

**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 Cross Telephone)	
Company, L.L.C.)	
)	

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 a Request for Review filed by Cross Telephone Company, L.L.C. (Cross Telephone) asking the Commission to review a Universal Service Administrative Company (USAC) decision affirming an Audit Report concluding Cross Telephone over-recovered high-cost universal service support during the audit period.¹ While we agree with Cross Telephone that USAC erred in finding it violated section 36.2(c)(2) of the Commission's separations rules with respect to an affiliate transaction, we conclude on alternative grounds that Cross Telephone improperly recorded the expenses associated with the purchase of interexchange transport service from an affiliate as a capital investment-related expense. The inclusion of this expense as a recoverable expense inflated Cross Telephone's plant-specific operation costs, resulting in an improper overpayment of millions of dollars in high-cost support.² We thus direct USAC to proceed with the recovery of approximately \$5.2 million in support from Cross Telephone.³

II. BACKGROUND

2. Cross Telephone is a rate-of-return incumbent local exchange carrier providing telecommunications exchange services, including local access, long distance, and Internet services to residential and business customers in northeastern Oklahoma.⁴ During the 2015 audit disbursement

¹ *Request for Review by Cross Telephone Company L.L.C. (SAC No. 431985) of Decision of the Universal Service Administrator*, WC Docket No. 10-90 (filed Sept. 3, 2019) (Cross Telephone Request). Cross Telephone incorporated by reference the arguments made in its appeal to USAC of the findings in the initial audit report. *See id.* at 10, Ex. 1 (USAC Appeal). We note the audit originally covered disbursements for the year ending December 31, 2015, but was expanded to review 2012, 2013, 2014, and 2016 with respect to Finding No. 1, the subject of the Cross Telephone Request. *See* USAC Appeal, Attach. A, at 1 (Audit Report). In addition, we note that while Cross Telephone's Request contains a header with the words "Privileged and Confidential," it has been publicly available in the Commission's Electronic Comment Filing System (ECFS) for the past six years. Further, the Commission's rules provide that "[c]asual requests (including simply stamping pages "confidential") which do not comply with the requirements of paragraphs (a) and (b) of this section will not be considered." 47 CFR § 0.459(c). We therefore are not treating the filing as confidential.

² 47 CFR Part 32, § 36.2(c)(2).

³ This recovery amount is a reduction of the previously calculated monetary effect of approximately \$8.25 million. Audit Report at 5.

⁴ Audit Report at 6; Study Area Code 431985; Cross Telephone Request at 3.

period, Cross Telephone received more than \$6.2 million from legacy high-cost support mechanisms, including High Cost Loop support (HCLS), Interstate Common Line Support (ICLS), and Local Switching Support (LSS).⁵ In 2016, Cross Telephone elected to receive model-based support pursuant to the Alternative Connect America Model (A-CAM) mechanism.⁶

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.⁷ 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.⁸ 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.⁹ 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.¹⁰ Finally, carriers apportion the interstate regulated costs among the interexchange services and rate elements that

⁵ 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). ICLS also supports high local loop costs by providing rate-of-return carriers with the difference between their interstate common line costs (*i.e.*, the portion of the local loop assigned to the interstate jurisdiction) and their interstate common line end-user revenues, which are limited due to the cap on subscriber line charges. In 2016, the Commission transformed ICLS into the Connect America Fund Broadband Loop Support (CAF BLS) mechanism, which 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*). LSS was provided to small carriers because, historically, it was difficult for small carriers to scale switching expenses for operations with fewer customers. In the *USF/ICC Transformation Order*, the Commission eliminated LSS and moved recovery of associated expenses to the Access Recovery Charge (ARC), a monthly fee assessed on end-users, and Connect America Fund-Intercarrier Compensation (CAF ICC), which provides support to the extent otherwise-eligible revenue cannot be recovered through the ARC. *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, 17760, para. 257 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

⁶ *Wireline Competition Bureau Authorizes 35 Rate-of-Return Companies to Receive More than \$51 Million Annually in Alternative Connect America Cost Model Support and Announces Offers of Revised A-CAM Support Amounts to 191 Rate-of-Return Companies to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 13328 (WCB 2016) (authorizing Cross Telephone to receive A-CAM I support as a glide path carrier, receiving less A-CAM support in 2016 than it received in legacy support in 2015).

⁷ Although some rate-of-return carriers remain subject to the regulatory processes described here, including Cross Telephone for the audit period in question, the Commission in 2018 adopted forbearance from these rules for carriers that had elected A-CAM I or II and also elected incentive regulation for their broadband data services offerings. *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, WC Docket Nos. 17-144 et al., Report and Order, Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, 33 FCC Rcd 10403, 10447-51, paras. 125-37 (2018). Therefore, while Cross Telephone opted into the A-CAM program in 2016, Cross Telephone remained subject to these processes while it continued to receive cost-based support.

⁸ 47 CFR Part 32.

⁹ *Id.* § 64.901-64.904.

¹⁰ *Id.* Part 36.

form the cost basis for its interstate access tariffs pursuant to the Commission's Part 69 rules, as well as for receiving high-cost universal service support pursuant to Part 54.¹¹

4. USAC initiated an audit on July 7, 2016 of Cross Telephone's compliance with the Commission's legacy high-cost program rules.¹² The Audit Report released October 4, 2018 contained eight findings of non-compliance.¹³ Cross Telephone challenged Finding No. 1, in which the Auditor concluded Cross Telephone incorrectly categorized expenses paid to an affiliate, MBO Video LLC (MBO Video), for DS1 interexchange transport service in its cost studies and high-cost filings, resulting in an overpayment of support of about \$8.25 million over the relevant disbursement period.¹⁴ Specifically, the Auditor found the affiliate transaction amounted to a sale lease-back transaction triggering section 36.2(c)(2) of the Commission's rules.¹⁵ This rule requires rate-of-return carriers to include the capital cost of the affiliate property rented and associated expenses, such as depreciation cost, as if the reporting carrier owned the property for purposes of the Part 36 interstate/intrastate separations process and to exclude the rental expenses paid to the affiliate.¹⁶

5. In its appeal of Finding No. 1 to USAC, Cross Telephone argued that (1) the transaction was a purchase of service and not a rent or lease of property and therefore section 36.2(c)(2) did not apply and (2) an earlier audit did not identify an issue with the affiliate transaction, and therefore any new guidance should apply prospectively.¹⁷ In denying the appeal, USAC again found section 36.2(c)(2) applicable and stated it "must audit regulated entities consistent with all applicable FCC rules and lacks the authority to apply Part 36.2(c) prospectively."¹⁸ Cross Telephone then filed the instant request for review with the Wireline Competition Bureau (Bureau) pursuant to sections 54.719-54.722 of the Commission's rules.¹⁹ Requests for review are subject to *de novo* review by the Bureau.²⁰

III. DISCUSSION

6. We overturn in part USAC's denial of Cross Telephone's appeal, but on different grounds we find that USAC should recover high-cost support because of the company's failure to correctly categorize the expenses associated with the affiliate transaction with MBO Video. First, we agree with Cross Telephone that the transaction at issue in Finding No. 1 is not an affiliate transaction covered by section 36.2(c)(2) as it does not involve the leasing or renting of property from an affiliate and is instead a purchase of services. However, notwithstanding the inapplicability of section 36.2(c)(2), we find that Cross Telephone incorrectly reported expenses paid for services obtained from its affiliate, in its cost studies and HCLS filing, as expenses associated with Category 1 facilities plant owned by Cross Telephone, which is not the case. Based on this finding, we direct USAC to recover the resulting overpayment of support to Cross Telephone in the amount of \$5,228,767.

¹¹ *Id.* Parts 54 and 69.

¹² Cross Telephone Request at 3. The audit was performed by Moss Adams LLP (Auditor).

¹³ *Id.* at 4.

¹⁴ While the audit originally focused on the 2015 disbursement period, the scope was later expanded at USAC's direction for Finding No. 1 to include the years 2012-2016 due to indications of incorrect reporting of the same expense over multiple years. *See* Audit Report at 8.

¹⁵ 47 CFR § 36.2(c)(2).

¹⁶ *Id.* § 36.2(c)(2); Audit Report at 22-24.

¹⁷ USAC Appeal at 8-9.

¹⁸ Letter from USAC to Denise Smith, Counsel for Cross Telephone, HC2016BE031, SAC 431985, at 5 (July 2, 2019) (USAC Decision) (attached to Cross Telephone Request, Exh. 2).

¹⁹ 47 CFR §§ 54.719(b), 54.720(a), and 54.722; Cross Telephone Request at 1.

²⁰ *Id.* § 54.723(a).

A. Section 36.2(c)(2) is Not Applicable Here

7. Cross Telephone's appeal focuses on Finding No. 1 that the purchase of transport services from an affiliate amounted to a substantial lease of property, triggering the affiliate transaction rule contained in Section 36.2(c)(2).²¹ Section 36.2(c)(2) requires cost-based carriers to treat property rented from an affiliate, if substantial, as if it were owned by the reporting carrier for the purpose of separating intrastate and interstate investments and expenses under Part 36. The rule also requires the exclusion of the property rental expense from the "operations of the company making the separation."²²

8. Prior to 1998, Cross Telephone purchased interexchange transport services from Southwestern Bell to carry traffic from Cross Telephone's Warner, Oklahoma, central office to a meet-point with Southwestern Bell and AT&T in Tulsa, Oklahoma.²³ In the late 1990s, MBO Video, a Cross Telephone affiliate, constructed a fiber network used to offer services to other carriers.²⁴ In 1998, Cross Telephone entered into a General Contract for Services with MBO Video and began obtaining transport service from MBO Video (instead of Southwestern Bell) to carry traffic between Warner and an interexchange carrier point-of-presence (POP) in Tulsa, Oklahoma.²⁵ Contemporaneously with the service agreement, Cross Telephone entered into an Equipment Lease whereby Cross Telephone leased to MBO Video four dark fibers from its central office in Warner to the "AT&T POP Location" in Muskogee, Oklahoma.²⁶ In 2008, the parties updated the terms of the service agreement by entering into the MBO Master Service Agreement.²⁷ Per Cross Telephone, the MBO Master Service Agreement superseded the General Contract for Services on the Tulsa route but "did not replace the Equipment Lease," which continued to govern the lease of dark fiber from Cross Telephone to the affiliate for the Muskogee route.²⁸

9. Over the relevant audit period,²⁹ Cross Telephone reported circuit expenses totaling more than \$11.5 million for the DS1 transport service purchased from MBO Video.³⁰ These expenses represented between 13% and 23% of the total operating expenses reported by Cross Telephone in its cost study filings during this period.³¹ According to Cross Telephone, it paid less for the transport services purchased from MBO Video than it did for the services purchased from Southwestern Bell prior to 1998.³² Cross Telephone also claims it "always" accounted for the transport purchased from MBO Video in the same manner it accounted for transport purchased from Southwestern Bell: "as a purchase of

²¹ Audit Report at 12-24.

²² 47 CFR § 36.2(c)(2).

²³ Letter from Steven A. Augustino, Counsel for Cross Telephone, to Marlene H. Dortch, FCC, filed Jan. 15, 2020 (Cross Tel. Jan. 15 Ex Parte Letter) at 2.

²⁴ Cross Telephone Request at 4. Cross Telephone avers that it did not provide any funds to MBO for the construction of the fiber network. *Id.* at 4, n.15.

²⁵ Audit Report at 15.

²⁶ *See* Cross Telephone Request at Exh. 1, Declaration of Warren Fischer, Exh. 5 at 1 (Equipment Lease).

²⁷ Audit Report at 34-45 (MBO Master Service agreement).

²⁸ *Id.* at 15; Cross Telephone Request at 4.

²⁹ The scope for Finding No. 1 was the 2012-2016 disbursement period, which was based on data reported by Cross Telephone in years 2010-2014.

³⁰ Audit Report at 12.

³¹ *Id.* at 24.

³² Cross Telephone Request at 2; USAC Decision at 4.

services” pursuant to both Parts 32 and 36.³³ Nonetheless, from 1997 to 1998 when Cross Telephone switched to MBO Video, the amount reported in a subaccount for circuit expenses in Account 6230, central office transmission expense, increased by more than 7,000%, from \$10,057 to \$742,657.³⁴ The increase in this account does not appear to have been offset through expense reductions in other similar or related accounts.³⁵ The substantial increase in circuit expenses reported, in turn, increased the reported loop expenses for, and the support received, from ICLS and HCLS for Cross Telephone.³⁶

10. Referencing section 36.2(c)(2), the Auditor found Cross Telephone included amounts in its cost studies and HCLS filing in account 6230 for circuit expense for “substantial rent expense paid to an affiliate for the use of interexchange plant assets owned by the affiliate.”³⁷ The Auditor stated that notwithstanding the fact that the agreement between Cross Telephone and its affiliate is styled as a service contract rather than a lease of plant assets, the application of rule 36.2(c)(2) was required “because of the mechanics of the Part 36 jurisdictional cost allocation process and the resulting impacts to the Part 36 cost study and [HCLS] support results when large interexchange expenses are included in lieu of the related interexchange plant facilities.”³⁸

11. On appeal to USAC, Cross Telephone again argued the affiliate transaction was a purchase of services and not a sale and lease-back transaction triggering section 36.2(c)(2) as addressed in the Commission’s declaratory ruling in *Moultrie*.³⁹ Alternatively, Cross Telephone argued that reliance on the findings in a prior audit on the accounting treatment of these expenses dictates application of the Auditor’s finding in a subsequent audit only prospectively.⁴⁰ USAC denied the appeal, stating “the distinction is irrelevant as section 36.2(c)(2) is applicable to the lease of property or the lease of a service, when the lease is between the regulated entity and its affiliate and is substantial in amount.”⁴¹

12. In the instant appeal, Cross Telephone essentially raises the same arguments addressed by USAC.⁴² Upon *de novo* review of the record, we find that Cross Telephone is correct that the transaction at issue is a purchase of services and not the renting or leasing of property from an affiliate, and thus section 36.2(c)(2) is inapplicable.

13. Section 36.2(c)(2) by its terms applies to “property rented from affiliates” and not the purchase of service from affiliates and governs the “treatment of rented property, related expenses, and

³³ Cross Telephone Jan.15 Ex Parte Letter at 3.

³⁴ Compare NECA Study Results, 1997 Report (*available at* <https://www.fcc.gov/universal-service-fund-data-neca-study-results>) (NECA 1997 Study) with NECA Study Results, 1998 Report (*available at* <https://www.fcc.gov/universal-service-fund-data-neca-study-results>) (NECA 1998 Study).

³⁵ Total Rent, the total of amounts reported in the rents subaccount of all plant-specific expense accounts, increased from \$40,686 to \$732,114. NECA 1997 Study; NECA 1998 Study. Total plant-specific expenses also increased from \$1,290,959 to \$2,018,797, though roughly half that increase was attributable to increased benefits expenses. NECA 1997 Study; NECA 1998 Study.

³⁶ The auditor found that Cross reported the following amounts of rent in account 6230: \$1,481,215 in 2010; \$2,461,630 in 2011; \$1,843,004 in 2012; \$2,906,004 in 2013; and \$2,820,657 in 2014. Audit Report at 12.

³⁷ Audit Report at 12.

³⁸ *Id.* at 22.

³⁹ USAC Decision at 3; *Moultrie Indep. Tel. Co.*, CC Docket No. 96-45, Order, 16 FCC Rcd 18242 (2001) (*Moultrie*).

⁴⁰ USAC Decision at 3.

⁴¹ *Id.* at 5 (citing *Moultrie*, 16 FCC Rcd at 18247, para. 10).

⁴² Cross Telephone Request at i-ii.

lease payments.”⁴³ The MBO Master Service Agreement, through which Cross Telephone obtains transport service, is styled as a purchase of service. Moreover, the agreement has none of the hallmarks of a “contract that purports to be a service contract” but must be “treated as a lease of property.”⁴⁴ For example, there are no terms and conditions in the MBO Master Service Agreement that would give the purchaser/customer the right to possess, control or operate the underlying facilities. While the agreement allows Cross Telephone to resell the service, section 8.7(a)(2) states the “Customer is responsible for ensuring that it and its customers comply with MBO’s Acceptable Use Policy . . .” when using the service.⁴⁵ MBO Video can also cancel any service prior to commencement without liability if it deems “such action is necessary to prevent or to protect against fraud or to otherwise protect its personnel, agents, facilities or Services . . .”⁴⁶ Section 8.8 also clearly states no title is conveyed to Cross Telephone, and section 8.11 states the provision of services does not create a partnership or joint venture.⁴⁷

14. Thus, the Auditor’s and USAC’s reliance on *Moultrie* is misplaced. In *Moultrie*, the Commission found the substantial sale and lease-back of assets, including motor vehicles, land and buildings, and equipment triggered the application of section 36.2(c)(2).⁴⁸ The carrier in that instance sold assets to an affiliate who then entered into a lease of the assets back to the carrier.⁴⁹ Thus, the carrier operated and controlled the assets pursuant to a lease but no longer owned the assets. As the Commission explained, “[i]f an incumbent carrier were to sell large portions of its non-loop related plant to an affiliate, and then lease[s] back those assets and include[s] the lease payment as an expense, the carrier’s cost study would be skewed to decrease its assets, and increase its operational expenses, thus resulting in a higher per-loop cost.”⁵⁰ Section 36.2(c)(2) thus requires the rate-of-return carrier to treat the leased property as

⁴³ 47 CFR § 36.2(c)(2); *Moultrie*, 16 FCC Rcd at 18247, para. 10.

⁴⁴ The Commission has adopted the definition of a “lease” as contained in the Financial Accounting Standards Board (FASB) lease accounting standards to be “a contract, or part of a contract, that conveys the right to control the use of identified property, plant and equipment (an identified asset) for a period of time in exchange for consideration.” 47 CFR § 32.1410(l)(1); *Connect America Fund, ETC Annual Report and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing a Unified Inter-carrier Compensation Regime*, WC Docket Nos. 10-90 et al., Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 33 FCC Rcd 11893, 11939, para. 156 (2018). In its request, Cross Telephone also points to the criteria considered by the Internal Revenue Service when determining whether an agreement is a lease of property or the purchase of a service. See Declaration of Warren R. Fischer, QSI Consulting, Inc., at 21 (Jan. 4, 2019) (attached to Cross Telephone Request, Exh. 1, Attch. B). These factors include “whether or not—(A) the service recipient is in physical possession of the property, (B) the service recipient controls the property, (C) the service recipient has a significant economic or possessory interest in the property, (D) the service provider does not bear any risk of substantially diminished receipts or substantially increased expenditures if there is nonperformance under the contract, (E) the service provider does not use the property concurrently to provide significant services to entities unrelated to the service recipients, and (F) the total contract price does not substantially exceed the rental value of the property for the contract period.” 26 U.S.C. § 7701(e)(1).

⁴⁵ See MBO Master Service Agreement § 8.7(a)(ii).

⁴⁶ *Id.* § 6.2(a).

⁴⁷ *Id.* § 8.8.

⁴⁸ *Moultrie*, 16 FCC Rcd at 18244, para. 4. That is not to say section 36.2(c) only applies to sale and lease-back transactions, as the language is broader and would include any affiliate transaction involving the renting or leasing of real and personal property if substantial in amount. See *Request for Review of a Decision of the Universal Service Administrator by Big Bend Telephone Company, Inc.*, WC Docket No. 10-90, Order, DA 25-489 at para. 20 (WCB rel. June 6, 2025) (*Big Bend Order*).

⁴⁹ *Moultrie*, 16 FCC Rcd at 18244, para. 4.

⁵⁰ *Id.* at 18248, para. 13.

its own and exclude the lease expense from its telephone operations for purposes of the Part 36 separations process.⁵¹

15. In contrast, Cross Telephone leased dark fiber to MBO Video for a transport route to Muskogee, Oklahoma and separately purchased *service* from the affiliate, using different, MBO Video-owned property, to transport traffic on a different route to Tulsa. The two arrangements are separate, and even if they were considered together do not constitute a sale and lease-back of property. Accordingly, we find the MBO Master Service Agreement, for the purchase of transport service from MBO Video on the Warner-Tulsa route does not trigger the application of section 36.2(c)(2).

B. Nonetheless Cross Telephone Improperly Accounted for the Expenses

16. While we find section 36.2(c)(2) inapplicable to Cross Telephone's purchase of transport service from affiliate MBO Video, we nonetheless find Cross Telephone improperly accounted for the cost of the interexchange transport service purchased from its affiliate by recording it as an expense associated with plant it owns. Instead of Cross Telephone so recording the cost, which is clearly in error as Cross Telephone did not own the underlying fiber, Cross Telephone should have recorded the expense in Account 6540, access expense, which includes "amounts paid by interexchange carriers or other exchange carriers to another exchange carrier for the provision of carrier's carrier access."⁵² Amounts recorded in Account 6540 are not included in the calculation of HCLS, which provides support for the last mile of connection to customer premises for rural carriers.⁵³ The misallocation of the expense also reduced the cost and support available for ICLS and LSS. In total, the erroneous recording of the interexchange transport service expense resulted in an over-payment of about \$5.2 million in support to Cross Telephone during the relevant audit period.⁵⁴

17. The USOA spelled out in Part 32 provides instructions for maintaining a system of financial accounts in a manner that permits uniform application of the Commission's other regulatory processes. Among the prescribed accounts are investment and property accounts (including telecommunications plant in service, or "plant"), expense accounts, and revenue accounts.⁵⁵ Telecommunications plant in service includes accounts for a variety of properties, including specific accounts for the carrier's investment in plant used directly in the provision of telecommunications service,⁵⁶ such as central office switching (Account 2210), central office transmission equipment (Account 2230), and cable and wire facilities (Account 2410), as well as property used for general support purposes (Account 2110), such as land and motor vehicles.⁵⁷

⁵¹ 47 CFR § 36.2(c)(2).

⁵² 47 CFR § 32.6540.

⁵³ *Id.* § 54.1308.

⁵⁴ *See infra Monetary Effect.* We note the Auditor separately sampled various types of affiliate transactions to determine if the transactions were recorded in accordance with section 32.27 of the Commission's rules, and categorized in the appropriate Part 32 accounts. Audit Report at 3-4, 11; 47 CFR § 32.27(c). The transactions sampled included the MBO Video transport services provided to Cross Telephone. Audit Report at 11. The Auditor did not reach a finding of non-compliance under section 32.27 for the sampled transactions. *Id.* 3-4.

⁵⁵ *See* 47 CFR Part 32, Subparts C-E.

⁵⁶ *See id.* § 32.2000(a)(1) (stating the telecommunications plant accounts (2001 to 2007 inclusive) are designed to show the company's investment in tangible and intangible telecommunications plant); *see also id.* § 32.2001 ("Telecommunications plant in service. This account shall include the original cost of the investment included in Accounts 2110 through 2690.").

⁵⁷ *See* 47 CFR § 32.2000(j).

18. The four major expense account groups recorded under the USOA are Plant Specific Operations, Plant Nonspecific Operations, Customer Operations, and Corporate Operations.⁵⁸ Plant Specific Operations expense accounts are used to record “costs related to specific kinds of telecommunications plant” investment owned by the recording carrier.⁵⁹ Particularly relevant here, Plant Specific Operations expense account 6230 (central office transmission expense), where Cross Telephone recorded its interexchange transport service expense with MBO Video, is to be used to record expenses associated with the maintenance and operation of the carrier’s circuit equipment plant recorded as investment held in Account 2230.⁶⁰ Plant Nonspecific Operations expense accounts are used to record a variety of expenses associated with the operation of the telecommunications network but not directly associated with the reporting carrier’s plant specific investment.⁶¹ Account 6540, where Cross Telephone should have recorded the expense, is a Plant Nonspecific Operations expense account.⁶² Customer Operations expense accounts include expenses related to sales and marketing and other customer service-related expenses.⁶³ Corporate Operations expenses include costs associated with executive and administrative activities.⁶⁴

19. The universal service legacy programs are intended to support a carrier’s high local loop or switching costs. As discussed above, Cross Telephone purchased transport service from MBO Video for the Warner-Tulsa route starting in 1998.⁶⁵ For HCLS purposes, Cross Telephone reported the expense associated with the transport purchased from MBO Video in Plant-Specific expense Account 6230–Rents subaccount⁶⁶ during the audit period even as Cross Telephone argues on appeal that the MBO Master Service Agreement is a purchase of service and not a lease/rent of property.⁶⁷ Cross Telephone appears to

⁵⁸ See *id.* § 32.5999(a)(2).

⁵⁹ *Id.* § 32.5999(b)(1).

⁶⁰ See 47 CFR §§ 32.2230, 32.6230; see also 47 CFR § 32.5999(b)(1)-(2) (“The Plant Specific Operations Expense accounts predominantly mirror the telecommunications plant in service detail accounts and are numbered consistently with them; the first digit of the expense account being six (6) and the remaining digits being the same as the last three numbers of the related plant account. . . . In classifying Plant Specific Operations expenses, the text of the corresponding plant account should be consulted to ensure appropriateness.”).

⁶¹ See 47 CFR § 32.5999(c); see also 47 CFR §§ 32.6510-32.6560 (plant nonspecific expense accounts).

⁶² 47 CFR § 32.6540.

⁶³ See 47 CFR § 32.5999(d); see also 47 CFR §§ 32.6610-32.6620 (customer operations expense accounts).

⁶⁴ See 47 CFR § 32.5999(e); see also 47 CFR §§ 32.6720-32.6790 (corporate operations expense accounts).

⁶⁵ Cross Telephone Request at 4.

⁶⁶ The Commission previously required carriers to further disaggregate expense account data into five basic subsidiary accounts – (1) Salary and Wages, (2) Benefits, (3) Rents, (4) Other Expenses, and (5) Clearances. See *Comprehensive Review of Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase I*, Report and Order, 15 FCC Rcd 8690, 8694-96, paras. 5-10 (2000) (*ARMIS Reporting*). The use of subaccounts was required for all expense accounts, though the “rents” subaccount applied only to plant-specific expense accounts. See 47 CFR § 36.302(c)(2). Although the Commission eliminated this “expense matrix” in 2000, the Commission stated it “expect[ed] companies to keep such data available and be prepared to provide it to the Commission, should the Commission make such a request.” *ARMIS Reporting*, 15 FCC Rcd at 8694, para. 7. Carriers continue to report expenses by sub-account for HCLS purposes because only the portions of some accounts associated with benefits and rent are included in the calculation of support. See, e.g., 47 CFR § 54.1305(f) (requiring the reporting of “the benefits and rent proportions of operating expenses”).

⁶⁷ Audit Report at 22 (“The Beneficiary also categorized these expenses as rents in its High Cost Loop filings under the rents portion of circuit expense.”)

have done so for every year since 1998.⁶⁸ As a result, Cross Telephone received high-cost universal service support for this transport expense even though the expense is not associated with Plant Specific Operations investment held by Cross Telephone. If Cross Telephone had not recorded the transport expense as associated with its plant specific investment, then those costs would have been included with Cross Telephone's interexchange cost categories for purposes of receiving cost-based support and recovered through its intercarrier compensation rates.

20. Although Cross Telephone argued it should have reported the transport expense in the Account 6230-Other subaccount instead of the Account 6230-Rent subaccount,⁶⁹ the distinction is irrelevant as neither subaccount is appropriate for expenses not associated with central office circuit equipment owned by Cross Telephone and reported in Account 2230. The interexchange transport expense does not relate to Cross Telephone's central office transmission plant, as required by the Commission's rules.⁷⁰ Cross Telephone should have instead recorded the expense as a plant nonspecific operations expense. Account 6540 (Access Expenses) is the only plant-nonspecific account suitable for recording the transport expense.⁷¹ Expenses recorded in Account 6540 are not recoverable through universal service.⁷² In the interstate jurisdiction, account 6540 access expenses are directly assigned to the interexchange category, and therefore not recovered through HCLS and ICLS.⁷³ Instead, the interexchange transport service expenses would be recovered through intercarrier rates or directly from customers, as permitted under the Commission's rules.⁷⁴ Accordingly, we find Cross Telephone received

⁶⁸ The NECA 2014 Study Results, which were last updated on September 30, 2019, show an amount in column labelled "DL405_6230_RENTS" (\$2,820,657) that matches the circuit expense rents on which USAC based its audit finding with respect to 2014. *Compare* NECA Study Results, 2014 Report (*available at* <https://www.fcc.gov/universal-service-fund-data-neca-study-results>) *with* Audit Report at 12. Cross Telephone continued to report high amounts of Account 6230 Rents in filings updated through September 30, 2021. *See* NECA Study Results, 2015 Report; NECA Study Results, 2016 Report; NECA Study Results, 2017 Report (*available at* <https://www.fcc.gov/universal-service-fund-data-neca-study-results>). As an A-CAM recipient, Cross Telephone did not file HCLS data for 2018 or later.

⁶⁹ *See* Declaration of Warren R. Fischer, QSI Consulting, Inc., at 9-10 (Jan. 4, 2019) (attached to Cross Telephone Request, Exh. 1, Att. B).

⁷⁰ 47 CFR § 32.5999(b)(1).

⁷¹ *See id.* § 32.6540.

⁷² Plant-nonspecific operations expenses include expenses related to property held for future telecommunications use, provisioning expenses, network operations expenses, and depreciation and amortization expenses. *See* 47 CFR §§ 32.5999(c), 32.6510-6560. Section 32.6540 specifies that the Access expense account "shall include amounts paid by interexchange carriers or other exchange carriers to another exchange carrier for the provision of carrier's carrier access." *Id.* § 32.6540; *see also Federal-State Joint Conference on Accounting Issues et al.*, WC Docket No. 02-269 et al., Notice of Proposed Rulemaking, 2003 WL 23009196, *35 (2003) (noting USOA supports classification of interconnection expenses in Account 6540 and stating that access expenses relate to long distance service).

⁷³ Pursuant to section 36.354, Account 6540 access expenses are directly assigned to the appropriate jurisdiction. 47 CFR § 36.354. Under section 69.401(e), access expenses assigned to the interstate jurisdiction are assigned to the interexchange category. *Id.* § 69.401(e). Access expenses are not included among the costs reported for HCLS purposes. *See Sandwich Isles Communications, Inc.*, WC Docket No. 10-90, Order, 31 FCC Rcd 12999, 13008-09, para. 28 n.67 (2016) (stating that expenses related to transport and switched access are "not common line loop costs, and therefore not recoverable through the Universal Service Fund for loop costs, except to the extent permitted as part of intercarrier compensation recovery").

⁷⁴ The Commission expressly declined to support interexchange service, as distinct from access to interexchange service. *Universal Service First Report and Order*, 12 FCC Rcd at 8819, para. 77. "Interexchange access" was limited to "the use of the local loop, as well as the portion of the switch that is paid for by the end user." *Id.* at 8818-

(continued....)

universal service support for transport-related expenses that legacy high-cost mechanisms are not intended to support.⁷⁵

21. Cross Telephone separately argues that because an earlier audit did not identify an issue with the affiliate transaction, any new guidance should apply prospectively.⁷⁶ As noted above, we do not find a violation of the affiliate transaction rule in section 36.2(c)(2) and instead find Cross Telephone did not correctly account for the cost of transport service purchased from the affiliate. Accordingly, Cross Telephone's argument that the lack of prior audit finding as to section 36.2(c)(2) precludes reaching such a finding in a subsequent audit is moot. That said, "[n]either the Bureau nor USAC is precluded from reaching a finding of non-compliance in subsequent audits when an earlier audit failed to make such findings."⁷⁷

22. *Monetary Effect.*⁷⁸ The incorrect categorization of interexchange transport expenses for the years 2010-2014 resulted in the overstatement of plant-specific operations expenses in the amount of \$11,512,510 and the understatement of plant-nonspecific operations expenses of \$11,512,510, which affected HCLS, ICLS, and LSS disbursements. Specifically, the reduction of plant-specific operations expenses and the inclusion of non-loop (i.e., interexchange) imputed rate base in Cross Telephone's high-cost program filing decreased HCLS, ICLS, and LSS support. The monetary effect of this finding relative to disbursements for the 12-month period ended December 31, 2015, and for the additional years for the 12-month periods ending December 31, 2012, 2013, 2014, and 2016 is calculated to be an overpayment of \$5,228,767 and is summarized by support mechanism and disbursement period as follows:

Support Type	Monetary Effect – 2012	Monetary Effect – 2013	Monetary Effect – 2014	Monetary Effect – 2015	Monetary Effect – 2016	Total Monetary Effect
ICLS	\$160,774	\$304,664	\$214,688	\$342,452	\$322,184	\$1,344,762
HCLS	\$479,467	\$752,784	\$563,194	\$860,840	\$828,354	\$3,484,639
LSS	\$131,392	\$199,386	\$68,588	\$0	\$0	\$399,366
Total	\$771,633	\$1,256,834	\$846,470	\$1,203,292	\$1,150,538	\$5,228,767

19, para. 76; *see also id.* at 8818 n. 126 (Noting that "[f]or an interexchange call, the [interexchange carrier] rather than the end user currently pays for switching costs").

⁷⁵ *See Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, 18 FCC Rcd 15090, 15101-02 (2003) (concluding that the list of supported services should not be expanded to include transport costs); *Sandwich Isles Communications, Inc.*, WC Docket No. 10-90, Order, 31 FCC Rcd 12999, 13022-23, para. 79 (2016) ("Under the Commission's rules, the cost of C&WF applicable to interexchange facilities shall be directly assigned where feasible to CAT 3 [which is not recoverable from HCLS or ICLS]"); *see id.* at App B (Category 1 Cable and Wireless Facilities Cost Separations Procedures), 31 FCC Rcd at 13048, para. 12 ("As their names imply, the HCLS and ICLS mechanisms of the high-cost support program are solely intended to provide support to loops, and not to support other parts of the carrier's network, such as the local switch or interexchange trunks. Under these mechanisms, carriers such as Sandwich Isles that choose to make capital expenditures beyond their local loop have to recover those costs from sources other than USF").

⁷⁶ USAC Appeal at 8-9.

⁷⁷ *Big Bend Order*, DA 25-489 at para. 11.

⁷⁸ Bureau staff worked with USAC to recalculate the monetary effect based on the alternative finding of noncompliance reached herein.

IV. ORDERING CLAUSES

23. 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, and 54.722 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 54.722, the request for review filed by Cross Telephone Company, L.L.C. IS GRANTED IN PART AND OTHERWISE DENIED.

24. IT IS FUTHER ORDERED that the Universal Service Administrative Company shall recover \$5,228,767 from Cross Telephone Company, L.L.C. consistent with this Order.

25. 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