd at 1857, para 5.

⁴⁴ SIC Motion to Revise at 4.

⁴⁵ See *id.*

15. Additionally, contrary to SIC's arguments, the procedural schedule provided for in the *SIC Protective Order* does not deprive SIC of protections against improper access to sensitive and confidential material.⁴⁶ Under the *Protective Order* persons who wish to review confidential materials must be representing or working for a party interested in participating in the proceeding and must not be involved in "competitive decision-making" as that term is used in the *SIC Protective Order*.⁴⁷ Further, review of Highly Confidential material is limited to Outside Counsel and Outside Consultants and is solely for the purpose of participating in the Related Proceedings.⁴⁸ The Commission has explained that persons who meet these criteria, who are participating in the proceeding in good faith, and who sign the *SIC Protective Order's* Acknowledgment certifying these facts, are entitled to review materials under the *SIC Protective Order*.⁴⁹ Contrary to SIC's arguments, this does not shift the initial burden to SIC. Rather, a party seeking access to confidential materials must certify that it is properly entitled to that access. Only then does a party opposing access have the burden of showing that access is improper.

16. SIC also suggests that the time period for objection to an individual being able to have access to information pursuant to the *SIC Protective Order* should be the same as that used with respect to FOIA requests under section 0.461 of our rules.⁵⁰ We disagree. SIC's argument ignores the substantial differences between FOIA requests and requests for access to information pursuant to the *SIC Protective Order*.⁵¹ If a request made under our FOIA regulations is granted, the previously confidential material will be made available to the public.⁵² Parties who have a confidentiality interest in the materials requested are given 10 business days to provide reasons why they believe the materials should not be publicly released. This type of review may require a detailed review of the materials, which in many cases are voluminous, determining which portions of the materials should not be publicly released and which may, and providing any objections with particularity.⁵³ By contrast, the only questions that need to be considered when a person is seeking to review Confidential or Highly Confidential materials under a protective order is whether the Reviewing Party is participating in good faith and whether its representative is engaged in "competitive decision-making," questions a Submitting Party ordinarily is able to answer easily.⁵⁴ Further, all persons seeking to review confidential materials under a protective order have certified to the Commission that they are *not* engaged in competitive decision-making and, with regard to persons seeking to review Highly Confidential materials, are Outside Counsel or Outside Consultants.⁵⁵ Finally, the *SIC Protective Order* uses the same time periods for objecting that the Commission has used for almost two decades.⁵⁶ We therefore find that the provisions contained in the

⁴⁶ *Id.* at 5.

⁴⁷ *SIC Protective Order*, 32 FCC Rcd at 1854-57, 1858-59, paras. 2, 4, 10.

⁴⁸ *Id.* at 1856, 1858-59, 1860, paras. 4, 10, 14.

⁴⁹ *Id.*

⁵⁰ SIC Motion to Revise at 5.

⁵¹ *Id.*; see also *SIC Protective Order*, 32 FCC Rcd at 1859, para. 11.

⁵² See *Nat'l Archives and Records Admin. v. Favish*, 541 U.S. 157, 174 (2004).

⁵³ See, e.g., 47 C.F.R. § 0.461(d)(3).

⁵⁴ See *Rates for Inmate Calling Services*, Memorandum Opinion and Order, 31 FCC Rcd 2352, 2360 para. 22 (2016); *Applications of Charter Communications, Inc., Time Warner Cable Inc. and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations*, Order, 30 FCC Rcd 10360, 10371, para. 21 (2015).

⁵⁵ See *SIC Protective Order*, 32 FCC Rcd at 1865, Appendix B (Acknowledgment of Confidentiality).

⁵⁶ See, e.g., *Applications of America Online, Inc. and Time Warner, Inc. for Transfers of Control*, Order Adopting Protective Order, 15 FCC Rcd 6117, 6122 para. 5 (Cable Serv. Bur. 2000). We note that model protective orders that had been adopted by the Commission before 2000 often did not contain any provision allowing for the objection to reviewing parties. See, e.g., *Examination of Current Policy Concerning the Treatment of Confidential*

(continued....)

SIC Protective Order provide sufficient time for SIC to object to any persons seeking to review their confidential information and we find no reason to change established Commission precedent.⁵⁷

V. SIC OBJECTION TO DISCLOSURE OF INFORMATION PENDING RESOLUTION OF ITS MOTION TO REVISE PROTECTIVE ORDER

17. Having resolved SIC's Motion to Revise the *SIC Protective Order*, we dismiss as moot the SIC Objection to the disclosure of information pending resolution of the SIC Motion to Revise. At the same time, we take this opportunity to make clear that any objections SIC has regarding the disclosure of confidential information pursuant to the *SIC Protective Order* should follow the processes provided in the *SIC Protective Order*.⁵⁸ This process provides for specific actions within specific timeframes as a matter of settled precedent (some of which have already been discussed in detail above), and we intend to follow those procedures. For example, those procedures contain provisions for a party to object to an individual reviewing its confidential information and for the resolution of such an objection.⁵⁹ If SIC wishes to object to a particular individual obtaining access to its confidential information, it must file an objection pursuant to those procedures.⁶⁰

VI. ORDERING CLAUSE

18. Accordingly, IT IS ORDERED, 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, 0.291,⁶¹ this Memorandum Opinion and Order and Erratum IS ADOPTED, and it IS EFFECTIVE upon adoption.

19. IT IS FURTHER ORDERED that the Sandwich Isles Communications, Inc. Motion to Revise Protective Order filed on March 21, 2017, is GRANTED IN PART and DENIED IN PART.

20. IT IS FURTHER ORDERED that the Sandwich Isles Communications, Inc. Objection to Disclosure of Information Pending Resolution of its Motion to Revise Protective Order filed on April 13, 2017, is DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Wireline Competition Bureau

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Information Submitted to the Commission, Report and Order, 13 FCC Rcd 24816, App. C (1998); *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, Report and Order, 12 FCC Rcd 2170, App. B (1997).

⁵⁷ See *supra* Section V (addressing the SIC Objection).

⁵⁸ *SIC Protective Order*, 32 FCC Rcd at 1858-59, para. 10, n14; see also generally *Charter Transfer Order*.

⁵⁹ See *SIC Protective Order*, 32 FCC Rcd at 1859, para. 11.

⁶⁰ We note that in the SIC Objection, SIC recognized that AT&T, DHHL and NECA filed Acknowledgments pursuant to the *SIC Protective Order*. While SIC argues that only DHHL should be entitled to review its confidential information, SIC states that it nevertheless provided AT&T and DHHL with unredacted copies of the May 13, 2016 USAC Final Audit Report and SIC's Response to the USAC Report. SIC Objection at 3.

⁶¹ See also 47 U.S.C. § 155(c).

APPENDIX A

ERRATUM

We amend the *SIC Protective Order*⁶² as follows:

1. The last sentence of Paragraph 3, on page 1855, is revised to read as follows: “This Sandwich Isles Protective Order makes no changes to the *Third Protective Order* or any other protective order previously adopted in WC Docket No. 10-90 or CC Docket No. 96-45, and those previously adopted protective orders do not apply to the Related Proceedings.”
2. In Paragraph 4, page 1856, the number “9” in the definition of “Reviewing Party” is corrected to read “10.”
3. In Paragraph 4, page 1856, the number “154” in the definition of “Reviewing Party” is corrected to read “15.”
4. In Paragraph 14, page 1860, the first sentence is revised to read as follows: “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 one or more of 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.”
5. In Paragraph 16, page 1860, the first sentence is revised to read as follows: “A party making a filing in one or more of 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.

⁶² *SIC Protective Order*, 32 FCC Rcd at 1855-56, 1860 paras. 3-4, 14, 16.