



# PUBLIC NOTICE

Federal Communications Commission  
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**WIRELINE COMPETITION BUREAU SEEKS TO REFRESH RECORD IN WC DOCKET NO. 09-133 AND SEEKS COMMENT ON AT&T APPLICATION FOR REVIEW, SANDWICH ISLES PETITION FOR RECONSIDERATION, AND NECA PETITION FOR CLARIFICATION AND/OR DECLARATORY RULING**

**WC Docket No. 09-133**

**Comment Date: April 18, 2016**

**Reply Comment Date: April 28, 2016**

On September 29, 2010, the Wireline Competition Bureau (Bureau) released a *Declaratory Ruling* addressing issues related to Sandwich Isles Communications, Inc. (Sandwich Isles) and its cable network lease costs submitted for cost recovery through the National Exchange Carrier Association (NECA) pool.<sup>1</sup> At issue in the proceeding was whether certain lease expenses incurred by Sandwich Isles were costs that were “used and useful” and could be included for recovery in the NECA pool.<sup>2</sup>

Sandwich Isles filed a Petition for Reconsideration of the *Declaratory Ruling* in 2010,<sup>3</sup> and AT&T filed an Application for Review that same year.<sup>4</sup> More recently, NECA filed a Petition for

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<sup>1</sup> *Sandwich Isles Communications, Inc. Petition for Declaratory Ruling*, WC Docket No. 09-133, Declaratory Ruling, 25 FCC Rcd 13647 (WCB 2010) (*Declaratory Ruling*).

<sup>2</sup> In the *Declaratory Ruling* the Bureau found it was reasonable to include 50% of “the lease expenses subject to dispute” in the revenue requirement, relying on a finding of certain “equitable considerations.” *Declaratory Ruling*, 25 FCC Rcd at 13654. The “lease expenses subject to dispute” which were allowed to be included were (1) the costs for Sandwich Isles to lease the Paniolo cable network each year, including the maintenance and insurance costs Sandwich Isles was responsible for under the terms of the lease agreement, to the extent that they were not attributable to actual usage of the cable; and (2) certain engineering costs associated with the Paniolo cable network. The order excluded from the “lease expenses subject to dispute” (1) those expenses related to the actual usage of the Paniolo cable network for the provision of services covered by the NECA tariff, 100 percent of which already would be included in Sandwich Isles’ revenue requirement even absent the *Declaratory Ruling*, and (2) those expenses associated with actual usage of the cable to provide services not encompassed by the NECA tariff, including, among other things, non-regulated services and intrastate services. *Declaratory Ruling*, 25 FCC Rcd at 13650, para. 9 & n.30.

<sup>3</sup> Sandwich Isles Communications Petition for Reconsideration, WC Docket No. 09-133 (filed Oct. 29, 2010) (Sandwich Isles Petition for Reconsideration).

Clarification and/or Declaratory Ruling in this docket, seeking clarification regarding particular conclusions in the *Declaratory Ruling*.<sup>5</sup> The petitions and application remain pending.

Recent filings in the record indicate new or changed facts and circumstances that may be relevant to the Commission's consideration.<sup>6</sup> We find it appropriate to refresh the record in this proceeding. Accordingly, we invite interested parties to comment on the outstanding petitions and application, as well as provide any and all updated information relevant to the consideration of these matters.<sup>7</sup>

Pursuant to sections 1.2 and 1.419 of the Commission's rules, 47 CFR §§ 1.2, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments and reply comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: <http://apps.fcc.gov/ecfs>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

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<sup>4</sup> Application for Review of AT&T Inc., WC Docket No. 09-133 (filed Oct. 28, 2010) (AT&T Application).

<sup>5</sup> The National Exchange Carrier Association Petition for Clarification and/or Declaratory Ruling, WC Docket No. 09-133 (filed Feb. 6, 2015) (NECA Petition for Clarification). In 2010, the Commission sought comment on AT&T's Application and Sandwich Isles' Petition for Reconsideration. *See Comment Sought on AT&T Application for Review and Sandwich Isles Petition for Reconsideration*, WC Docket No. 09-133, Public Notice, 25 FCC Rcd 15589 (2010).

<sup>6</sup> *See, e.g.*, Letter from Robin Puanani Danner, Chairman, Sovereign Councils of the Hawaiian Homelands Assembly, to Ms. Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-133 et al., at 1 (filed Nov. 6, 2015); Letter from Henry Hulquist, Vice President, Federal Regulatory, AT&T Services, Inc., to Ms. Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-133, at 1 (filed Nov. 4, 2015) (asserting that certain foundational equitable considerations in the Declaratory Ruling are now unsupported due to "subsequent events"); Letter from Brian Benison, Director, Federal Regulatory, AT&T Services, Inc., to Ms. Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-133, at 1-2 (filed Aug. 27, 2015) (noting a recent change in USAC payments to Sandwich Isles, as well as alleged "accounting irregularities" and "legal troubles of the Sandwich Isles management").

<sup>7</sup> *See* Sandwich Isles Petition for Reconsideration; AT&T Application; and NECA Petition for Clarification.

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The proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>8</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

For further information, please contact Rhonda Lien, Pricing Policy Division, Wireline Competition Bureau, at (202) 418-0918 or via email at [rhonda.lien@fcc.gov](mailto:rhonda.lien@fcc.gov).

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<sup>8</sup> 47 C.F.R. § 1.1200 *et seq.*