

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

In the Matter of
Universal Service Contribution Methodology
Request for Review of Decision of the Universal
Service Administrator by Mark Twain Telephone
Company
WC Docket No. 10-90
WC Docket No. 06-122

ORDER

Adopted: July 15, 2022

Released: July 15, 2022

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we address a request for review filed by Mark Twain Telephone Company (Mark Twain) challenging a Universal Service Administrative Company (USAC) decision requiring the carrier to charge a Subscriber Line Charge (SLC) and to contribute to the Universal Service Fund (USF or Fund) based on this interstate revenue. We conclude that Mark Twain is not required by the Commission's rules to charge its end-user customers an itemized SLC, but Mark Twain, nevertheless, continues to have an obligation to contribute to the Fund based on the interstate-allocated portion of its local loop revenues and to report those revenues on the FCC Form 499-A. Accordingly, Mark Twain's request for review is denied in part and granted in part.

II. BACKGROUND

A. Contributions to the Universal Service Fund

2. Section 254(d) of the Communications Act of 1934, as amended (the Act), directs that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service." Section 254(d) further provides that "[a]ny other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires." To this end, the Commission has determined that common carriers and certain other service providers that provide

1 The SLC is a flat-rated, per-line monthly end-user charge that allows local exchange carriers (LECs) to recover from end-users a portion of the interstate costs associated with the local loop, the connection between an end-user and the LEC.

2 Mark Twain Rural Telephone Company Petition for Review of Decision of USAC, WC Docket Nos. 10-90 and 06-122 (filed Nov. 8, 2021) (Request for Review).

3 47 U.S.C. § 254(d).

4 Id.

interstate telecommunications to others for a fee must contribute to the USF based on their interstate and international end-user telecommunications revenues.⁵

3. Section 54.706 of the Commission's rules requires all entities that provide interstate telecommunications to the public for a fee to contribute to the Commission's universal service support mechanisms.⁶ It also states that certain other interstate telecommunications providers must contribute, and sets forth a non-exclusive list of services that the Commission considers as "interstate telecommunications" subject to the contributions, including "access to interexchange service."⁷ In addition to local exchange service, all LECs provide their customers with interexchange access services or the ability to place and receive interstate calls.⁸

4. Pursuant to the Commission's rules, contributors report their revenues for USF contribution purposes by filing FCC Forms 499-A and 499-Q with USAC.⁹ USAC, as the designated entity responsible for administering the universal service support mechanisms,¹⁰ reviews these filings, verifies the information provided by the contributors and bills contributors for their universal service contributions.¹¹

⁵ See 47 CFR § 54.706; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9179, para. 787 (1997) (*Universal Service First Report and Order*) (subsequent history omitted). The Commission also requires certain other providers of interstate telecommunications to contribute to the universal service fund. See, e.g., *Universal Service Contribution Methodology et al.*, WC Docket Nos. 06-122 et al., Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (requiring interconnected voice over Internet protocol providers to contribute to the universal service fund because they are providers of interstate telecommunications). The Act and the Commission's rules do, however, exempt certain carriers from the contribution requirement. For example, carriers are not required to contribute directly to the universal service fund in a given year if their contribution for that year would be less than \$10,000. 47 CFR § 54.708. Likewise, carriers with purely international revenues are not required to contribute. *Universal Service First Report and Order*, 12 FCC Rcd at 9174, para. 779. Certain government entities, broadcasters, schools, libraries, systems integrators, and self-providers are also exempt from the contribution requirement. 47 CFR § 54.706(d). Unless a carrier meets one of the exemptions, however, it must contribute to the universal service fund.

⁶ 47 CFR § 54.706(a).

⁷ *Id.* § 54.706(a)(5).

⁸ See *Universal Service First Report and Order*, 12 FCC Rcd at 8818, para. 76 (defining "access to interexchange service" as "the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network"); *Nat'l Ass'n of Reg. Util. Comm'rs v. FCC*, 737 F.2d 1095, 1113 (D.C. Cir. 1984) (finding "the same loop that connects a telephone subscriber to the local exchange necessarily connects that subscriber into the interstate network as well").

⁹ 47 CFR § 54.711(a) (setting forth reporting requirements in accordance with Commission announcements in the Federal Register). Contributors report historical revenue on the annual FCC Form 499-A, which is generally filed on April 1 each year. See Universal Service Administrative Company, Schedule of Filings, at <https://www.usac.org/service-providers/contributing-to-the-usf/when-to-file/> (last visited July 15, 2022) (USAC Form 499 Filing Schedule). Contributors project future quarters' revenue on the quarterly FCC Form 499-Q, which is generally filed on February 1, May 1, August 1, and November 1. See USAC Form 499 Filing Schedule.

¹⁰ See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-21, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400, 18423-24, para. 41 (1997) (*Universal Service Second Order on Reconsideration*); 47 CFR § 54.701.

¹¹ 47 CFR §§ 54.711(a), 54.702(b).

5. In the 1997 *Universal Service Second Order on Reconsideration*, the Commission set forth the specific methodology for carriers to use to compute their USF contributions.¹² Filers are required to allocate their total telecommunications revenues among the intrastate, interstate, and international jurisdictions based on information from their books of account or other internal data reporting systems, where possible.¹³ It is well-established that where the amount of intrastate, interstate, and international revenues cannot be determined directly from the corporate books of account or subsidiary records, the Commission's orders and the FCC Form 499 Instructions direct filers to provide good-faith estimates of those amounts.¹⁴ Contributors may derive their estimates using a method that they, in good faith, believe will yield a reasonably accurate result. Contributors must document how they calculated their estimates and make such information available to the Commission or Administrator upon request.¹⁵

B. The Subscriber Line Charge

6. All LECs incur costs from providing the local loop, the connection between an end-user and the LEC, that are necessarily reflected in their total revenues.¹⁶ Unlike other parts of service, the costs—and the revenues reflecting the costs—of providing the local loop do not depend on the amount of traffic.¹⁷ The Commission created the end user common line charge, also known as the Subscriber Line Charge or SLC—a flat-rated, per-line monthly end-user charge—to allow incumbent LECs to recover

¹² *Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18498-18513, App. C (Appendix A to Universal Service Worksheet, FCC Form 457).

¹³ *Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18512, App. C; *see also* 2022 Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A (2022 Form 499-A Instructions) at 40-41.

¹⁴ *See* 47 CFR § 54.711(a); *Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12444, 12453, para. 21 (1997) (concluding that contributors that cannot derive interstate revenues from their books of account, or that cannot derive the line-by-line revenue breakdowns required by FCC Form 499-A from their books of account, may report good faith estimates of these figures); *Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18512, App. C; 2022 Form 499-A Instructions at 40-41 (where a filer can determine the precise amount of revenues that it has billed for interstate and international services it should enter those amounts on the Worksheets. If the allocation of revenues cannot be determined directly from corporate books of account or subsidiary records, filers may provide on the Worksheet good-faith estimates of these figures).

¹⁵ *See* 47 CFR § 54.711(a); *Universal Service Second Order on Reconsideration*, 12 FCC Rcd at 18512, App. C; 2022 Form 499-A Instructions at 40-41.

¹⁶ *Nat'l Ass'n of Reg. Util. Comm'rs*, 737 F.2d at 1113-15 (explaining that “[e]very telephone subscriber is automatically connected through the same subscriber plant into both the local exchange and the interstate network. No subscriber can avoid ‘causing’ those costs of its telephone line allocated to the interstate jurisdiction. . . . A subscriber’s choice not to make or receive interstate calls . . . would not reduce the costs of that subscriber’s loop; the local telephone plant costs would remain unchanged, as would the need to recover those costs.”). *See, e.g., AT&T Corp., MCI Telecoms. Corp. et al. v. Bell Atlantic – Pennsylvania*, File No. E-95-006 et al., Memorandum Opinion and Order, 14 FCC Rcd 556, 559, para. 4 (1998) (“A common line, sometimes called a ‘local loop,’ connects an end user’s home or business to a LEC central office. A characteristic feature of a common line is that it enables the end user to complete local as well as interstate and foreign calls.”) (footnotes omitted), *recon. denied*, 15 FCC Rcd 7467 (2000). Carriers that cannot recover the entire portion of these costs from their end users may, after assessing access charges to interexchange carriers, receive high-cost universal service support. *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17987, para. 905 (2011) (*USF/ICC Transformation Order*), *pets. for review denied sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

¹⁷ *1997 Access Charge Reform et al.*, CC Docket Nos. 96-262 et al., First Report and Order, 12 FCC Rcd 15982, 15992, para. 23 (1997) (*1997 Access Charge Reform Order*).

from end users a portion of the interstate costs associated with the local loop.¹⁸ The flat per-line nature of this charge reflects the fact that an incumbent LEC's cost of providing the local loop is not traffic-sensitive.¹⁹ The Commission found that requiring carriers to recover non-traffic sensitive costs through flat fees would ensure that rates were "just and reasonable," as required by the Act, and emphasized that its long-term goal was for incumbent LECs to recover a large share of their non-traffic sensitive common line costs on a flat-rated basis from end users instead of from other carriers.²⁰ Subsequently, the Commission codified a maximum cap to ensure that any such charges remained reasonable.²¹ The Commission also created the High-Cost Fund in part to supplement incumbent LECs' revenues to ensure they could cover their loop costs after first recovering what they could from their end users, through SLCs, and from interexchange carriers, through access charges.²²

7. *Rate-of-Return Local Exchange Carriers.* In establishing the SLC caps, the Commission sought to ensure that its reforms recognized "the cost differences between providing common line service" in urban versus rural areas.²³ Although the Commission established maximum SLCs for rate-of-return carriers, it concluded that imposing a minimum SLC limitation was unnecessary because rate-of-return carriers "are likely to have less latitude than price cap carriers in reducing SLCs" because of higher common line costs, among other reasons.²⁴ In fact, the Commission has determined that "the cost of

¹⁸ 47 CFR § 69.104. See *MTS and WATS Market Structure*, CC Docket No. 78-72, Third Report and Order, 93 F.C.C.2d 241 (1983) (*1983 Access Charge Order*), recon., *MTS and WATS Market Structure*, CC Docket No. 78-72, Memorandum Opinion and Order, 97 F.C.C.2d 682 (1983), recon., *MTS and WATS Market Structure*, CC Docket No. 78-72, Memorandum Opinion and Order, 97 F.C.C.2d 834 (1984).

¹⁹ *1983 Access Charge Order*, 93 F.C.C.2d at 292, para. 176. See, e.g., *1997 Access Charge Reform Order*, 12 FCC Rcd at 16007, para. 67. Because by nature, the local loop has interstate and intrastate components, there is always an interstate and intrastate portion to report and contribute. Neither portion can be zero. *Nat'l Ass'n of Reg. Util. Comm'rs*, 737 F.2d at 1115; *Universal Service First Report and Order*, 12 FCC Rcd at 8797, para. 40. While the SLC is one proxy for those interstate local loop revenues (47 CFR § 69.104), carriers may use other means to determine such revenues. For example, competitive LECs are free to build into their end-user rates for voice service any charge, including an amount equivalent to the incumbent LECs' SLC, subject only to the general requirement that their rates be just and reasonable. *Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers; Petition of Z-Tel Commc'ns, Inc. For Temporary Waiver of Communication Rule 61.26(d) to Facilitate Deployment of Competitive Service in Certain Metropolitan Statistical Areas*, CC Docket No. 96-262, CCB/CPD File No. 01-19, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd 9108, 9128, para. 39 (2004); *Access Charge Reform*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9223, 9956, para. 81 (2001) (*2001 Access Charge Reform Order*).

²⁰ *1983 Access Charge Order*, 93 F.C.C.2d at 260, 278, paras. 55, 121.

²¹ 47 CFR § 69.104(n)-(o); see generally *MTS and WATS Market Structure, and Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, 50 Fed. Reg. 939 (Jan. 8, 1985). See *1997 Access Charge Reform Order*, 12 FCC Rcd at 16007, para. 68.

²² See *Universal Service First Report and Order*, 12 FCC Rcd at 8891, para. 209 (explaining that a portion of incumbent LEC's local loop costs is "recovered through rates charged to its customers for interstate services" and for carriers with "above-average loop costs, the existing high cost assistance fund mechanism shifts an additional percentage of the loop costs to the interstate jurisdiction and permits those ILECs to recover this incremental allocation from the high cost assistance fund"); see also *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers et al.*, CC Docket No. 00-256 et al., Second Report and Order and Further Notice of Proposed Rulemaking et al., 16 FCC Rcd 19613, 19673, para. 142 (2001) (*MAG Order*) (observing that high cost loop support covers costs not recovered through end-user and carrier charges).

²³ *MAG Order*, 16 FCC Rcd at 19636, para. 45.

²⁴ *Id.* at 19642, para. 59. In particular, the Commission noted that:

The isolation of rural carrier service areas creates numerous operational challenges, including high loop costs, high transportation costs for personnel, equipment, and supplies, and the need to invest

(continued....)

providing a local loop in a rural area may be approximately one hundred times greater than the cost in an urban area.”²⁵ Given these high costs, the Commission did not expect rate-of-return carriers to charge significantly less than the maximum allowable SLC. To the contrary, the Commission anticipated that rate-of-return carriers would likely need to supplement their SLCs with USF support.²⁶ As a result, the Commission’s rules do not specify a minimum charge for non-price cap incumbent LECs.²⁷

8. *A-CAM Carriers.* The Commission relieved rate-of-return carriers electing to adopt model-based support (A-CAM carriers) of certain obligations that generally apply to such carriers, including rate-of-return regulation for common line offerings.²⁸ Nonetheless, the Commission permitted A-CAM carriers to continue to “assess SLCs on end-user customers of voice and voice/broadband lines subject to the current rules.”²⁹ A-CAM carriers’ SLCs are capped at “the rate in effect on the last day of the month preceding the month for which model-based support . . . is first provided.”³⁰

9. *Recent State Deregulation of Access Charges.* In the years since the Commission established the SLC, many states have eased rate regulations.³¹ As a result, all types of carriers generally have greater flexibility regarding how they charge their customers and how they recover their costs than they did at the time the Commission adopted the SLC.

C. Request for Review

10. Mark Twain is a rural incumbent LEC headquartered in Missouri.³² In 2017, after the Commission revised the rules that cover end-user SLCs for non-price cap incumbent LECs, Mark Twain

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more resources to protect network reliability. In addition, rural carriers generally have fewer customers per switch, higher total investment in plant per loop, and higher plant specific expenses per loop than non-rural carriers, all of which may vary dramatically depending on how many lines they serve.

Id. at 19628-29, para. 28.

²⁵ *Id.* at 19636, 19639, para. 45 & n.162.

²⁶ *Id.* at 19673, para. 142 (“The new Interstate Common Line Support mechanism will provide each carrier with support necessary to meet its common line revenue requirement after recovery of common line revenue from SLCs, other common line end user charges, [Long Term Support], and the transitional [Carrier Common Line] charge, to the extent it remains.”).

²⁷ See 47 CFR § 69.104(n), (o), and (s). For purposes of this Order, we use “rate-of-return carriers” and “non-price cap incumbent LECs” interchangeably to refer to all incumbent LECs that are not subject to the Commission’s price cap rules. These carriers include, but are not limited to, A-CAM carriers, such as Mark Twain.

²⁸ *Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Intercarrier Compensation Regime*, WC Docket Nos. 10-90, 14-58, and CC Docket No. 01-92, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3098, para. 21 (2016) (*A-CAM Order*).

²⁹ *Id.* at 3159, para. 192.

³⁰ 47 CFR § 69.104(s). The SLC caps in effect at the time A-CAM support was first provided were—and continue to be—\$6.50 for residential and single-line business lines and \$9.20 for multiline business lines. *A-CAM Order*, 31 FCC Rcd at 3159, para. 192; 47 CFR § 69.104(n)-(o).

³¹ According to one report, as of 2016, at least 41 states had “significantly reduced or eliminated oversight of wireline telecommunications” through legislation or public utility commission action. Sherry Lichtenberg, Ph.D., National Regulatory Research Institute, *The Year in Review 2016: Moving Past Reduced Regulation* at iii (2016), <https://pubs.naruc.org/pub/FA869A8F-988C-F56C-5378-99F47EDE2EDF>; see also Jeffrey A. Eisenach & Kevin W. Caves, American Enterprise Institute, *What Happens When Local Phone Service Is Deregulated?* (2012), http://www.aei.org/wp-content/uploads/2012/09/eisenach-cato-phone-deregulation-paper_09341082848.pdf.

³² Request for Review at 3.

was authorized for A-CAM support.³³ Since 2017, Mark Twain has received over \$31 million in High Cost disbursements.³⁴ After being authorized for A-CAM support, Mark Twain withdrew from the National Exchange Carrier Association common line pool and revised its federal tariff listing the rates it charged to recover loop costs assigned to the interstate jurisdiction.³⁵ In doing so, Mark Twain elected to not assess an end-user SLC, tariffed its SLC at \$0, and subsequently reported \$0 interstate revenue on Line 405 of its 2018 and 2019 Form 499-A filings for revenue years 2017 and 2018.³⁶ USAC rejected these Form 499 submissions as non-compliant and required the company to refile and impute a SLC.³⁷ Mark Twain filed an appeal on November 16, 2020, and on September 10, 2021, USAC denied the appeal.³⁸

11. On November 8, 2021, Mark Twain filed a Request for Review in which it challenges USAC's decision. Specifically, the company argues that: 1) the totality of the Commission's revised regulatory paradigm for cost recovery does not require A-CAM carriers to assess an end-user SLC; and 2) the FCC Form 499-A Instructions do not require A-CAM carriers to impute the SLC for contribution purposes and permit filers to report no interstate revenues on the Form 499-A if SLCs are not separately stated.³⁹

III. DISCUSSION

12. We grant Mark Twain's request for review to the extent that it seeks to reverse USAC's finding that it must charge or impute a SLC. In all other respects, Mark Twain's petition is denied. We direct Mark Twain to file corrections to its 2018 and 2019 Forms 499-A to report for USF purposes, the interstate revenue associated with, and inherent in, its charges for local exchange service.

A. SLC Rules for A-CAM Carriers

13. In its Request for Review, Mark Twain argues that the election of model-based support places A-CAM carriers in a different regulatory paradigm than other incumbent LECs because "[s]ections 69.104(n) and (s) of the Commission's rules established a maximum or ceiling for Model Carrier end-user SLC but failed to establish a minimum for Model Carrier end-user SLC."⁴⁰ Further, Mark Twain asserts that the Commission's rules do not provide A-CAM carriers the ability to calculate a SLC if the A-CAM

³³ *Id.*; *Wireline Competition Bureau Authorizes 182 Rate-of-Return Companies to receive \$454 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 32 FCC Rcd 842, 849 (WCB 2017).

³⁴ See Universal Service Administrative Company, High Cost Funding Disbursement Search at <https://opendata.usac.org/High-Cost/High-Cost-Funding-Disbursement-Search/cegz-dzzi> (last visited July 15, 2022) (figure includes all types of high-cost support for Study Area Code 421914 (MARK TWAIN RURAL TEL)).

³⁵ Request for Review at 4.

³⁶ *Id.*

³⁷ See *id.* at 1. Mark Twain alleges that it reached out to USAC on multiple occasions seeking guidance on how to comply with USAC's decision. *Id.* at 4, n.18.

³⁸ *Id.* at 5. USAC stated that "the election of A-CAM support does not override the existing FCC rules regarding an [incumbent] LEC's obligation to recover a portion of its costs through a SLC and to report those revenues as interstate on its Forms." *Id.*

³⁹ *Id.* at 6. Mark Twain states that it does not argue that the election of A-CAM overrides Part 36 cost allocation requirements and that it makes all the necessary cost assignments to the interstate jurisdiction and "is fully compliant with FCC cost assignments." *Id.*

⁴⁰ *Id.* at 7 (arguing that "[t]he effect of the FCC's changes [in the *A-CAM Order*] was the establishment of a maximum or ceiling for Model Carrier end-user SLC but no minimum for Model Carrier end-user SLC, thus making assessing end-user SLC an option for Model Carriers and not a requirement.").

carriers choose to charge less than the maximum allowable SLC.⁴¹ Likewise, Mark Twain claims that A-CAM carriers are not required “to calculate a common line revenue requirement with an end user rate element which is necessary to calculate the end-user SLC.”⁴²

14. We agree with Mark Twain that section 69.104 does not establish a minimum SLC for non-price cap incumbent LECs, including A-CAM carriers.⁴³ Since 2002, the rule has prescribed a maximum allowable SLC, rather than specifying the precise SLC that an incumbent LEC must charge.⁴⁴ The Commission declined to adopt a minimum SLC for rate-of-return LECs, recognizing their higher common line costs.⁴⁵ Further, section 69.104(q) recognizes that incumbent LECs may charge less than the maximum SLC.⁴⁶ Accordingly, we find that section 69.104 allows incumbent LECs to charge their end users any SLC amount that is below the maximum—including a SLC of zero dollars.

15. The regulatory regime applicable to A-CAM carriers since 2016 did not alter the existing rules governing SLCs. Subsection (s) of section 69.104 prescribes maximum charges for non-price cap A-CAM carriers, but no minimum charges.⁴⁷ We also agree with Mark Twain that subsection (q) of section 69.104 does not require Model Carriers to impute a maximum SLC against A-CAM support.⁴⁸ Accordingly, some A-CAM carriers may have chosen to charge less than the maximum SLC for competitive reasons, as a lower SLC would not impact their ability to receive A-CAM support. We note, however, that in adopting the funding threshold for the A-CAM Model, the Bureau relied upon an assumed rate of \$30 for voice services, which, in turn, included the local rate, federal SLC, Access Recovery Charge, and the local Extended Area Service charge.⁴⁹ Therefore, the Bureau envisioned that A-CAM carriers would continue to charge a SLC, and we reject Mark Twain’s argument that the rules do not provide A-CAM carriers the ability to calculate a SLC if the A-CAM carriers choose to charge less than the maximum allowable SLC.⁵⁰ Mark Twain could use cost-study data or other reasonable

⁴¹ *Id.* at 10-11.

⁴² *Id.* at 7. Mark Twain asks the Bureau to “reverse USAC’s Decision and restore funding of the principal in the amount of \$50,141.60, plus interest accrued consistent with federal court procedures.” *Id.* at 2. For the reasons discussed in this Order, we decline to do so.

⁴³ See 47 CFR § 69.104(n), (o), and (s).

⁴⁴ *Id.* § 69.104(n), (o); *MAG Order*, 16 FCC Rcd at 19621, para. 15. The Commission’s rules set a minimum SLC only for price cap incumbent LECs that choose to deaverage their SLC. See 47 CFR § 69.152(q). This Order does not extend to that rule.

⁴⁵ *MAG Order*, 16 FCC Rcd at 19637, para. 48. The Commission found that that “a minimum SLC charge limitation is unnecessary, because rate-of-return carriers are likely to have less latitude than price cap carriers in reducing SLCs due to the above limitations and their higher common line costs.” *Id.* at 19642, para. 59.

⁴⁶ 47 CFR § 69.104(q).

⁴⁷ *Id.* § 69.104(s). The SLC caps in effect at the time A-CAM support was first provided were—and continue to be—\$6.50 for residential and single-line business lines and \$9.20 for multiline business lines. *A-CAM Order*, 31 FCC Rcd at 3159, para. 192.

⁴⁸ Request for Review at 9.

⁴⁹ *Connect America Fund High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Report and Order, 29 FCC Rcd 3964, 4037 at para. 174 and n.497 (WCB 2014); *A-CAM Order*, 31 FCC Rcd at 3108, para. 53 (adopting the same average revenue per user assumptions as in Connect America Cost Model); see also *A-CAM Order*, 31 FCC Rcd at 3160, para. 195 (observing “the only revenue requirement remaining for the Common Line and Consumer Broadband-Only Loop categories are those amounts associated with end-user charges.”).

⁵⁰ Request for Review at 10-11.

alternative methods to determine this interstate revenue for contribution purposes, if it chooses to charge a less-than-maximum SLC.⁵¹

16. We therefore reverse USAC's determination to the extent that it required Mark Twain to charge a SLC, and conclude that the Commission's rules do not require non-price cap incumbent LECs to charge their customers an itemized SLC. As discussed below, however, Mark Twain is nonetheless required to continue contributing to the USF based on the end-user revenues it collects that are attributable to the interstate portion of its loop costs.

B. Mark Twain's Interstate Loop Revenue is Assessable for USF Contributions

17. All LECs have interstate costs associated with their local loop, and those costs do not vary based on the number or types of calls the carriers' subscribers choose to make.⁵² As the D.C. Circuit explained, interstate local loop costs "are necessarily incurred for each subscriber by virtue of that subscriber's interconnection into the local network, and they must be recovered regardless of how many or how few interstate calls (or local calls for that matter) a subscriber makes."⁵³ Thus, any incumbent LEC providing local service that includes the capability of making or receiving interstate communications has local loop costs that are attributable to the interstate jurisdiction.⁵⁴ In the absence of an explicit end-user charge attributable to the interstate exchange access capability, any resulting revenues collected to cover the costs of the local loops therefore inherently includes some portion of that revenue attributable to the provision of interexchange access service, hence the interstate jurisdiction. Those revenues attributable to the interstate jurisdiction are subject to USF contributions, regardless of how that carrier chooses to label charges on its end-users' bills.⁵⁵

⁵¹ The Commission has granted forbearance from its separations and cost assignment rules to carriers who have adopted business data service (BDS) incentive regulation. *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, Business Data Services in an Internet Protocol Environment, Special Access for Price Cap Local Exchange Carriers, WC Docket Nos. 17-144, 16-143, 05-25, Report and Order, Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, 33 FCC Rcd 10403, 10423-24, 10445-47, 10449-50, paras. 50, 120, 125, and 131 (2018) (*BDS RoR Order*). These carriers are not obligated to perform a cost study. *See generally id.* A-CAM carriers that did not select incentive regulation for BDS remain obligated to perform a cost study biennially, but only for the purpose of setting the rates for their BDS offerings. *See id.* at 10406-07, paras. 9-10. Mark Twain has not adopted BDS incentive regulation, and, therefore, remains obligated to perform a cost study. While Mark Twain is correct that it is not required under the Commission's rules to base its SLC on a cost study, it is incorrect to maintain that it has no means of determining its interstate revenues, absent a maximum SLC. It has the ability to use the data from the BDS cost study to calculate a lower than maximum SLC if it chooses to do so. It can also use other methods to arrive at a good-faith estimate of how much of its revenues should be attributed to the interstate jurisdiction for contributions purposes. And if none of those methods prove appealing, Mark Twain can simply charge the maximum SLC allowed by the Commission's rules and make corresponding adjustments to its other end-user charges. What Mark Twain *cannot do* is claim that it has zero interstate revenues to report on its Form 499-A for USF contribution purposes.

⁵² *Nat'l Ass'n of Reg. Util. Comm'rs*, 737 F.2d at 1113-14. "Every telephone subscriber is automatically connected through the same subscriber plant into both the local exchange and the interstate network. No subscriber can avoid 'causing' those costs of its telephone line allocated to the interstate jurisdiction." *Nat'l Ass'n of Reg. Util. Comm'rs*, 737 F.2d at 1115. Moreover, "[a] subscriber's choice not to make or receive interstate calls . . . would not reduce the costs of that subscriber's loop; the local telephone plant costs would remain unchanged, as would the need to recover those costs." *Nat'l Ass'n of Reg. Util. Comm'rs*, 737 F.2d at 1115.

⁵³ *Nat'l Ass'n of Reg. Util. Comm'rs*, 737 F.2d at 1114.

⁵⁴ The interstate costs constitute 25% of common line costs. *See* 47 CFR § 36.154.

⁵⁵ *Universal Service First Report and Order*, 12 FCC Rcd at 8797, para. 40 ("Contributions will be assessed against end-user telecommunications revenues, revenues derived from end users for telecommunications and telecommunications services, including SLCs.").

18. The Commission created the SLC as a mechanism through which LECs may recover their interstate local loop costs.⁵⁶ In doing so, it determined that the SLC amount is a reasonable proxy for the interstate portion of the incumbent LECs' interstate loop revenues.⁵⁷ Nevertheless, not all LECs charge end users a SLC.⁵⁸ The decision not to charge a SLC, or equivalent as a separate interstate line item on a customer's bill, however, does not relieve incumbent LECs of their obligation to contribute to the USF based on their interstate loop revenues. By virtue of the fact that LECs provide their end users with the ability to make and receive interstate calls as part of their "local service" offerings, there is an interstate component to offering local service and providers have an obligation to contribute to the Fund based on revenue associated with that interstate service.⁵⁹ In other words, regardless of whether incumbent LECs recover the interstate portion of their loop costs directly through a separate charge or, like Mark Twain, include it in the local service charges, they are obligated to report the associated interstate portion of the revenues received from local loop service on Form 499, so it can be appropriately assessed for USF contributions purposes.⁶⁰ To be clear, an incumbent LEC that does not collect and report revenues from a SLC, or other separate line item that explicitly covers the costs associated with the interstate portion of the local loop, must still allocate a reasonable portion of its revenues from the local loop to the interstate jurisdiction for contribution purposes and be prepared to defend that allocation if questioned by the Commission or USAC.⁶¹ In that instance, interstate loop revenues should be reported in column (d) of the appropriate line 404.1-404.5 of the Form 499-A.⁶²

⁵⁶ *1983 Access Charge Order*, 93 F.C.C.2d at 249-51, paras. 23-24, 27.

⁵⁷ *Universal Service First Report and Order*, 12 FCC Rcd at 8970, para. 367 ("The interstate portion of [incumbent] LECs' rates to recover loop costs is, almost without exception, greater than the amount of the SLC cap for residential subscribers; we are therefore confident that this amount is a reasonable proxy for the interstate portion of other eligible telecommunications carriers' costs.").

⁵⁸ Competitive LECs may not charge a SLC because they do not participate in the formal separations process that the Commission's rules mandate for incumbent LECs, and therefore do not "distinguish between the interstate and intrastate portion of their charges and costs." *Universal Service First Report and Order*, 12 FCC Rcd at 8970, para. 366. The Commission does not regulate the end-user charges of competitive LECs because it has found that competitive LECs generally lack market power in the provision of telecommunications service to end users for which they must compete to provide service. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17965-66, para. 864. Thus, competitive LECs are free to build into their end-user rates for voice service any charge, including an amount equivalent to the incumbent LECs' SLC, subject only to the general requirement that their rates be just and reasonable. *Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers; Petition of Z-Tel Commc'ns, Inc. For Temporary Waiver of Communication Rule 61.26(d) to Facilitate Deployment of Competitive Service in Certain Metropolitan Statistical Areas*, CC Docket No. 96-262, CCB/CPD File No. 01-19, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd 9108, 9128, para. 39 (2004); *2001 Access Charge Reform*, 16 FCC Rcd at 9956, para. 81; 47 U.S.C. § 201(b).

⁵⁹ *Universal Service First Report and Order*, 12 FCC Rcd at 8970, para. 366. ("[A] portion of every carrier's charge can be attributed to the interstate jurisdiction, whether or not the carrier formally participates in the separations procedure.").

⁶⁰ We clarify that the scope of this order is limited to incumbent LECs. The issue of competitive LECs' contribution obligation on interstate loop revenue in the absence of charging a SLC that the Bureau previously addressed in 2013 is not before us at this time. *Universal Service Contribution Methodology, Petition for Declaratory Ruling by the Rural Independent Competitive Alliance, Request for Review of a Decision of the Universal Service Administrative Company by Blackfoot Communications, Inc.*, WC Docket No. 06-122, Declaratory Ruling and Order, 28 FCC Rcd 16037, 16041-42, paras. 11-12 (WCB2013) (*RICA/Blackfoot Order*).

⁶¹ See, e.g., 2022 Form 499-A Instructions at 40-41. While the Commission has not codified rules for how contributors that do not charge a SLC must allocate revenues between the interstate and intrastate jurisdictions for USF contributions purposes, and thus carriers can use any reasonable method, in 2012, while seeking comment on adopting bright-line rules for the allocation of interstate and intrastate revenues, and again in 2020, while considering detariffing Telephone Access Charges, the Commission indicated that between 20% and 30% of total revenues for non-toll services were interstate and international. *Universal Service Contribution Methodology - A*

(continued...)

19. Accordingly, the lack of a required minimum SLC does not relieve any incumbent LEC, including A-CAM carriers such as Mark Twain, of the obligation to collect and report any end-user revenue used to cover the interstate portion of their loop costs.⁶³ Section 54.706(a) states that access to interexchange service is interstate telecommunications subject to contributions.⁶⁴ The local loop is a network element that is used to provide all wired telecommunications, including interexchange service, to and from the end user and incumbent LEC contributors must report and contribute to USF based on this portion of local loop revenues.⁶⁵ As a LEC, Mark Twain has interstate costs associated with its local loop and as a rural rate-of-return LEC, those costs are likely high.⁶⁶ If Mark Twain is not recovering these

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National Broadband Plan for Our Future, WC Docket No. 06-122, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357, 5407, Chart 4 (2012); *see also Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges*, WC Docket No. 20-71, Notice of Proposed Rulemaking, 35 FCC Rcd 3165, 3190, para. 82 (2020).

⁶² *See, e.g.*, 2022 Form 499-A Instructions at 25-26. In 2012, the Form 499-A Instructions included the following italicized language that provided additional explanation about local exchange service revenues reported on Line 404 of the Form. This clarifying language was subsequently and perhaps erroneously deleted from the instructions following the *RICA/Blackfoot Order* that pertained only to competitive LECs:

Line 404 should not include subscriber line charges levied under a tariff filed by the filer or placed on customer bills as a pass-through of underlying carrier subscriber line charges. Filers should instead report such revenues on line 405. *Note that federal subscriber line charges typically represent the interstate portion of fixed local exchange service; these amounts are separate from toll revenues and correspond to the revenues received by incumbent telephone companies to recover part of the cost of networks that allow customers to originate and terminate interstate calls. Filers without subscriber line charge revenue must identify the interstate portion of fixed local exchange service revenues in column (d) of the appropriate line 404.1-404.5.*

2012 Instructions to the Telecommunications Reporting Worksheet, Form 499-A at 15 (emphasis added). The Bureau intends to revise the Form 499 instructions to add back in this clarifying language to the instructions before the next 499-A forms are due in 2023.

⁶³ As an incumbent LEC, Mark Twain is a provider of interstate telecommunications services and is required to contribute to the USF. *See* 47 U.S.C. § 254(d); 47 CFR § 54.706; Request for Review at 3. For purposes of deciding this appeal, we do not need to—and therefore do not—address whether Mark Twain is required to tariff whatever charges it is using to recover its interstate costs associated with the local loop. 47 U.S.C. § 203; *see A-CAM Order*, 31 FCC Rcd at 3159, para. 193 (allowing A-CAM carriers to detariff consumer broadband-only loop service, but not addressing the tariffing of end user common line charges). We are concerned, however, that Mark Twain may be mislabeling charges on its end-users' bills to evade its duty to contribute to USF. Likewise, we are concerned that Mark Twain may be ignoring the section 69.104(a) requirement to assess a “charge that is expressed in dollars and cents per line per month” on end user bills, even if that amount is \$0.00.

⁶⁴ 47 CFR § 54.706(a)(5).

⁶⁵ *See Universal Service First Report and Order*, 12 FCC Rcd at 8818, para. 76 (defining “access to interexchange service” as “the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier’s network”); *Nat’l Ass’n of Reg. Util. Comm’rs v. FCC*, 737 F.2d 1095, 1113 (D.C. Cir. 1984) (finding “the same loop that connects a telephone subscriber to the local exchange necessarily connects that subscriber into the interstate network as well”); *Universal Service First Report and Order*, 12 FCC Rcd at 8970, para. 367 (“The interstate portion of [incumbent] LECs’ rates to recover loop costs is, almost without exception, greater than the amount of the SLC cap for residential subscribers; we are therefore confident that this amount is a reasonable proxy for the interstate portion of other eligible telecommunications carriers’ costs.”).

⁶⁶ *Nat’l Ass’n of Reg. Util. Comm’rs*, 737 F.2d at 1114; *MAG Order*, 16 FCC Rcd at 19636, 19639, para. 45 and n.162. It is indisputable that as an incumbent LEC, Mark Twain has interstate local loop costs. *Nat’l Ass’n of Reg. Util. Comm’rs*, 737 F.2d at 1113-14 (explaining that interstate local loop costs “are necessarily incurred for each subscriber by virtue of that subscriber’s interconnection into the local network, and they must be recovered regardless of how many or how few interstate calls (or local calls for that matter) a subscriber makes.”).

costs through a SLC, it must be recovering them through other charges.⁶⁷ While we do not, in this Order, prescribe a specific methodology for A-CAM carriers to determine the portion of their end-user revenues attributable to the interstate jurisdiction for contributions purposes, we reiterate that such revenues exist and must be reported accurately on Form 499 as interstate revenue.

20. If Mark Twain elects not to charge a SLC, it must select another mechanism to determine its interstate exchange access revenues, whether that method involves using the maximum SLC permitted by the Commission's rules as a proxy for those interstate revenues, or a cost study to estimate an amount that is below the maximum allowable SLC amount, if its costs permit it to do so. Mark Twain may also choose to report interstate revenue based on a reasonable percentage of total revenues, or use any other reasonable methodology for making a good-faith estimate of its interstate exchange access service revenues subject to USF contributions.⁶⁸ Any method that Mark Twain selects must properly attribute these revenues to the interstate jurisdiction. The Commission's precedent makes it clear that the company cannot credibly claim to have no revenue attributable to interstate exchange access service.⁶⁹

21. Mark Twain further argues that the *ACS Order* cited by USAC as a basis for requiring Mark Twain to impute a SLC on its Form 499 for contributions purposes is inapposite because: 1) ACS volunteered to impute its SLC for purposes of calculating universal service contributions and was not required to do so; and 2) the decision predates adoption of the A-CAM regulatory paradigm.⁷⁰

22. Mark Twain's argument that the *ACS Order* does not apply in this case is unavailing. Although we agree that the *ACS Order* does not provide precedent for requiring A-CAM carriers to impute a separately-itemized SLC, it supports our conclusion here that the decision not to charge a SLC does not relieve a LEC of the obligation to contribute to the Fund.⁷¹ In the *ACS Order*, the Commission granted ACS's petition to forbear from the SLC caps applicable to rate-of return carriers, but made clear that if "ACS chooses to no longer assess federal end-user subscriber line charges, ACS must identify the interstate portion of fixed local exchange service revenues for universal service contribution purposes."⁷² Thus, relief from the obligation to charge a SLC did not relieve ACS from its universal service contribution obligations. That decision is consistent with and correctly reflects the clarifications and decisions we make in this Order.

C. Conclusion

23. In light of the above, we direct Mark Twain to file corrections to its 2018 and 2019 Forms 499-A to reflect either a SLC or the interstate portion of its revenue associated with its local exchange service.⁷³ We additionally direct Mark Twain to file corrections to any subsequently filed

⁶⁷ For the purposes of this order, we do not reach the question of whether it is just and reasonable for non-price cap carriers to recover interstate local loop costs through charges other than the SLC.

⁶⁸ See, e.g., 2022 Form 499-A Instructions at 40-41.

⁶⁹ See *Nat'l Ass'n of Reg. Util. Comm'rs v. FCC*, 737 F.2d at 1113-15. The company must also be prepared to defend its methodology, if requested to do so by either the Commission or USAC. See, e.g., 2022 Form 499-A Instructions at 40-41 ("Information supporting good-faith estimates must be made available to either the FCC or to the administrators upon request.").

⁷⁰ Request for Review at 12-13. See generally *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(C), for Forbearance from Certain Dominant Carrier Regulation of its Interstate Access Services, and for Forbearance from Title II Regulation of its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, WC Docket No. 06-109, Memorandum Opinion and Order, 22 FCC Rcd 16304 (2007) (*ACS Order*).

⁷¹ *ACS Order*, 22 FCC Rcd at 16338, para 72.

⁷² *Id.* ACS stated that it would impute the tariffed SLC rates when calculating its universal service contributions.

⁷³ Mark Twain's 2018 and 2019 Forms 499-A neither reported a SLC on Line 405 nor any interstate revenue associated with its local exchange service on Line 404, and accordingly were not in compliance with the

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Forms 499-A that do not report revenue for the interstate portion of its local loop. If Mark Twain chooses not to recover the interstate-allocated portion of its local loop costs through a SLC, it may report “zero” on Line 405 of the Form 499-A.⁷⁴ However Mark Twain still continues to collect interstate revenues from its end users through the interstate portion of its local loop charges even if it chooses not to assess a SLC.⁷⁵ Regardless of how Mark Twain chooses to collect its revenue from end-users, it is obligated to report some reasonable good faith amount of interstate loop revenue on Line 404 of its Form 499 submissions.⁷⁶ The fact that the Form 499-A Instructions currently lack express language about how to calculate and report these revenues in no way relieves Mark Twain of its regulatory obligation to report all of its interstate revenues and to make an equitable contribution to the USF on such revenues, as required by the Act.⁷⁷

IV. ORDERING CLAUSES

24. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151–154, 254, and delegated under sections 0.91, 0.291, and 54.722(a) of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, 54.722(a), the request for review filed by Mark Twain Telephone Company is hereby GRANTED in part and DENIED in part.

25. IT IS FURTHER ORDERED, that Mark Twain Telephone Company SHALL SUBMIT REVISED Telecommunications Reporting Worksheets to the Universal Service Administrative Company within 90 days from release of this Order, consistent with the determination herein.

26. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission’s rules, 47 C.F.R. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

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requirement to report interstate loop revenue. USAC rejected Mark Twain’s 2018 and 2019 FCC Form 499-A filings and accordingly reversed all credits associated with these filings.

⁷⁴ See, e.g., 2022 Form 499-A Instructions at 27.

⁷⁵ *Nat’l Ass’n of Reg. Util. Comm’rs*, 737 F.2d at 1113-14.

⁷⁶ We do not reach a determination regarding whether it is just and reasonable for incumbent LECs or other carriers to recover interstate costs through intrastate charges. However, we emphasize that regardless of what incumbent LECs name the charges in their tariff, a portion of their local loop costs remains subject to interstate jurisdiction, is considered interstate revenue, and is therefore subject to assessment for USF contributions.

⁷⁷ Finally, if we uphold USAC’s decision, Mark Twain requests a post-hoc waiver, pursuant to section 1.3 of the Commission’s rules, of the requirement to impute SLCs on its end-users for 2018-2019. Because we grant Mark Twain’s request for review to the extent that it seeks to reverse USAC’s finding that it must charge or impute a SLC, we need not address its request for a post-hoc waiver.