

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)

PROTECTIVE ORDER

Adopted: August 26, 2009

Released: August 26, 2009

By the Acting Chief, Wireline Competition Bureau:

1. On June 26, 2009, Sandwich Isles Communications, Inc. (Sandwich Isles) filed a petition requesting that the Commission issue a declaratory ruling that certain circuit lease expenses incurred by Sandwich Isles are “used and useful” in the provision of interstate service, and also requesting the Commission to direct the National Exchange Carrier Association (NECA) to accept such costs for inclusion in, and settlement from, its traffic sensitive pool.¹ Initial comments are due in this proceeding on August 31, 2009.²

2. On August 10, 2009, NECA and Sandwich Isles filed a Joint Motion for a Protective Order, stating that they anticipate that “information filed with comments pertaining to either Sandwich Isles or another commenter in this proceeding is likely to contain confidential information.”³ Accordingly, to facilitate review of any such documents by the Commission and interested parties, the Bureau hereby adopts this Protective Order to ensure that any confidential or proprietary documents submitted in this proceeding are afforded adequate protection. The Protective Order does not constitute a resolution of the merits concerning whether any information submitted under it would be released publicly by the Commission upon a proper request under the Freedom of Information Act (FOIA) or otherwise.

¹ Sandwich Isles Communications, Inc., Petition for Declaratory Ruling, WC Docket No. 09-133 (filed June 26, 2009) (Petition).

² On July 27, 2009, the Wireline Competition Bureau (Bureau) issued a Public Notice seeking comment on the Petition, establishing comment deadlines of August 17, 2009 for initial comments and August 27, 2009 for reply comments. See *Comments Sought on Petition for Declaratory Ruling of Sandwich Isles Communications, Inc.*, WC Docket No. 09-133, Public Notice, DA 09-1622 (WCB rel. July 27, 2009). On August 3, 2009 NECA filed a Motion for Extension of Time to file comments. See *Sandwich Isles Communications, Inc. Petition for Declaratory Ruling, Motion for Extension of Time*, WC Docket No. 09-133 (filed Aug. 3, 2009). This motion was granted by the Bureau and initial comments now are due August 31, 2009 and reply comments are due September 10, 2009. See *Sandwich Isles Communications, Inc. Petition for Declaratory Ruling*, WC Docket No. 09-133, Order, DA 09-1754 (WCB rel. Aug. 5, 2009).

³ Sandwich Isles Communications, Inc., Petition for Declaratory Ruling, Joint Motion for Protective Order, WC Docket No. 09-133 (filed Aug. 10, 2009).

3. Non-Disclosure. Except with the prior written consent of the person originally designating a document to be stamped as a confidential document, or as hereinafter provided under this order, no stamped confidential document may be disclosed to any person. A “stamped confidential document” means any document which bears the legend (or which shall otherwise have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 09-133” to signify that it contains information believed to be subject to protection under the Commission’s rules. For purposes of this order, the term “document” means all written, recorded, electronically stored, or graphic material, whether produced or created by a party or another person, whether produced pursuant to the Commission’s rules, pursuant to subpoena, by agreement, or otherwise. Documents that quote, summarize, or contain materials entitled to protection may be accorded status as a stamped confidential document, but, to the extent feasible, shall be prepared in such a manner that the confidential information is bound separately from that not entitled to protection.

4. Permissible Disclosure. Notwithstanding paragraph 3, stamped confidential documents may be disclosed subject to the provisions of subparagraphs (a) and (b), to the following persons if disclosure is reasonably necessary for such persons to render professional services in this proceeding: counsel of record for parties that may file in this proceeding, including in-house counsel who are actively engaged in the conduct of this proceeding; partners, associates, secretaries, paralegal assistants, and employees of such counsel; outside consultants or experts retained to render professional services in this proceeding, provided that they are under the supervision of the counsel of record; and in-house economists and regulatory analysts, provided that they are under the supervision of the counsel of record. Such documents may also be disclosed to relevant employees of regulatory agencies, Commission employees involved in this proceeding, and to any person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper.

(a) Notwithstanding any other provision of this order, before any disclosure shall occur, any individual (other than a Commission employee) to whom confidential information is disclosed must certify in writing that he/she has read and understands this Protective Order, agrees to abide by its terms, and understands that unauthorized disclosures of the stamped confidential documents are prohibited. A copy of each such certification shall be provided to the party that designated the information confidential. (*See* Attachment for a model certification.)

(b) Before disclosing a stamped confidential document to any person who is listed in paragraph 4 (other than an attorney) and who is employed by a competitor or potential competitor of the party that so designated the document, the party seeking such disclosure shall give at least five days’ advance notice in writing to the counsel who designated such information as confidential, stating the names and addresses of the person(s) to whom the disclosure will be made, identifying with particularity the documents to be disclosed, and stating the purposes of such disclosure. Such notice shall also be filed via the Commission’s Electronic Comment Filing System (ECFS) in this docket. No such disclosure shall be made within the five-day period. If, within the five-day period, a motion is filed objecting to the proposed disclosure, disclosure is not permissible until the Commission has denied such motion and disclosure is permitted under 47 C.F.R. § 0.459. Any such motion shall be hand-served on the party seeking such disclosure.

5. Access to Confidential Information. Any party producing confidential information pursuant to this order shall designate a Washington, D.C., location and such other locations as may be convenient at which all parties shall be permitted access to and review of requested confidential information pursuant to the other terms of this order, or pursuant to alternative arrangements agreed upon by the parties. Except as provided in paragraph 6 below, any such access or review may be limited to regular business hours after reasonable notice by the requesting party.

6. Information in Electronic Format. Any person entitled to access confidential information pursuant to this order, upon request, is entitled to one searchable electronic copy of information contained, recorded, or electronically stored on a CD-ROM, DVD, flash drive, portable hard drive or other electronic storage device. The disk or other medium containing confidential information in electronic format shall be physically sent to the person requesting access; it shall not be transmitted electronically.

a. A person in receipt of confidential information in electronic format shall load the information onto a computer solely for the purpose of analysis in connection with this proceeding and for no other purpose. The original disk or other storage medium shall be stored in a secure location and a record kept of any persons who access it. Only persons who have signed the Acknowledgement to this Protective Order may be given access to the disk or other medium.

b. Once loaded onto a computer, the files containing confidential information shall be password protected immediately. The password shall be given only to persons who have signed the Acknowledgement. The confidential information may not be stored on a computer after being analyzed. Consequently, confidential information should not be stored in computer memory that is copied, such as to a network's back-up or archival storage. After the analysis is complete, the results of such analysis may be stored by saving the results (but not the underlying confidential information) to a mobile data storage medium. All files containing confidential information shall be deleted from the computer as soon as practicable.

7. Confidential Information Filed in the Record. Stamped confidential documents and other confidential information may be offered in the record of this proceeding, provided that such confidential information is furnished under seal. The party submitting confidential documents shall ensure that each page bears the legend "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 09-133." All parties should submit a searchable electronic copy of filings containing confidential information to Pamela Arluk (pamela.arluk@fcc.gov) and Lynne Hewitt Engledow (lynne.engledow@fcc.gov).

8. Commission Treatment of Confidential Information. If confidential documents are submitted to the Commission in accordance with paragraph 7, the materials shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents. The Commission may, *sua sponte* or by petition, determine that all or part of the information claimed by the producing party to be confidential is not entitled to such treatment. *See generally* 47 C.F.R. § 0.459.

9. Use. Persons obtaining access to stamped confidential documents under this order shall use the information only in the conduct of this proceeding and any judicial proceeding arising therefrom, and shall not use such information for any other purpose, including business, governmental, commercial, or other administrative or judicial proceedings. Persons obtaining access to confidential information under the terms of this order may disclose, describe, or discuss the confidential information in any pleading filed in this proceeding, provided that such pleading is stamped confidential and filed under seal, and provided that a separate public version is filed in which all confidential information is redacted. Persons filing pleadings under seal based on confidential information provided by others shall serve such pleadings by hand or overnight delivery on the party originally requesting confidential treatment of the underlying information.

10. Subpoena by Courts or Other Agencies. If a court or another administrative agency subpoenas or orders production of stamped confidential documents which a party has obtained under terms of this order, such party shall promptly notify the party and any other person who designated the document as confidential of the pendency of such subpoena or order.

11. Client Consultation. Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients regarding the proceeding in which a confidential document is submitted and, in the course thereof, relying generally on examination of stamped confidential documents submitted in that proceeding; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure of any item so designated except pursuant to the procedures of paragraph 4 above.

12. Prohibited Copying. If a document contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited." Application for relief from this restriction against copying may be made to the Commission, with notice to counsel so designating the document.

13. Non-Termination. The provisions of this order shall not terminate at the conclusion of this proceeding.

14. Modification Permitted. Nothing in this order shall prevent any party or other person from seeking modification of this order.

15. Responsibility of Attorneys. The attorneys of record are responsible for employing reasonable measures to control, consistent with this order, duplication of, access to, and distribution of copies of stamped confidential documents. Parties shall not duplicate any stamped confidential document except working copies and for purposes of filing at the Commission under seal.

16. Return of Confidential Documents. Within two weeks after the conclusion of this proceeding and any administrative or judicial review, persons described by paragraph 4 shall destroy or return to the submitting party stamped confidential documents and all copies of the same. No material whatsoever derived from stamped confidential documents may be retained by any person having access thereto, except counsel (as described in paragraph 4) may retain, under the continuing strictures of this Protective Order, two copies of pleadings (one of which may be in electronic format) containing confidential information prepared (in whole or in part) by that party and one copy of orders issued by the Commission or Bureau containing confidential information. All counsel retaining any such documents containing confidential information shall make certification of compliance herewith and shall deliver the same to counsel for the submitting party not more than three weeks after conclusion of this proceeding and any administrative or judicial review. The provisions of this paragraph regarding retention of stamped confidential documents and copies of same shall not be construed to apply to the Commission or its staff.

17. Penalties. In addition to any other penalties or remedies authorized under the Communications Act, the Commission's rules, the common law or other source of law, any failure to abide by the terms of this order may result in dismissal of a party's pleadings, or censure, suspension, or disbarment of the attorneys involved, *see* 47 C.F.R. § 1.24, or possible referral to the relevant local bar.

18. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 154(j), and pursuant to authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291,⁴ the Protective Order IS ADOPTED, effective upon its release.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Acting Chief, Wireline Competition Bureau

⁴ See 47 U.S.C. § 155(e).

ATTACHMENT
DECLARATION

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

I, _____,
 hereby declare under penalty of perjury that I have read the Protective Order in this proceeding, and that I agree to be bound by its terms pertaining to the treatment of confidential information submitted by parties to this proceeding. I understand that the confidential information shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only for purposes of the proceedings in this matter. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission. I acknowledge that this Protective Order is also a binding agreement with the submitting party.

(signed) _____

(name) _____

(representing) _____

(title) _____

(employer) _____

(address) _____

(phone) _____

(date) _____