

**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 Hart Telephone)	
Company, Inc.)	

ORDER

Adopted: September 10, 2025

Released: September 10, 2025

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we deny a request filed by Hart Telephone Company, Inc. (Hart) 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 Hart as the company did not meet its burden to substantiate its claims with adequate documentation, in compliance with Commission rules. We also conclude that the requested waiver of those rules is not appropriate given the facts of this situation. We therefore direct USAC to proceed with the recovery of \$279,584 in improperly paid support.²

II. BACKGROUND

2. Hart is a rural, rate-of-return incumbent local exchange carrier headquartered in Hartwell, Georgia offering broadband and voice services. Hart's service areas include Hartwell, Float Shoals, Cross Roads, Maretts, Reed Creek, and Montevideo.³ During the 2018 audit disbursement period, Hart received more than \$2.1 million from legacy high-cost support mechanisms, including Connect America Fund Broadband Loop Support (CAF BLS), and Connect America Fund Intercarrier Compensation Support (CAF ICC).⁴

¹ Hart Telephone Company, Inc. Request for Review, USAC Audit ID: HC2019LR001, WC Docket No. 10-90 (filed July 18, 2022) (Hart FCC Request); 47 CFR §§ 54.719-54.722. We note that while the Hart Telephone's Request for Review filing 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 three 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 Hart Telephone's Request for Review as confidential.

² Hart Telephone Company, Inc., Limited Review Performance Audit on Compliance with Federal Universal Service Fund High Cost Support Mechanism Rules, USAC Audit No. HC2019LR001 – CONF (July 30, 2021) (2021 USAC Audit or Audit Report).

³ See FCC Study Area Boundaries, <https://www.fcc.gov/reports-research/maps/study-area-boundaries/> (Study Area Code 220368).

⁴ Audit Report at 6. Interstate Common Line Support (ICLS) 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. ICLS subsequently became the CAF BLS mechanism, which subsidizes carriers with high local loop costs in the interstate jurisdiction for both voice and consumer broadband-only loops. See

(continued....)

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.⁵ Second, carriers assign the costs in those accounts to regulated and nonregulated activities in accordance with Part 64 of the Commission's rules to ensure that the costs of nonregulated activities will not be recovered by regulated service rates or through universal service support.⁶ 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.⁷ 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 54.⁸

4. In 2019, USAC's Audit and Assurance Division (AAD) initiated an audit of Hart's compliance with the Commission's rules for the High-Cost Program for the 2018 disbursement period.⁹ The audit report identified seven findings of non-compliance and recommended the recovery of \$279,584 against Hart for the overpayment of support during the relevant audit period.¹⁰ Hart filed a partial request for review with USAC, seeking to vacate portions of two of the findings in the USAC Audit Report:

- Finding No. 1: Inaccurate Cost Study Adjustment – Assets and Expenses
- Finding No. 2: Improper Inclusion of Non-Regulated Amounts and Support Not Used for Intended Purpose of Federal Universal Support.¹¹

5. These two findings of noncompliance resulted in an overpayment of support in the amount of \$158,274 for finding No. 1; and, \$60,966.33, which are a portion of the expenses for finding No. 2.¹²

6. USAC denied Hart's request for review on May 17, 2022.¹³ Hart then filed a request seeking review of USAC's denial with the Wireline Competition Bureau (Bureau).¹⁴ Specifically, Hart

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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*). In the *USF/ICC Transformation Order*, the Commission moved recovery of expenses associated with the Local Switching Support expenses to the Access Recovery Charge (ARC), a monthly fee assessed on end users, and 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).

⁵ 47 CFR Part 32.

⁶ 47 CFR §§ 64.901-64.904.

⁷ 47 CFR Part 36.

⁸ 47 CFR Parts 54 and 69.

⁹ 2021 USAC Audit Report, USAC Audit No. HC2019LR001.

¹⁰ *Id.* at 6.

¹¹ 47 CFR § 54.719(a); Request for Review by Hart of Decision of the Universal Service Administrator, USAC Audit ID HC2019LR001 (filed Dec. 30, 2021) (attached to Hart FCC Request, Exh. 2) (Hart Audit Appeal).

¹² Audit Report at 5.

¹³ See Letter from USAC to Randy Daniel, President, Hart Telephone (May 17, 2022) (USAC Appeal Decision).

¹⁴ Hart FCC Request.

seeks review of USAC's finding that Hart was required to provide documentation of individual building values to support its Part 64 allocations, and USAC's rejection of 100 percent of expenses for training seminars and legal retainers on the ground that a portion of the expenses may be unrelated to the provision, maintenance, and upgrading of facilities and services.¹⁵ Simultaneously, Hart filed a request seeking waiver of the section 54.320(b) pursuant to sections 1.3 or 32.18 of the Commission's rules.¹⁶ Requests for review of USAC decisions are subject to *de novo* review by the Bureau.¹⁷

III. DISCUSSION

A. Finding No. 1: Inaccurate Cost Study Adjustment - Assets and Expenses

7. We affirm USAC's finding that Hart did not provide sufficient documentation to justify the allocation of land and building values between regulated and nonregulated operations pursuant to section 64.901 of the Commission's rules. Accordingly, we agree with USAC that Hart made inaccurate allocations in its cost adjustments for certain assets and expense accounts for the 2018 audit disbursement period, which is based on high-cost data filed by Hart in 2016 and 2017.¹⁸ Under the foundational "used and useful" standard, the Commission has adopted rules that "seek to ensure that carriers are compensated for the use of their property to provide regulated services, balanced by the equitable principle that ratepayers should not be forced to pay a return except on investments that can be shown to benefit them within a reasonable period of time."¹⁹ Section 254(k) of the Communications Act further prohibits incumbent local exchange carriers from using services that are not competitive to subsidize services that are subject to competition, and directs the Commission to establish rules to ensure that services supported by the USF "bear no more than a reasonable share of the joint or common costs of facilities used to provide those services."²⁰ The Commission's rules thus require rate-of-return carriers to allocate cost between regulated and nonregulated activities, with section 64.901 setting forth the methodology for this cost allocation.²¹ Section 64.901(b)(2) of the Commission's rules specifically requires carriers to directly assign costs to "either regulated or nonregulated activities whenever possible."²²

8. Section 54.320(b) of the Commission's rules further requires all carriers receiving high-cost support to "retain all records required to demonstrate to auditors that the support received was consistent with the universal service high-cost program."²³ Carriers must also maintain these records for "at least ten years from the receipt of funding [and] [a]ll such documents shall be made available upon request."²⁴

¹⁵ *Id.* at 6-7.

¹⁶ 47 CFR §§ 1.3, 32.18, 54.320(b); Hart FCC Request at 16-20.

¹⁷ 47 CFR § 54.723(a).

¹⁸ Audit Report at 6. CAF ICC support received in 2018 is based on data filed during the 2016-2017 period. CAF BLS and ICLS received in 2018 is based on 2016 data. *Id.*

¹⁹ *In the Matter of Sandwich Isles Commc'ns, Inc.*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 577, 601, para. 54 (2019) (*Sandwich Isles Reconsideration*). See also 47 U.S.C. § 201(b); *American Tel. & Telegraph Co.; The Associated Bell System Cos.; Charges for Interstate Tel. Service, AT&T Transmittal Nos. 10989, 11027, 11657*, Docket No. 19129 (Phase II), Phase II Final Decision and Order, 64 FCC 2d 1, 46-48, paras. 111-15 (1977) (*AT&T Phase II Order*).

²⁰ 47 U.S.C. § 254(k); 47 CFR § 64.901(a).

²¹ 47 CFR § 64.901(b); see also *2000 Biennial Review Order*, 16 FCC Rcd at 19959, para. 122 (discussing cost allocation forecasts).

²² 47 CFR § 64.901(b)(2).

²³ 47 CFR § 54.320(b).

²⁴ *Id.*

9. As part of the audit, AAD obtained and examined Hart's supporting documentation for 17 cost study adjustments to its 2016 high-cost data to determine whether Hart accurately calculated the adjustments.²⁵ AAD identified several unsupported cost allocations. Relevant to this appeal, AAD found that Hart did not provide documentation to support the allocation of the land and building values assigned to the regulated and nonregulated entities, which Hart used to derive the land and building allocation factors to allocate cost amongst Hart and its nonregulated affiliates.²⁶

10. During the audit, Hart provided updated floor space studies, square footage data, building Continuing Property Records (CPRs), and its Cost Allocation Manual (CAM). AAD found this documentation insufficient, however, to support the reported cost allocations.²⁷ Specifically, AAD found that Hart's CPRs did not contain individual building values, which were necessary to verify the building allocation factors used to split costs between regulated and nonregulated operations.²⁸ AAD noted that because these individual buildings were used for different segments of the business, various allocation factors were derived based on their stated values to allocate costs, and that Hart admitted that it was not able to separate costs for each building in its CPR due to the length of time the buildings have been in place.²⁹ AAD stated that without access to those values, AAD could not confirm the validity of the allocation methodology reflected in the CAM.³⁰ Hart also claimed that its CPRs tied to total balances in the audited financial statements,³¹ and that while it could not provide individual building-level costs, the aggregate total was verifiable and audited.³²

11. As a result of the insufficient information provided by Hart, AAD concluded that the regulated costs associated with these buildings reported for high-cost purposes, including those costs recorded in Accounts 2121 (Buildings), 2122 (Furniture), and 2123 (Office Equipment), were not accurate.³³ In the absence of sufficient documentation to support the land and building values underlying the CAM allocation factors, AAD determined that the entire regulated balance associated with these accounts could not be used for the cost study.³⁴ The cumulative monetary effect of these deficiencies resulted in an overpayment of high-cost support of \$158,274 for the 2016 disbursement year.³⁵

12. Hart asserted to AAD that it had not observed significant changes to building square footage to justify a full update to its CAM and did not submit documentation to back up its assertions.³⁶ AAD rejected Hart's position, emphasizing that aggregate reconciliation does not satisfy the documentation requirements under section 54.320(b) of the Commission's rules.³⁷ Carriers are required to retain records necessary to demonstrate the accuracy of their reported data and compliance with

²⁵ 2021 USAC Audit Report at 8-9.

²⁶ *Id.*

²⁷ *Id.* at 10.

²⁸ *Id.* at 12.

²⁹ *Id.*

³⁰ *Id.*

³¹ 2021 USAC Audit Report at 11-12.

³² *Id.*

³³ *Id.* 12-13.

³⁴ *Id.* at 13.

³⁵ *Id.* at 5.

³⁶ *Id.* at 12.

³⁷ 2021 USAC Audit Report at 12.

program rules.³⁸ Because Hart did not retain and could not reconstruct individual building values, or clearly explain how the allocation percentages were derived, AAD found the reported allocations to be unsupported and unverifiable.³⁹ The identified overpayment, totaling more than \$158,000, was deemed recoverable by USAC.

13. In its appeal to USAC, Hart continued to argue that as a Class B rate-of-return carrier, it follows industry-standard mass asset accounting, and its updated building allocation meets FCC requirements for assigning common costs.⁴⁰ Additionally, Hart argued that it was willing to conduct a detailed building-level analysis, if USAC deemed it necessary, to avoid removal of 100% of its building values from the cost study.⁴¹ Hart submitted revised square footage data and CPRs at AAD's request, stating that these updates had minimal impact on the CAM results.⁴² Hart also claimed that its CPRs tied to total balances in the audited financial statements⁴³ and that while it could not provide individual building-level costs, the aggregate total was verifiable and audited.⁴⁴ On appeal, USAC agreed with AAD that Hart is indeed "an eligible carrier receiving High Cost funds and they must maintain their records to demonstrate compliance as they are subject to an audit."⁴⁵ USAC also confirmed that "Hart Telephone failed to retain and maintain records for the 10-year period, in accordance with FCC rules."⁴⁶

14. In its appeal to the FCC, Hart argued that it provided records consistent with Part 32 accounting purposes, which allows aggregate accounting, and that no rule requires building-level detail.⁴⁷ It also contended that section 54.320(b) mandates record retention, not creation, and does not grant USAC discretion to demand new or more granular records.⁴⁸ Finally, Hart submitted a request for waiver of the document retention rule.⁴⁹ Hart argues that strict application of the document retention rule is not justified, as no Commission orders require carriers otherwise subject to Part 32 to provide records with specificity.⁵⁰

15. After *de novo* review, we uphold USAC's finding that Hart failed to provide adequate documentation supporting the allocation of its land and building costs between regulated and non-regulated operations.⁵¹ The Commission has consistently held that recipients of universal service support bear the burden of compliance with program rules, including documentation under section 54.320(b). For instance, in *Sandwich Isles*, the Commission disallowed millions in claimed expenditures where the carrier failed to provide adequate support, emphasizing that unsupported costs may be recovered in full to

³⁸ See 47 CFR § 54.320(b).

³⁹ 2021 USAC Audit Report at 12.

⁴⁰ Hart Audit Appeal at 8-13.

⁴¹ *Id.* at 14.

⁴² *Id.* at 6, 14.

⁴³ *Id.* at 11-12.

⁴⁴ *Id.*

⁴⁵ Administrator's Decision on Appeal at 5.

⁴⁶ *Id.*

⁴⁷ Hart FCC Request at 11-14.

⁴⁸ *Id.* at 14.

⁴⁹ *Id.* at 17-20.

⁵⁰ *Id.* at 17 ("Absent previous Commission orders requiring carriers subject Part 32 to provide records with specificity, Hart Telephone was justified in expecting that its records in compliance with Part 32 would be sufficient.").

⁵¹ 2021 USAC Audit Report at 8-9; Administrator's Decision on Appeal at 4-5.

preserve the integrity of the Fund and ensure compliance with program requirements.⁵² Similarly here, Hart failed to provide documentation to demonstrate that *any* portion of the CAM was correct. Full disallowance is appropriate and necessary to make the Fund whole.

16. In its appeal to the Bureau, Hart asserted that, as a Class B rate-of-return carrier, it is permitted under Part 32 of the Commission's Uniform System of Accounts to aggregate land and building accounts and is not required to maintain building-level records.⁵³ While Part 32 permits such aggregation for accounting purposes, it does not relieve carriers of their separate obligation under section 54.320(b) to retain documentation sufficient to demonstrate that universal service support was received consistent with program rules. Even where detailed records are not required for general ledger accounting, carriers must still be able to demonstrate their cost allocations and support claims submitted for High-Cost funding. The obligation under section 54.320(b) is not to create documentation on demand, but to retain records that are adequate to substantiate the support claimed and the methods used to allocate common costs.⁵⁴

17. Here, Hart used individual building allocations in its CAM to distinguish between regulated and non-regulated expenses.⁵⁵ However, it did not retain records identifying the value of each building or explaining how those values informed the allocation methodology.⁵⁶ Without such documentation, Hart could not demonstrate that its cost allocations satisfied section 64.901(a) requirements, separating regulated and nonregulated costs.⁵⁷ The submitted CPRs reflected only aggregate balances, which could not be reconciled to the specific building-level allocations claimed in the cost study.⁵⁸ This non-verifiable detail undermined any assurances that Hart's allocations complied with section 64.901(a). There was no path forward to determine whether nonregulated costs had been excluded from regulated accounts. As a result, USAC and AAD were unable to verify the accuracy of Hart's allocations, and the entire regulated portion of the building account was disallowed.⁵⁹

18. While Hart argued that aggregate cost data is "reliable,"⁶⁰ FCC rules under section 54.320(b) require that carriers retain all records required to demonstrate support was received consistent

⁵² See *Sandwich Isles Communications, Inc.*, WC Docket No. 10-90, Order, 31 FCC Rcd 12999, 13036-37, para. 124 (2016) (disallowing over \$3 million in costs for lack of adequate documentation and affirming that "[t]he burden is on the recipient of high-cost support to maintain and provide sufficient documentation to demonstrate compliance with the Commission's rules.") (*Sandwich Isles Order*); *Sandwich Isles Reconsideration*, 34 FCC Rcd at 598, para. 43 (reiterating that carriers must support claims with verifiable documentation and upholding full recovery where no such support existed).

⁵³ Hart FCC Request at 8-14 (asserting that a Class B carrier is not required to disaggregate land and building investments by individual structure); see 47 CFR § 32.11; see also Federal Communications Commission, Decision, Uniform System of Accounts for Telephone Companies, FCC 86-221, 60 R.R.2d 1111 at para. 3 (1986).

⁵⁴ See *Sandwich Isles Reconsideration*, 34 FCC Rcd at 598, para. 43 (stating that the burden of demonstrating compliance with the Commission's rules rests with the carrier, and unsupported claims may be disallowed in their entirety). See also Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (establishing that carriers must ensure that only permissible costs are recorded in regulated cost categories).

⁵⁵ 2021 USAC Audit at 11.

⁵⁶ *Id.* at 8.

⁵⁷ 47 CFR § 64.901(a) ("Carriers shall separate their regulated costs from nonregulated costs in accordance with the principles described in this subpart. Carriers shall not include their regulated account any costs not related to the provision of regulated telecommunications services.").

⁵⁸ 2021 USAC Audit at 10.

⁵⁹ *Id.*; Administrator's Decision on Appeal; Hart Appeal at 10-11.

⁶⁰ Hart FCC Request at 13.

with program rules.⁶¹ Section 64.901(a) requires apparent separation of regulated and nonregulated costs,⁶² not merely aggregated totals that cannot “match exactly” to underlying building-level costs.⁶³ Hart itself admitted that “[it] does not maintain separate costs for each building.”⁶⁴ This admission confirms that Hart could not satisfy the standard of 64.901(a), since the rule requires separation to be evidenced at the cost level, not reconstructed after the fact.

19. The purpose of section 64.901(a) is to validate accuracy of the regulated versus non-regulated cost allocations, not just the total costs.⁶⁵ It is not the role of auditors to reconstruct or retroactively validate unsupported claims, particularly when a carrier seeks to justify cost allocation only after an audit has identified deficiencies.⁶⁶ The problem is not the timing of Hart’s request, but that the analysis, even if performed, would not provide the verifiable support necessary to demonstrate that the previously claimed costs complied with section 64.901(a), separating regulated versus nonregulated costs.⁶⁷ As in *Sandwich Isles*, where the Commission disallowed costs in full, we find that USAC appropriately disallowed the reported amounts and sought recovery to preserve program integrity.⁶⁸

20. *Waiver.* We also deny Hart’s request for waiver of section 54.320(b).⁶⁹ Under longstanding Commission precedent, a waiver may be granted only where the petitioner demonstrates that special circumstances warrant a deviation from the general rule and that such deviation would serve the public interest.⁷⁰ Hart argues that it adhered to generally accepted industry practices for Class B carriers and, in the absence of Commission orders requiring carriers subject to Part 32 to provide building-level records, it reasonably relied on aggregate records permissible under Part 32.⁷¹ However, this does not establish special circumstances under the Commission’s waiver standard. As the *Sandwich Isles Order* makes clear, the burden is on the carrier to retain documentation sufficient to support cost allocations claimed for high-cost support.⁷² Hart is not relieved of an independent obligation to substantiate cost allocations.

21. Hart’s reliance on the *Elite Program Specialists* and *Allband Communications Cooperative*, is unpersuasive.⁷³ In *Elite Program Specialists*, the Bureau granted relief from a procedural requirement, whereas in this case, the deficiency is substantive in nature.⁷⁴ *Elite Program Specialists* does not excuse documentation issues or establish that a waiver is warranted in the absence of waste, fraud and abuse. Similarly, in *Allband Communications Cooperative*, the Bureau allowed waiver of study

⁶¹ 47 CFR § 54.320(b).

⁶² 47 CFR § 64.901(a).

⁶³ Hart FCC Request at 13.

⁶⁴ *Id.* at 11.

⁶⁵ *Sandwich Isles Reconsideration*, 34 FCC Rcd at 598, para. 43 .

⁶⁶ See *Sandwich Isles Order*, 31 FCC Rcd at 13036-37, para. 124; *Sandwich Isles Reconsideration*, 34 FCC Rcd at 598, para. 43.

⁶⁷ 47 CFR § 64.901(a).

⁶⁸ Administrator’s Decision on Appeal at 5.

⁶⁹ Hart FCC Request at 17-20.

⁷⁰ See generally *WAIT Radio*, 418 F.2d 1153 (D.C. Cir. 1969).

⁷¹ Hart FCC Request at 19.

⁷² *Sandwich Isles Reconsideration*, 34 FCC Rcd at 598, para. 43.

⁷³ Hart FCC Request at 18-19.

⁷⁴ *Request for Waiver by Elite Program Specialists, LLC, Rural Health Care Program, Order, Wireline Competition Bureau*, DA 22-554 (May 19, 2022) (waiving application deadline due to Louisiana natural disasters).

area boundary rules to preserve eligibility but did not address documentation requirements or disallowance for unsupported past claims.⁷⁵ Neither supports the proposition that a waiver is appropriate where a carrier does not meet the evidentiary requirement. The obligation under section 54.320(b) is not just procedural, it ensures that support is traceable to documented costs.

22. Hart also argues that strict disallowance is harsh and that, even without precise records, the majority of costs were related to regulated operations.⁷⁶ However, this argument misinterprets the Commission's burden-of-proof framework. Carriers, not the Commission or USAC, bear the responsibility of demonstrating the allowability of claimed costs.⁷⁷ Without documentation, there is no basis for determining what portion, if any, of the claimed costs was permissible. The Commission has consistently upheld full recovery in such cases, not as a penalty, but as a compensatory measure to protect the Fund.⁷⁸ Granting a waiver here would undermine audit integrity as inconsistent with the Commission's oversight responsibilities and the integrity of the Fund.⁷⁹ In the absence of evidence demonstrating that support was received appropriately and in accordance with program rules, recovery is required. Accordingly, Hart has not met the waiver standard, and its request is therefore denied.

B. Finding No. 2: Improper Inclusion for Non-Regulated Amounts and Support Not Used for Intended Purpose of Federal Universal Support

23. We affirm USAC's finding that Hart included nonregulated costs in its high-cost filings. We agree that the training and legal retainer costs were unrelated to telephone facilities and instead covered topics like set-top boxes and general advisory services. Accordingly, we agree with USAC that Hart improperly included expenses for nonregulated activities not used for the intended purpose of the Fund.

24. Under section 64.901(a), carriers must allocate costs between regulated and nonregulated activities to prevent cross-subsidization and ensure only eligible costs are included in support calculations.⁸⁰ Section 54.7(a) further requires that high-cost support be used solely for the "provision, maintenance, and upgrading of facilities and services for which the support is intended."⁸¹

25. As part of USAC's 2019 audit, AAD reviewed Hart's general ledger for the twelve month period ending December 31, 2016. Specifically, AAD reviewed 74 expense transactions totaling \$1,488,495, 19 affiliate transactions totaling \$82,667, and related support for cost study adjustments.⁸² USAC AAD concluded that Hart failed to exclude non-allowable expenses, resulting in a finding of non-compliance with sections 64.901(a) and 54.7(a).⁸³ The monetary effect of these disallowances totaled

⁷⁵ *Allband Communications Cooperative Petition for Waiver of Certain High-Cost Universal Service Rules*, Order, DA 18-177, WC Docket No. 10-90, para.18 (Feb. 22, 2018).

⁷⁶ Hart FCC Request at 19.

⁷⁷ *Sandwich Isles Reconsideration*, 34 FCC Rcd at 598, para. 43.

⁷⁸ See *id.* at 598, para. 43; *Universal Service Contribution Methodology*, CC Docket No. 96-45, Order, 29 FCC Rcd 5974, 5984, para. 24 (WCB 2014) (recovery is required to make the Fund whole where no evidence demonstrates compliance).

⁷⁹ See 47 C.F.R. § 54.320(b) (carriers must retain documentation sufficient to demonstrate compliance; failure may result in recovery and enforcement); *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket Nos. 05-195 et al., Report and Order, 22 FCC Rcd 16372, 16383, para. 20 (2007) (adopting safeguards to ensure accountability and integrity of the Fund).

⁸⁰ 47 CFR § 64.901(a).

⁸¹ 47 CFR § 54.7(a).

⁸² 2021 USAC Audit Report at 13.

⁸³ 47 CFR §§ 64.901(a); 54.7(a).

\$116,089.⁸⁴ AAD identified 22 transactions where nonregulated or ineligible expenses were included in Hart's cost study.⁸⁵ These included meal and travel expenses, prohibited membership dues, and food and beverage expenses unrelated to service provisions, which were tied to an annual employee meeting and a retirement luncheon.⁸⁶ AAD noted that some events included substantial extracurricular activities, such as golf tournaments and zip-lining, or sessions unrelated to supported services, such as set-top box discussions.⁸⁷ AAD also concluded that the legal retainer fee covered broad services like newsletters and general advisory support, which are not sufficiently linked to high-cost service provision.⁸⁸ AAD concluded that these expenses were not necessary for the provision, maintenance, or upgrade of supported services and therefore should have been excluded from Hart's cost study.⁸⁹ USAC notified Hart that the cumulative monetary effect of these disallowed expenses would be subject to recovery, totaling \$116,089.⁹⁰

26. In its appeal to USAC, Hart disputed the disallowances of expenses totaling \$60,966.33.⁹¹ Specifically, Hart disputed its Training Seminar Related Expenses and legal retainer fee, which it asserted were necessary for the provision of maintenance, and upgrading of supported services.⁹² Similarly, Hart contends that they relied upon a retainer agreement with communications counsel to provide timely guidance on a variety of questions concerning the Universal Service program and its regulations and obligations.⁹³ Hart explained that, as a small provider with limited internal resources, it relies on industry trainings and legal counsel to remain compliant with state, federal, and local regulatory requirements – including tariff filings, plant permitting, cybersecurity, and cost study compliance.⁹⁴ Hart argued these functions are preconditions to delivering supported voice and broadband services, consistent with section 54.7(a) and common industry practice.⁹⁵ “Hart does not have the internal resources to be able to keep up with the everchanging regulatory, accounting, and technological landscapes”⁹⁶ Hart contends that its legal counsel and the Training Seminars attended by Hart's officers and staff are thus necessary for the “provision, maintenance, and upgrading of facilities and services for which the high-cost support is intended.”⁹⁷

27. Hart further maintained that the *2018 High-Cost support Expense Exclusion Order* does not categorically prohibit training or legal expenses necessary to maintain operational expertise, and that

⁸⁴ 2021 USAC Audit Report at 16.

⁸⁵ USAC Audit Report at 13-14.

⁸⁶ *Id.* at 18.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* at 5, 15-16. The AAD noted these expenses included meals, travel, membership dues, community events, retirements parties and gifts to employees- all expenses that were not necessary for the provision, maintenance, and upgrading of facilities.

⁹¹ Hart Audit Appeal at 6. Hart states 142 expenses, which is under 22 transaction as shown in Exhibit F.

⁹² *Id.* at 15. The Training Seminar expenses are identified as N1 and N7 in the Audit.

⁹³ *Id.* at 15-16.

⁹⁴ *Id.* at 15-16, 20-21.

⁹⁵ *Id.* at 16.

⁹⁶ *Id.* at 16.

⁹⁷ Hart Audit Appeal at 16.

meals associated with work-related travel may be recoverable as reasonable per diem expenses.⁹⁸ Hart maintains that it provided adequate documentation to support these expenses and was not notified of deficiencies by AAD during the audit process.⁹⁹ In its appeal to USAC, Hart further emphasized that it already allocated these expenses through its CAM, which accounts for ineligible portions, and thus USAC's full disallowance was inappropriate.¹⁰⁰ USAC denied the appeal, affirming AAD's prior finding and reiterating that "Hart Telephone included non-regulated costs in its cost study balances reported for High Cost program purposes."¹⁰¹

28. In its appeal to the Bureau, Hart argued that USAC misapplied the statute in disallowing "costs incurred attending ordinary telecommunications conferences relevant to the provision, maintenance, and upgrading of telecommunication services, and . . . a legal retainer fee that covered 'general inquiries' in addition to inquiries relating to universal service."¹⁰² Hart defined the Training Seminar Related expenses as "third-party training and educational meetings to obtain the latest knowledge relevant to the provision of services and to federal, state and local regulatory requirements."¹⁰³ It continued to argue that, as a small, independent carrier, its membership in associations and attendance at seminars is essential to staying informed of evolving FCC rules and maintaining necessary practices, including cybersecurity and accounting, and that the "benefits of these seminars in the provision, maintenance, and upgrading of supported services is clear."¹⁰⁴ Finally, Hart argues that USAC's concerns are already addressed in the way Hart accounts for the expenses; it "reduces the amount of the expenses at issue, in order to account for any portions of the expenses that are not directly and solely related to supported facilities and operations."¹⁰⁵

29. We affirm USAC's determination that Hart included non-regulated and ineligible expenses in its high-cost cost study submissions, in violation of sections 64.901(a) and 54.7(a) of the Commission's rules. Hart argued that its training seminar expenses and legal retainer are directly related to the provision, maintenance, and upgrading of supported services, and therefore should be eligible for high-cost support.¹⁰⁶ Hart stated that the Commission's *2015 Ineligible Expenses Public Notice* identified personal travel, personal vehicles, and gifts as impermissible uses of support and asserts that its training seminars and legal services are nothing like those examples and do not involve waste, fraud, or abuse.¹⁰⁷ Hart further argued that these costs were included as part of its corporate operations expenses, which are subject to a CAM allocator that removes ineligible costs, and therefore should not have been excluded in full.¹⁰⁸

⁹⁸ *Id.* at 15.

⁹⁹ *Id.* at 15.

¹⁰⁰ *Id.* at 15-16.

¹⁰¹ USAC Administrator's Opinion on Appeal at 6.

¹⁰² Hart FCC Request at 20.

¹⁰³ *Id.* at 22. Hart stated that "The Georgia Telecommunications Association meeting was entitled 'Harnessing Waves of Change' and included keynote addresses by the CEO of the Rural Broadband Association and a communications consultant, both of whom were addressing recent regulatory changes at the federal level." *Id.* at 22-23.

¹⁰⁴ *Id.* at 21-22.

¹⁰⁵ *Id.* at 25.

¹⁰⁶ *Id.* at 22.

¹⁰⁷ *Id.* at 23.

¹⁰⁸ *Id.* at 24-25.

30. We reject these arguments. First, while the *2015 Ineligible Expenses Public Notice* did provide examples of ineligible expenses, it expressly stated that its list was “non-exhaustive” and reminded carriers that they bear the burden of ensuring that support is used “only for the provision, maintenance, and upgrading of facilities and services for which support is intended.”¹⁰⁹ Thus, even if Hart’s expenses do not resemble the examples cited, the *2015 Ineligible Expenses Public Notice* made it reasonably foreseeable that costs not directly and verifiably tied to supported operations would be disallowed. The *2018 Eligible Expenses Order* reaffirmed this principle, clarifying that expenses incurred partly for recoverable business uses and partly for non-recoverable purposes must be properly allocated and that unsupported portions may be denied in full.¹¹⁰ The Commission made clear that its conclusions reflected pre-existing law, not new obligations.¹¹¹

31. Second, while training seminars and legal advice may in some cases further support operations, Hart has not demonstrated that the expenses at issue were solely or even primarily related to high-cost eligible services. Hart 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,”¹¹² and full recovery for the expenses is warranted.¹¹³ The *2015 Ineligible Expenses Public Notice* 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.”¹¹⁴ The record shows that the seminars included sessions on topics beyond supported facilities, such as video set-top boxes and general business matters, and that the legal retainer included broad services like newsletters and general advisory support.¹¹⁵ Hart provided no documentation breaking down or allocating these costs between eligible and ineligible purposes. Without verifiable support, neither the seminars nor the retainer can be properly included in Hart’s high-cost studies.

32. Finally, Hart’s reliance on its CAM allocator is misplaced.¹¹⁶ Allocators do not convert ineligible costs into allowable ones. The Commission requires that carriers first ensure that only permissible costs are entered into regulated accounts; allocating collective expenses that already include ineligible items does not satisfy this obligation.¹¹⁷ As in *Sandwich Isles*, unsupported claims may be disallowed in their entirety, and the burden rests squarely on the carrier to demonstrate compliance.¹¹⁸ Because Hart failed to substantiate that any portion of its seminar or legal retainer expenses was allowable, USAC properly disallowed them in full.

33. Based on *de novo* review, we find that Hart failed to demonstrate that the disallowed training and legal expenses were eligible for high-cost support under 47 CFR §§ 64.901(a) and 54.7(a).

¹⁰⁹ *2015 Ineligible Expenses Public Notice*, 30 FCC Rcd at 11822.

¹¹⁰ *2018 Ineligible Expenses Order*, 33 FCC Rcd at 2997, para. 16; 47 CFR § 54.7(c).

¹¹¹ *2018 Ineligible Expenses Order*, 33 FCC Rcd at 2771, para. 4; 47 CFR § 54.7(c).

¹¹² 47 CFR § 54.7(a).

¹¹³ *2015 Ineligible Expenses Public Notice*, 30 FCC Rcd at 11822.

¹¹⁴ *Id.*

¹¹⁵ Hart FCC Request at 22.

¹¹⁶ *Id.* at 25.

¹¹⁷ *Sandwich Isles Reconsideration*, 34 FCC Rcd at 598, para. 43

¹¹⁸ *Id.* at 598, para. 43

We therefore affirm USAC's determination and deny this portion of Hart's appeal. We also direct USAC to proceed with the recovery of \$279,584 in improperly paid support.¹¹⁹

IV. ORDERING CLAUSES

34. 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 Hart Telephone Company, Inc. IS DENIED.

35. 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

¹¹⁹ Hart Telephone Company, Inc., Limited Review Performance Audit on Compliance with Federal Universal Service Fund High-Cost Support Mechanism Rules, USAC Audit No. HC2019LR001 – CONF (July 30, 2021).