

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

In the Matter of)	
)	
Request for Review of a Decision of the Universal)	WC Docket No. 10-90
Service Administrator by Marquette Adams)	
Telephone Cooperative)	
)	
Petition for Waiver of Sections 32.27, 32.2000,)	
54.7, 54.320, 32.6112, and 64.901 of the)	
Commission's Rules)	

ORDER

Adopted: September 10, 2025

Released: September 10, 2025

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant in part and deny in part a request filed by Marquette Adams Telephone Cooperative (MATC) seeking review of a decision of the Universal Service Administrative Company (USAC).¹ We conclude that USAC properly sought recovery of federal universal service fund (USF or Fund) high-cost support provided to MATC based on the company's failure to comply with the Commission's rules for the six findings at issue and deny MATC's request for waiver of the applicable rules. We direct USAC to proceed with the recovery for four of the six findings as indicated herein and remand two findings to USAC for further review of the appropriate recovery amount.

II. BACKGROUND

2. MATC is an incumbent rate-of-return local exchange carrier (ILEC) offering exchange and exchange access telecommunications services in Marquette and Adams counties in Wisconsin, Study Area Code 330908.² The audit of MATC performed by CliftonLarsenAllen (auditor) on USAC's behalf covered the 2020 disbursement period.³ At that time, MATC's wholly-owned subsidiary, Marquette Adams Communications, LLC (MAC) also provided broadband internet access, video, and long distance service. Since then, however, MATC and MAC have combined operations and now "operate[] as a single entity" as of the end of 2023.⁴ During the relevant audit review period, MATC received Connect America Fund Broadband Loop Support (CAF BLS), High Cost Loop Support (HCLS), and Connect

¹ Request for Review by Marquette Adams Telephone Cooperative of a Decision of the Universal Service Administrator and Petition for Waiver, USAC Audit ID: HC20227LR017, WC Docket No. 10-90 (filed Sept. 9, 2024) (MATC Request); 47 CFR §§ 54.719-54.722.

² MATC Request at 2.

³ Marquette Adams Telephone Cooperative, Limited Review Performance Audit on Compliance with Federal Universal Service Fund High Cost Support Mechanism Rules, USAC Audit No. HC2022LR017, at 1 (Sept. 16, 2022, revised Dec. 14, 2023) (attached to MATC Request, Exh. 2) (2023 Audit Report).

⁴ MATC Request at 2 n.2.

America Fund Inter-carrier Compensation (CAF ICC) support from the high-cost program totaling more than \$3.2 million.⁵

3. Incumbent local exchange carriers subject to rate-of-return regulation develop their revenue requirements, used to calculate both rates and high-cost universal service support, in accordance with a four-step regulatory process. First, carriers record their costs, including investments and expenses, into various accounts in accordance with the Uniform System of Accounts (USOA) prescribed by Part 32 of the Commission's rules.⁶ Second, carriers assign the costs in those accounts to regulated and non-regulated activities in accordance with Part 64 of the Commission's rules to ensure that the costs of non-regulated activities will not be recovered by regulated service rates or through universal service support.⁷ Third, carriers separate the regulated costs between the interstate and intrastate jurisdictions, as well as among cost categories, in accordance with the Commission's Part 36 separations rules.⁸ Finally, carriers apportion the interstate regulated costs among the interexchange services and rate elements that form the cost basis for their interstate access tariffs pursuant to the Commission's Part 69 rules, as well as for high-cost universal service support pursuant to Part 54.⁹

4. The revised audit report was released on December 14, 2023 and identified eight findings of non-compliance and recommended a recovery action of \$178,494 against MATC for the overpayment of support during the relevant audit period.¹⁰ In response, USAC issued a letter to recover \$168,747.¹¹ On February 12, 2024, MATC filed a partial request for review with USAC, seeking reversal or revision of six of the eight findings in audit report as follows.¹² MATC did not appeal the remaining findings.¹³

- Finding No. 1: Improper Valuation of Affiliate Transaction;
- Finding No. 2: Inaccurate Continuing Property Records;
- Finding No. 3: Support Not Used for Intended Purposes of Federal Universal Service Support;
- Finding No. 4: Inadequate Documentation: Assets

⁵ *Id.* at 2. CAF BLS subsidizes carriers with high local loop costs in the interstate jurisdiction for both voice and consumer broadband-only loops. *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3091, para. 5 (2016) (*2016 Rate-of-Return Reform Order*). HCLS provides support to rate-of-return carriers that experience high loop-related costs by deducting costs in excess of a specified benchmark from the state jurisdiction and adding them to the interstate jurisdiction. *See* 47 CFR § 54.1301(a). CAF ICC provides support to the extent otherwise-eligible revenue cannot be recovered through the carrier's Access Recovery Charge. *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 et al., 26 FCC Rcd 17663, 17994, paras. 917-18 (2011) (*USF/ICC Transformation Order*).

⁶ 47 CFR pt. 32.

⁷ *Id.* §§ 64.901-64.904.

⁸ *Id.* pt. 36.

⁹ *Id.* pts. 54 and 69.

¹⁰ MATC Request at 2-3; 2023 Audit Report at 3-4.

¹¹ 2023 Audit Report at 4; Letter from USAC to Lori Kleist, Marquette Adams Telephone Cooperative, Inc., HC2022LR017, SAC 330908 (July 10, 2024) (USAC Decision) (attached to MATC Request, Exh. 1). USAC credited \$9,747 for the eighth finding, in which the auditor determined that MATC's "cost study adjustment for land and support assets was miscalculated." 2023 Audit Report at 3.

¹² 47 CFR § 54.719(a); Request for Review by Marquette Adams Telephone Cooperative of USAC Decision, USAC Audit ID: HC2022LR017 (filed Feb. 12, 2024) (attached to MATC Request, Exh. 3) (USAC Appeal).

¹³ *See generally* USAC Appeal.

- Finding No. 5: Improper Distribution of Overhead Expenses
- Finding No. 6: Improper Inclusion of Non-Regulated Assets

5. USAC denied MATC's request for review on July 10, 2024 for the six findings.¹⁴ On September 9, 2024, MATC then timely filed a request seeking review of USAC's denial with the Wireline Competition Bureau (Bureau) pursuant to sections 54.719 and 54.722 of the Commission's rules, or as an alternative, waiver of the applicable rules pursuant to sections 1.3 or 32.18 of the Commission's rules.¹⁵ Requests for review of USAC decisions are subject to *de novo* review by the Bureau.¹⁶

III. DISCUSSION

A. Improper Valuation of Affiliate Transaction

6. The affiliate transactions rules in section 32.27 are intended to protect the local ratepayer by preventing "the ability of carriers to shift the investment risk of nonregulated activities to the regulated entity and its ratepayers."¹⁷ Sections 32.27(a)-(c) of the Commission's rules "require incumbent LECs, in transactions with their affiliates, to account for those transactions in 'direct' fashion, i.e., by recording the revenue or expenses associated with the transaction at the prevailing price (if the transaction qualifies for such treatment) or fair market value in the appropriate investment or expense accounts" or by alternative means specified in section 32.27(b) (for asset transfers) or section 32.27(c) (for exchanges of services).¹⁸ Section 32.27(b) addresses "[a]ssets sold or transferred between a carrier and its affiliate," and, as applicable here, states that "[w]hen the total aggregate annual value of the asset(s) does not reach or exceed \$500,000, the asset(s) shall be recorded at net book cost."¹⁹ Section 32.27(c) states that "other services" i.e., services other than tariffed services or non-tariffed services that qualify for prevailing price valuation, "sold by or transferred to a carrier from its affiliate . . . shall be recorded at no more than the lower of fair market value and fully distributed cost."²⁰ In the case of services for which the "aggregate annual value of that service" is below \$500,000, the carrier must record the transaction at fully distributed cost.²¹ Section 32.27(d) describes how a sale of an asset or service qualifies for "prevailing price valuation."²²

¹⁴ See generally USAC Decision.

¹⁵ 47 CFR §§ 1.3, 32.18, 54.719(b) and 54.722; MATC Request.

¹⁶ 47 CFR § 54.723(a).

¹⁷ See *Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies to Provide for Nonregulated Activities and to Provide for Transactions Between Telephone Companies and Their Affiliates*, CC Docket No. 86-111, Joint Cost Order on Reconsideration, 2 FCC Rcd 6283, 6295, para. 109 (1987).

¹⁸ *Moultrie Indep. Tel. Co. Motion for Stay of Part 69.605(a) of the Commission's Rules and Petition for Declaratory Ruling, Request for Waiver of Part 36 of the Commission's Rules, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 16 FCC Rcd 18242, 18251, para. 21 (2001) (*Moultrie Order*) (citing 47 CFR § 32.27(a)-(c)).

¹⁹ 47 CFR § 32.27(b). Pursuant to section 32.27(b)(3), "carriers are required to make a good faith determination of fair market value for an asset when the total aggregate annual value of the asset(s) reaches or exceeds \$500,000, per affiliate. When a carrier reaches or exceeds the \$500,000 threshold for a particular asset for the first time, the carrier must perform the market valuation and value the transaction on a going-forward basis in accordance with the affiliate transactions rules on a going-forward basis." *Id.* § 32.27(b)(3).

²⁰ 47 CFR § 32.27(c).

²¹ *Id.* § 32.27(c)(3); see also NECA, Reporting Guidelines § 8.7 at 3 (Dec. 2024) (NECA Reporting Guidelines).

²² 47 CFR § 32.27(d).

7. In the 2023 Audit Report, the auditor found that MATC had “leased plant vehicles from [its] affiliate” and because the transaction was “an asset transfer of less than \$500,000 in value between” MATC and its affiliate, “the transaction was to be recorded at net book cost” pursuant to section 32.27(b).²³ Instead, the auditor found that MATC’s “valuation of the transaction was recorded at fully distributed cost,” resulting in MATC overstating its account balances and the auditor recommending \$47,834 in recovery.²⁴

8. In MATC’s response to the finding, MATC indicated that it understood that the transaction “was not appropriately valued at net book cost” and stated that it would “revalue this transaction to reflect an appropriate depreciation rate on the affiliate assets, and to reflect an appropriate expense calculation on the ILEC books.”²⁵

9. However, MATC later appealed the finding to USAC, claiming that the lease was “properly valued at fully distributed cost” pursuant to section 32.27(c) of the Commission’s rules because “[v]ehicle leases from an affiliate constitute services.”²⁶ MATC also claimed that its “fully distributed cost for the leases in question included a rate of return of 10% on the vehicles, which is standard under rate-of-return ILEC accounting requirements,” and indicated the auditor “appear[ed] to have used a depreciation rate of 10 years in its calculations,” while the Rural Utilities Service had noted a 17% “median depreciation rate for vehicles.”²⁷

10. USAC denied MATC’s appeal, stating that the auditor had appropriately applied section 32.27(b).²⁸ USAC also found that MATC “did not provide additional documentation with its appeal to substantiate its claim.”²⁹ MATC now seeks review of USAC’s denial claiming that USAC’s determination that the leasing of motor vehicles is an asset transfer subject to section 32.27(b) of the Commission’s rules was “an incorrect interpretation of the Commission’s rules” and that MATC had accurately recorded the “leases as services at fully distributed cost” pursuant to section 32.27(c) of the Commission’s rules.³⁰ MATC also reiterates its claim that the auditor’s “cost effect calculation” was “overstated” and “should be recalculated” due to the auditor’s use of “an effective depreciation rate of 10 years” which MATC claims “is significantly higher than the industry standard of 5 years.”³¹ MATC also raised the new claim that auditor’s “cost effect calculation” included “amounts that were redistributed and also disallowed in” the improper distribution of overhead expenses finding as discussed below, “effectively double-counting those amounts.”³²

11. Alternatively, MATC seeks a waiver of 32.27(b). As a general matter, MATC claims that a waiver of the rules associated with all of the auditor’s findings would serve the public interest because “[a]ny recovery of support will negatively impact MATC’s ability” to deploy and operate voice

²³ 2023 Audit Report at 8 (citing 47 CFR § 32.27(b)).

²⁴ *Id.* at 8-10.

²⁵ *Id.* at 10.

²⁶ USAC Appeal at 3.

²⁷ *Id.* at 3 (citing Publication of Depreciation Rates for Telecommunications Plant, 87 Fed. Reg. 71576 (Nov. 23, 2022) (*RUS Depreciation Rates*)).

²⁸ USAC Decision at 8.

²⁹ *Id.* at 8.

³⁰ MATC Request at 8-9.

³¹ *Id.* at 9.

³² *Id.*

and broadband networks.³³ Moreover, MATC claims that the “Commission should be especially hesitant to authorize the recovery of USF funding that has already been disbursed and spent” given that at the time MATC filed its request, a Supreme Court decision was pending on the Fifth Circuit’s holding that “Universal Service Fund . . . contributions are a ‘misbegotten tax’ levied in violation of the nondelegation doctrine of Article I, § 1 of the Constitution.”³⁴ The Supreme Court has since overturned the Fifth Circuit’s decision.³⁵ MATC claims that special circumstances warrant waiver of the rules associated with all the findings given that “MATC has essentially had to revisit the entire audit in order to address these issues” because the auditor issued a revised audit report in 2023 that included findings that MATC claims that the auditor had indicated were “verbal” and thus would not be included in the report.³⁶ Specific to this finding, MATC also claims that “[a] waiver would allow MATC to properly realize the cost and efficiency benefits of leasing vehicles from its affiliate,” which MATC claims “was the original intention of distinguishing between asset transfers and the provision of services and supplies under the affiliate transaction rules.”³⁷

12. We agree with USAC that the auditor properly applied section 32.27(b) to MATC’s lease of its affiliate’s plant vehicles and thus the auditor should have recorded the motor vehicle leases at net book cost.³⁸ MATC makes the conclusory claim that “plant leases from an affiliate to a carrier are a service, not an asset transfer,” citing a 2018 tariff investigation order as precedent for when the Commission applied section 32.27(c) to another carrier’s lease.³⁹ However MATC fails to note the difference between a finance lease, which would constitute the transfer of an asset so that 32.27(b) would apply, and an operating lease.

13. To determine whether a lease constitutes a transfer of an asset, it must be determined whether the lease at issue is a finance lease.⁴⁰ A finance lease “is effectively a purchase of the underlying

³³ *Id.* at 7.

³⁴ *Id.* (quoting *Consumers’ Research v. FCC*, 109 F.4th 743 (5th Cir. 2024)).

³⁵ *FCC v. Consumers’ Research*, Nos. 24-354 and 24-422, 2025 WL 1773630, at *19 (June 27, 2025).

³⁶ MATC Request at 7. The auditor conducted audit fieldwork during the February 24, 2022 through September 16, 2022 period. 2023 Audit Report at 1. MATC claims that once the audit concluded, the auditor made 10 findings—eight of which the auditor described as “verbal” and for which the auditor indicated it would not act upon. MATC Request at 3. MATC states that on October 31, 2022 it received a “final” audit report with two findings. *Id.* However, in August 2023, MATC claims that the auditor informed MATC that it had updated the “final” report so that it now included the “verbal” findings after the auditor had been informed by USAC that the auditor was not able to make “verbal” findings. *Id.* at 3-4. Despite being given an opportunity to respond, MATC chose not to respond to the updated report, claiming that “[d]ue to the passage of time, the complexity of revisiting the audit history, and previous issues with [the auditor] declining to consider additional information provided by MATC, MATC did not provide additional responsive information to [the auditor] at this time.” *Id.* at 4.

³⁷ MATC Request at 10.

³⁸ 47 CFR § 32.27(b).

³⁹ MATC Request at 9 (citing *Iowa Network Access Division, Tariff F.C.C. No. 1*, WC Docket No. 18-60, Memorandum Opinion and Order, 33 FCC Rcd 7517, 7541, para. 61 (2018)).

⁴⁰ See 47 CFR § 32.1 (explaining the Uniform System of Accounts “has been designed to reflect stable, recurring financial data based to the extent regulatory considerations permit upon the consistency of the well-established body of accounting theories and principles commonly referred to as generally accepted accounting principles (GAAP)”; Financial Accounting Standards Board, Accounting Standards Update No. 2016-02, at 30-31, <https://fasb.org/page/document?pdf=ASU+2016-02+Section+A.pdf&title=Update%202016-02%E2%80%9494Leases%20> (2016) (FASB Accounting Standards); see also NECA Reporting Guidelines § 2.19 at 2.

asset—the lessor transfers the right to control the use of the underlying identified asset to the lessee for a period of time in exchange for consideration.”⁴¹ To be considered a finance lease, the lease must meet one of the following criteria: 1) “[t]ransfers ownership of the asset by the end of the lease term;” 2) “[g]rants the lessee the option to purchase the asset, and that option is reasonably certain to be exercised;” 3) “[t]he lease term is for the major part of the remaining economic life of the asset;” 4) “[t]he present value of the lease payments plus any residual value guarantee equals or exceeds substantially all of the asset’s fair value;” or 5) “[t]he asset is of such specialized nature that only the lessee can use it without major modifications.”⁴²

14. Here, MATC’s lease agreement for the motor vehicles had a term of {[]}⁴³ The length of the initial term in addition to the fact that the lease could potentially go on indefinitely, satisfies the criterion of having a lease term that “is for the major part of the remaining economic life of the asset,” which qualifies the lease as a finance lease.⁴⁴ MATC does not make any arguments about why the auditor should have instead treated its lease of motor vehicles as an operating lease that should have been subject to section 32.27(c).⁴⁵

15. We also are not persuaded by MATC’s claim that auditor improperly applied a depreciation rate of 10 years in calculating the recovery.⁴⁶ MATC did not raise this issue until it appealed the audit report,⁴⁷ and then only provided evidence to suggest that the Rural Utilities Service (RUS) had determined a median rate for depreciation for motor vehicles is closer to 5 years.⁴⁸ MATC has failed to explain why it was improper for the auditor to use the same depreciation rate used by MATC when calculating the support recovery and why the auditor should have instead used the median depreciation rate determined by RUS.⁴⁹

16. However, while we agree with the auditor’s application of section 32.27(b) and its use of a 10-year depreciation rate, we remand this finding to USAC to address MATC’s claims that the auditor in effect double recovered support for this finding and the finding for improper distribution of overhead expenses that we affirm below.⁵⁰ Based on the auditor’s audit report, it does appear that the auditor made adjustments for some of the same line items for both findings.⁵¹ Accordingly, we remand this finding to

⁴¹ NECA Reporting Guidelines § 2.19 at 1-2.

⁴² FASB Accounting Standards at 30, NECA Reporting Guidelines § 2.19 at 2.

⁴³ Lease Agreement Between MATC and MAC at 6 (Apr. 1, 2012) (provided to auditor during the course of the audit). Material that is set off by double brackets {[]} is subject to a request for confidential treatment and is redacted from the public version of this document.

⁴⁴ FASB Accounting Standards at 30; *see also* NECA Reporting Guidelines § 2.19 at 2.

⁴⁵ 47 CFR § 32.27(c).

⁴⁶ MATC Request at 9

⁴⁷ USAC Appeal at 3; 2023 Audit Report at 8-10.

⁴⁸ USAC Appeal at 3 (citing *RUS Depreciation Rates*).

⁴⁹ Based on supporting documentation that MATC submitted as part of the audit, {[]}. MATC Asset Management Depreciation Calculation (provided to auditor during the course of the audit).

⁵⁰ MATC Request at 9.

⁵¹ 2023 Audit Report at 8-10, 17-20.

USAC and instruct USAC to remove any instances of double recovery and recalculate the cost effect for this finding.

17. We separately decline to waive section 32.27(b). Generally, the Commission's rules may be waived for good cause shown.⁵² A petition for waiver of the Commission's Part 32 rules must “expressly demonstrate[]” that: (1) “existing peculiarities or unusual circumstances warrant a departure from a prescribed procedure or technique;” (2) “a specifically defined alternative procedure or technique will result in a substantially equivalent or more accurate portrayal of operating results or financial condition, consistent with the principles” of Part 32; and (3) “the application of such alternative procedure will maintain or improve uniformity in substantive results among telecommunications companies.”⁵³

18. As an initial matter, we disagree with MATC's claims that it would generally serve the public interest to waive the rules associated with the auditor's findings. While it is the Commission's goal to promote the deployment and operation of voice and broadband services in rural areas and recovering MATC's support will mean that MATC will have less support to accomplish this goal,⁵⁴ we have also found that “[h]olding that the public interest prong of the waiver standard is met whenever a carrier is faced with a reduction in support would effectively negate the public interest requirement, as this criterion would be met any time application of a rule resulted in reduced support.”⁵⁵ The Commission must balance its goal of supporting the deployment and operation of voice and broadband networks with its responsibility as steward of the Universal Service Fund to protect it from waste, fraud, and abuse, and here we find on balance that ensuring that we are protecting ratepayers by enforcing the affiliate transactions rules outweighs the potential impact on MATC's ability to deploy broadband.⁵⁶ We find on balance that incentivizing carriers to maintain accurate records so that the Commission can ensure that support is being used properly weighs more in favor of the public interest.⁵⁷ Specific to this finding, MATC failed to allege any “existing peculiarities or unusual circumstances” that warrant a departure from section 32.27(b). In addition, MATC does not provide any support or analysis for its claims that waiving the rule would “allow MATC to properly realize the cost and efficiency benefits of leasing vehicles from its affiliates”⁵⁸ MATC cites the *Joint Cost Order* to explain that “subjecting [asset transfers and the provision of services] to the same valuation requirements ‘would discourage, if not eliminate, the incentive for certain service activities to be provided in a more efficient manner than that which the regulated entity would alone achieve,’” however, as we discussed above, by virtue of being a finance

⁵² 47 CFR § 1.3; see *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

⁵³ 47 CFR § 32.18; see also *Puerto Rico Tel. Co. Petition for Waiver of Section 32.27 of the Commission's Rules*, ASD File No. 98-93, Order of Reconsideration, 16 FCC Rcd 8878, 8880-81, para. 6 (CCB 2001) (*PRTC Order*).

⁵⁴ MATC Request at 7.

⁵⁵ *Coral Wireless D/B/A Moby PCS Request for Review of the Decision of the Universal Service Administrator*, CC Docket No. 96-45, Order, 29 FCC Rcd 9540, 9542, para. 8 (WCB 2014) (*Coral Wireless Order*).

⁵⁶ See, e.g. *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 33 FCC Rcd 2900, 2995, para. 13 (2018) (*2018 Ineligible Expenses Order*) (explaining the Commission has “a duty to protect the public from waste, fraud, and abuse—a role that is especially important in the context of limited high-cost support, because overpayment to some carriers reduces the funding available to other providers.”).

⁵⁷ MATC's suggestion that we should delay recovery and pause our role as a steward of the public's funds until the Supreme Court has made a decision on the Fifth Circuit's holding regarding contributions to the Universal Service Fund is moot now that the Supreme Court has overturned the Fifth Circuit's holding. MATC Request at 7 (citing *Consumers' Research v. FCC*, 109 F.4th 743 (5th Cir. 2024)); *FCC v. Consumers' Research*, 2025 WL 1773630. MATC also cites the delay in receiving the audit findings as a reason that we should waive support recovery, but that reason is not applicable here because this finding was included in the original report. MATC Request at 3, 7.

⁵⁸ MATC Request at 10.

lease, the lease is treated as an asset transfer and MATC's argument fails to recognize the distinction between finance and operating leases and their different treatment under accounting rules.⁵⁹ MATC does not explain how waiving the rule would be consistent with the Commission's goal of "prevent[ing] cost shifting to ratepayers by means of improper transfer pricing."⁶⁰ Moreover, while MATC cites several situations where the Bureau waived section 32.27 to permit carriers "to avoid unnecessary expense,"⁶¹ in these cases the relevant Divisions of the Bureau emphasized the "limited" or "short" duration of the leases and that these short-term leases were connected to one-time corporate transactions, like a sale or separation of affiliated companies—such unusual circumstances are not present here.⁶² For the same reasons, MATC did not "expressly demonstrate" that the factors for waiving a part 32 rule have been met—for example, it does not even address how "the application of such alternative procedure will maintain or improve uniformity in substantive results as among telecommunications companies."⁶³

B. Inaccurate Continuing Property Records

19. Section 254(e) states a "carrier that receives [universal service] support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."⁶⁴ To this end, the Commission's rules require that rate-of-return carriers maintain and establish accurate continuing property records (CPR) that include certain details, including "the description, location, date of placement, the essential details of construction, and the original cost . . . of the property record units."⁶⁵ A "carrier is required by Part 32 to maintain a detailed inventory and other records of its telecommunications plant in service so that the equipment may be readily spot-checked for proof of physical existence."⁶⁶ The Commission's rules also make clear that "[c]arriers authorized to receive universal service high-cost support are subject to random compliance audits and other investigations to ensure compliance with program rules and orders."⁶⁷ Carriers are required to "retain all records required to demonstrate to auditors that the support received was consistent with the universal service rules" and must maintain such documentation "for at least ten years from the receipt of funding."⁶⁸

⁵⁹ *Id.* (citing *Separation of Costs of Regulated Telephone Service from Cost of Nonregulated Activities*, CC Docket No. 86-111, Report and Order, 2 FCC Rcd 1298, 1336, para. 294 (1987) (*Joint Cost Order*), modified on recon., 2 FCC Rcd 6283 (1987) (*Joint Cost Reconsideration Order*), modified on further recon., 3 FCC Rcd 6701 (1988) (*Joint Cost Further Reconsideration Order*), *aff'd*, *Southwestern Bell Corp. v. FCC*, 896 F.2d 1378 (D.C. Cir. 1990)).

⁶⁰ *Joint Cost Order*, 2 FCC Rcd at 1334, para. 290.

⁶¹ MATC Request at 10 (citing *US West, Inc.; Petition for Waiver of Section 32.27(c) of the Commission's Rules*, ASD File No. 98-102, Memorandum Opinion and Order, 15 FCC Rcd 4400 (CCB Accounting Safeguards Div. 2000) (*US West Order*); *Verizon Tel. Cos.; Petition for Waiver of Section 32.27(c) of the Commission's Rules*, CCB/CPD File No. 02-05, Order, 17 FCC Rcd 6997 (WCB Pricing Policy Div. 2002) (*Verizon Order*); *Qwest Servs. Corp.; Petition for Waiver of Section 32.27(c) of the Commission's Rules*, WCB/Pricing File No. 02-32, Order, 18 FCC Rcd 770 (WCB Pricing Policy Div. 2003) (*Qwest Order*)).

⁶² *US West Order*, 15 FCC Rcd at 4402, para. 5; *Verizon Order*, 17 FCC Rcd at 6998, para. 5; *Qwest Order*, 18 FCC Rcd at 771, para. 5.

⁶³ 47 CFR § 32.18.

⁶⁴ 47 U.S.C. § 254(e).

⁶⁵ 47 CFR § 32.2000(f)(2)(iii); see also generally *id.* § 32.2000(e), (f)(1)-(2).

⁶⁶ *BellSouth Telecommunications' Continuing Property Records Audit*, ASD File No. 99-22, Order, 14 FCC Rcd 4258, 4258, para. 2 (1999) (*BellSouth Audit*).

⁶⁷ 47 CFR § 54.320(a).

⁶⁸ *Id.* § 54.320(b).

Carriers must make such documentation available upon request to the Commission, the Bureau, and USAC.⁶⁹ Carriers failing to comply with public interest obligations or any other terms and conditions of the high-cost support program “may be subject to further action, including . . . reductions in support amounts.”⁷⁰

20. In verifying the footage of buried fiber optic (BFO) during a site visit, the auditor determined that “only a portion of the entire footage sampled from the CPR was supported in the field” and concluded that MATC “contained inaccurate CPRs for their [Cable and Wire Facilities (C&WF)] account balance (account 2410) as reported in its High Cost filings.”⁷¹ As a result, the auditor found that the monetary effect was \$51,392.⁷² In response to the initial audit finding, MATC acknowledged that “[a] lack of information in [its] records hampered [its] ability to reconcile [its] property records to [its] mapping system, leading to problems locating the assets in the field,” and also stated that it would “update [its] record keeping procedures to identify all assets accurately.”⁷³

21. However, in its appeal of the final Audit Report to USAC, MATC challenged the finding claiming that after working with “multiple consultants” on its CPRs, several issues were identified, including that the auditor “mistakenly interpreted” the “beginning balance as of December 31, 2016” used by MATC’s consultant as the “2016 additions,” which MATC claims “caused [the auditor] to incorrectly determine only a portion of MATC’s BFO was supported by its CPRs.”⁷⁴ MATC claims it shared with the auditor “the prior CPRs that the 2016 beginning balance was based upon . . . but [the auditor] declined to integrate this information into its audit findings.”⁷⁵ Moreover, MATC acknowledged that its “CPRs do not necessarily correctly describe the location of a given asset in each exchange,” because “certain construction invoices covering assets deployed in both of its exchanges were split evenly between them in the books rather than allocated specifically” and the audit sample did not include both exchanges.⁷⁶ MATC claims to have explained the issues to the auditor and provided further documentation, but the auditor did not revise its findings to account for this information.⁷⁷ MATC conceded that “its CPRs require better maintenance and [it] has committed to doing so.”⁷⁸ USAC denied the appeal, finding that MATC “did not submit any supporting documentation with its appeal for USAC to review to substantiate its arguments.”⁷⁹

22. In its request for review of USAC’s denial, MATC acknowledges that “although the CPR reviewed does overstate the BFO in MATC’s Brooks exchange, CPRs for its other exchanges plus other records do support MATC’s total BFO,” and that the auditor “used . . . inflated balances in [its] audit report, creating an inaccurate calculation” of support to be recovered.⁸⁰ MATC also claims that the

⁶⁹ *Id.*

⁷⁰ *Id.* § 54.320(c).

⁷¹ 2023 Audit Report at 10.

⁷² *Id.* at 12.

⁷³ *Id.* at 13.

⁷⁴ *Id.* at 3.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at 4.

⁷⁹ USAC Decision at 9.

⁸⁰ MATC Request at 11.

auditor refused to correct an overstatement by “approximately 60%” of the monetary effect calculation due to the BFO that was part of the sample being “erroneously overheaded by MATC at year end 2016 with legitimate costs of other assets, which were neither part of the asset sampled nor verified by the auditor during the audit,”⁸¹ and that MATC requests that the Commission either “reverse USAC’s determination entirely or, at a minimum, reverse its monetary effect calculation.”⁸²

23. Alternatively, MATC seeks waiver of sections 32.2000(e) and (f)(1)-(2) of the Commission’s rules. In addition to the general arguments MATC makes for waiving the rules associated with all of the findings, MATC argues that this particular “violation of the rule is minor” given that “the only inaccuracy in MATC’s records is the location (i.e., which exchange) of the BFO,” and the auditor’s calculation of the cost effect was determined using the “percentage of all of MATC’s BFO, not just the sample,” which resulted in overstating the impact as compared to the “actual, real impact.”⁸³

24. The support recipient bears the burden of demonstrating compliance with the Commission’s rules to justify the high-cost support received.⁸⁴ Based on our review of the record and the circumstances before us, we find that full recovery of the amount recommended in the audit finding is warranted due to the company’s non-compliance with the Commission’s rules. MATC is attempting to shift responsibility for properly documenting its costs to the auditor and prolong the audit by claiming, without support, that the auditor disregarded the additional information that MATC provided to “substantiate its BFO” and “correct” what MATC claims are calculations that are “overstated by approximately 60%.”⁸⁵ The Bureau has found that it is “not the responsibility of the auditors or within the scope of [an] audit for the auditors to recalculate, reconstruct, or correct [a carrier’s] records.”⁸⁶ Rather, the Bureau has held it is a carrier’s “responsibility to comply with the Commission’s rules by maintaining complete, accurate records.”⁸⁷ To allow for such post-audit corrections “would increase the time and cost

⁸¹ *Id.* MATC explains that it incorrectly associated certain indirect costs with the asset. *Id.* at 15, n.37.

⁸² *Id.*

⁸³ *Id.* at 12.

⁸⁴ 47 CFR § 54.320(b); *Sandwich Isles Communications, Inc.*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 577, 598, para. 43 (2019) (*2019 Sandwich Isles Order*) (“The burden is on recipients of high-cost funding to retain records sufficient to demonstrate that the funding they receive is consistent with the rules of the high-cost programs.”); *Request for Review of a Decision of the Universal Service Administrator by Nemont Tel. Coop., Inc.*, WC Docket No. 08-71, Order, 29 FCC Rcd 11780, 11784, para. 13 (WCB 2014) (*Nemont Order*) (“[I]t was not the responsibility of the auditors or within the scope of the audit for the auditors to recalculate, reconstruct, or correct [the carrier’s] records, or examine financial records from years outside of the audited year to determine what [carrier’s] support levels should have been. Rather, it is [the carrier’s] responsibility to comply with the Commission’s rules by maintaining complete, accurate records and reporting accurate costs to USAC.”); *see also Request for Review of a Decision of the Universal Administrator by New Lisbon Tel. Co.*, CC Docket No. 96-45, Order, 34 FCC Rcd 6352, 6354, para. 5 (WCB 2019) (“Maintaining appropriate documentation to support information submitted in cost studies used to determine universal service support is critical to the Commission’s ability to ensure that high-cost support is provided appropriately.”).

⁸⁵ MATC Request at 11.

⁸⁶ *Nemont Order*, 29 FCC Rcd at 11784, para. 13; *Request for Review of a Decision of the Universal Service Administrator by Big Bend Tel. Co., Inc.*, WC Docket No. 10-90, Order, DA 25-849, at 12, para. 34 (WCB June 6, 2025) (*Big Bend Order*).

⁸⁷ *Nemont Order*, 29 FCC Rcd at 11784, para. 13.

of the audit,” and would “improperly shift the responsibility for properly documenting costs from the carrier to the auditors.”⁸⁸

25. Even if it were the auditor’s responsibility to use MATC’s evidence to try to reconstruct or correct MATC’s CPRs, MATC does not provide evidence to support its claims that it raised concerns with the auditor during the audit, MATC did not raise its concerns in response to the audit report to give the auditor an opportunity to respond to MATC’s claims, and it is not clear whether the Exhibits that MATC is using to support its appeal contain information that was shared with the auditors.⁸⁹ Without further information, MATC does not demonstrate that the auditor failed to exercise “reasonable care and professional skepticism” in conducting the audit.⁹⁰ The Bureau has also declined requests to require auditors to consider late-filed evidence, finding that “requiring auditors to accept new evidence after their reports have been finalized would unnecessarily prolong and increase the costs of audits and make it difficult for auditors to draw final conclusions about an auditee’s compliance.”⁹¹ These same considerations apply here, where MATC conceded the auditor’s findings and now in the context of its appeal is raising new claims that were not included in its audit response, potentially prolonging an audit for a finding of \$51,392 as compared to the over \$3.2 million in high-cost support that MATC received during the audit period.⁹²

26. The Commission has stated “funds disbursed from the high-cost . . . support mechanism[] in violation of a Commission rule that implements the statute or a substantive program goal should be recovered.”⁹³ Here, MATC failed to comply with the Commission’s rules by not having, as required,⁹⁴ accurate CPRs that can “readily be spot-checked for proof of physical existence,”⁹⁵ which MATC acknowledges.⁹⁶ The Bureau has found that “[m]aintaining appropriate documentation to support information submitted in cost studies used to determine universal service support is critical to the Commission’s ability to ensure that high-cost support is provided appropriately.”⁹⁷ Accordingly, MATC is only entitled to retain support for which it can demonstrate it was entitled to receive during the course of the audit.

⁸⁸ *Id.*; *Big Bend Order* at 12, para. 34 (“Although some portion of payroll expense is likely recoverable, [the carrier] cannot use that likelihood to push the burden on [the auditor] to retroactively determine what portion of payroll was recoverable and what portion should be allocated to . . . other businesses and offerings”).

⁸⁹ 2023 Audit Report at 13 (acknowledging in MATC’s response to the audit report “[a] lack of information in our records hampered our ability to reconcile our property records to our mapping system, leading to problems locating the assets in the field. We will update our record keeping procedures to identify all assets accurately.”). *See also* MATC Request at 10 & Exh. 6, 7 (stating that MATC “acknowledged the BFO footage on the CPR is overstated and provided information as to why”).

⁹⁰ U.S. Government Accountability Office, Government Auditing Standards 2024 Revision, § 3.110, <https://guides.gaoinnovations.gov/yellowbook/2024/> (Feb. 2024) (GAGAS 2024 Revision) (“Professional skepticism includes being alert to, for example, evidence that contradicts other evidence obtained or information that brings into question the reliability of documents or responses to inquiries to be used as evidence.”).

⁹¹ *Nemont Order*, 29 FCC Rcd at 11784, para. 11.

⁹² 2023 Audit Report at 6, 12.

⁹³ *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight et al.*, WC Docket No. 05-195 et al., Report and Order, 22 FCC Rcd 16372, 16386, para. 30 (2007).

⁹⁴ 47 CFR § 32.2000(e), (f)(1)-(2).

⁹⁵ *BellSouth Audit*, 14 FCC Rcd at 4258, para. 2.

⁹⁶ MATC Request at 10, 11, 12.

⁹⁷ *Nemont Order*, 29 FCC Rcd at 11783, para. 8.

27. We also decline to waive sections 32.2000(e) and (f)(1)-(2) of the Commission's rules. As an initial matter, we addressed above why we were not persuaded by MATC's general claims about waiving the rules related to all of the auditor's findings that MATC chose to appeal.⁹⁸ Specific to this claim, despite MATC's characterization as its error as "minor,"⁹⁹ we find on balance that incentivizing carriers to maintain accurate records so that the Commission can ensure that support is being used properly weighs more in favor of the public interest than permitting a carrier to retain its support. We are also not convinced that MATC satisfies the other condition for waiving Part 32 of the Commission's rules, requiring MATC to "expressly demonstrate[]" certain factors.¹⁰⁰

28. Here, the issues result from an error on MATC's part which is not an "existing peculiarity or unusual circumstances."¹⁰¹ Moreover, rather than proposing a "specifically defined alternative procedure or technique,"¹⁰² MATC is instead asking us to overlook an error in MATC's records. And finally, MATC does not explain why overlooking MATC's error "will maintain or improve uniformity in substantive results as among telecommunications companies."¹⁰³ Rather, we find doing so would more likely undermine such goals.

C. Support Not Used For Intended Purposes

29. Under federal law, high-cost support provided to an eligible telecommunications carrier (ETC) must be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."¹⁰⁴ In 2015, the Commission released a public notice reminding carriers of their obligation to use high-cost support for its intended purposes.¹⁰⁵ The public notice contained a "non-exhaustive" list of expenditures that cannot be recovered through the high-cost program because they are "not necessary to the provision of supported services."¹⁰⁶ In 2018, noting recent "large-scale abuses in the recovery of expenses that are unrelated to the provision of . . . universal service supported services," the Commission codified in section 54.7(c) of the Commission's rules an updated non-exhaustive list of expenses categories that cannot be recovered through high-cost support.¹⁰⁷ Prior to (and since) the effective date of this change to section 54.7, paragraph (a) of the rule included the above-quoted language from section 254(e).¹⁰⁸

30. During its audit of MATC, the auditor reviewed MATC's general ledger and supporting documentation and found ineligible expense transactions "related to legal retainer, gifts, memberships,

⁹⁸ MATC Request at 7; *see also supra* para. 18. We note that MATC's general claim that special circumstances exist because of the delay in receiving the final audit report is not applicable here because this finding was included in the initial report. *See* MATC Request at 3, 7.

⁹⁹ MATC Request at 12.

¹⁰⁰ 47 CFR § 32.18.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ 47 U.S.C. § 254(e).

¹⁰⁵ *All Universal Service High-Cost Support Recipients are Reminded that Support Must be Used for its Intended Purpose*, WC Docket No. 10-90 et al., Public Notice, 30 FCC Rcd 11821 (2015) (*2015 Ineligible Expenses Public Notice*).

¹⁰⁶ *Id.* at 11822.

¹⁰⁷ *2018 Ineligible Expenses Order*, 33 FCC Rcd at 2997, para. 16; 47 CFR § 54.7(c).

¹⁰⁸ 47 U.S.C. § 254(e); 47 CFR § 54.7(a) (2017) .

dues, subscriptions, donations, scholarships, etc., that were not necessary for the provision, maintenance, and upgrading of facilities.”¹⁰⁹ The auditor stated that because the Commission’s *2018 Ineligible Expenses Order* was released during the audit’s data period, “the FCC rule effective during the audit period [47 CFR § 54.7(a)] states, ‘a carrier that receives federal universal service support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.’”¹¹⁰ The auditor also indicated that it relied on the Commission’s *2015 Ineligible Expenses Public Notice*.¹¹¹ The auditor found that MATC “should have removed the entire value of these unallowable transactions during its cost study process,” and recommended a cost recovery of \$23,969.¹¹² MATC responded by acknowledging “some ineligible expenses” had been “included in the High Cost filing,” citing a “misunderstanding of notice effective date and inadequate procedures for identifying ineligible expenses.”¹¹³

31. However, MATC later appealed the finding, claiming that the Commission’s *2015 Ineligible Expenses Public Notice* “does not . . . support many of the exclusions that [the auditor] identifies.”¹¹⁴ For example, MATC claimed that its Buried Cable Expenses “are routine inventory adjustments for materials directly used for maintaining and upgrading MATC’s buried cable” despite not being “adjusted out of materials for each individual project.”¹¹⁵ MATC also identified certain expenses that were not specifically identified as excludable in the Commission’s *2015 Ineligible Expenses Public Notice* but were identified by the auditor as excludable, including legal retainers, employee uniforms, and certain dues.¹¹⁶ USAC denied the appeal, explaining that even though the *2015 Ineligible Expenses Public Notice* did not specifically state that the expenses identified by MATC are unallowable, the Commission’s list was “non-exhaustive” and the fact such expenses were not specifically on the list does not preclude a finding that they are ineligible.¹¹⁷

32. In its request for review of USAC’s denial, MATC reiterates its claims that the *2015 Ineligible Expenses Public Notice* did not specifically list the expenses identified by the auditor and “USAC made no attempt to discuss this fact or explain its finding to the contrary.”¹¹⁸ MATC also claims that USAC lacks the authority “to make interpretations of Commission policy or rules, such as determining what other expenses may or may not be included in a non-exhaustive list,” and that rather than MATC having the burden of demonstrating the expenses were allowable, “it is up to the auditor to support its conclusions appropriately in the first place.”¹¹⁹ Alternatively, MATC seeks waiver of section 54.7(a) of the Commission’s rules and the Commission’s *2015 Ineligible Expenses Public Notice* claiming that it would be in the public interest to “allow MATC to properly recover and continue to deploy broadband in a timely and efficient manner,” and noting that because the Commission’s *2018 Ineligible Expenses Order* “was not effective during the audit period, the monetary impact calculated by

¹⁰⁹ 2023 Audit Report at 13.

¹¹⁰ *Id.* at 14 (quoting 47 CFR § 54.7(a)).

¹¹¹ *Id.* at 13 & n.10.

¹¹² *Id.* at 14.

¹¹³ *Id.* at 15.

¹¹⁴ USAC Appeal at 4.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ USAC Decision at 9.

¹¹⁸ MATC Request at 13.

¹¹⁹ *Id.* at 13, 14.

[the auditor] should not be recovered.”¹²⁰ MATC also acknowledges that some of the expenses that the auditor listed as disallowed “were misidentified in its records” and claims to have “since corrected these records and implemented better accounting measures to avoid future issues.”¹²¹

33. MATC has failed to meet its burden of showing that the expenses at issue were for the “provision, maintenance, and upgrading of facilities and services for which the support is intended,”¹²² and thus full recovery for the expenses is warranted.¹²³ While we acknowledge that the Commission did not list all of the expenses at issue in this audit in its *2015 Ineligible Expenses Public Notice*, it made very clear that the list it provided was “non-exhaustive” and put carriers on notice that they have the burden to ensure their support is being used for its intended purpose by stating “ETCs should take all necessary steps to ensure that they and their agents, contractors, consultants, and representatives scrupulously adhere to the rules governing legacy high-cost and Connect America Fund program support.”¹²⁴

34. We also disagree with MATC’s claim that USAC could not affirm the auditor’s exclusion of expenses not included in the non-exhaustive list that the Commission provided in the *2015 Ineligible Expenses Public Notice*.¹²⁵ As an initial matter, we note that it was the auditor, not USAC, that identified the ineligible expenses, applying section 54.7(a) of the Commission’s rules and the *2015 Ineligible Expenses Public Notice*. While we acknowledge that USAC cannot “make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress,”¹²⁶ we disagree that USAC is unable to determine whether support is being used for its intended purposes. As noted above, there is nothing to suggest that the auditor or USAC were limited to just the specific examples in determining which expenses were ineligible, and we disagree that USAC is “mak[ing] policy, interpret[ing] unclear provisions of the statute or rules, or interpret[ing] the intent of Congress” by applying the guidance provided by the Commission to affirm the auditor’s identification of expenses that are ineligible.¹²⁷ Moreover, while MATC claims it was the auditor’s responsibility to support its findings that the expenses were unallowable,¹²⁸ MATC appears to be shifting its responsibility to comply with the rules to the auditor that only has what is reported as expenses and any documentation provided by MATC to support its conclusions. The Commission has previously stated “[t]he burden is on recipients of high-cost funding to retain records sufficient to demonstrate that the funding they receive is consistent with the rules of the high-cost programs.”¹²⁹ If MATC disagreed with the auditor’s findings, then MATC had the opportunity to dispute the auditor’s findings and provide evidence to demonstrate that the expenses were connected to

¹²⁰ *Id.* at 14.

¹²¹ *Id.*

¹²² 47 CFR § 54.7(a).

¹²³ *2015 Ineligible Expenses Public Notice*, 30 FCC Rcd at 11822.

¹²⁴ *Id.*

¹²⁵ MATC Request at 13.

¹²⁶ 47 CFR § 54.702(c).

¹²⁷ *Id.* § 54.702(c); see *Federal-State Joint Board on Universal Service et al.*, CC 96-45 et al., Order, 22 FCC Rcd 4925, 4931, para. 20 (WCB 2007) (affirming USAC’s ability to use its “discretion” when it had the authority to review information and acted within guidance provided by the Commission); *Universal Service Contribution Methodology Federal-State Joint Board on Universal Service*, WC Docket No. 06-122 et al., Order on Reconsideration, 29 FCC Rcd 7538 (2014) (affirming the Bureau’s reasoning).

¹²⁸ MATC Request at 14.

¹²⁹ *2019 Sandwich Isles Order*, 34 FCC Rcd at 598, para. 43.

the intended purpose of the support.¹³⁰ Instead, MATC conceded that its “inadequate procedures for identifying ineligible expenses caused some ineligible expenses to be included in the High Cost filing”¹³¹ and only later reversed course to raise these issues in its appeal and request for review of USAC’s denial.

35. Irrespective of USAC’s authority to affirm an auditor’s identification of ineligible expenses beyond the examples identified in the *2015 Ineligible Expenses Public Notice*, the Bureau has the authority to review USAC’s decisions de novo.¹³² The Commission has previously held that “[a]bsent statutory requirements to the contrary or factors warranting a heightened standard, the Commission generally applies the ‘preponderance of the evidence’ standard in informal agency adjudications.”¹³³ We find that MATC has not demonstrated that the excluded expenses are related to the provision, maintenance, or upgrading of supported services by the preponderance of evidence. While the auditor disallowed expenses “related to legal retainer, gifts, memberships, dues, subscriptions, donations, scholarships, etc., that were not necessary for the provision, maintenance, and upgrading of facilities,”¹³⁴ MATC only very generally describes in its appeal and request for review which expenses should not be disallowed, makes conclusory statements about the expenses being allowable, and does not provide any evidence for its claims that they are allowable expenses.

36. For example, while MATC claims that its Buried Cable Expenses were “directly used for maintaining and upgrading MATC’s buried cable,” the fact that the expenses were not “adjusted out of materials for each individual project” makes it difficult to determine whether the expenses were directly related to the carrier’s supported services.¹³⁵ MATC is responsible for maintaining accurate books and providing the information necessary to the auditor to conduct its audit. As we noted above, it is a carrier’s “responsibility to comply with the Commission’s rules by maintaining complete, accurate records” and the Bureau has found that auditors are not required to accept late filed evidence.¹³⁶ Without further evidence about how these expenses are tied to MATC’s provision, maintenance, or upgrading of supported services, MATC has failed to meet its burden to show that these expenses were for the provision, maintenance, and upgrading of facilities and services for which high-cost support is intended.

37. In its appeal, MATC also claims that legal retainers, employee uniforms, and dues were improperly excluded by the auditor, but it is not clear for which specific expenses MATC is continuing to seek relief for in its request.¹³⁷ MATC explains in its request for review that some of the records for legal retainers, employee uniforms, and dues were “misidentified” and instead were “special costs for attending educational seminars” that MATC claims are allowable expenses.¹³⁸ MATC also appears to now concede

¹³⁰ See *Sandwich Isles Communications, Inc.*, WC Docket No. 10-90, Order, 31 FCC Rcd 12999, 13014, para. 48 (2016) (describing how “USAC reported it was unable to come to a determination regarding the validity of . . . management fees given that [the beneficiary] did not submit details on how each invoice related to [the beneficiary’s] obligations under section 54.7 of the Commission’s rules to use support for the provision, maintenance, and upgrading of facilities and services.”).

¹³¹ 2023 Audit Report at 15.

¹³² 47 CFR §§ 54.722, 54.723(a).

¹³³ *2019 Sandwich Isles Order*, 34 FCC Rcd at 598, para. 43 (quoting *Universal Service Contribution Methodology, Petition for Clarification and Partial Reconsideration by XO Communications Services, LLC*, WC Docket No. 06-122, Order on Reconsideration, 29 FCC Rcd 9715, 9719, para. 12 (2014)).

¹³⁴ 2023 Audit Report at 13.

¹³⁵ USAC Appeal at 4.

¹³⁶ See *supra* paras. 24-26; *Nemont Order*, 29 FCC Rcd at 11784, paras. 11, 13.

¹³⁷ USAC Appeal at 4.

¹³⁸ MATC Request at 14.

that dues “are not includable.”¹³⁹ To the extent MATC is seeking relief for these expenses, it is not clear how the auditor could have known that these were includable expenses when MATC made an error in its records and did not dispute the auditor’s findings in its response to audit.

38. If MATC is still seeking to have support associated with these expenses restored, MATC makes no effort to explain how these expenses are connected to the intended purpose of support or provide evidence to support such a claim and therefore has failed to meet its burden. Instead, MATC argues in its appeal that the auditor should not have excluded these expenses because they were not identified in the non-exhaustive list in the *2015 Ineligible Expenses Public Notice*.¹⁴⁰ Regarding dues, the *2015 Ineligible Expenses Public Notice* explicitly explained that support could not be recovered for “[m]embership fees and dues in clubs and organizations.”¹⁴¹ Even though the *2018 Ineligible Expenses Order* later clarified that this extended to dues for industry organizations, the *2018 Ineligible Expenses Order* stated that only new prohibitions would be applied on prospective basis.¹⁴² The prohibition on dues was an existing prohibition, and the FCC’s decision to later provide more clarity on what it meant did not preclude a finding based on the *2015 Ineligible Expenses Public Notice* that dues for a trade association would be prohibited.

39. We also decline to waive section 54.7(a) of the Commission’s rules or the *2015 Ineligible Expenses Public Notice*.¹⁴³ Waiver of the Commission’s rules is appropriate only if both: (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest.¹⁴⁴ For the reasons explained above, we are not persuaded by MATC’s general claim that a waiver is in the public interest.¹⁴⁵ Moreover, we are not persuaded that there are any special circumstances that warrant a waiver. MATC cites the delay in receiving the audit findings as a reason that we should waive support recovery.¹⁴⁶ But MATC was on notice prior to the first audit report being issued that the auditor had made these findings and MATC had a chance to respond at that time.¹⁴⁷ Although the auditor informed MATC that some of the findings were oral and it was not planning to take any action,¹⁴⁸ MATC had a second chance to respond once it was clear that the auditor was going to take action,¹⁴⁹ and MATC was even provided with additional time to respond after MATC initially did not take the auditor up on the opportunity to provide a response.¹⁵⁰ While we acknowledge the burden of having to go back and review the records to prepare a response, preparation of a revised audit report is not an unusual situation and, moreover, we see no reason why this occurrence would justify MATC’s use of

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 13.

¹⁴¹ *2015 Ineligible Expenses Public Notice*, 30 FCC Rcd at 11822.

¹⁴² *2018 Ineligible Expenses Order*, 33 FCC Rcd at 2997, para. 17 & n.45.

¹⁴³ MATC Request at 14; 47 CFR § 54.7(a); *2015 Ineligible Expenses Public Notice*, 30 FCC Rcd 11821.

¹⁴⁴ See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969), *cert. denied*, 93 S.Ct. 461 (1972)).

¹⁴⁵ MATC Request at 7; see also *supra* para. 18.

¹⁴⁶ MATC Request at 7.

¹⁴⁷ *Id.* at 3.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 3-4.

¹⁵⁰ USAC Decision at 11; see also MATC Request at 4 (claiming that “[d]ue to the passage of time, the complexity of revisiting the audit history, and previous issues with [the auditor] declining to consider additional information provided by MATC, MATC did not provide additional responsive information to [the auditor] at this time.”).

high-cost support for ineligible expenses. Specific to this finding, MATC reiterates its claim that USAC should not recover support because the clarifications in the Commission's *2018 Ineligible Expenses Order* were not effective until after the audit period,¹⁵¹ but we have explained above that the Bureau made clear that the list of examples in the *2015 Ineligible Expenses Public Notice* was non-exhaustive so that carriers and auditors were on notice that other expenses may also be excludable.¹⁵² MATC has cited no special circumstances that warrant waiver, and as the Commission has previously explained, a carrier's "dissatisfaction with the amounts currently available to it under the existing" high-cost support mechanism "does not constitute a 'special circumstance' that would justify a waiver."¹⁵³

D. Inadequate Documentation

40. As discussed above, section 54.320 of the Commission's rules states that carriers receiving high-cost support "are subject to random compliance audits and other investigations to ensure compliance with program rules and orders."¹⁵⁴ The rule further requires ETCs to "retain all records required to demonstrate to auditors that the support received was consistent with the universal service high-cost program rules" for a 10-year period.¹⁵⁵ As the Commission previously explained, "[t]he burden is on recipients of high-cost funding to retain records sufficient to demonstrate that the funding they receive is consistent with the rules of the high-cost programs."¹⁵⁶

41. The auditor reviewed MATC's general ledger and C&WF CPR and determined that MATC "did not have adequate documentation to substantiate the value for one asset sample."¹⁵⁷ As a result, the auditor recommended that USAC recover \$20,790.¹⁵⁸ MATC responded that the asset was "in the company's network" despite the fact that it "was not found in the exchange where it was recorded in the CPRs."¹⁵⁹ MATC also explained that it was developing "[p]rocesses and procedures for document retention and recording in proper exchange as well as for future changes in employee and outside consulting professionals."¹⁶⁰

42. MATC then appealed the finding, claiming that the asset at issue was "an addition to its BFO . . . incorrectly overheaded in 2016, with a number of other minimal assets that are typically not separately identified as CPR assets."¹⁶¹ Accordingly, MATC claims the asset was not within the 10-year record retention period and that the auditor "refused to remove this asset from the sample" even though MATC had raised this issue with the auditor.¹⁶² USAC denied MATC's appeal, finding that MATC "did

¹⁵¹ MATC Request at 14.

¹⁵² *2015 Ineligible Expenses Public Notice*, 30 FCC Rcd at 11822.

¹⁵³ *Moultrie Order*, 16 FCC Rcd at 18251, para. 21.

¹⁵⁴ 47 CFR § 54.320(a).

¹⁵⁵ *Id.* § 54.320(b).

¹⁵⁶ *See 2019 Sandwich Isles Order*, 34 FCC Rcd at 598, para. 43.

¹⁵⁷ 2023 Audit Report at 15.

¹⁵⁸ *Id.* at 17.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ USAC Appeal at 5.

¹⁶² *Id.*

not provide adequate documentation to demonstrate that transactions were recorded in the proper amount and to the proper general ledger account.”¹⁶³

43. MATC seeks review of USAC’s denial, raising the new claim that the sample selected by the auditor {[]} which MATC states “illustrates the flaw in [the auditor’s] sampling of the 12-31-2016 balances rather than the individual assets.”¹⁶⁴ MATC also claims that the 2016 overheads “were never part of the asset and should not have been part of the overstated asset balance,” and that they should not have been “removed by [the auditor], since [the auditor] did not verify the existence of the items included in the overhead allocation.”¹⁶⁵ MATC claims that even though it brought this to the auditor’s attention while undergoing the audit, the auditor did not make any corrections.¹⁶⁶ MATC also takes issues with the fact that the auditor determined that depreciation for the asset should be {[]}, while MATC claims the depreciation should be {[]}

[]}.¹⁶⁷ Alternatively, MATC seeks a waiver, claiming that because the asset “is almost 20 years old and almost fully depreciated” the asset “did not have a material impact on MATC’s USF receipts in 2018.”¹⁶⁸ Although MATC concedes it had inadequate documentation for the asset, it claims “USAC would be recovering support that MATC did not actually receive.”¹⁶⁹

44. We agree with USAC that the support associated with the asset sample should be fully recovered. MATC is again seeking to shift the burden of properly documenting its costs to the auditor and seeking to prolong the audit. As we explained above, it is not an auditor’s responsibility to “recalculate, reconstruct, or correct [a carrier’s] records.”¹⁷⁰ Here, MATC conceded that the asset was “erroneously overheaded by MATC in 2016” and that it “did not have appropriate documentation to support the asset”.¹⁷¹ The auditor calculated the recovery based on the sufficient, appropriate evidence the auditor collected from MATC’s records by “removing the unsupported balances” from MATC’s filings for the relevant periods, using a depreciation that is consistent with what the records indicated from the sample.¹⁷²

45. Even if the auditor had the responsibility to consider the evidence that MATC claims without support to have brought to the auditor’s attention, such as the fact that MATC “erroneously overheaded” certain costs,¹⁷³ and the auditor “did not verify the existence of the items included in the overhead allocation,”¹⁷⁴ MATC again waited until after the audit report was finalized to formally raise these concerns so that the auditor did not have the opportunity to respond to the allegations that it had improperly “refused” to address these issues and should have made such corrections. The audit report

¹⁶³ USAC Decision at 10.

¹⁶⁴ MATC Request at 15.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 16.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Nemont Order*, 29 FCC Rcd at 11784, para. 13; *Big Bend Order* at 12, para. 34. *See also supra* para. 24.

¹⁷¹ MATC Request at 15-16.

¹⁷² 2023 Audit Report at 15-17; MATC Request at 16.

¹⁷³ MATC Request at 15-16.

¹⁷⁴ *Id.* at 15.

indicates that MATC simply acknowledged that the existence of the asset “in the company’s network” in response to the audit and claimed it was unable to produce documentation to substantiate the balances “due to a lack of effective retention policy and procedures, a change of outside consulting professionals, and employee turnover.”¹⁷⁵ Without further information, MATC does not demonstrate that the auditor failed to exercise “reasonable care and professional skepticism.”¹⁷⁶ Moreover, for the same reasons that we discuss above, accepting new claims regarding evidence raised upon appeal and outside the context of the audit would unnecessarily prolong and increase the costs of an audit for a finding of \$20,790 as compared to the over \$3.2 million that MATC received in high-cost support during the audit period.¹⁷⁷

46. Nor are we convinced by MATC’s argument that there is a “flaw in [the auditor’s] sampling of the 12-31-2016 balances” because the sample {{ }}.¹⁷⁸ The auditor made clear it reviewed a non-statistical, judgmental sample.¹⁷⁹ MATC raises this issue for the first time in its request for review and does not provide any explanation or support for its conclusory claim that a sample {{ }} is flawed, and we see no evidence to suggest that the auditor did not properly exercise its judgment in determining the sample.¹⁸⁰

47. We also deny MATC’s request for waiver.¹⁸¹ In addition to not being persuaded by MATC’s general waiver claims,¹⁸² MATC acknowledged that it failed to maintain accurate records and we are not persuaded an error constitutes special circumstances that warrants deviating from precedent.¹⁸³ Despite MATC’s claims that USAC would be over-recovering support for the sampled asset and that the error “did not have a material impact on MATC’s USF receipts in 2018,”¹⁸⁴ the Bureau has been clear that “[m]aintaining appropriate documentation to support information submitted in cost studies used to determine universal service support is critical to the Commission’s ability to ensure that high-cost support is provided appropriately,” and has recovered support based on a carrier’s existing documentation regarding its costs.¹⁸⁵ Apart from its general waiver claims, MATC has not explained why it would serve the public interest to deviate from the Bureau’s precedent.¹⁸⁶

E. Improper Distribution of Overhead Expenses

48. Section 32.6112 of the Commission’s rules describes which expenses should be included

¹⁷⁵ 2023 Audit Report at 16.

¹⁷⁶ GAGAS 2004 Revision, § 3.110 (“Professional skepticism includes being alert to, for example, evidence that contradicts other evidence obtained or information that brings into question the reliability of documents or responses to inquiries to be used as evidence.”); 2023 Audit Report at 6, 17.

¹⁷⁷ *Nemont Order*, 29 FCC Rcd at 11784, para. 11. *See also supra* para. 25.

¹⁷⁸ MATC Request at 15.

¹⁷⁹ 2023 Audit Report at 15.

¹⁸⁰ GAGAS 2024 Revision, § 8.107 (providing an auditor with discretion to choose “the appropriate selection method” depending “on the audit objectives”).

¹⁸¹ MATC Request at 16.

¹⁸² *Id.* at 7; *see supra* paras. 18, 39.

¹⁸³ MATC Request at 15-16; 2023 Audit Report at 16.

¹⁸⁴ MATC Request at 16.

¹⁸⁵ *See, e.g., Nemont Order* at 11782-83, para. 8. *See also Big Bend Order* at 9, para. 31; *Request for Review of a Decision of the Universal Service Administrator by New Lisbon Tel. Co.*, CC Docket No. 96-45, Order, 34 FCC Rcd 6352, 6354, para. 5 (WCB 2019).

¹⁸⁶ 47 CFR § 54.320(b).

in Account 6112 for motor vehicle expenses.¹⁸⁷ Additionally, the section states “[c]redits shall be made to this account for amounts transferred to Construction and/or to other Plant Specific Operations Expense accounts.”¹⁸⁸

49. During the audit, the auditor reviewed MATC’s overhead clearing reports.¹⁸⁹ The auditor found that “account 6112 motor vehicle expense improperly included customer operations expenses, corporate operations expenses, and plant non-specific operations expense accounts” and recommended that USAC recover \$18,936.¹⁹⁰ MATC indicated in its response to the audit that its “procedures to spread the motor vehicle expenses were not clear and appropriate,” and stated that it “will develop clear procedures and instructions for properly spreading the motor vehicle expenses to construction and to the related plant specific operations expense accounts.”¹⁹¹

50. However, MATC then appealed the finding. MATC claimed that it “allocates vehicle expenses based on use,” and was “not aware of any prohibition” of its allocation of expenses to non-plant related accounts such as “customer operations, corporate operations, or non-regulated operations” when some of the vehicle’s use is for these purposes.¹⁹² USAC denied the appeal stating that “FCC rules do not have any exceptions for not allocating 100% of vehicle expenses,” and finding that the FCC’s rules do not “permit allocation of vehicle expense based on use.”¹⁹³

51. MATC seeks review of USAC’s denial, claiming that the auditor and MATC misinterpreted section 32.6112(b) “to limit credits to accounts exclusively to those specifically listed (i.e., Construction or Plant Specific)” and that instead, the rule does not prevent MATC from “crediting its motor vehicle expenses to other accounts.”¹⁹⁴ MATC also raises the new claim that because there are expenses in Account 6112 related to the lease for which the auditor already disallowed expenses under its first finding, “the monetary impact and proposed recovery for [this finding] are significantly overstated.”¹⁹⁵ Alternatively, MATC requests that the Bureau waive section 32.6112 of the rules, claiming that its allocation “more accurately reflects the company’s actual financial situation, without subverting the purpose of Part 32 of the rules” given that the auditor’s calculation of the cost effect “artificially inflated allocation to the regulated operations” due to the fact that the “other expense accounts” to which MATC actually allocates its motor vehicle expenses “are not allocated between regulated and non-regulated operations in the same percentages as the Construction and Plant Specific accounts.”¹⁹⁶

52. We find that recovery associated with this finding is warranted, subject to a remand to remove any instances of double recovery, and agree with USAC that section 32.6112 of the rules limits the type of credits carriers can make to Account 6112 to only those amounts transferred to construction

¹⁸⁷ *Id.* § 32.6112(a).

¹⁸⁸ *Id.* § 32.6112(b).

¹⁸⁹ 2023 Audit Report at 17.

¹⁹⁰ *Id.* at 17, 19.

¹⁹¹ *Id.* at 20.

¹⁹² USAC Appeal at 5.

¹⁹³ USAC Decision at 10.

¹⁹⁴ *Id.* at 17.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at 18.

and/or other plant specific operations expense accounts.¹⁹⁷ In responding to petitions for reconsideration of the order establishing the uniform systems of accounts, the Commission stated that a party “also requested clarification of the difference in clearance instructions for accounts 6112, 6113, 6114, 6116, and 6512 . . . which permit clearances *only* to construction or other plant specific operations accounts.”¹⁹⁸ The Commission clarified “[t]he instructions for the five accounts in question provide for clearance to construction and other plant specific expense accounts leaving behind amounts which (a) would relate to other expense account groups (plant nonspecific, customer operations, and corporate operations) and (b) those expenses which would require highly arbitrary allocations if those accounts were forced to zero balances.”¹⁹⁹ MATC has not cited to any Commission documents or other evidence to support its more expansive reading of the rule, nor did it dispute the auditor’s finding at the time of the audit despite having an opportunity to respond.

53. We also are not convinced we should waive the Commission’s rule to permit MATC to allocate its motor vehicle expenses based on use.²⁰⁰ As noted above, we are not persuaded by MATC’s general claims for seeking waiver of all the rules related to the auditor’s findings, including MATC’s public interest claims.²⁰¹ Moreover, specific to this finding, we do not find that MATC has expressly demonstrated that a waiver is warranted as required by section 32.18 of the Commission’s rules.²⁰² MATC does not expressly demonstrate that there are any “existing peculiarities or unusual circumstances” that would justify a waiver.²⁰³ Instead, MATC just explains it takes a different approach by crediting its motor vehicle expenses to other accounts not permitted by the rule.²⁰⁴ Although MATC claims that its “practice more accurately reflects the company’s actual financial situation, without subverting the purpose of Part 32 of the rules,” explaining that the “other expense accounts are not allocated between regulated and non-regulated operations in the same percentages as the Construction and Plant specific accounts,”²⁰⁵ it does not provide evidence to support these claims.²⁰⁶ Finally, MATC does not demonstrate or even address how permitting MATC to use its alternative approach “will maintain or improve uniformity in substantive results as among telecommunications companies.”²⁰⁷

54. However, as we explained above, we remand this finding to USAC and direct USAC to recalculate the cost effect calculation for this finding to remove any instances of double recovery for this finding and the improper valuation of affiliate transaction finding.²⁰⁸

¹⁹⁷ 47 CFR § 32.6112(b).

¹⁹⁸ *Revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B Telephone Companies (Parts 31, 33, 42, and 43 of the FCC’s Rules)*, CC Docket No. 78-196, Memorandum Opinion and Order, 2 FCC Rcd 1086, 1090, para. 33 (1987) (emphasis added).

¹⁹⁹ *Id.* at 1090, para. 34.

²⁰⁰ MATC Request at 18.

²⁰¹ *Id.* at 7; *see supra* paras. 18, 39.

²⁰² 47 CFR § 32.18.

²⁰³ *Id.*

²⁰⁴ MATC Request at 18.

²⁰⁵ *Id.*

²⁰⁶ *See, e.g., PRTC Order*, 16 FCC Rcd at 8881, para. 7 (denying a petition for waiver in part because a carrier relied on “mere assertions” regarding how its alternative approach “would result in a substantially more accurate portrayal of operating results or financial conditions”).

²⁰⁷ 47 CFR § 32.18.

²⁰⁸ *See supra* para. 16.

F. Improper Inclusion of Non-Regulated Assets

55. Part 64 of the Commission's rules governs an incumbent local exchange carrier's allocation of joint and common costs between activities regulated under Title II of the Communications Act of 1934 and nonregulated activities. The Commission established these rules to protect ratepayers from bearing the costs and risks of nonregulated activities. The rules are intended to deter unreasonable cost shifting both from cost misallocations of joint and common costs and from affiliate transactions.²⁰⁹ Section 64.901(b) describes principles for assigning or allocating costs to regulated and nonregulated activities,²¹⁰ including that incumbent local exchange carriers shall allocate central office equipment and outside plant investment costs between regulated and nonregulated activities based on the peak "relative regulated and nonregulated usage" projected over a three-year period.²¹¹ Accordingly, spare (or reserve) capacity shall be allocated "based on how the incumbent local exchange carrier projects that the deployed plant will be used during the three-year period."²¹²

56. During the audit, the auditor reviewed MATC's C&WF route allocation and found that MATC had only allocated its dark fiber to regulated usage.²¹³ Finding that MATC should have also allocated a portion of its dark fiber to non-regulated usage based on the usage of the investment, the auditor recommended recovery of \$14,933 which is the result of allocating the dark fiber in same proportion as MATC allocates its in-use fiber.²¹⁴ MATC responded that "[b]ased on fiber usage," MATC "removed the lease fibers from [its] network and allocated the spares on the fibers left in the network."²¹⁵ The auditor cited this response, but clarified that MATC should have first allocated the costs associated with spares between regulated and non-regulated uses and then removed the costs related to non-regulated leased assets.²¹⁶ MATC claimed that it was "unaware of any rules on sequential order for the removal of leased fibers" and indicated it would "update [its] procedures for the removal of leased fibers."²¹⁷

57. MATC appealed the finding, claiming that the auditor had "over-allocated MATC dark fiber to its affiliate," because MATC's affiliate does not make unregulated use of MATC's dark fiber due to the fact that "[t]he dark fiber in question does not extend beyond its ILEC boundary."²¹⁸ USAC denied the appeal, reiterating that that "dark fiber should have been allocated upon the usage of the investment rather than only on the regulated usage of the investment," and accordingly MATC "must ensure allocation of dark fiber is based on the in-use portion of the same section of cable costs submitted for High Cost Program purposes."²¹⁹

58. MATC seeks review of USAC's denial, claiming that the auditor's finding was "not supported by 'appropriate sufficient evidence' or any rational basis in law," because the auditor and

²⁰⁹ See generally *Joint Cost Order*, 2 FCC Rcd 1298.

²¹⁰ 47 CFR § 64.901(b)

²¹¹ *Id.* § 64.901(b)(4).

²¹² See *Allocation of Costs Associated with Local Exchange Carrier Provision of Video Programming Services*, CC Docket No. 96-112, Notice of Proposed Rulemaking, 11 FCC Rcd 17211, 17231, para. 51 (1996).

²¹³ 2023 Audit Report at 20.

²¹⁴ *Id.* at 20, 22.

²¹⁵ *Id.* at 23.

²¹⁶ *Id.* at 22.

²¹⁷ *Id.* at 23.

²¹⁸ USAC Appeal at 5.

²¹⁹ USAC Decision at 11.

USAC did not identify any non-regulated use of the fiber and did not provide an explanation for why it allocated “half of the unused fiber strands to the leased fiber, and half to the fiber in use[] by the ILEC operation.”²²⁰ MATC reiterates that “it is not possible to make non-regulated use” of the dark fiber because its “fiber is provisioned for the ILEC or affiliate operations separately upon deployment, and ILEC-provisioned fibers do not connect to anything in its affiliate operation service area and vice versa.”²²¹ As an alternative, MATC seeks waiver of section 64.901(b) in order to permit MATC “to accurately account for and recover its fiber investment.”²²² MATC explains that in order to save costs by making use of existing higher-capacity inventory rather than purchasing brand new sections of matching-capacity fiber, some of the fiber in the auditor’s sample has more capacity than the rest of fiber deployed in the network and it does not make sense to allocate the additional capacity to non-regulated uses because the additional capacity is not able to be used.²²³ For the remaining fiber in the auditor’s sample, MATC explains where there is fiber that is “partially used” by the ILEC, “partially leased, and partially unused (but usable . . .),” MATC allocates the unused fiber to the ILEC operation because to do otherwise “would increase the price of leased fiber above a competitive rate and would have the effect of preventing MATC from successfully leasing it in the first place.”²²⁴

59. We disagree with MATC that USAC erred in affirming the auditor’s finding that MATC should have allocated its dark fiber between regulated and non-regulated use. MATC fails to meet its burden of proof by not citing to any Commission precedent or other authority to support its claims that MATC can allocate its spares based on how it actually provisions spares.²²⁵ Instead, the Commission’s rules are clear that the allocation “shall be based upon the relative regulated and nonregulated usage of the investment during the calendar year when nonregulated usage is greatest in comparison to regulated usage during the three calendar years beginning with the calendar year during which the investment usage forecast is filed.”²²⁶ NECA reporting guidelines confirm that “[f]or cost study and USF purposes, carriers are required to allocate spare plant between the regulated and non-regulated operations whenever the associated in-use plant is used for both purposes. Carriers should use a reasonable and defensible allocation methodology.”²²⁷ For purposes of identifying the in-use plant, we consider a cable as a whole to be a facility that consists of strands of fiber. To allocate the cost of the cable conduit for Part 64, we look at how all the fiber strands are being used within the cable conduit for regulated and nonregulated activities. To the extent some strands are spares, we look to how the lit strands in the cable conduit are being used to determine how the spare strands should be allocated. Exhibit 9 of MATC’s request shows that its in-use fiber is used for both ILEC (i.e., regulated) and CLEC (i.e., non-regulated) uses.²²⁸

²²⁰ MATC Request at 18-19.

²²¹ *Id.* at 19.

²²² *Id.* at 19-20.

²²³ *Id.* at 20.

²²⁴ *Id.*

²²⁵ See *2019 Sandwich Isles Order*, 34 FCC Rcd at 598, para. 43 (stating that the Commission uses a preponderance of the evidence standard for informal agency adjudications). We acknowledge MATC claims to have explained to the auditor how it provisions its fiber and produced an Exhibit it shared with the auditor that shows its fiber is separately assigned to the ILEC and CLEC. MATC Request at 19. However, MATC fails to explain why the auditor’s decision to not reference this evidence negates MATC’s failure to allocate the spares consistent with the Commission’s rules.

²²⁶ 47 CFR § 64.901(b)(4).

²²⁷ NECA Reporting Guidelines § 4.23 at 3.

²²⁸ MATC Request at 158, 161, Exh. 9.

60. We also disagree with MATC's claims that the auditor and USAC failed to give "any basis for allocating the fiber" in equal proportion to the leased fiber and the fiber used by the ILEC.²²⁹ The auditor explains in the audit report that it allocated the spare fiber in proportion to the in-use fiber,²³⁰ which includes fiber that is leased.²³¹ Accordingly, the auditor's allocation is a reasonable and defensible given it is based on the demonstrated usage of the fiber.²³²

61. We also decline to waive section 64.901(b) to permit MATC to allocate all of its dark fiber to regulated uses.²³³ In addition to not being persuaded by the more general special circumstances and public interest claims that MATC raised applicable to its request for waiver of all the rules related to the auditor's findings,²³⁴ we are not convinced that waiving section 64.901(b) would serve the public interest. The Commission was clear that there should be a balance between costs being allocated to the regulated sector and costs being allocated to nonregulated sector, and that it has an objective of "promot[ing] an equitable sharing of common costs."²³⁵ MATC has made business decisions about how it will allocate its fiber that it claims will reduce its costs. However, MATC does not claim or demonstrate that this balance would be maintained if MATC is able to allocate all of its spare fiber to regulated use. Moreover, while MATC makes general claims about various savings and efficiencies that result from its various business decisions and that it "would increase the price of leased fiber above a competitive rate" if MATC were to allocate the spare fiber like the auditor,²³⁶ MATC does not provide support for those claims or address the costs to the general public if MATC is able to allocate the costs associated with all of its spares to regulated use.

IV. ORDERING CLAUSES

62. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act, 47 U.S.C. §§ 151-154, and 254, and pursuant to sections 0.91, 0.291, 1.3, 32.18, and 54.722 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, 32.18 and 54.722, the request for review filed by Marquette Adams Telephone Cooperative IS GRANTED IN PART AND DENIED IN PART to the extent described herein, and two audit findings are REMANDED to the Universal Service Administrative Company consistent with the terms of this Order

63. IT IS FURTHER ORDERED that pursuant to the authority contained in sections 1-4 and 254 of the Communications Act, 47 U.S.C. §§ 151-154, and 254, and pursuant to sections 0.91, 0.291, and 54.722 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 54.722, the Universal Service Administrative Company SHALL COMPLETE its review of the remanded findings and ISSUE a decision based on a complete review and analysis in due course.

²²⁹ *Id.* at 19.

²³⁰ 2023 Audit Report at 20; *see also Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, 12 FCC Rcd 22120, 22152-53, para. 70 (1997) ("Our separations rules generally require carriers to apportion the cost of [spare network] facilities on the basis of working network facilities."); NECA Reporting Guidelines, § 4.23 at 3 ("If the spare facility is part of an existing in-use cable facility, the spare capacity/facilities would be categorized in the same proportion of in-use categorization (or directly assigned if the entire facility is assignable to one category)").

²³¹ MATC Request at 20.

²³² *Id.* at 158, 161, Exh. 9.

²³³ *Id.* at 19-21.

²³⁴ *Id.* at 7; *see also supra* paras. 18, 39.

²³⁵ *Joint Cost Order*, 2 FCC Rcd at 1312, para. 109.

²³⁶ MATC Request at 19-21.

64. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Joseph S. Calascione
Chief
Wireline Competition Bureau