

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Sandwich Isles Communications, Inc. ) WC Docket No. 09-133  
Petition for Declaratory Ruling )

**COMMENTS OF VERIZON<sup>1</sup> AND VERIZON WIRELESS ON  
APPLICATION FOR REVIEW AND OPPOSITION TO PETITION FOR  
RECONSIDERATION**

The Commission should grant AT&T's Application for Review of the *Bureau Order* and deny Sandwich Isles' Petition for Reconsideration.<sup>2</sup> The *Bureau Order* incorrectly gave Sandwich Isles an access charge windfall that must ultimately be paid by customers of other carriers. Encouraging other local exchange carriers (LECs) to abuse regulated intercarrier compensation payments in the same way will only reduce funding available to expand broadband availability in areas where it is truly lacking.

DISCUSSION

1. AT&T requests reversal of the *Bureau Order* granting in part Sandwich Isles' petition to overrule a NECA decision that correctly excluded from the NECA access charge pool more than \$15 million in annual costs to lease vast amounts of excess capacity on a new undersea

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<sup>1</sup> In addition to Verizon Wireless, the Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

<sup>2</sup> *Sandwich Isles Communications, Inc. Petition for Declaratory Ruling*, Declaratory Ruling, 25 FCC Rcd 13647 (2010) ("*Bureau Order*"); Application for Review of AT&T, Inc., *Sandwich Isles Communications, Inc. Petition for Declaratory Ruling*, WC Docket No. 09-133 (Oct. 28, 2010) ("*Application for Review*"); Petition for Reconsideration of Sandwich Isles Communications, Inc., *Sandwich Isles Communications, Inc. Petition for Declaratory Ruling*, WC Docket No. 09-133 (Oct. 29, 2010) ("*Petition for Reconsideration*").

cable network. Application for Review at 1; *Bureau Order* ¶ 5. The *Bureau Order* allows Sandwich Isles to recover 50 percent of these exorbitant costs through the NECA pool—a “half-a-loaf” approach. *Bureau Order* ¶ 9. There remains no basis for Sandwich Isles’ request, trimmed by half or otherwise.

Until the *Bureau Order*, this situation stood as a rare example of where the meager safeguards to prevent excessive NECA access charge pool payments actually worked. Costs included in the NECA pool, which are used to determine access rates in the NECA tariffs, are typically not subject to meaningful scrutiny. NECA’s required analysis as to whether those costs are just and reasonable based on the “used and useful doctrine and its associated prudent expenditure standard” is largely invisible to those carriers (e.g., IXCs and wireless carriers) that must pay access charges to NECA LECs.<sup>3</sup>

Indeed, it is highly unusual for NECA to actually reject a carrier’s proposed costs in a way that ever becomes public. If the NECA cost review process means anything, then the Commission must defer to NECA’s refusal to include clearly exorbitant costs such as the expenses associated with Sandwich Isles’ undersea cable network. As the Commission’s designated agent for these purposes, NECA’s role—its most important function—is to review LEC data and to exclude costs that violate the Commission’s “used and useful” and “prudent expenditure” standards. See *Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Processes, Consideration of NECA’s Incentive Compensation Plan*, Report and Order and Order to Show Cause, 10 FCC Rcd 6243, ¶¶ 5, 36, 40 (1995) (directing NECA to, among other things, “correct any data that it reasonably believes do not comply with [Commission] rules.”).

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<sup>3</sup> *Establishing Just and Reasonable Rates for Local Exchange Carriers*, Notice of Proposed Rulemaking, 22 FCC Rcd 17989, n.147 (2007) (citations omitted).

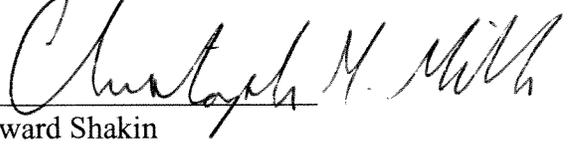
In this instance, there is no doubt that Sandwich Isles is attempting to abuse the system. Sandwich Isles' territory consists of 69 sparsely populated, non-contiguous areas scattered across six volcanic islands. In 2009 Sandwich Isles served just under 2,200 lines and received approximately \$24 million in high cost Universal Service Fund (USF) support—nearly \$11,000 per line. *See* Federal Communications Commission Response to United States House of Representatives Committee on Energy and Commerce Universal Service Fund Data Request of June 15, 2010, Part 3 – Largest Per-Line Subsidies, by Study Area, <http://energycommerce.house.gov/documents/20100708/Request3.pdf> , at 1. Among carriers with a material number of lines, Sandwich Isles receives more per-line USF support than any carrier in the country. To further gold-plate its network, Sandwich Isles constructed an entire new undersea cable network to serve these few customers with terrestrial technologies and is attempting here to saddle customers of other carriers with the bill through a huge increase in NECA pool receipts. Sandwich Isles admits that the vast majority of capacity on this new cable network is not needed to offer regulated services. Application for Review at 2-3. And the Sandwich Isles cable network is duplicative of four other undersea cables serving the Hawaiian Islands with sufficient capacity to meet voice and data needs in the state. *See, e.g.*, Letter from Suzanne Yelen, counsel to Hawaiian Telecom, to Marlene Dortch, FCC, *Sandwich Isles Communications, Inc. Petition for Declaratory Ruling*, WC Docket No. 09-133 (Aug. 11, 2010).

The *Bureau Order* acknowledges the “current lack of use of the [Sandwich Isles] cable and a lack of substantial record evidence concerning future demand. . .” *Bureau Order* ¶ 17. Nonetheless, because of other vague “equitable considerations” (e.g., Sandwich Isles’ “special role” in Hawaii) Sandwich Isles is now allowed to collect half of its requested increase in NECA pool receipts. *Id.* Such a marked departure from the used and useful and prudent expenditure

standard sets a dangerous precedent for other intercarrier compensation abuses at time when the system can least afford it. Access charges are a substantial cost that must be paid by carriers (and ultimately their customers) that terminate traffic to LECs such as Sandwich Isles. Allowing LECs to abuse the system in this way, inflating costs to increase their intercarrier compensation receipts, flows through to consumers and unfairly takes resources away from important priorities—such as expanding broadband availability in areas where it is truly lacking. There must be a reasonable limit to access charge demands by NECA LECs. The Commission should reverse the Bureau and reinstate the NECA decision.

2. For its part, Sandwich Isles requests reconsideration of the *Bureau Order*, primarily because the LEC claims that other carriers also have a substantial amount of spare fiber built into their networks. Petition for Reconsideration at ii-iii. This is hardly an answer. Even if NECA has, in the past, allowed other carriers to include excessive costs in the NECA pool there is no reason to compound such an error in this instance. There is a clear standard: Network expenses must be for used and useful purposes as determined by the prudent expenditure test. Sandwich Isles admits and the Bureau acknowledges that capacity on the this new cable network vastly exceeds what Sandwich Isles needs to offer regulated services, even assuming significant growth in its customer base. *Id.* And, as NECA initially determined, there is no reason Sandwich Isles could not lease capacity on one of the other undersea cables serving the Hawaiian islands at far less expense. Sandwich Isles presents nothing to reconsider.

Respectfully submitted,

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