



for Review,<sup>5</sup> both of which sought the Federal Communications Commission’s (FCC or Commission) assistance in reigning in what was widely viewed as rampant abuse of the Universal Service Fund by SIC. In September 2010, the Wireline Competition Bureau (WCB) of the FCC granted SIC a special 50 percent allowance in the revenue requirements of the NECA for “disputed lease expenses” associated with a submarine cable and land-based network (cable system).<sup>6</sup> This special allowance was granted, even though the Commission recognized that the expenses were not justified by current and expected future customer demand.<sup>7</sup> In response to the WCB’s Order, AT&T filed its Application for Review, arguing that, among other things, the Order “saddles ratepayers of Sandwich Isles’ regulated services with millions of dollars in expenses that do not – and will not ever – benefit them in any way.”<sup>8</sup>

Subsequent to the WCB Order, the SIC lease was the subject of dispute before the Commission on a number of other occasions in this ongoing matter and a separate proceeding seeking waiver of the \$250 per line cap on universal service funds.<sup>9</sup> After discovering that SIC had discontinued making lease payments to the closely-related Paniolo Cable, despite submitting the lease expenses as a legitimate revenue requirement expense, NECA sought guidance from the

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<sup>5</sup> Application for Review of AT&T, Inc., WC Docket No. 09-133, 2 (filed Oct. 28, 2010).

<sup>6</sup> Sandwich Isles Communications, Inc., 25 FCC Rcd 13647 (WCB 2010), app. for rev. pending (*Declaratory Ruling*). The “disputed lease expenses” also include related maintenance and engineering expenses.

<sup>7</sup> *Id.*, ¶ 17.

<sup>8</sup> Application for Review of AT&T, Inc., WC Docket No. 09-133, 2 (filed Oct. 28, 2010).

<sup>9</sup> Connect America Fund, Sandwich Isles Communications, Inc. Petition for Waiver of Section 54.302 of the Commission’s Rules, WC Docket No. 10-90, 28 FCC Rcd 6552, ¶ 19 (Wir. Comp. Bur. 2013).

Commission as to whether those missed lease payments should have been included in the revenue requirement pursuant to the Order.<sup>10</sup>

Finally in December 2016, the Commission acted and issued the SIC Order and SIC NAL which determined that, among other things, SIC misallocated Category 1 costs, which led to an overpayment of USF support of nearly \$27 million dollars.<sup>11</sup> In its Petition, SIC argues that the Commission failed to consider some of the facts it placed into the record.<sup>12</sup> However, there is no new evidence or argument made in the Petition that requires reconsideration. All of the facts SIC raises in its Petition were part of the record at the time that the Commission made its decision and by virtue of that fact they were available for the Commission to consider. The Commission simply did not find them persuasive. The SIC Order came after a long ongoing proceeding during which a multitude of evidence was presented to the Commission showing rampant misuse of funds both from a criminal and civil perspective. By the time that the Commission adopted the SIC Order and SIC NAL, it had already suspended High Cost USF Support to Sandwich Isles.<sup>13</sup> In fact, a full year before the Order at issue was adopted, the Commission issued a Public Notice specifically reminding carriers that they are obligated to use Universal Service Fund support only for its intended purposes of maintaining and extending

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<sup>10</sup> National Exchange Carrier Association, Inc., Petition for Clarification and/or Declaratory Ruling, WC Docket No. 09-133, 10-11 (dated Feb. 6, 2015).

<sup>11</sup> *SIC Order* at 13020.

<sup>12</sup> *Petition* at 4-7.

<sup>13</sup> See USAC, Funding Disbursement Search for Sandwich Isles, *available at* <http://www.usac.org/hc/tools/disbursements/default.aspx>; 2013 NECA Report, *available at* <http://go.usa.gov/3uPt4>.

communications service to rural, high-cost areas of the nation.<sup>14</sup> That Public Notice points out a specific list of expenditures that are not necessary to the provision of supported services and therefore may not be recovered through universal service support, including personal entertainment and many other of the uses that are unrelated to a carriers' operations, for which one of its principles, Albert S. Hee, was found to have used the support.<sup>15</sup> Although neither Hee nor Sandwich Isles is mentioned in the Public Notice, it is clear, based on this "reminder," that Sandwich Isles is an example of a company that has flouted the Commission's rules.

Throughout the ongoing proceedings involving SIC, the Commission has made it clear that it will not tolerate an entity that flouts the Commission's rules and policies. As such the Commission should not now walk back any of the determinations in this instance either by reconsidering the SIC Order.

USTelecom urges the Commission to deny the Petition for Reconsideration and ensure that the NAL is enforced against SIC.

Respectfully submitted,

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<sup>14</sup> *All Universal Service High Cost Support Recipients are Reminded That Support Must Be Used For Its Intended Purpose*, Public Notice, WC Docket No. 10-90 & 14-58, FCC 15-133 (Oct. 19, 2015).

<sup>15</sup> *Id.*