

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

In the Matter of
Sandwich Isles Communications, Inc.
WC Docket No. 10-90

ORDER ON RECONSIDERATION

Adopted: December 4, 2018

Released: January 3, 2019

By the Commission:

TABLE OF CONTENTS

Heading Paragraph #
I. INTRODUCTION..... 1
II. BACKGROUND..... 6
A. Regulatory Background..... 6
B. Procedural Background..... 25
III. DISCUSSION 36
A. The Commission Has Considered All Relevant Arguments and Information..... 43
B. Misclassification of Costs as Category 1 Cable and Wire Facilities 47
1. Routes without Subscribers 48
2. Routes between Central Offices 105
3. Other Claimed Errors Relating to Exception 1..... 116
C. Violation of Affiliate Transaction Rules..... 120
D. Statute of Limitations for Improper Payments..... 130
1. The Text, Context, Purpose, and History of Section 1658(a) Supports the Commission’s Interpretation in the SIC Improper Payments Order..... 131
2. The D.C. Circuit’s Decision in PHH Does Not Support Reconsideration of the Commission’s Interpretation 136
E. For all of these reasons, we reject the arguments in the SIC Petition concerning the applicability of 28 U.S.C. § 1658(a). Other Asserted Grounds for Reconsideration..... 138
IV. ORDERING CLAUSES..... 144
APPENDIX A: DEFICIENCY OF SIC’S SHOWING TO SUPPORT TREATMENT OF COSTS AS CATEGORY 1

I. INTRODUCTION

1. Universal service is a foundational principle of the Communications Act of 1934 (Communications Act), one that is core to the mission of the Federal Communications Commission.1 High-cost universal service support is designed to ensure that consumers in rural, insular, and high-cost

1 47 U.S.C. § 151 (“For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination . . . a rapid, efficient, Nation-wide . . . communication service with adequate facilities at reasonable charges . . . there is hereby created a commission to be known as the ‘Federal Communications Commission’”).

areas have access to modern communications at rates that are reasonably comparable to those in urban areas.² The high-cost support programs fulfill these goals by allowing eligible carriers that serve rural, insular, and high-cost areas to recover certain reasonable costs of providing service. At the same time, as the steward of federal universal service funds collected from American consumers and businesses, the Commission must ensure that those funds are being used efficiently and for their intended purposes, and must prevent waste, fraud, and abuse.³ This order reaffirms our commitment to ensuring that universal service support is distributed only for proper purposes, so that funds will be available to those providers who are eligible and in those places where such services are legitimately needed.

2. Between 2002 and 2015, the Commission's high-cost universal service support mechanisms provided nearly \$250 million of funds to Sandwich Isles Communications, Inc. (SIC) to provide service to customers in the Hawaiian Home Lands.⁴ Yet SIC only provides service to less than █ lines—a small fraction of the customers it originally stated it planned to serve.⁵ Far more troubling, an investigation by the Universal Service Administrative Company (USAC) begun in 2015 determined that SIC received more than \$27 million in high-cost universal service support to which it was not entitled.⁶ In addition to these findings by USAC, the Hawaii Public Utilities Commission in 2015 concluded that it could not certify that all federal high-cost support provided to SIC was used in the preceding calendar year, and would be used in the coming calendar year, only for facilities and services for which the support is intended, as required by the Commission's universal service rules.⁷

3. The Commission confirmed USAC's findings in the *SIC Improper Payments Order*.⁸ The Commission concluded that SIC violated the Commission's regulatory cost accounting rules and related requirements, resulting in inflated costs being used as the basis for SIC's universal service support payments. In particular, the Commission found that SIC relied on three general types of costs and expenses as the basis for improper high-cost universal service support:

- Costs associated with facilities that were not serving any customers;⁹
- Costs associated with network facilities used for purposes that are not compensable under the Commission's high-cost support rules,¹⁰ and

² See 47 U.S.C. § 254(b); *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17668, para. 5 (2011) (*USF/ICC Transformation Order*); *Federal-State Board on Universal Service*, Order on Remand, Further Notice of Proposed Rulemaking, Memorandum Opinion and Order, 18 FCC Rcd 22559, 22563, para. 5 (2003).

³ 47 U.S.C. § 254, (e); see generally *AT&T, Inc. v. FCC*, 886 F.3d 1236, 1252 (D.C. Cir. 2018); *Rural Cellular Ass'n v. FCC*, 588 F.3d 10950, 1103 (D.C. Cir. 2009).

⁴ *Sandwich Isles Communications, Inc.*, Order, 31 FCC Rcd 12999, 13004, paras. 16, 18 (2016) (*SIC Improper Payments Order*).

⁵ *AT&T Application for Review; Sandwich Isles Communications, Inc. Petition for Declaratory Ruling*, Memorandum Opinion and Order, 31 FCC 12977, 12977-78, 12995-96, paras. 2, 54 (2016) (*SIC Paniolo Order*), *pet. for review pending*, *Sandwich Isles v. FCC*, No. 17-1036 (D.C. Cir. filed Feb. 3, 2017).

⁶ *SIC Improper Payments Order*, 31 FCC Rcd at 13000, para. 2.

⁷ *Id.* at 13013, para. 45 (discussing the Hawaii PUC order).

⁸ See generally *SIC Improper Payments Order*, 31 FCC Rcd 12999.

⁹ *Id.* at 13014, 13021-22, paras. 74-78.

¹⁰ *Id.* at 13014, 13022-23, paras. 79.

- Inflated expenses that violated rules governing how carriers account for transactions with affiliates, or that otherwise were excessive.¹¹

4. SIC filed a petition seeking reconsideration of virtually all aspects of the *SIC Improper Payments Order*.¹² SIC contends that the Commission ignored its legal arguments and factual submissions, but in fact, the Commission painstakingly responded to those arguments and submissions and deemed them unpersuasive. On reconsideration, SIC fails to take account of the text of the Act and the reasonable policies underlying the Commission's universal service rules, which among other things preclude recovery for facilities that are not actually used to provide service in covered areas. While SIC points to evidence that it claims shows that its cost accounting did in fact comply with Commission rules, that evidence is either incomplete, unpersuasive, or else outright contradictory to other facts and claims made elsewhere by SIC. Nor are we persuaded by the other legal or equitable arguments SIC raises in seeking to avoid the consequences of having received improper universal service support. None of these arguments prevents the Commission from exercising its specific statutory obligation to make sure that high-cost funds are used for their intended purposes and seek repayment of improperly distributed funds.¹³ We thus deny the SIC Petition.

5. Our decision today does not diminish in any way the Commission's commitment to service for customers on the Hawaiian Home Lands. SIC still has ongoing obligations to its customers, under both the Communications Act and Commission rules, to continue to provide interstate telecommunications services.¹⁴ SIC may not discontinue service without our express authorization.¹⁵ Nor, however, may SIC ignore our accounting rules and universal service safeguards going forward.

II. BACKGROUND

A. Regulatory Background

6. *General Overview of the Regulatory Framework.* Section 201(b) of the Act directs the Commission to ensure that rates for common carrier services are just and reasonable.¹⁶ When carrying out that statutory directive in the context of rate-of-return regulation, the Commission seeks to ensure that carriers like SIC obtain revenues for providing regulated services at levels that allow carriers to recover their associated costs and to earn a specific return on their regulated investment.¹⁷ The same network facilities, however, are used to provide both services that are compensable through interstate rate and support mechanisms (regulated, interstate services) and services that are not (nonregulated or intrastate). As a result, the Commission developed rules to assign or allocate the costs to build and maintain the network, and the revenues derived from the array of services offered over the network, by type of cost, type of service (regulated or nonregulated), jurisdiction (intrastate or interstate), and service categories.

¹¹ *Id.* at 13014-15,13030-44, paras. 52-56, 102-49.

¹² Petition for Reconsideration of Sandwich Isles Communications, Inc., WC Docket No. 10-90, (filed Jan. 4, 2017) (SIC Petition).

¹³ See, e.g., *Blanca Telephone Company Seeking Relief From the June 22, 2016 Letter Issued By the Office of the Managing Director Demanding Repayment of A Universal Service Fund Debt Pursuant To the Debt Collection Improvement Act*, Memorandum Opinion and Order, 32 FCC Rcd 10594, 10609-10, para. 41 (2017) (citing 47 U.S.C. § 254(b)(5), (e)).

¹⁴ See 47 U.S.C. § 214(a); 47 CFR § 63.71.

¹⁵ *Id.*

¹⁶ 47 U.S.C. § 201(b).

¹⁷ See generally *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*, Report and Order, 2 FCC Rcd 1298, 1300, para. 10 (1987) (*Joint Cost Order*).

Thus, the various Commission regulatory cost accounting and rate regulations were designed to work together to help protect the Universal Service Fund (the Fund) from waste, fraud, and abuse and ensure the statutory goal of just and reasonable rates.¹⁸

7. The Commission for decades has applied the “used and useful” standard in determining the appropriate investments and expenses to be included in a rate-of-return carrier’s interstate rate base. The used and useful standard provides the foundation for Commission decisions evaluating whether particular investments and expenses are reasonable. First, the Commission considers the need to compensate the service providers for the use of their property and the expenses incurred in providing the regulated service.¹⁹ Second, the Commission looks to the equitable principle that ratepayers should not be forced to pay a return except on investments that can be shown to benefit them; thus it considers whether the expense was necessary to the provision of interstate telecommunications services.²⁰ Finally, the Commission considers whether a carrier’s investments and expenses were prudent (rather than excessive),²¹ and whether the investment will be put in use and begin yielding benefits for ratepayers within a reasonable period of time.²² The “used and useful” concept has both informed the Commission’s regulatory cost accounting and ratemaking rules and operated to protect the interests of ratepayers and carriers.²³

8. In setting regulated rates, another primary policy objective of the Commission has been to promote universal service to all consumers through affordable local telephone rates for residential customers.²⁴ Before passage of the Telecommunications Act of 1996 (1996 Act), universal service was

¹⁸ See, e.g., 47 CFR § 32.2(f) (“The financial data contained in the [Uniform System of Accounts], together with the detailed information contained in the underlying financial and other subsidiary records required by this Commission, will provide the information necessary to support separations, cost of service and management reporting requirements.”); see also *Joint Cost Order*, 2 FCC Rcd at 1299, para. 1; *Amendment of Part 69 of the Commission’s Rules and Regulations, Access Charges, To Conform It With Part 36, Jurisdictional Separations Procedures*, Report and Order, 2 FCC Rcd 6447, 6448, paras. 4-5 (1987).

¹⁹ See *American Tel. and Tel. Co.*, Phase II Final Decision and Order, 64 FCC 2d 1, 38, para. 111 (1977) (*AT&T Phase II Order*).

²⁰ See *id.* at 38, para. 112 (“Equally central to the used and useful concept, however, is the equitable principle that the ratepayers may not fairly be forced to pay a return except on investment which can be shown directly to benefit them. Thus, imprudent or excess investment, for example, is the responsibility and coincident burden of the investor, not the ratepayer.”).

²¹ See, e.g., *AT&T Communications Revisions to Tariff F.C.C. Nos. 1, 2, 11, 13, and 14 Application for Review*, Memorandum Opinion and Order, 5 FCC Rcd 5693, 5695, para. 17 (1990).

²² *AT&T Phase II Order*, 64 FCC 2d at 38, para. 113 (“The phrase ‘presently or within a reasonable future period’ in the denotation of ‘used and useful’ is included to protect ratepayers from being forced to pay a return on investment which may not be used for a considerable length of time or is not needed to serve as a reserve for currently used investment.”). The benefit, however, does not have to be immediate and can include, for example, a portion of equipment that is serving as a reserve for future use. See, e.g., *Investigation of Special Access Tariffs of Local Exchange Carriers*, Memorandum Opinion and Order, FCC 86-52, 1986 WL 291617, para. 41 (1985) (*Phase I Special Access Tariffs Investigation Order*), remanded on other grounds, *MCI Telecom. Corp. v. FCC*, 842 F.2d 1296 (D.C. Cir. 1988).

²³ See, e.g., 47 CFR § 65.800; *AT&T Application For Review; Sandwich Isles Communications, Inc. Petition For Declaratory Ruling*, Memorandum Opinion and Order, 31 FCC Rcd 12977, 12984-93, paras. 20-46 (2016).

²⁴ See, e.g., *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, et al.*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613, 19624-26, paras. 21-23 (2001) (*MAG Order*); *Access Charge Reform et al.*, CC Docket Nos. 96-262 et al., , Sixth Report and Order, 15 FCC Rcd 12962, 12970-71, para. 21 (2000) (Sixth Access Charge Reform Report and Order), *rev’d in part, Texas Off. Of Public Utility Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2004).

promoted through implicit and explicit subsidies at both the state and federal levels.²⁵ In the 1996 Act, Congress enacted section 254 of the Communications Act, which directed the Commission to replace support flows implemented through regulatory cost accounting rules and rate design with explicit support from federal universal service support mechanisms.²⁶

9. As the Commission shifted to explicit support mechanisms in response to the 1996 Act, it continued to rely on rate-of-return carriers' embedded costs to determine the level of high-cost universal service support provided.²⁷ In the case of both High Cost Loop Support (HCLS)²⁸ and Interstate Common Line Support (ICLS),²⁹ the Commission made comparatively few changes to the embedded cost-driven calculations used to determine support amounts.³⁰ Thus, these support mechanisms continued to rely in significant ways on regulatory cost accounting requirements originally developed in the ratemaking context.

10. Under the Act, carriers receiving high-cost universal service support must use it “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”³¹ High-cost support was intended to ensure the availability of basic telephone service at reasonable rates.³² Particularly given the origins of high-cost support in implicit, rate-based subsidies, the Commission naturally has interpreted the limitation on carriers' receipt of high-cost support to reflect, among other things, the “used-and-useful” principle that excessive, imprudent investment is not entitled

²⁵ See *Sixth Access Charge Reform Report and Order*, 15 FCC Rcd at 12971-72, paras. 22-23..

²⁶ See generally 47 U.S.C. § 254; see also *id.* at 12972-73, paras. 24-25.

²⁷ The high-cost universal service support program is one of four universal service programs created by the Commission to fulfill its statutory mandate to help ensure that consumers have access to modern communications networks at rates that are reasonably comparable to those in urban areas. See 47 U.S.C. § 151 (directing the Commission “to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges”); 47 U.S.C. § 254(b)(3) (“Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”).

²⁸ See, e.g., 47 CFR §§ 36.601-36.641 (1995); *MTS and WATS Market Structure; Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-22 and 80-286, Decision and Order, 50 Fed. Reg. 939 (Jan. 8, 1985); *MTS and WATS Market Structure; Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, Recommendation to the Commission, 49 Fed. Reg. 48325 (Joint Bd. Dec. 12, 1984).

²⁹ ICLS replaced earlier mechanisms—a Carrier Common Line (CCL) charge on long distance providers, and Long Term Support (LTS) paid by larger incumbent local exchange carriers (ILECs)—to supplement the revenues carriers obtained through subscriber line charges, which were capped under Commission rules. See, e.g., *MAG Order*, 16 FCC Rcd at 19623, 19625-26, para. 17, 22 (discussing CCL and TLS charges).

³⁰ See, e.g., *MAG Order*, 16 FCC Rcd at 19667-69, paras. 128-131; *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122, 4150-53, paras. 61-67 (2004); *Federal-State Joint Board on Universal Service*, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22559, 22575-76, para. 27 & n.88 (2003); *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8939-40, para. 301 (1997) (*Universal Service First Report and Order*).

³¹ 47 U.S.C. § 254(e); accord 47 CFR § 54.7.

³² 47 U.S.C. § 254(b)(3); see also, e.g., *Connect America Fund et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4571, para. 46 (2011).

to recovery through regulatory mechanisms.³³ This interpretation also accords with the understanding that section 254 of the Act requires the Commission to guard against excessive universal service support.³⁴

11. The retention of records necessary for carriers to justify their regulatory cost accounting and universal service support claims have long been part of those regulatory regimes. The Commission's rules historically have required carriers to retain records to justify their regulatory cost accounting.³⁵ In the universal service context, since the beginning of the Commission's implementation of section 254 of the Act, high-cost support beneficiaries have been subject to audit by the Administrator, and support will not be disbursed "if the carrier fails to provide adequate verification of discounts, offsets, or support amounts provided upon reasonable request."³⁶ USAC has been auditing universal service contributors and beneficiaries as of the early 2000s,³⁷ and in 2007 the Commission supplemented its pre-existing record retention requirements with additional rules for high-cost support recipients.³⁸

12. *Specific Regulatory Cost Accounting, Ratemaking, and Universal Service Requirements Relevant Here.* Rate-of-return carriers follow a multi-step process under the Commission's rules and precedents to identify the costs permissible for recovery through interstate access charges and federal universal service support.³⁹ In the discussion and charts that follow, we describe the requirements of particular relevance here.⁴⁰

³³ See, e.g., *Universal Service First Report and Order*, 12 FCC Rcd at 8899-900, 8932, paras. 225, 285.

³⁴ See, e.g., *AT&T, Inc. v. FCC*, 886 F.3d 1236, 1252 (D.C. Cir. 2018); *Rural Cellular Ass'n v. FCC*, 588 F.3d 1090, 1103 (D.C. Cir. 2009).

³⁵ For example, the Commission's Part 32 rules have required carriers to keep and maintain certain property records for the life of the relevant property, see 47 CFR § 32.2000(e), (f) (2003), and for rate-of-return carriers like SIC, continue to operate in that manner today. See 47 CFR § 32.2000(e), (f) (2018). In addition, Part 42 record retention requirements applied to "all accounts, records, memoranda, documents, papers, and correspondence prepared by or on behalf of the carrier." 47 CFR § 42.1(a) (2003). Those materials had to be included in a master index and retained for the period of time specified in that index. 47 CFR §§ 42.4, 42.7 (2003). The Commission granted forbearance from these Part 42 rules, in pertinent part, in 2013. *Petition of USTelecom For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain Legacy Telecommunications Regulations*, Memorandum Opinion and Order and Report and Order and Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, 28 FCC Rcd. 7627, 7671-74, paras. 93-100 (2013).

³⁶ 47 CFR § 54.707 (1998). Section 54.707 of the Commission's rules remains substantially similar to this day.

³⁷ See generally USAC Comments, WC Docket Nos. 05-195 et al., at 200-02, 214-45 (Oct. 18, 2005).

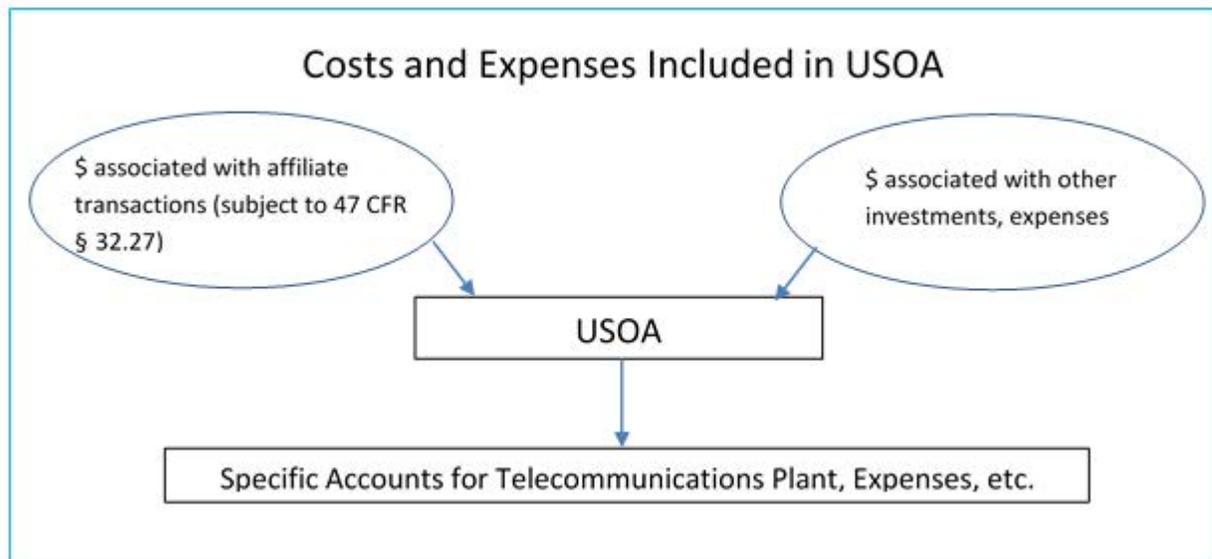
³⁸ See *Comprehensive Review Of The Universal Service Fund Management, Administration, and Oversight*, Report and Order et al., 22 FCC Rcd 16372, 16383-84, para. 24 (2007) ("These records should include without limitation the following: data supporting line count filings; historical customer records; fixed asset property accounting records; general ledgers; invoice copies for the purchase and maintenance of equipment; maintenance contracts for the upgrade or equipment; and any other relevant documentation."). The original high-cost rule set a five-year retention period—subject to longer retention periods imposed by other applicable requirements—and the Commission subsequently extended that to ten years in 2011. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17864, para. 620-21.

³⁹ See generally 47 CFR pts. 32, 36, 54, 64, 65, and 69; see also *SIC Improper Payments Order*, 31 FCC Rcd at 13046, App. B. The relevant time period for this action is 2002-2015. More recently the Commission invited rate-of-return carriers to accept support based on a cost model. See generally *Wireline Competition Bureau Authorizes 182 Rate-of-Return Companies To Receive \$454 Million Annually In Alternative Connect America Cost Model Support to Expand Rural Broadband*, Public Notice, 32 FCC Rcd 842 (WCB 2017). SIC did not elect model-based support, and model-based support is not at issue in this proceeding.

⁴⁰ Because we focus on the legal requirements of specific relevance here, the discussion that follows should not be understood as a comprehensive description of our regulatory cost accounting, ratemaking, or universal service rules. Similarly, the charts that follow seek to provide a simplified illustration of many of the key elements of the legal frameworks relevant here, and not exhaustive illustrations of all elements of those frameworks.

13. Under Part 32 of the Commission’s rules, rate-of-return carriers record their investments, expenses, and other financial activity in the uniform system of accounts (USOA).⁴¹ These rules differ if the investments and expenses are incurred in connection with affiliate transactions. For example, when services are purchased by a carrier from an affiliate, cost shall be recorded at no more than the lower of fair market value and fully distributed cost.⁴² If an affiliate exists solely to provide services to members of the carrier’s corporate family, all services the carrier purchases from that affiliate shall be recorded at fully distributed cost.⁴³ These affiliate transaction rules were adopted to guard against the risk that rate-of-return carriers would pay excessive rates to unregulated affiliates for services and pass such costs onto ratepayers.

Chart 1



14. Among the categories of USOA accounts are those for “[t]elecommunications plant,” which “represents an economic resource which will be used to provide future services, the cost of which will be allocated in a rational and systematic manner to the future periods in which it provides benefits.”⁴⁴ The USOA divides telecommunications plant among six high-level categories⁴⁵:

- Account 2001 – Telecommunications plant in service.⁴⁶
- Account 2002 – Property held “under a definite plan for use in telecommunications service” within two years.⁴⁷ “If at the end of two years the property is not in service,” the cost may remain in this account but not used for ratebase and ratemaking purposes.⁴⁸

⁴¹ See generally 47 CFR pt. 32.

⁴² 47 CFR § 32.27(c)(2).

⁴³ *Id.* § 32.27(c)(3).

⁴⁴ 47 CFR § 32.2000(c)(1).

⁴⁵ See *id.* § 32.2000(a)(1) (referring to accounts 2001 to 2007 as the “telecommunications plant accounts”). Note that 2004 is not currently used as an account.

⁴⁶ *Id.* § 32.2001.

⁴⁷ *Id.* § 32.2002(a).

⁴⁸ *Id.*

- Account 2003 – Telecommunications plant under construction.⁴⁹ Once the plant is constructed, the cost is removed from this account and moved to “the appropriate telecommunications plant or other accounts.”⁵⁰
- Account 2005 – Certain adjustments in the cost of telecommunications plant obtained in an acquisition from another entity.⁵¹
- Account 2006 – Nonoperating plant. “[T]he company’s investment in regulated property which is not includable in the plant accounts as operating telecommunications plant.”⁵²
- Account 2007 – Goodwill.⁵³

Account 2001, Telecommunications Plant in Service, is particularly relevant here. The component costs of account 2001 are disaggregated in accounts 2110 through 2690.⁵⁴ Among those is account 2410 – Cable and wire facilities (C&WF),⁵⁵ which plays a significant part in calculating the high-cost universal service support at issue in this proceeding.

⁴⁹ *Id.* § 32.2003.

⁵⁰ *Id.* § 32.2003(d).

⁵¹ *Id.* § 32.2005.

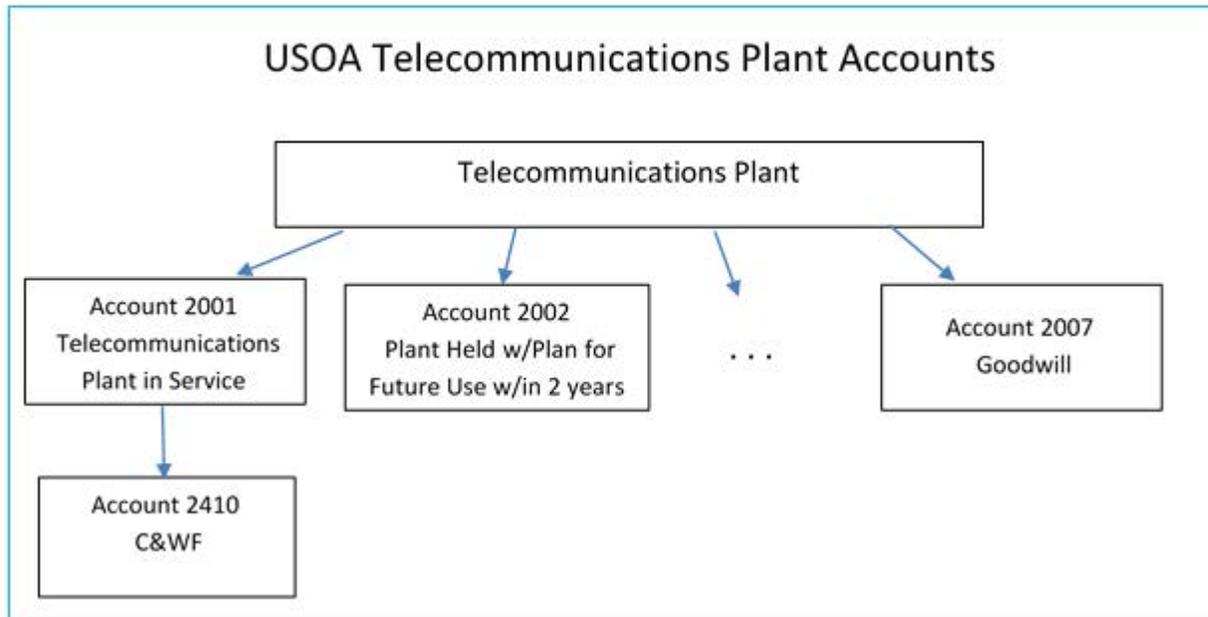
⁵² *Id.* § 32.2006(a). This includes property held for sale. *Id.* Historically, this category also included plant held for future use but not put into use within two years, but in 2000 the Commission changed its rules to allow the costs associated with such plant to remain in Account 2002 so long as it was not used for ratebase and ratemaking purposes. See *Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements For Incumbent Local Exchange Carriers: Phase 1*, Report and Order, 15 FCC Rcd 8690, 8704-05, paras. 28-29 (2000).

⁵³ 47 CFR § 32.2007.

⁵⁴ See *id.* § 32.2001.

⁵⁵ *Id.* § 32.2410. The components of account 2410 are further disaggregated in accounts 2411 through 2441. *Id.*

Chart 2



15. Recognizing that the same facilities can be used for both regulated and nonregulated activities, Commission rules establish methodologies for assigning or allocating costs to regulated or nonregulated activities. Investment and expenses exclusively associated with the provision of nonregulated activities are assigned to nonregulated accounts and are not included when determining a carrier's interstate rate base or revenue requirement.⁵⁶ Otherwise, investments and expenses are recorded in the regulated accounts⁵⁷—such as C&WF account 2410—and then subdivided between regulated and nonregulated activities in accordance with procedures contained in Part 64 of the Commission's rules.⁵⁸ Requiring these regulatory cost accounting distinctions helps “to keep incumbent local exchange carriers from imposing the costs and risks of their competitive ventures on interstate telephone ratepayers, and to ensure that interstate ratepayers share in the economies of scope realized by incumbent local exchange carriers when they expand into additional enterprises.”⁵⁹

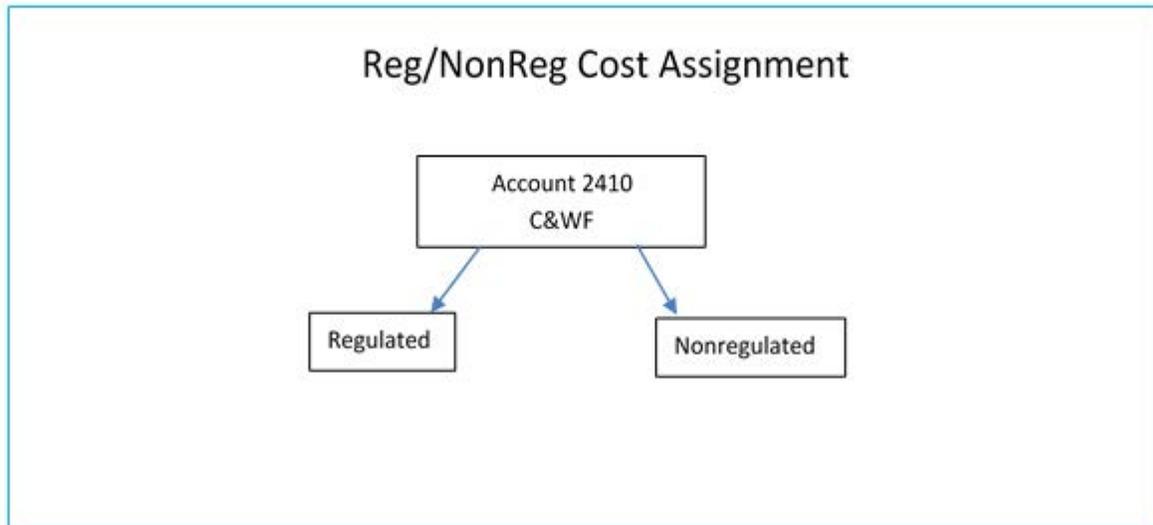
⁵⁶ See *id.* §§ 32.14, 32.23, 65.800.

⁵⁷ See *id.* § 32.14(a)-(c).

⁵⁸ See *id.* §§ 64.901-905. Those rules generally provide that costs shall be directly assigned to either regulated or nonregulated activities where possible, and common costs associated with both regulated and nonregulated activities are allocated according to a hierarchy of principles. See *id.* § 64.901.

⁵⁹ *Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539, 17550, para. 25 (1996).

Chart 3



16. In determining the federal rates of return, the division of costs associated with regulated services between federal (Commission) and state jurisdictions is necessary. This ensures that carriers recover an appropriate amount of their costs from the interstate and intrastate jurisdictions, while preventing double-recovery.⁶⁰ Continuing our focus on C&WF account 2410 given its particular relevance here, the Part 36 jurisdictional separations rules begin by subdividing facilities encompassed by that account into four categories:

- Category 1 (“Exchange Line C&WF Excluding Wideband”).⁶¹ This covers cable and wire “facilities between local central offices and subscriber premises used for” certain types of services.⁶²
- Category 2 (“Wideband and Exchange Trunk C&WF”).⁶³ This covers “all wideband” and cable and wire facilities “between central offices or other switching points.”⁶⁴
- Category 3 (“Interexchange C&WF”).⁶⁵ This covers cable and wire facilities for long distance services.⁶⁶

⁶⁰ See *Jurisdictional Separations and Referral to the Federal-State Joint Board*, Order and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5516, 5517, para. 2 (2006); cf. *Smith v. Illinois Bell Tel. Co.*, 282 U.S. 133, 148 (1930) (finding the “separation of intrastate and interstate property, revenues and expenses” to be “essential to the appropriate recognition of the competent governmental authority in each field of regulation”).

⁶¹ 47 CFR § 36.152(a)(1) (italics omitted).

⁶² *Id.*

⁶³ *Id.* § 36.152(a)(2) (italics omitted)

⁶⁴ *Id.* See 47 CFR pt. 36, app. (defining wideband channel as “a bandwidth equivalent to twelve or more voice grade channels”).

⁶⁵ *Id.* § 36.152(b).

⁶⁶ See *id.* (covering facilities “used for message toll and toll private line services”).

- Category 4 (“Host/Remote Message C&WF”).⁶⁷ This covers cable and wire facilities connecting a remote unit directly connected to users with a “host” central office that handles the actual call processing for those users.⁶⁸

“Where an entire cable or aerial wire is assignable to one category, its cost and quantity are, where practicable, directly assigned.”⁶⁹ Otherwise, segregation of cable and wire facilities to the appropriate categories is based on relative use.⁷⁰

17. The two terms relevant to cable and facilities categories are central office and exchange.⁷¹ A central office is “[a] switching unit, in a telephone system which provides service to the general public, having the necessary equipment and operations arrangements for terminating and interconnecting subscriber lines and trunks or trunks only.”⁷² Further, an exchange consists of one or more central offices and their associated facilities.⁷³ A call between any two points within an exchange area is a local call.⁷⁴

18. Also relevant is Digital Loop Carrier (DLC), which is a remote concentration device.⁷⁵ DLCs, which are category 4 C&WF, are a means of aggregating subscriber traffic from a remote terminal to a central office.⁷⁶

19. As relevant here, cable and wire facilities Category 1 (“Exchange Line C&WF *Excluding Wideband*”) is further subdivided into three subcategories:

- Subcategory 1.1 – Intrastate private lines.⁷⁷
- Subcategory 1.2 – Interstate private lines.⁷⁸
- Subcategory 1.3 – Subscriber lines.⁷⁹

⁶⁷ *Id.* § 36.152(c).

⁶⁸ *See id.* (covering cable and wire facilities “between host offices and all remote locations.”); *id.* at pt. 36, App. (defining a “host central office”).

⁶⁹ 47 CFR § 36.153(a). *See also id.* §§ 36.151(c); 36.1(c) (providing that “[t]he first step is the assignment of the cost of the plant to categories. The basic method of making this assignment is the identification of the facilities assignable to each category and the determination of the cost of the facilities so identified.”)

⁷⁰ *See id.* § 36.153.

⁷¹ Categories 1, 2, and 4 refer to central office(s), and categories 1, 2 and 3 refer to exchanges.

⁷² 47 CFR pt. 36, app. (defining “central office” and stating that “[t]here may be more than one central office in a building”). A trunk is a “[c]ircuit between switchboards or other switching equipment, as distinguished from circuits which extend between central office switching equipment and information origination/termination equipment.” *Id.*

⁷³ Newton’s Telecom Dictionary (25th Ed. 2009 Harry Newton).

⁷⁴ IEEE Standard Dictionary of Electrical and Electronics Terms, 7th Edition at 399.

⁷⁵ *See* Deployment of Wireline Servs. Offering Advanced Telecommunications Capability Petition of Bell Atl. Corp. for Relief from Barriers to Deployment of Advanced Telecommunications Servs. et al., Memorandum Opinion and Order, and Notice of Proposed Rulemaking, 13 FCC Rcd. 24012, 24037 (1998).

⁷⁶ *Id.* at 24085.

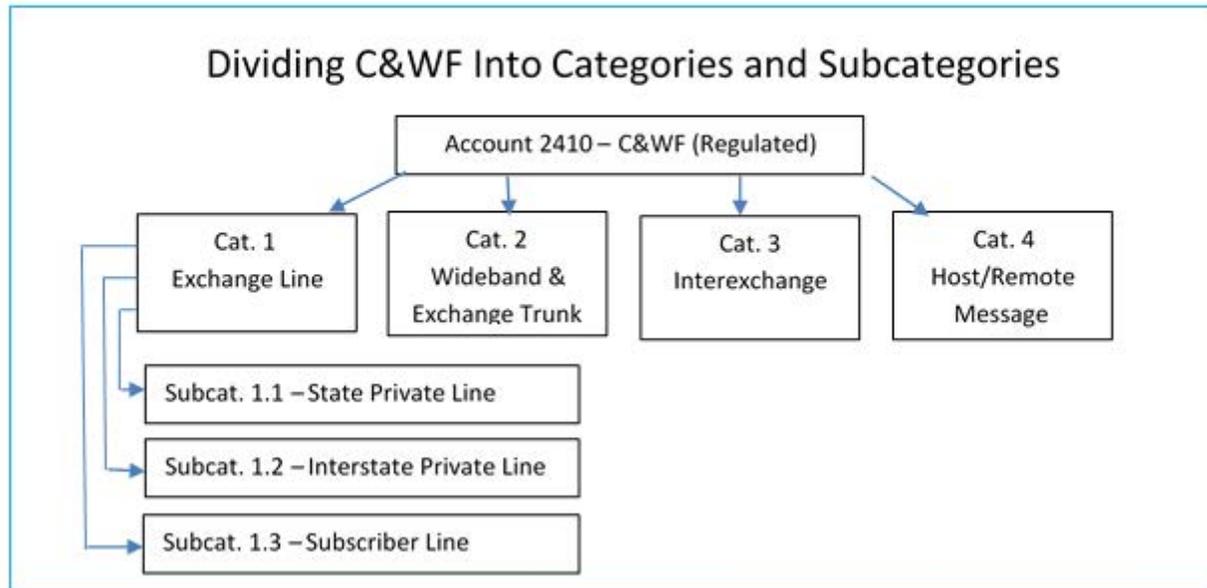
⁷⁷ 47 CFR § 36.154(a).

⁷⁸ *Id.*

⁷⁹ *Id.*

Category 1 costs are divided among the three subcategories based on the calculated average cost per working loop and the number of working loops in each subcategory.⁸⁰ A “working loop” is defined as “[a] revenue producing pair of wires, or its equivalent, between a customer’s station and the central office from which the station is served.”⁸¹

Chart 4



20. At this point in the process, subcategory 1.3 investment—along with that of certain central office equipment and certain associated expenses—is used as an input for calculating HCLS support under the Commission’s Part 54 universal service rules. In particular, rate-of-return carriers receive HCLS based on their unseparated loop costs, depending on the number of working loops they serve.⁸² The HCLS formula relies on the difference between the average loop cost per working loop in the study area and the national average loop cost per working loop.⁸³

⁸⁰ The “average cost per working loop is determined by dividing the total cost of exchange line cable and wire Category 1 in the study area by the sum of the working loops described in subcategories” 1.1 through 1.3. *Id.* See *Connect America Fund*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3120, para. 87 & n.176 (2016); *Annual 1988 Access Tariff Filings*, Memorandum Opinion and Order, 4 FCC Rcd 4115, 4128, para. 98 (1988). Until June 30, 2015, the national average unseparated loop cost for purposes of calculating expense adjustments for rural incumbent local exchange carriers was frozen at \$240.00 and, after July 1, 2015, was frozen at the national average unseparated loop cost per working loop as calculated by NECA. See *id.* § 54.1309.

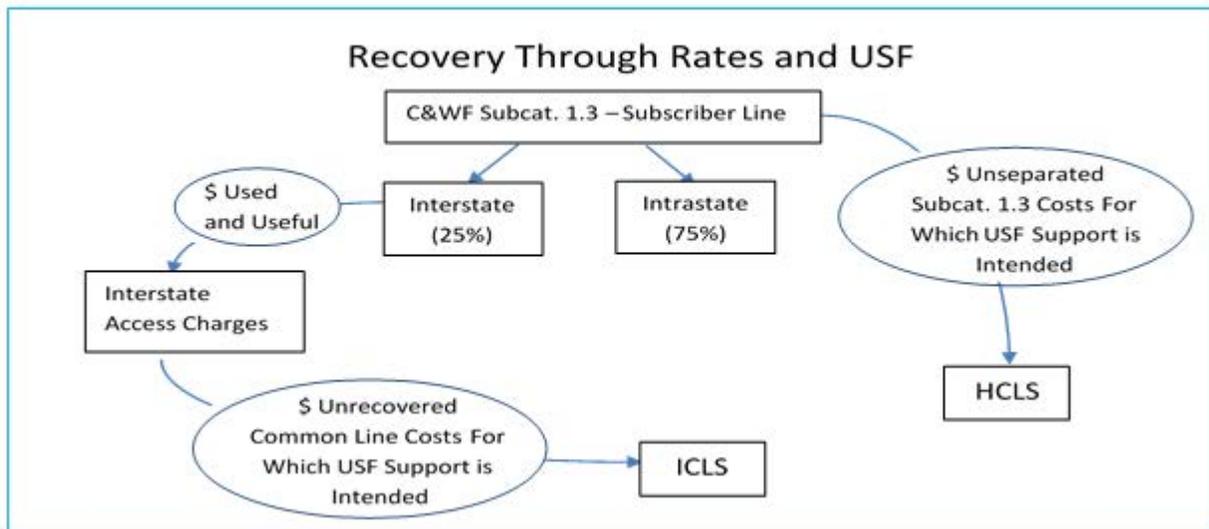
⁸¹ 47 CFR pt. 36, App. (defining “working loop”).

⁸² See 47 CFR §§ 54.1301-54.1310; *USF/ICC Transformation Order*, 26 FCC Rcd at 17743-44, para. 216 & n.347; MTS and WATS Market Structure Amendment of Part 67 (new Part 36) of the Commission’s Rules and Establishment of a Federal-State Joint Board, Report and Order, 2 FCC Rcd 2639, 2641-42, para. 14 (1987); Amendment of Part 67 (new Part 36) of the Commission’s Rules and Establishment of a Federal-State Joint Board, Recommended Decision and Order, 2 FCC Rcd 2582, 2588, para. 48 (Joint Bd. 1987). For purposes of these rules, “working loops are defined as the number of working Exchange Line C&WF loops used jointly for exchange and message telecommunications service, including C&WF subscriber lines associated with pay telephones in C&WF Category 1, but excluding WATS closed end access and TWX service.” 47 CFR § 54.1305(i). The Commission recently modified support for rate-of-return companies so that high-cost support mechanisms now provide support for broadband lines regardless of whether the customer subscribes to voice service, but that modification is not

(continued...)

21. To determine a rate-of-return carrier's interstate rates and other cost-based universal service support, the relevant costs must be separated between intrastate and interstate jurisdictions. As relevant here, 75 percent of subcategory 1.3 (subscriber lines) costs are assigned to the intrastate jurisdiction and 25 percent to the interstate jurisdiction.⁸⁴ Under the Part 69 rate regulations, interstate cable and wire facilities investments for rate-of-return carriers are recovered in the first instance through a variety of rate elements, such as the Common Line element in the case of subcategory 1.3.⁸⁵ Rate-of-return carriers' Common Line costs that cannot be recovered through interstate access rates due to Commission caps on those rates were instead recovered through ICLS support under the associated Part 54 rules in place at the time period relevant to the dispute here.⁸⁶

Chart 5



22. In addition to telecommunications plant in service (account 2001), other categories of costs also can be relevant to interstate access rates and universal service support, and are implicated by SIC's alternative arguments. For example, investment in telecommunications plant held under a definite plan for future use within two years (account 2002) can be relevant to universal service support. Account 2002 costs go through a similar—albeit somewhat more simplified—regulatory cost accounting and rate regulation process. For example, the treatment of telecommunications plant in service is used for

(Continued from previous page) _____

relevant to the period at issue here. See *Connect America Fund*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3119-20, para. 86 (2016).

⁸³ These average figures and the Expense Adjustments are provided annually to the Commission by NECA, which calculates HCLS based on information submitted by the carriers. See 47 CFR §§ 54.1305, 54.1307.

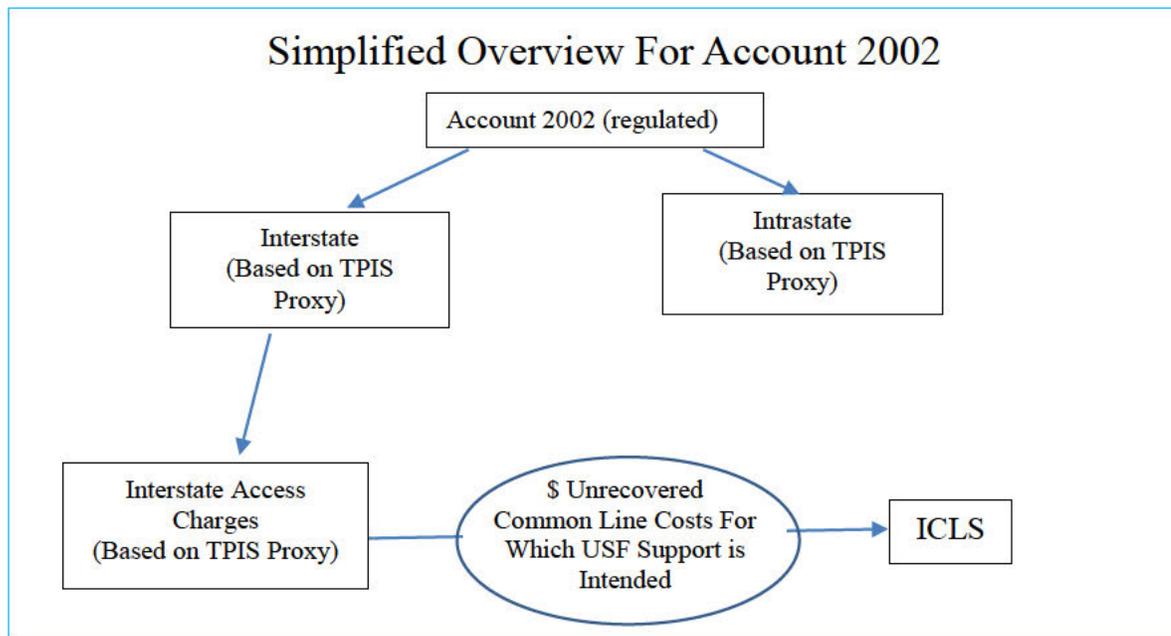
⁸⁴ *Id.* § 36.154(b), (c).

⁸⁵ *Id.* § 69.304(a) (“Investment in local exchange subscriber lines shall be assigned to the Common Line element.”); *id.* § 69.304(b) (“Investment in interstate and foreign private lines and interstate WATS access lines shall be assigned to the Special access element.”); *id.* § 69.305 (“Carrier cable and wire facilities” is assigned to various interexchange, local Transport element, Line Information Database element, Special Access element, and local switching category).

⁸⁶ See 47 CFR §§ 54.901-54.904 (2015).

jurisdictional separations and apportionment among interstate access rate categories and elements for account 2002 investment.⁸⁷ Thus, just as a portion of cable and wire facilities investment (which is part of telecommunications plant in service) gets included in Common Line costs potentially recovered in part from ICLS, so, too, can some account 2002 costs be included in Common Line costs potentially recovered through ICLS. By contrast, account 2002 investment cannot be included in C&WF subcategory 1.3, and thus it cannot be supported by HCLS.

Chart 6



23. Rate-of-return carriers' ICLS and HCLS support are calculated based on filings made with the USAC and the National Exchange Carrier Association (NECA). USAC collects information necessary to calculate ICLS payments on FCC Forms 507, 508, and 509.⁸⁸ Carriers and their agents submitting those forms are required to certify that the information contained therein is accurate to the best of their knowledge.⁸⁹

⁸⁷ Account 2002 costs “are apportioned” between interstate and intrastate jurisdictions “on the basis of the separation of the cost of Telecommunications Plant in Service, Account 2001.” 47 CFR § 36.162(b). Similarly, investment in Account 2002—property held under a definite plan for use in telecommunications service within two years—“shall be apportioned [to rate categories and elements] on the basis of the total investment in Account 2001, Telecommunications Plant in Service.” *Id.* § 69.302(b); see *Amendment of Part 69 of the Commission’s Rules and Regulations, Access Charges, To Conform It With Part 36, Jurisdictional Separations Procedures*, Order on Reconsideration, 4 FCC Rcd 765, 774, para. 60 (1988).

⁸⁸ 47 CFR § 54.903(a)(3),(4). In order to receive ICLS, SIC was required to submit the following forms to USAC: (1) FCC Form 507 Interstate Common Line Support Mechanism Line Count Report; (2) FCC Form 508 Interstate Common Line Support Mechanism Projected Annual Common Line Requirement Form; and (3) FCC Form 509 Interstate Common Line Support Mechanism Annual Common Line Actual Cost Data Collection Form.

⁸⁹ 47 CFR § 54.904. Agents for a reporting carrier certify that they are authorized to submit the information reported on forms on behalf of the reporting carrier, and to the best of their knowledge, the information reported is accurate. An agent must certify that the cost data provided is compliant with the Commission’s cost allocation rules and does not reflect duplicative assignment of costs to the consumer. Moreover, the required certification on the FCC Forms used to collect cost information for purposes of ICLS states that, “[p]ersons making willful false

(continued...)

24. Pursuant to our rules, carriers also are required to submit certified data to NECA, which is then transmitted to USAC in determining HCLS payments to eligible carriers.⁹⁰ Carriers are required to calculate cost study data, including related subscriber data, as of December 31.⁹¹ The cost study information must include certain costs, such as investments and expenses, and the number of working loops in the study area.⁹² Moreover, to receive high-cost support for category 1 C&WF, the facilities must serve subscribers as of December 31 of the year for which the carrier is seeking high-cost support.⁹³ From at least 2000 through 2015, SIC submitted annual cost studies to the NECA, which USAC used to determine SIC's annual HCLS amounts.⁹⁴

B. Procedural Background

25. The investigation that culminated in the *SIC Improper Payments Order* began in 2015, after the criminal tax fraud conviction of Albert Hee, an owner and executive of SIC during the periods at issue here.⁹⁵ On July 28, 2015, the Commission's Chief Financial Officer, Office of Managing Director (OMD), directed USAC to suspend high-cost funding to SIC pending completion of further investigation and/or other ameliorative measures to ensure that any funding provided is used solely in a manner consistent with Commission rules and policies. On August 7, 2015, USAC informed SIC that its federal high-cost support was suspended, beginning with the disbursement for July 2015.⁹⁶

26. Also in August 2015, the Wireline Competition Bureau (Bureau) directed USAC to investigate whether SIC received any improper payments from the federal high-cost support mechanisms from 2002 to June 2015.⁹⁷ The Bureau also directed USAC to determine if there were sufficient assurances that high-cost support amounts provided on a going forward basis would be used consistent with the Commission's rules. The investigation focused on testing reported costs affecting disbursements between 2002 and June 2015. From August 2015 through April 2016, USAC and Commission staff held weekly meetings by telephone with SIC to discuss inquiries and documentation needed for the investigation.

(Continued from previous page) _____

statements in this data submission can be punished by fine or imprisonment under the provisions of the U.S. Code, Title 18, Section 1001." See, e.g., Form 507 at Certification-Reporting Carrier, Certification-Agent.

⁹⁰ NECA analyzes cost data, performs certain calculations, and then transmits the information to USAC. See 47 CFR §§ 54.1305-54.1307; see also *id.* § 69.601(c). HCLS predates the enactment of section 254 and the creation of USAC. See generally *Universal Service First Report and Order*, 12 FCC Rcd at 8939-40, paras. 300-02 (1997).

⁹¹ 47 CFR § 54.1305(c),(d). The cost study data is due the following July 31st.

⁹² See 47 CFR § 54.1305(b)-(i) (setting forth gross plant investment in Exchange Line (CW&F) and working loops for universal service support purposes); see also *SIC Improper Payments Order*, 31 FCC Rcd at 13019-20, paras. 67-69 (discussing subcategory 1.3). Part 36 historically permitted carriers that serve high-cost areas to allocate local loop costs to the interstate jurisdiction through an "Expense Adjustment" and to recover those costs through the HCLS mechanism. To allow for the determination of the expense adjustment, each carrier must provide NECA with the information listed for each study area in which the carrier operates. See 47 CFR § 54.1305(a).

⁹³ *SIC Improper Payments Order*, 31 FCC Rcd at 13020, para. 69.

⁹⁴ For rate-of-return cost companies, such as SIC, NECA performs a twenty-six step calculation, which determines a study area's total unseparated cost per loop and, ultimately, the company's HCLS. See *SIC Improper Payments Order*, 31 FCC Rcd at 13004, para. 14.

⁹⁵ In addition to the relevant procedural background discussed below, the *SIC Improper Payments Order* provides additional background information. See *SIC Improper Payments Order*, 31 FCC Rcd at 13005-14, paras. 16-50.

⁹⁶ Letter from Karen Majcher, Vice President, USAC High-cost Program, to Abby Tawahara, Controller, SIC (Aug. 7, 2015); see 47 CFR § 54.707 (authorizing USAC to suspend Fund support to a carrier if directed by the Commission to do so).

⁹⁷ *SIC Improper Payments Order*, 31 FCC Rcd at 13012, para. 43.

27. On February 5, 2016, USAC sent SIC a draft report containing USAC's exceptions and observations from the investigation for the period 2002 to June 2015.⁹⁸ USAC tentatively concluded that SIC received \$61,850,980 in improper payments, of which \$58,024,044 related to the misclassification of category 1 (CAT 1) C&WF.⁹⁹

28. The USAC draft report spurred further development of the record in the investigation. SIC submitted comments in response to the draft report on February 25, 2016, in which it disagreed with the USAC draft report exceptions and observations.¹⁰⁰ Regarding the category 1 cost misallocation exception in particular, SIC disagreed with USAC's treatment of SIC's use of DLC equipment as switches and USAC's claim that certain network facilities did not connect to subscriber premises.¹⁰¹ USAC and Commission staff reviewed SIC's comments and requested further documentation. As relevant here, on March 31, 2016, USAC provided SIC with a spreadsheet including a line count analysis and requested clarification regarding the exchanges and network facilities that USAC identified as not having subscribers.¹⁰² SIC responded on April 11, 2016, identifying the exchanges for each location. Based on SIC's submissions, USAC updated and finalized its report.

29. On May 13, 2016, USAC submitted its final report to both the Bureau and SIC.¹⁰³ In its final report summarizing the results of its investigation, USAC identified eight exceptions that it concluded had resulted in \$27,270,390 in overpayments from the high-cost programs to SIC.¹⁰⁴ The exception resulting in the greatest monetary recovery from the Fund related to the misclassification of category 1 C&WF (Exception 1).¹⁰⁵ As part of Exception 1, USAC found that SIC received \$26,320,270 in high-cost overpayments because of its improper classification of facilities between central offices (Exception 1A - \$7,420,638), and its improper classification of facilities without subscribers during certain years (Exception 1B - \$18,899,632).¹⁰⁶

30. On May 18, 2016, USAC provided SIC with a spreadsheet highlighting cable and wire facilities for which costs had been included in category 1 (USAC Routes Spreadsheet), but for which information from SIC showed no subscribers for certain years—i.e., costs associated with Exception 1B.¹⁰⁷ USAC presented the cable and wire facilities as associated with a numeric identifier, which we refer to here as the “route” number.¹⁰⁸ The USAC Routes Spreadsheet shows for each route what years

⁹⁸ Draft Audit Report from Wayne M. Scott, Vice President, Internal Audit Division, USAC, to Abby Tawarahara, Controller, SIC (Feb. 5, 2016) (USAC Draft Report).

⁹⁹ USAC Draft Report at 3.

¹⁰⁰ Letter from James A. Barnett, Jr., Venable, Counsel to SIC, to Wayne M. Scott, Vice President, Internal Audit Division, USAC (Feb. 25, 2016) (SIC Draft Report Comments).

¹⁰¹ SIC Draft Report Comments at 10.

¹⁰² E-mail from Emily Powell, USAC-IAD, to Janeen Olds, President and CEO, SIC (March 31, 2016).

¹⁰³ See Memorandum from Universal Service Administrative Company to FCC Wireline Competition Bureau, Investigation of Sandwich Isles Communications, Inc., WC Docket Nos. 10-90, 16-405, CC Docket No. 96-45 (dated May 13, 2016, filed Mar. 13, 2017) (USAC Final Report).

¹⁰⁴ USAC identified eight exceptions, five of which had monetary findings. USAC Final Report at 4.

¹⁰⁵ *Id.*

¹⁰⁶ See USAC Final Report at 6-15.

¹⁰⁷ See SIC Petition, Declaration of James A. Rennard (Rennard Decl.) at Exh. 1 (USAC Routes Spreadsheet).

¹⁰⁸ The USAC and SIC materials are not entirely consistent in referring to these sets of facilities as “routes,” sometimes instead referring to them as “segments” or referring to the associated numeric identifiers using various other terminology. See, e.g., Rennard Decl. at para. 9. Since there appears to be no dispute that the relevant numeric identifiers correspond to particular sets of cable and wire facilities for which SIC's accounting and universal service treatment was rejected by USAC, for the sake of consistency and convenience, we continue to use

(continued....)

appeared to have no subscribers based on USAC’s review of SIC’s annual cost studies and other information provided by SIC. Below is a summary table of the routes identified by USAC as associated with the ‘no subscribers’ finding and the relevant years.

Table 1: Summary Exception 1B – Relevant Routes and Years Disputed by SIC

Route No.	Location Description	Years Subject to Dispute For Which USAC Determined No Subscribers ¹⁰⁹
█	██████████ ██████████	2005 - 2010
█	██████████ ██████████ ██████████	2005 – 2007
█	██████████ ██████████ ██████████	2007
█	██████████	2004 – 2006
█	██████████ ██████████	2010
█	██████████	2004 - 2006
█	██████████	2005 – 2006
█	██████████	2010
█	██████████	2004
█	██████████	2004

31. USAC’s Final Report also presented seven other exceptions from the investigation, generally arising from violations of the affiliate transactions rules and otherwise unsupported or excessive costs:

- Inflation of Management Fees Paid to Waimana (Exception 2), involving SIC’s treatment of certain payments to its parent company;
- Improper Allocation of ClearCom Watermains (Exception 3), involving SIC’s treatment of water main lease payments made to an affiliate;
- Unsupported or Misclassified Cost Study Amounts (Exception 4), involving SIC’s misclassification of accumulated amortization;
- Exorbitant Expenses (Exception 5), involving certain SIC corporate bonus payments;

(Continued from previous page) _____
 the “route” terminology that was used in the *SIC Improper Payments Order* when referring to those numeric identifiers.

¹⁰⁹ Although USAC found no evidence of subscribers served by some of these routes for earlier periods, as well, the years identified here are those associated with misclassified category 1 C&WF costs underlying the finding of improper universal service support payments. *See, e.g.*, USAC Routes Spreadsheet (identifying routes, years, and costs subject to Exceptions); USAC Final Report at 15 (identifying “misclassified CAT 1 cable and wire costs between 2004 and 2013” and calculating the associated monetary recovery).

- Higher Cost of Relocation (Exception 6), involving SIC's use of the temporary office space on the Pine Spur property it owned while at the same paying rent in Honolulu, Hawaii;
- Misclassification of Expenses (Exception 7), involving SIC's misclassification of certain general and administrative services expenses; and
- Affiliate Financials Not Provided (Exception 8), regarding certain financial statements of SIC affiliates that were not provided.¹¹⁰

The monetary amounts of Exception 2 and Exception 7 were not determined at the time of the USAC Final Report. USAC also presented six observations from the investigation, focusing on two of them – Complexity of Corporate Structure (Observation 1) and Transactions Involving Relatives of Albert Hee (Observation 2) – as the most significant areas of concern that increase the risk of waste, fraud, and abuse in the cost-based high-cost programs.¹¹¹ In reaching its conclusions, USAC relied on the responses it has received from SIC to over 350 inquiries and review of more than 3,200 files submitted by SIC to USAC.¹¹²

32. On June 13, 2016, SIC submitted its response (SIC Final Report Response) to the USAC Final Report, in which it sought modification of the Final Report's findings and a substantial reduction of the total net monetary effect calculated by USAC.¹¹³ Regarding the issue associated with the largest amount of universal service support, SIC admitted that it misclassified one route and a segment of another route as category 1 during the relevant time period and that the monetary impact was approximately \$4.1 million.¹¹⁴ However, SIC otherwise disagreed with USAC's finding that the costs relating to certain routes were improperly allocated to category 1 because there were no subscribers on those routes.¹¹⁵ SIC argued that it built the facilities associated with four of the routes at issue at the direction of the state of Hawaii and therefore should be able to recover for the cost of those routes even though it agrees they did not serve subscribers during some or all of the time periods at issue.¹¹⁶ With respect to the other routes, SIC argued that each had at least one subscriber during the relevant time period.¹¹⁷

33. On December 5, 2016, the Commission adopted and released the *SIC Improper Payments Order*, concluding that SIC improperly received payments in the amount of \$27,270,390 from the federal high-cost support mechanisms from 2002 to June 2015.¹¹⁸

¹¹⁰ See USAC Final Report at 4.

¹¹¹ See USAC Final Report at 71-87.

¹¹² *SIC Improper Payments Order*, 31 FCC Rcd at 13012-13, para. 44. In the USAC Final Report, USAC states that SIC was responsive to most, but not all, of its requests for information. USAC Final Report at 1. For example, given that recovery of costs for C&WF is a large component of the amounts that SIC is eligible to receive from the high-cost programs, versus the costs for payroll fees, throughout the investigation, USAC focused significantly more on C&WF costs rather than corporate operational costs.

¹¹³ See Response of Sandwich Isles Communications to the Universal Service Administrative Company Final Audit Report, June 13, 2016 at 1, 9 (SIC Final Report Response)

¹¹⁴ See SIC Final Report Response at 9, Attach. 8. SIC also admits a USAC exception regarding two routes, admitting there were errors with the cost study data for those routes. SIC's \$4.1 million includes the monetary impact of accepting this finding. *Id.*

¹¹⁵ SIC Final Report Response at 6-9; SIC Final Report Response, exh. AA (Exhibit AA).

¹¹⁶ SIC Final Report Response at 8; Exhibit AA at 4-9.

¹¹⁷ Exhibit AA at 6-9.

¹¹⁸ *SIC Improper Payments Order*, 31 FCC Rcd at 13000, 13044, paras. 2, 149.

- Consistent with the USAC Final Report, the Commission found that SIC misallocated C&WF costs for the period 2002 to 2015 and, as a result, received \$26,320,270 in improper payments.¹¹⁹ The Commission's conclusions focused on inclusion in category 1 of the cost of routes between central offices (Exception 1A - \$7,420,638) and of facilities associated with routes without subscribers (Exception 1B - \$18,899,632).¹²⁰
- The Commission also found that SIC received \$950,120 in improper payments from the Fund for corporate and operational expenses.¹²¹
- In addition to these improper payment findings, the Commission directed USAC to calculate the total amount of improper payments for inflated management fees paid by SIC to its affiliated companies for the period 2002 to 2015.¹²² USAC determined this amount to be \$6,771,363 and issued a demand letter to SIC.¹²³
- The Commission also directed USAC to complete a review of SIC's 2016 Affiliated Transactions, which remains underway.¹²⁴

34. On the same day that the Commission adopted the *SIC Improper Payments Order*, it adopted two other SIC-related orders. First, the Commission adopted the *SIC Notice of Apparent Liability for Forfeiture and Order (SIC NAL)*, which found that SIC apparently violated the Act and Commission rules by failing to keep its accounts, records, and memoranda in the manner prescribed by the Commission's rules, and by submitting and certifying inaccurate data included in annual cost studies for years 2002 through 2013 that were used in calculating high-cost support.¹²⁵ Second, the Commission adopted a Memorandum Opinion and Order, the *SIC Paniolo Order*,¹²⁶ which granted an Application for Review filed by AT&T and denied an SIC petition for reconsideration of the Bureau's *Declaratory Ruling* in that proceeding.¹²⁷ In the *Declaratory Ruling*, the Bureau concluded that certain disputed Paniolo, LLC (Paniolo) undersea cable lease expenses should not be included in SIC's revenue requirement for recovery through the NECA pooling process.¹²⁸

¹¹⁹ *See id.* at 13020-24, paras. 70-86.

¹²⁰ *Id.* at 13020-22, paras. 72-79; *see* USAC Final Report at 7.

¹²¹ *SIC Improper Payments Order*, 31 FCC Rcd at 13030-40, paras. 102-135.

¹²² *Id.* at 13000, 13031, paras. 2, 106. In calculating the ineligible management fees, the Commission directed USAC to disallow the management fees in excess of \$1,237,355, which is the average amount of the comparable entities' average management fees for 2012, 2013, and 2014, and apply that approach for each year, from 2002 to 2015. *Id.* at 13000, para. 2 & n.3.

¹²³ *See* Letter from Charles Salvator, Vice President and Chief Financial Officer, USAC, to Breanne Hee, Director of Corporate Service, SIC (Jan. 16, 2018) (Management Fee Demand Letter).

¹²⁴ *SIC Improper Payments Order*, 31 FCC Rcd at 13041, para. 138-139.

¹²⁵ *Sandwich Isles Communications, Inc., Waimana Enterprises, Inc., Albert S.N. Hee*, Notice of Apparent Liability for Forfeiture and Order, 31 FCC Rcd 12947 (Dec. 5, 2016) (*SIC NAL*); *but see* SIC Comments and Response to Notice of Apparent Liability and Forfeiture Order (FCC Order 16-165) and FCC Order 16-167, WC Docket No. 10-90, File No.: EB-15-00019603 NAL/Acct. No.: 201732080004 FRN: 0001514080 (filed Feb. 6, 2017) (*SIC NAL Response*).

¹²⁶ *SIC Paniolo Order*, 31 FCC Rcd 12977.

¹²⁷ *Sandwich Isles Communications, Inc. Petition for Declaratory Ruling*, Declaratory Ruling, 25 FCC Rcd 13647 (Wireline Comp. Bur. 2010) (*Declaratory Ruling*), *review granted on other grounds by SIC Paniolo Order*, 31 FCC Rcd 12977.

¹²⁸ *See id.*

35. On January 4, 2017, SIC filed a petition for reconsideration of the *SIC Improper Payments Order* (SIC Petition).¹²⁹ On February 1, 2017, the Commission published the SIC Petition in the Federal Register and invited public comment.¹³⁰ Only the United States Telecom Association (USTelecom) filed comment, and it urged the Commission to deny SIC's request on the basis that all the facts raised in the SIC Petition were previously considered and found unpersuasive by the Commission when it adopted the *SIC Improper Payments Order*.¹³¹ The Commission received no replies, but SIC subsequently submitted additional information and arguments.

III. DISCUSSION

36. SIC's Petition seeks reconsideration of the *SIC Improper Payments Order* on a number of different grounds. We summarize SIC's positions here and address them all in the sections below.

37. Many of SIC's arguments center on Exception 1, which is associated with the largest portion of the high-cost support at issue. SIC's Petition alleges that the Commission never disputed the methodologies used by its consultant GVNW Consulting, Inc. (GVNW), and that the *SIC Improper Payments Order* instead made mistakes in interpreting the Commission rules relevant to the Exception 1 issues.¹³² In that regard, SIC argues that GVNW serves as a consultant for a variety of carriers for which it uses the same regulatory cost accounting methodologies that it used for SIC;¹³³ the Commission misinterpreted its rules and/or took them out of context;¹³⁴ the rule interpretations in the *SIC Improper Payments Order* conflict with that of other orders;¹³⁵ and the Commission's interpretations are, in fact, rule changes that only can apply prospectively.¹³⁶

38. SIC also contends that USAC and the Commission ignored evidence relevant to its arguments on Exception 1 issues.¹³⁷ In particular, SIC argues that the Commission failed to address evidence of subscribers served by relevant routes;¹³⁸ evidence regarding its construction of facilities at the direction of the State of Hawaii Department of Hawaiian Home Lands (DHHL);¹³⁹ and evidence regarding the use of routes between central offices.¹⁴⁰ SIC reiterates its position that it is, at most, responsible for approximately \$4.1 million in support associated with category 1 C&WF misallocations. SIC further maintains that the routes and route segments it disputes were properly categorized as category 1 C&WF.¹⁴¹ The SIC Petition additionally contends that, even if SIC misallocated costs associated with routes for which the Commission found no subscribers, those costs should instead be included in account

¹²⁹ Petition for Reconsideration by Sandwich Isles Communications, Inc., WC Docket No. 10-90, filed January 4, 2017 (SIC Petition).

¹³⁰ Sandwich Isles Communications Inc., Petition for Reconsideration, 82 Fed. Reg. 8908 (Feb. 1, 2017). Oppositions were due by February 16, 2017 and Replies to an opposition were due by February 27, 2017. *Id.*

¹³¹ USTelecom Comments, WC Docket No. 10-90, at 3-4 (Feb. 16, 2017) (USTelecom Opposition).

¹³² See SIC Petition at 2-3, 9-13.

¹³³ See *id.* at 10; SIC Petition, Declaration of Jeffrey H. Smith at 2, paras. 5-6 (Smith Decl.).

¹³⁴ See SIC Petition at 3, 8-13; Rennard Decl. at 5-6, para. 12.

¹³⁵ See SIC Petition at 3, 8-9, 11.

¹³⁶ See *id.* at 10.

¹³⁷ See *id.* at 1-2, 5-6; Rennard Decl. at 3, paras. 6-8.

¹³⁸ See SIC Petition at 6-7; Rennard Decl. at 3-4, paras. 6-9.

¹³⁹ See SIC Petition at 2, 7, 12-13.

¹⁴⁰ See *id.*; Rennard Decl. at 5, para. 11.

¹⁴¹ See SIC Petition at 2-5, 13.

2002 (plant held for future use),¹⁴² an account that, in part, flows through to ICLS under the Commission's rules. In addition, the SIC Petition contends that other errors occurred in the determination of the high-cost support amounts associated with Exception 1, and that it cannot replicate those calculations itself.¹⁴³

39. The SIC Petition also seeks reconsideration of the findings regarding the recovery through high-cost support of expenses associated with certain affiliate transactions and certain other expenses that were found to be unreasonable.¹⁴⁴ SIC disputes the existence of rules or objective standards that the Commission could apply in that regard,¹⁴⁵ and contends that any such standards cannot be developed through adjudication but must result from a rulemaking.¹⁴⁶

40. In addition, SIC asserts that a statute of limitations precludes recovery of much of the high-cost support at issue in the *SIC Improper Payments Order*.¹⁴⁷ According to the SIC Petition, the four-year statute of limitations in 28 U.S.C. § 1658(a) applies to the Commission's administrative recovery of universal service support, and that there is judicial precedent undermining the Commission's arguments to the contrary.¹⁴⁸

41. Finally, the SIC Petition cites a range of equitable and due process considerations to inform the Commission's evaluation of SIC's reconsideration request.¹⁴⁹ SIC claims that the Commission has cited no consumer complaints or evidence of waste, fraud, and abuse,¹⁵⁰ and that the Commission has unreasonably misinterpreted SIC's intent and incentives in seeking universal service support based on the costs at issue here.¹⁵¹ SIC also cites unfairness on the part of the Commission in raising these issues now, arguing that had the Commission identified these concerns in prior audits, SIC could have taken any warranted corrective action before now.¹⁵² SIC further asserts that the Commission's interpretations and actions in the *SIC Improper Payments Order* would be a substantial departure from past practice, with significant industry-wide effects, and for which retroactive application would be unfair.¹⁵³ In addition, SIC claims inconsistency between the *SIC Improper Payments Order* and *SIC NAL*, and argues that as a matter of due process, public comment should be considered on the *SIC NAL* and SIC Petition, and the issues raised in the *SIC NAL* should be resolved before the Commission acts on the SIC Petition.¹⁵⁴

42. For the reasons set forth below, all of SIC's arguments lack merit.

¹⁴² See *id.* at 7.

¹⁴³ See *id.*, Rennard Decl. at 4-5, 6-7, paras. 10, 13.

¹⁴⁴ See SIC Petition at 3, 14-17.

¹⁴⁵ See *id.* at 3, 14-15.

¹⁴⁶ See *id.*

¹⁴⁷ See *id.* at 3, 15-18.

¹⁴⁸ See *id.* at 16-18.

¹⁴⁹ See *id.* at 4, 15-16, 18-20.

¹⁵⁰ See *id.* at 4, 18.

¹⁵¹ See *id.* at 18; Rennard Decl. at 6-7, para. 13.

¹⁵² See SIC Petition at 15-16; see also Sandwich Isles Communications, Inc. Petition for Review of January 16 USAC Demand Letter, WC Docket No. 10-90, at 9-10 (filed Mar. 19, 2018) (SIC Demand Letter Pet.).

¹⁵³ See SIC Petition at 19; Rennard Decl. at 5-6, para. 12.

¹⁵⁴ See SIC Petition at 4, 19-20.

A. The Commission Has Considered All Relevant Arguments and Information

43. 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.¹⁵⁵ And as stated previously by the Commission, “[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.”¹⁵⁶

44. An over-arching concern expressed in the SIC Petition is that the Commission relied solely on the USAC Final Report in adopting the conclusions in the *SIC Improper Payments Order*, without conducting an independent evaluation.¹⁵⁷ That concern is misplaced. The Commission analyzed the relevant record, including not only the USAC Final Report, but also SIC’s response.¹⁵⁸ The Commission simply found the arguments and information that SIC submitted unpersuasive—a reasonable conclusion, as we discuss in greater detail below.

45. While suggesting that the Commission gave too much deference to the USAC Report, SIC simultaneously argues that the Commission has not given enough weight to documents and reports submitted with the SIC Final Report Response by its consultant, GVNW.¹⁵⁹ But just as the Commission conducts its own analysis rather than simply deferring to the USAC Final Report, it likewise does not simply defer to GVNW’s arguments—including GVNW’s claims about industry practice—without independent analysis of what our rules and precedent require and how they apply to the relevant facts. SIC’s argument that GVNW is an experienced, independent, third-party consulting firm that has a longstanding relationship with SIC does not persuade us that GVNW’s analysis resolves the questions at issue here.¹⁶⁰

46. In reviewing SIC’s arguments on reconsideration—in conjunction with the additional arguments and information submitted to the Commission on these issues—we affirm the Commission’s conclusions in the *SIC Improper Payments Order*. As discussed in more detail below, we continue to disagree with many of SIC’s interpretations of the Act and our rules, and we find the submitted factual documents contradictory, unreliable, and unpersuasive and thus insufficient to meet the requisite burden of proof by a preponderance of the evidence.

¹⁵⁵ 47 CFR § 54.320(b); *Connect America Fund, Allband Communications Cooperative Petition for Waiver of Certain High-Cost Universal Service Rules*, Order and Order on Review, WC Docket No. 10-90, 31 FCC Rcd 8454, 8463, para. 25 n.83 (2016) (noting the information and records necessary to meet this burden could include service call locations, customer service records and other detailed information sufficient to allocate costs between regulated and nonregulated activities for cost accounting purposes); *SIC Improper Payments Order*, 31 FCC Rcd at 13031, para. 105 & n.215 (citing 47 CFR § 54.320(b), which requires eligible telecommunications carriers to “retain all records required to demonstrate to auditors that the [high-cost] support received was consistent with the universal service high-cost program rules,” and retain those records “for at least ten years from the receipt of funding”). The language of the current version of Section 54.320(b) has been in place since December 29, 2011. The *SIC Improper Payments Order* addresses the applicability of the ten-year document retention requirement to SIC. *Id.* at 13028, 13031, 13033, paras. 95, 105 & n.215, 112 (finding that SIC failed to satisfy Section 54.320).

¹⁵⁶ *Universal Service Contribution Methodology, Petition for Clarification and Partial Reconsideration by XO Communications Services, LLC*, WC Docket No. 06-122, 29 FCC Rcd 9715, 9719-20, para. 12 (2014).

¹⁵⁷ See SIC Petition at 1-2.

¹⁵⁸ *SIC Improper Payments Order*, 31 FCC Rcd at 13016, paras. 70-84.

¹⁵⁹ SIC Petition at 5-8.

¹⁶⁰ See *id.* at 5; Smith Decl. at 1-2, paras. 2-6.

B. Misclassification of Costs as Category 1 Cable and Wire Facilities

47. We begin our evaluation of the more targeted arguments in the SIC Petition by considering its challenges related to Exception 1, which is associated with the largest portion of the high-cost universal service support at issue here. In the *SIC Improper Payments Order*, the Commission affirmed USAC's finding that SIC improperly misallocated C&WF costs to category 1 for several routes in years that those routes had no subscribers, and that SIC misallocated costs for routes between central offices to category 1 when they should have been allocated to either category 2, category 3, or category 4 pursuant to Commission rules.¹⁶¹ We now reaffirm the Commission's conclusion that SIC misallocated category 1 C&WF costs for the period 2002 through 2015 and, as a result, received \$26,320,270 in improper high-cost support payments from the Fund.¹⁶²

1. Routes without Subscribers

48. Within Exception 1, the issue of routes without subscribers (Exception 1B) represents the largest portion of the universal service support at issue and was the specific focus of much of SIC's Petition and subsequent factual submissions. In the *SIC Improper Payments Order*, the Commission found that SIC misallocated costs to category 1 C&WF for facilities that were not used to serve subscribers at the relevant time periods.¹⁶³ The Commission also explained that SIC's reliance on buildout performed at the behest of the DHHL based on a hope of potential future subscribers was inadequate as a basis for its regulatory cost accounting and receipt of high-cost support.¹⁶⁴ In seeking reconsideration, SIC broadly claims that the Commission misinterpreted relevant rules and failed to consider all the relevant facts. For the reasons explained below, we disagree.

a. If Investment Is Not Associated with Subscribers, It Is Not Category 1

49. As the Commission explained in the *SIC Improper Payments Order*, category 1 C&WF is particularly significant for a rate-of-return carrier's high-cost universal service support calculations.¹⁶⁵ In particular, category 1 C&WF is subdivided into three subcategories, with subcategory 1.3—subscriber lines—forming the basis both for the costs used to determine HCLS support as well as the common line revenue requirement used to calculate certain interstate access charges and as the basis for ICLS support.¹⁶⁶

50. If costs are not associated with working loops—*i.e.*, subscribers—they are not appropriately included in category 1. This interpretation of the scope of category 1 flows from the text and structure of the rules related to category 1 C&WF and from the requirement that the Commission compensate only those costs expended for providing services that are “used and useful.” Category 1 encompasses “[e]xchange” “C&WF between local central offices and subscriber premises used” for certain types of services.¹⁶⁷ The critical role of “working loops” in the subcategories of category 1 C&WF informs our interpretation of the scope of costs encompassed by that category—*i.e.*, what it means to have facilities serving “subscriber premises” that are “used” for the covered types of services. “Cost for category 1 facilities are apportioned to subcategories based in part on the calculation of an ‘average cost per working loop,’ which is determined by dividing the category 1 costs by the total working loops in all

¹⁶¹ *SIC Improper Payments Order*, 30 FCC Rcd at 13020-24, paras. 70-86.

¹⁶² *Id.* at 13028, para. 96.

¹⁶³ *Id.* at 13021-22, paras. 74-78.

¹⁶⁴ *Id.* at 13021-22, paras. 75-77.

¹⁶⁵ *Id.* at 13017-19, paras. 61-62, 67.

¹⁶⁶ *Id.* at 13017-20, paras. 62, 67-69; *see also supra* Part II.A.

¹⁶⁷ 47 CFR § 36.152(a)(1).

the categories. Allocating costs based on the number of working loops in each subcategory presumes that the only costs included are those associated with ‘working loops.’¹⁶⁸ In turn, a “working loop” is “a revenue producing pair of wires, or its equivalent, between a customer’s station and the service office from which the station is served.”¹⁶⁹ As the Commission observed, “[t]he requirement that a working loop be ‘revenue producing’ of necessity presumes that there is a customer at the end of [the] loop paying for service.”¹⁷⁰ Given the language and focus of category 1 and its interplay with the ‘working loop’-focused subcategories, we find that when an entire exchange line has no subscribers for the relevant types of services, it cannot have C&WF investment for that exchange line included in category 1.

51. Our interpretation also respects the broader balancing of policies reflected in the Commission’s regulatory cost accounting, ratemaking, and universal service rules. In particular, where a rate-of-return carrier has made investments to provide service in the future—but lacks existing subscribers—the Commission has provided for some interstate rate and universal service revenue recovery, but only in specified circumstances and only at a level of recovery less than that for category 1 C&WF costs. Specifically, account 2002 covers “property owned and held for no longer than two years under a definite plan for use in telecommunications service.”¹⁷¹ Under the Commission’s access charge rules, investment in account 2002 is apportioned to rate categories and elements—including the common line category that can flow into ICLS support—by using the apportionment of telecommunications plant in service (account 2001).¹⁷² Because investment recorded in account 2002 is not ultimately included in category 1 C&WF, however, that investment does not flow through to HCLS, and thus is compensated at a lower level as a matter of regulated interstate revenue recovery. By contrast, account 2006 encompasses nonoperating plant and is not included in a carrier’s interstate rates for regulated services (or high-cost universal service support) at all.¹⁷³

52. The Commission historically has allowed some recovery for property held for future use under the theory that acquisition of property in advance of future use can lower the ultimate cost of service to ratepayers by enabling carriers to take advantage of cost-saving opportunities when they arise.¹⁷⁴ The Commission carefully limited the circumstances when such treatment would be allowed, however, after being faced with “abuse” of less stringent requirements under which the property had “no date certain for use” or where there was “little likelihood of demand in the foreseeable future.”¹⁷⁵ Under those circumstances, the Commission saw “no basis for finding a benefit to present ratepayers to justify their being charged” to recover such investment.¹⁷⁶ The Commission thus found it necessary to “exert greater control over this account” and required definite plans for use of the property in providing telecommunication service within two years.¹⁷⁷

53. The notion that C&WF investment in exchange lines with no subscribers nonetheless could be included in category 1 conflicts with this broader regulatory framework in several ways. In the

¹⁶⁸ *SIC Improper Payments Order*, 31 FCC Rcd at 13020, para. 68 (footnote omitted).

¹⁶⁹ 47 CFR pt. 36, app. (defining working loop).

¹⁷⁰ *SIC Improper Payments Order*, 31 FCC Rcd at 13018, para. 62 & n.136.

¹⁷¹ 47 CFR § 32.2002(a).

¹⁷² *See* 47 CFR § 69.302.

¹⁷³ 47 CFR §§ 32.2006, 65.820.

¹⁷⁴ *See, e.g., AT&T Phase II Order*, 64 FCC 2d at 61, para. 155 (discussing account 100.3—the predecessor of account 2002).

¹⁷⁵ *Id.* at 61-62, paras. 155-60.

¹⁷⁶ *Id.* at 62, para. 158.

¹⁷⁷ *Id.* at 62, para. 159.

scenario where a carrier has a definite plan to put those facilities in use providing telecommunications service within two years, including that investment in account 2001, and ultimately in category 1 C&WF, is likely to result in significantly greater interstate revenue recovery—particularly in the form of high-cost universal service support—than if that investment instead had been included in account 2002. And where a carrier lacks any definite plan to put those facilities in use providing telecommunications service within two years, including the investment in account 2001, and ultimately in category 1 C&WF, would result in a substantial windfall of interstate revenues that would not be provided if the investment instead were included in account 2006. In both scenarios, we see no basis for otherwise similarly-situated investment to receive such differential treatment. Such artificially favorable treatment for C&WF investment included in account 2001 and flowing through to category 1 would be contrary to the policy balancing underlying the Commission’s overall approach to investment not currently in use providing telecommunications service.¹⁷⁸

54. Our interpretation of the scope of category 1 C&WF also is bolstered by the underlying policy considerations relevant here. The Commission’s regulatory cost accounting and rate regulations collectively help ensure just and reasonable rates under section 201(b) of the Act.¹⁷⁹ These rules also form the basis for embedded cost-based universal service support for rate-of-return carriers.¹⁸⁰ As to interstate rates, under section 201(b) the foundational ‘used and useful’ standard seeks 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.¹⁸¹ Similarly, embedded cost-based universal service support is intended “to support existing subscribers, rather than some potential future need[.]”¹⁸² Category 1 C&WF costs—and those in subcategory 1.3, in particular—are designed to flow into access charge and universal service mechanisms that provide the highest level of recovery for C&WF investment. To allow investment in C&WF serving no subscribers to be included in that category thus would be at odds with both the used and useful standard under section 201(b) and universal service policies under section 254. By contrast, our interpretation that C&WF investment not associated with subscribers falls outside the scope of category 1 better advances those policy objectives.

55. These considerations provide additional, independent grounds for our finding of improper universal service support payments associated with Exception 1B. As discussed below, SIC does not demonstrate that the relevant routes served subscribers during the relevant periods of time, nor that it had a definite plan to put those facilities in use in providing telecommunications services within two years. Under those circumstances, we conclude that C&WF associated with exchange lines with no customers is not used and useful.¹⁸³ That is itself sufficient reason to exclude that investment from SIC’s

¹⁷⁸ Under our approach, C&WF investment that legitimately could have been included in account 2002, but was instead included in account 2001, might not be subject to recovery unless it ultimately could be included in a C&WF category other than category 1. Under the Commission’s rules, however, carriers could make amendments to shift that investment to account 2002—if warranted—so long as they did so within deadlines specified in the relevant rules, *see, e.g.*, 47 CFR § 54.903 (2010), or could demonstrate good cause to waive the deadline pursuant to 47 CFR § 1.3.

¹⁷⁹ *See, e.g., Joint Cost Order*, 2 FCC Rcd at 1299, para. 1; *Amendment of Part 69 of the Commission’s Rules and Regulations, Access Charges, To Conform It With Part 36, Jurisdictional Separations Procedures*, Report and Order, 2 FCC Rcd at 6448, paras. 4-5.

¹⁸⁰ *See supra* Part II.A.

¹⁸¹ *See, e.g., AT&T Phase II Order*, 64 FCC 2d at 38, paras. 111-12.

¹⁸² *SIC Improper Payments Order*, 31 FCC Rcd at 13019, para. 65.

¹⁸³ Thus, we reject on two separate grounds SIC’s argument that the used and useful concept is not applicable here. E-mail from Jamie Barnett, Esq., Venable LLP, Counsel to SIC, to Romanda Williams, *et al.*, Federal Communications Commission, Attach. at 23 (June 23, 2017) (SIC June Submission). First, we find the used and useful standard, at a minimum, relevant to our interpretation of regulatory cost accounting rules that are part of the

(continued....)

common line revenue requirement, and thus also from the investment supported by ICLS during the relevant periods. Further, using HCLS and ICLS support to defray the costs of investment in C&WF serving no subscribers under the circumstances at issue here is not consistent with that high-cost support's purpose of "support[ing] existing subscribers, rather than some potential future need[.]"¹⁸⁴ Thus, HCLS and ICLS support premised on defraying such costs was not proper under section 254(e) of the Act and the Commission's implementing rules.

56. SIC does not meaningfully dispute our interpretation that if an exchange line is not serving subscribers the associated C&WF investment should not be included in category 1—and thus, also not subcategory 1.3—since SIC concedes that certain routes served no subscribers during certain years, and that it was improper for it to receive high-cost support based on that investment.¹⁸⁵ Instead, SIC takes issue with isolated statements from the *SIC Improper Payments Order* regarding the Commission's regulatory cost accounting requirements. None of those arguments persuade us that C&WF investment for exchange lines with no subscribers appropriately can be included in category 1 and subcategory 1.3.¹⁸⁶

57. SIC errs in suggesting that the Commission cannot use the concept of "working loops" (found in section 36.154 of our rules) to inform our interpretation of compensable category 1 expenses under section 36.152 of our rules.¹⁸⁷ To the contrary, when interpreting language in section 36.152(a)(1)—which defines the scope of category 1—we find it reasonable to consider how those costs subsequently will be treated under the companion section 36.154 of the rules. Our interpretation of section 36.152(a)(1) flows primarily from the language of the rule, i.e., requiring facilities to "*subscriber premises*,"¹⁸⁸ and the general "used and useful" principle.¹⁸⁹ The terms of section 36.154 reinforce our interpretation.¹⁹⁰ Once having concluded that C&WF investment associated with exchange lines with no subscribers cannot be included in category 1 under section 36.152(a)(1) of the rules, that investment cannot, as the wording in section 36.154 suggests, be among the costs used to calculate an average cost *per working loop* and subdivided among subcategories 1.1, 1.2, and 1.3 under section 36.154 of the rules.¹⁹¹

(Continued from previous page) _____
Commission's framework for identifying appropriate elements of a carrier's ratebase given the historical role of the used and useful standard to ratebase development. Second, we find the used and useful standard directly applicable as an independent, additional basis for our decision, particularly when considering whether to reject certain SIC C&WF costs that flow into the Common Line revenue requirement, and ultimately ICLS.

¹⁸⁴ *SIC Improper Payments Order*, 31 FCC Rcd at 13019, para. 65.

¹⁸⁵ SIC Petition at 2.

¹⁸⁶ Should USAC identify circumstances involving other carriers where this interpretation of our rules, as applied to the relevant facts regarding those carriers, would reveal the same problems as those that the Commission has found in the case of SIC, USAC will, of course, need to act in a manner consistent with this precedent. *See, e.g.*, 47 CFR § 54.702(c) (providing that USAC may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress). We thus reject the suggestion that we are adopting USAC's unique interpretation of our rules in the context of SIC. *See, e.g.*, Smith Decl. at 2, para. 6.

¹⁸⁷ *See* SIC Petition at 10-11; Rennard Decl. at 5-6, para. 12.

¹⁸⁸ 47 CFR § 36.152(a)(1) (emphasis added).

¹⁸⁹ *See AT&T Phase II Order*, 64 FCC 2d at 38, para. 111.

¹⁹⁰ 47 CFR § 36.154.

¹⁹¹ 47 CFR § 36.154 (emphasis added). Thus, contrary to SIC's claim, we see no inconsistency between our decisions in the improper payments context and the statement in the *SIC NAL* that "SIC acted in contravention of Section 36.154(a)" of the Commission's rules. *See* Rennard Decl. at 5-6, para. 12 (quoting *SIC NAL*, 31 FCC Rcd at 12965, para. 52).

58. Our interpretation of category 1 also does not require the supposedly “nonsensical” outcome SIC suggests—*i.e.*, that if a single subscriber cancels service, any C&WF associated with that subscriber inevitably would have to be removed from category 1.¹⁹² Indeed, contrary to SIC’s concern, the mere fact that a single subscriber cancels service generally does not require C&WF associated with that subscriber to be removed from category 1 costs that are subject to recovery so long as the associated costs continue to go towards serving other subscribers.¹⁹³ If, however, the C&WF investment was used to serve only one subscriber and that subscriber cancels service, then the investment would no longer qualify for category 1.

59. SIC’s concerns about statements in the *SIC Improper Payments Order* regarding the scope of telecommunications plant in service under account 2001—and related accounts like account 2410—also do not cause us to revisit our interpretation of category 1 C&WF.¹⁹⁴ SIC claims that the *SIC Improper Payment Order*’s interpretation of “plant-in-service” conflicts with a paragraph in the *2016 ROR Reform Order and FNPRM*.¹⁹⁵ The cited paragraph does not purport to interpret what constitutes “plant-in-service,” however, and in any case deals with new rules adopted in 2016 that apply prospectively—and that consequently have no relevance to the periods at issue here. SIC’s reliance on the *2016 ROR Reform Order and FNPRM* for the proposition that it “emphatically required the buildout of networks without waiting for the construction of subscriber residences” fails for similar reasons.¹⁹⁶ SIC does not clarify which aspect of the *2016 ROR Reform Order and FNPRM* it is relying on, but whatever policies the Commission adopted prospectively have no bearing on the policies and requirements in place during the time at issue here. In addition, in establishing prospective deployment obligations for rate-of-return carriers continuing to receive embedded cost-based support,¹⁹⁷ the Commission did not discuss scenarios involving exchange lines where a carrier has no subscribers, let alone where subscriber residences have not even been constructed.¹⁹⁸ Consequently, the *2016 ROR Reform Order and FNPRM* does not undermine our decisions here.

¹⁹² See SIC Petition at 11; Rennard Decl. at 5-6, para. 12.

¹⁹³ See, e.g., *Federal-State Joint Board On Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, 19 FCC Rcd 10800, 10845, para. 109 (2004) (“As we have stated, the high-cost universal service mechanisms calculate support for rural carriers based on total embedded costs averaged on a study-area basis. Under these mechanisms, a rural carrier’s per-primary line support automatically increases as its total embedded costs are spread over fewer lines.”).

¹⁹⁴ See SIC Petition at 12-13.

¹⁹⁵ SIC Petition at 13 (citing *Connect America Fund, ETC Annual Reports and Certifications, Developing a Unified Inter-carrier Compensation Regime*, WC Docket Nos. 10-90, 14-58, 01-92, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3145-46, para. 156 (2016) (*2016 ROR Reform Order and FNPRM*)).

¹⁹⁶ SIC Petition at 11.

¹⁹⁷ In the *2016 ROR Reform Order and FNPRM*, the Commission also adopted a voluntary path for rate-of-return carriers to elect to receive model-based support in exchange for defined buildout obligations for broadband-capable networks. *2016 ROR Reform Order and FNPRM*, 31 FCC Rcd at 3096-97, para. 20. SIC chose not to elect model-based support. See generally *Wireline Competition Bureau Authorizes 182 Rate-of-Return Companies to Receive \$454 Million Annually In Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 32 FCC Rcd 842 (WCB 2017).

¹⁹⁸ See *2016 ROR Reform Order and FNPRM*, 31 FCC Rcd at 3148-54, paras. 162-80. We note that for purposes of the regulatory requirements at issue in the *2016 ROR Reform Order and FNPRM*, when the Commission referred to “unserved” customers or locations, it was referring to customers or locations unserved by broadband Internet access service meeting certain minimum performance requirements. *Id.* at 3240-42, App. B (revising section 54.308(a) of the Commission’s rules).

60. SIC also cites a decision by the Federal Energy Regulatory Commission (FERC) in support of its claim that the Commission misinterpreted “plant-in-service,” but does not explain why a different agency’s interpretation of a distinct regulatory scheme should be persuasive here, let alone controlling.¹⁹⁹ Nor is it otherwise apparent to us why FERC’s analysis of a utility’s investment in a cancelled power plant in that order would counsel in favor of a different approach here.

61. SIC also incorrectly implies that a carrier’s recording of costs in account 2410 necessarily should result in recovery of those costs through regulated interstate rates and/or universal service.²⁰⁰ This misunderstands the overall operation of the Commission’s regulatory cost accounting, ratemaking, and universal service rules and policies. Even if it was not a violation of Part 32 rules to include that C&WF investment in account 2410, it does not follow that the investment would be includable in category 1 or subject to recovery through interstate regulatory mechanisms.²⁰¹ As the analysis of costs progresses through the Commission’s regulatory cost accounting, ratemaking, and universal service rules, there is a continued winnowing of costs to set aside some, in order to focus on those of regulatory relevance to the Commission—including setting aside nonregulated costs, intrastate costs, costs associated with investment that is not used and useful, and costs that do not advance the purposes for which particular universal service support is intended.²⁰² Our interpretation of category 1 is fully consistent with that framework, while treating C&WF costs in account 2410 as inevitably included in category 1 and subject to recovery would undercut it.

b. SIC’s Submissions Do Not Demonstrate Subscribers on the Relevant Routes at the Relevant Times

62. We remain unpersuaded that the routes at issue in Exception 1B were serving subscribers during the relevant time periods, and thus affirm the prior Commission finding of improper high-cost universal service payments in that regard. SIC contends that the Commission failed to consider information included in SIC’s response to the USAC Final Report regarding the Exception 1B issue.²⁰³ Principally, this information involved excerpts of “working pair reports” (sometimes referred to as “F-223s”) and excel spreadsheets containing F-223 and subscriber information, as well as a letter from

¹⁹⁹ SIC Petition at 13 (citing *New England Power Company*, 42 F.E.R.C. ¶61,016 (rel. Jan. 15, 1988)).

²⁰⁰ SIC Petition at 10 (discussing category 1 and stating that “the costs to be allocated are *those included in account 2410*, not only those associated with working loops” (emphasis in original)); see Rennard Decl. at 5-6, para. 12.

²⁰¹ We recognize that certain statements in the *SIC Improper Payments Order* could be read to suggest it would be a violation of Part 32 rules to include that investment in account 2001 and account 2410. See, e.g., *SIC Improper Payments Order*, 31 FCC Rcd at 13018, para. 64. In context, our focus was on those costs ultimately subject to regulated interstate recovery—particularly through HCLS and ICLS—and on reconsideration we clarify that we did not intend to speak more broadly to what accounting was permissible as a matter of Part 32 standing alone, nor does our analysis of the C&WF costs properly included in category 1 and subcategory 1.3 depend on the interpretation of “plant in service” or the treatment of the costs at issue here under accounts 2001 and 2410. That said, we are unsure what SIC intends by the suggestion that section 32.2003(d) of the rules “governs when plant is placed in service.” SIC June Submission, Attach. at 21. SIC emphasizes the language from that rule that when plant investment in account 2003 (plant under construction) is “completed ready for service, the cost thereof shall be credited to this account and charged to the appropriate telecommunications plant” or other accounts. *Id.* (quoting 47 CFR § 32.2003(d)). But the telecommunications plant accounts include all the accounts from 2001 through 2007. 47 CFR § 32.2000(a)(1). The rule language quoted by SIC thus gives no indication which of those accounts necessarily would be used—*i.e.*, it does not require the use of account 2001 (telecommunications plant in service) and the associated C&WF account 2410, rather than potentially other telecommunications plant accounts such as account 2002 (plant held for future use) or account 2006 (nonoperating plant).

²⁰² See generally *supra* Part II.A.

²⁰³ SIC Petition at 2, 5-6; Rennard Decl. at 3-4, paras. 6-9.

DHHL.²⁰⁴ After filing the SIC Petition, SIC also made submissions to the Commission in 2017 providing information purporting to demonstrate the existence of subscribers.²⁰⁵ Nothing in those submissions alters our conclusions here.

63. Despite multiple rounds of requests for clarification by Commission staff, the information submitted by SIC continues to have substantial shortcomings. While purporting to provide support for claims in the SIC Final Report Response, the SIC August Submission²⁰⁶ was not accompanied by an explanation as to the relevance, accuracy, or authenticity of the documents submitted. As a result, Commission staff asked SIC to explain for each record: (1) the exact route for which the record is relevant, (2) whether the addresses on the documents are within the SIC study area, and (3) the dates for which SIC provided service at the addresses.

64. The SIC September Submission provided an e-mail response with attachments including documents that appear to be cover sheets, network maps, Internet maps, customer invoices, and customer billing data, regarding a different, but overlapping, set of routes from those in the SIC August Submission.²⁰⁷ No meaningful explanation was provided as to how the materials contained in the SIC September Submission answered Commission staff's request following the SIC August Submission, and Commission staff again asked for an explanation of the documents provided and how they support SIC's claims.

65. On October 17, 2017, SIC provided an e-mail response attaching substantially the same materials provided in the SIC September Submission, plus an additional five pages that appear to be computer database screenshots, a summary chart, and a copy of the USAC Routes Spreadsheet (the SIC October Submission).²⁰⁸ In the cover e-mail accompanying the SIC October Submission, SIC purports to summarize the contents of the submission and states that the materials "provide substantiation for location of service address and proof of existence" of subscribers on the disputed routes.²⁰⁹

66. The SIC provided summary chart appears to identify for each route at issue, a subscriber service address, a connection date for that service address, and years and investment at issue. Although the information alleges that the dates of service cover all the years in dispute for any given route, in most

²⁰⁴ See Exhibit AA – GVNW Response to Category 1 Exceptions; Exhibit AA, Attach. 2 – ██████████ Form F-223, Cost Study Category, Exchange; Exhibit AA, Attach. 3 – ██████████ Form F-223, Cost Study Category, Exchange; Exhibit AA, Attach. 4 – ██████████ Form F-223, Cost Study Category, Exchange; Exhibit AA, Attach. 5 – ██████████ Form F-223; Exhibit AA, Attach. 6 – ██████████ Form F-223, Cost Study Category, Exchange; Exhibit AA, Attach. 7 – GVNW Statement F-223 Working Pair Report; SIC Final Report Response, Exhibit DD – DHHL Letter (Exhibit DD).

²⁰⁵ The SIC June Submission purported to provide information for some routes at issue in Exception 1B, but other than unsupported assertions of when the route was "in service" (with no explanation whether that means there were subscribers, or merely that it was able to serve subscribers had there been any), the subscribership information covers periods of time much more recent than the periods of time at issue here. See SIC June Submission, Attach. at 18. The SIC June Submission also provides information for other routes that appear to have no bearing on the Exception 1B issue here. *Id.* The SIC June Submission thus does not provide meaningful factual information relevant to the Exception 1B issue implicated here.

²⁰⁶ See E-mail from Jamie Barnett, Esq., Venable LLP, Counsel to SIC, to Michele Ellison *et al.*, Federal Communications Commission (Aug. 3, 2017) (SIC August Submission). SIC admitted it had not previously provided the information included in the August Submission to USAC, claiming it was not specifically requested by USAC. *Id.*

²⁰⁷ See E-mail from Jamie Barnett, Esq., Venable LLP, Counsel to SIC, to Jim Bird, Federal Communications Commission (Sept. 28, 2017) (SIC September Submission).

²⁰⁸ See E-mail from Jamie Barnett, Esq., Venable LLP, Counsel to SIC, to Jim Bird, Federal Communications Commission (Oct. 17, 2017) (SIC October Submission).

²⁰⁹ SIC October Submission.

cases the documents relate only to a single (first) month of service.²¹⁰ The SIC October 2017 Submission also asserts that the addresses listed are the service addresses and not billing addresses found elsewhere in the 2017 Submissions, and that all addresses are within the relevant study area.²¹¹ There is otherwise no explanation for how the SIC October Submission supports SIC’s argument of subscribers on the routes. Nor does the submission explain why this information was not previously provided to USAC or the Commission.

67. Consequently, we have the overarching concern that SIC never provides information or explanation to demonstrate that the documents provided were authentic or accurate. SIC offers no explanation for how it acquired the information it provides about the disputed routes, how the documents were created, or what it did to verify the relevance, accuracy, and authenticity of the documents. This is particularly notable insofar as much of the filings purport to provide information regarding 2004-2010, but appears to be generated recently (since the SIC Petition). Further, SIC did not provide any customer sales documentation, e.g., service agreements, customer authorizations, customer requests for service, or service orders and reports, which could have helped verify the information submitted.²¹² These problems are compounded by the unreliability and shortcomings identified below in connection with specific routes regarding the data and maps that SIC seeks to rely upon here,²¹³ which not only undermine SIC’s claims regarding the specific route at issue but also independently call into question SIC’s reliance on those same or equivalent information with respect to each route for which it claims subscribers.

68. Finally, even by their terms these data do not purport to demonstrate the existence of subscribers on all the routes for all the years at issue, as reflected in Table 2.

Table 2: Exception 1B – Relevant Routes and Years

Route No.	Location Description		Years SIC Argues Entitled to HC Support ²¹⁴	Years in Dispute For Which SIC Admits No Subscribers ²¹⁵	Years in Dispute For Which SIC Attempts to Support Existence of Subscribers ²¹⁶
█	██████████ ██████████		2005-2010		2005-2010
█	██████████ ██████████ ██████████		2005-2007	2005-2007	
█	██████████ ██████████ ██████████		2007		2007

²¹⁰ See generally SIC October Submission; SIC September Submission.

²¹¹ *Id.*

²¹² See USAC Investigation Audit Inquiry “54 – 2016 Affiliate Transactions,” Dec. 20, 2017 (SIC Customer Sales Inquiry); SIC Final Report Response to December 20, 2017 USAC Investigation Audit Inquiry “54 – 2016 Affiliate Transactions,” Dec. 29, 2017 (SIC Customer Sales Response).

²¹³ See *infra* Part III.B.1.b(ii).

²¹⁴ See SIC Final Report Response at 8-9; Exhibit AA at 4-9.

²¹⁵ See SIC Final Report Response at 8-9; Exhibit AA at 4-9.

²¹⁶ See SIC Final Report Response at 8-9; Exhibit AA at 4-9; SIC Petition at 6; Rennard Decl. at 3-6, paras. 6-12; SIC August Submission; SIC September Submission; SIC October Submission.

█	██████		2004-2006	2004-2006	
█	██████████		2010		2010
█	██████████		2004-2006	2004-2005	2006
█	██████████		2005-2006	2005-2006	
█	██████████		2010		2010
█	██████████		2004		2004
█	██████████		2004		2004

(i) **Routes for Which SIC Admits No Subscribers**

69. Contrary to SIC’s claims, it was wrong to categorize as category 1 C&WF investment associated with four routes (██████████) that it admits had no subscribers during the years at issue.²¹⁷ In supporting its claim that it should receive support for these routes, SIC relies on the same arguments and documents previously rejected by the Commission.²¹⁸ It also is not clear to what extent SIC even continues to pursue this theory. In particular, while the 2017 submissions purport to provide information about subscribers on these routes, the information provided is for subsequent years that are not in dispute.²¹⁹ The subscriber information instead appears to be cited in support of the theory that the investment would have been appropriately included in account 2002 (plant held for future use), and thus could flow into ICLS, not HCLS. We ultimately reject each of these theories as inconsistent with the Commission’s rules.

70. *Inclusion of Investment Associated With Routes ██████████ In Category 1 C&WF.* We affirm the decision in the *SIC Improper Payments Order* that any arrangement between SIC and the DHHL does not change SIC’s obligations to correctly allocate its C&WF pursuant to Commission rules.²²⁰ As we explained above, if C&WF costs are not associated with subscribers, they are not appropriately included in category 1.²²¹ Thus, mere plans that future subscribers could be located in such areas—even if anticipated by DHHL, as well as SIC²²²—is not enough to justify allocation of costs for such facilities under category 1, under the plain reading of the Commission’s rules.

71. There is no merit to SIC’s argument that the Commission’s decision regarding these routes improperly overrode both the local regulator and SIC.²²³ Rates for interstate services are subject to

²¹⁷ See SIC Petition at 7; SIC Final Report Response at 8-9; Exhibit AA at 5-8; Exhibit DD. SIC concedes a lack of subscribers for only two of the three years it disputes for Route █.

²¹⁸ See Rennard Decl. at 4 (citing the GVNW report submitted as Exhibit AA); SIC Final Report Response at 8; Exhibit AA at 5-8.

²¹⁹ See SIC September Submission, Cover Page “██████████” and accompanying materials at 11-16; *id.*, Cover Page “██████████” and accompanying materials at 23-30; *id.*, Cover Page “██████████” and accompanying materials at 31-37; *id.*, Cover Page “██████████” and accompanying materials at 50-53; SIC October Submission, Cover Page “██████████” and accompanying materials at 11-16; *id.*, Cover Page “██████████” and accompanying materials at 23-30; *id.*, Cover Page “██████████” and accompanying materials at 31-37; *id.*, Cover Page “██████████” and accompanying materials at 50-53.

²²⁰ *SIC Improper Payments Order*, 31 FCC Rcd at 13021-22, paras. 75-77.

²²¹ See *supra* Part III.B.1.a.

²²² See SIC Petition at 7; SIC Final Report Response at 8-9; Exhibit AA at 5-8; Exhibit DD.

²²³ SIC Petition at 7. We note that the DHHL Letter itself observes that the DHHL “may never fully understand how Rural Utilities Service and IC are able to fund our extremely costly projects,” making it highly questionable that, at least for its part, the DHHL had any reasonable basis for believing SIC legitimately could recover the costs at issue here from high-cost universal service support. See Exhibit DD at 1.

exclusive federal regulation under the Communications Act, and neither states nor individual service providers have authority to require the Commission to include particular investment in the rate base for interstate services.²²⁴ Likewise, states and individual providers lack authority to require the Commission to allow recovery of costs through federal universal service support. Universal service contributions collected under section 254(d) of the Act can be used only for “the specific, predictable, and sufficient mechanisms *established by the Commission* to preserve and advance universal service.”²²⁵ Thus, it is the Commission—not states, and certainly not individual providers—that determines the operation of the universal service support mechanisms for which such contributions may be used. Indeed, states are prohibited from adopting regulations “inconsistent with the Commission’s rules to preserve and advance universal service.”²²⁶ Nor may state universal service mechanisms “rely on or burden Federal universal service support mechanisms.”²²⁷ Therefore, even if DHHL had imposed some state or local legal requirement on SIC, it was not allowed to do so in a way inconsistent with Commission rules, nor through state universal service policies that rely on or burden Federal universal service support mechanisms.

72. Likewise, while SIC is free to enter into agreements with local authorities regarding network infrastructure construction, or may even be required to undertake certain activities by state or other authorities, if it seeks recovery through federal rates and high-cost support, it must comply with the Commission’s rules. As such, SIC must allocate its C&WF pursuant to Commission rules in order to receive high-cost funding, regardless of any agreement it may have had with DHHL. We reject the suggestion that the Commission owes any “deference” in this regard to SIC’s “business decisions regarding investment in plant which are plainly used and useful in the provision of service[.]”²²⁸ As explained above, we reject the view that the relevant plant has been shown to be used and useful. And even if it were, that would not resolve the question of whether the associated investment properly could be included in category 1 C&WF—and ultimately subcategory 1.3—under the Commission’s rules.

73. Further, we find that SIC overstates its obligations to DHHL based on the information in the record here. As the Commission explained in the *SIC Improper Payments Order*:

[T]he DHHL letter demonstrates that SIC itself volunteered to fund this and similar expensive projects, accepting responsibility for costs that the DHHL itself had anticipated paying. Thus, this situation is better viewed not as an obligation, but as an expensive voluntary undertaking from which SIC would reap the benefits of a substantial authorized rate of return while causing the high-cost fund to subsidize its “extremely costly projects.”²²⁹

Insofar as the DHHL did not impose any legal obligations on SIC to build specific routes, we reject SIC’s theory that the Commission is preempting any requirement placed on SIC by the DHHL or is otherwise attempting to “override” DHHL’s state authority.²³⁰

74. *Inclusion of C&WF Investment Associated With Routes ██████████ In Account 2002.* We also reject SIC’s argument that the C&WF investment associated with these routes could instead be included in account 2002 as property held for future use,²³¹ ultimately flowing through (in part) to the

²²⁴ See 47 U.S.C. §§ 152(a), 201(b).

²²⁵ *Id.* § 254(d) (emphasis added).

²²⁶ *Id.* § 254(f).

²²⁷ *Id.*

²²⁸ SIC Petition at 7.

²²⁹ *SIC Improper Payments Order*, 31 FCC Rcd at 13022, para. 77 (footnote omitted).

²³⁰ SIC Petition at 2, 7.

²³¹ *Id.* at 7; SIC Final Report Response at 9.

common line revenue requirement and recovery from ICLS (though not HCLS).²³² Account 2002 encompasses property held “under a definite plan for use in telecommunications service” within two years.²³³ The record does not persuade us that during the relevant years at issue SIC had a definite plan for use of these facilities in providing telecommunications service within two years.

75. The Commission’s regulatory cost accounting rules generate the inputs into a rate-of-return carrier’s rate base, and thus are designed to be implemented by carriers on an ongoing basis as they incur costs and generate revenues to ensure an appropriate nexus between costs and cost recovery at a given point in time. Consequently, the mere fact that SIC might have fortuitously ended up with a subscriber using particular facilities is not a sufficient basis to go back two years and move the associated investment from account 2001 into account 2002. Instead, in determining whether investment can be included in account 2002, we look to whether, at the time the accounting entry originally would have been recorded, the carrier had “a definite plan for use [of the property] in telecommunications service” within two years.²³⁴

76. SIC does not demonstrate that during the years at issue it had a definite plan for use of the facilities for routes ██████████ to provide telecommunications service within two years. The DHHL Letter is the only evidence in the record arguably supporting SIC’s claim of a definite plan for use of the facilities, but it falls short for several reasons. First, the DHHL Letter is framed throughout in speculative terms. The DHHL Letter notes, for example, that the governor had “challenged DHHL to place 20,000 qualified native Hawaiians onto Hawaiian home lands during the next 5 years,” and as a result DHHL “anticipate[s] that development activity will increase significantly over the next few years.”²³⁵ Indeed, DHHL acknowledged that “we lack infrastructure on many DHHL parcels.”²³⁶ Reading the DHHL Letter as a whole in light of those statements, we see no basis in the record for viewing the DHHL Letter as itself constituting, or providing a reasonable basis for, any definite plans for future use of the relevant property in providing telecommunications service.

77. Second, even assuming *arguendo* that the DHHL Letter were viewed as something other than speculative, SIC does not explain why the plans discussed in that Letter support a definite plan for use of the relevant facilities in telecommunications service for the years at issue. For many of the projects, only an auction/bid schedule is listed.²³⁷ And to the extent that estimated completion dates are provided for other projects, the vast majority of those anticipated nothing more than vacant lots, at least within the timeframes expressly discussed in the Letter.²³⁸ Against that backdrop, SIC provides no meaningful explanation how the DHHL Letter could support a finding that the property associated with the specific routes at issue here was held under a definite plan for future use in telecommunications service within two years.

78. As an additional, independent basis for rejecting SIC’s proposed reliance on account 2002, moving the investment to that account now would be untimely under the relevant Commission rules. As the Commission explained in the *SIC Improper Payments Order* when declining to recalculate ICLS based on SIC’s theory that the investment could be included in account 2002, there is a deadline for

²³² See SIC Petition at 7; SIC Final Report Response at 9; SIC September Submission (identifying these routes as “plant held for future use”); SIC October Submission (same).

²³³ 47 CFR § 32.2002.

²³⁴ *Id.*

²³⁵ Exhibit DD at 2.

²³⁶ *Id.*

²³⁷ *Id.*, Attach. A.

²³⁸ *Id.*, Attach. B.

amending that regulatory cost accounting information that already had passed.²³⁹ Neither the SIC Petition nor SIC's other filings addresses the timeliness issue. Nor do we find waiver of the deadline justified here by the mere potential that investment could have been accounted for differently, resulting in some recovery—even assuming *arguendo* that were the case here. Failure to correctly follow the underlying rules in the first instance, even if based on a claim of good faith uncertainty or misunderstanding, does not, standing alone, persuade us of special circumstances justifying a waiver of a deadline to make corresponding corrections. Since virtually anyone could make such a claim of good faith uncertainty or misunderstanding, we conclude that granting a waiver under the facts present here would broadly undermine the deadline for corrections.²⁴⁰ We thus see no rationale on the record here why SIC's proposed accounting changes should be considered timely or why the deadline should be waived, even assuming *arguendo* the accounting changes could be justified on the merits.

79. Accordingly, for the foregoing reasons, we deny reconsideration and affirm the Commission's conclusion that there were no subscribers for the years at issue on Routes [REDACTED]. We also affirm that SIC received improper high-cost support payments associated with these routes for the years in dispute.

(ii) Routes for Which SIC's Evidence Does Not Support Subscribers

80. For seven routes ([REDACTED]), SIC alleges that it had one or more customers during at least some of the disputed years.²⁴¹ However, the information that SIC has provided in support of those claims is wholly insufficient. In addition to the over-arching concerns we have about the relevance, accuracy, and authenticity of the submitted information,²⁴² the details of those submissions leave many unresolved questions about the existence of relevant subscribers being served by the specific route at issue.

(a) Route # [REDACTED]

81. The Commission found that SIC did not have subscribers on Route [REDACTED] for 2005-2010, resulting in improper universal service support payments. The record here does not demonstrate otherwise. We therefore affirm the finding in the *SIC Improper Payments Order* regarding this route.

82. As a threshold matter, SIC claims that “[c]onstruction phases, [REDACTED] must be consolidated when examining the actual physical route of service.”²⁴³ SIC stated that “[REDACTED] is an area located along the route between [REDACTED], and the construction costs to service subscribers in [REDACTED] are included in construction phase #1.”²⁴⁴ Although the SIC Final Report Response also asserts Route [REDACTED] should be considered along with Route [REDACTED] in determining whether there were subscribers,

²³⁹ *SIC Improper Payments Order*, 31 FCC Rcd at 13024, para. 86 & n.180.

See, e.g., NetworkIP v. FCC, 548 F.3d 116, 125-28 (D.C. Cir. 2008) (holding that FCC's waiver of filing deadline without special circumstances was arbitrary and capricious); *cf. Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (holding that FCC's waiver of certain rules was arbitrary and capricious).

²⁴¹ *See* SIC Petition at 2, 5-6; Rennard Decl. at 3-4, paras. 6-9; SIC Final Report Response at 7-9; Exhibit AA at 4-9; Exhibit AA, Attachments 2-7; SIC August Submission; SIC September Submission; SIC October Submission. Regarding Route [REDACTED], SIC alleges that it had a customer during only one of the three disputed years. *See infra* Part III.B.1.b(ii)(d).

²⁴² *See supra* Part III.B.1.b.

²⁴³ *See* Exhibit AA at 8. Although no explanation is provided, we have assumed the term “construction phase” means a route under construction but not yet completed, and we assume the construction phase number correlates with the ultimately completed route with the same number.

²⁴⁴ *Id.*

there was also no SIC investment for the relevant period associated with Route ■.²⁴⁵ Because SIC proceeds under this theory, we are unable to determine whether the information SIC submitted pertains to subscribers that it claims were directly served by Route ■, or if they only could be viewed as having been served, in part, by Route ■ if we accept SIC's claim that Route ■ must be considered in conjunction with Routes ■ and ■.

83. We find no basis to accept SIC's argument that these routes must be evaluated collectively, which fatally undermines the subscribership claims SIC makes related to Route ■. Other than bare assertions,²⁴⁶ the only information in the record arguably supporting SIC's claim that these routes must be considered collectively is a map suggesting that they are in close geographic proximity.²⁴⁷ But taken as a whole, the SIC route maps reveal widely dispersed and varied network facilities, the operation of which is not self-evident from the maps alone.²⁴⁸ Thus, mere close geographic proximity does not demonstrate whether or to what extent these routes actually operate collectively to all serve the same subscribers. Further, SIC concedes that in other submissions it identified these routes as associated with distinct exchanges. In particular, SIC cited Routes ■ and ■ as associated with the ■ exchange, while Route ■ was associated with the ■ exchange.²⁴⁹ But SIC contends that it was the ■ exchange—the one not associated with Route ■ in its earlier-provided information—that had the subscribers.²⁵⁰ At the same time, the data provided to USAC show no reported C&WF costs associated with Route ■ for the years at issue here, even though Route ■ was originally reported as associated with the ■ exchange for which SIC claims to have had subscribers. Although the SIC Final Report Response also asserts Route ■ should be considered along with Route ■ in determining whether there were subscribers, there was also no SIC investment for the relevant period associated with Route ■.²⁵¹ SIC provides no explanation that reconciles the conflicting claims or justifies its assertion that these routes must be considered collectively.

84. In addition, the information purporting to identify specific subscribers served by the route(s) has significant anomalies and inconsistencies of its own that independently renders the information inadequate. The SIC Final Report Response purports to identify three business customers, all with the same address, with service beginning in 2003, on both Routes ■ seemingly (though not unambiguously) identified as being in the ■ exchange.²⁵² SIC provided no explanation for how three business customers all had the same address or how that one address could sit on two different routes. Further, these three business customers were shown as having ■ lines with service start dates in the summer of 2003.²⁵³ The associated working pair report showed ■ exchange working pairs, but purported to have a study date of December 31, 2002—before any of the identified subscribers supposedly initiated service.²⁵⁴ That apparent inconsistency was unexplained by SIC. We thus cannot consider the information filed with the SIC Final Report Response reliable, even with respect to the issues it purports to directly address.

²⁴⁵ *Id.*

²⁴⁶ See Exhibit AA at 8; Rennard Decl. at 3-4, para. 9.

²⁴⁷ See SIC September Submission, Cover Page “■” and accompanying materials at 55 (Map #29).

²⁴⁸ See generally USAC Final Report, Sandwich Isles Exhs. E, F, and G.

²⁴⁹ Exhibit AA at 8.

²⁵⁰ *Id.*

²⁵¹ See USAC Routes Spreadsheet.

²⁵² Exhibit AA, Attach. 6

²⁵³ See *id.*

²⁵⁴ See *id.*

88. Additionally, confronted with Commission staff requests to better justify the relevance and accuracy of the information in SIC's earlier submissions, these remaining two entities were not identified as subscribers in the SIC September Submission or SIC October Submission.²⁶² Yet SIC did not address the associated universal service implications. These two entities were SIC's sole basis for claiming subscribers associated with Route █ for 2006-2010.²⁶³ Further, as to 2005, even under SIC's theory, an inability to support the existence of subcategory 1.3 working loops for these entities would reduce the portion of category 1 costs in subcategory 1.3, which forms the basis for both HCLS and ICLS support.²⁶⁴ On the other hand, if these entities were SIC subscribers but not, in fact, served by Route █, not in SIC's study area, and/or not subscribing to regulated common carrier services relevant here, SIC's apparent, unexplained abandonment of its efforts to defend the relevance and validity of these entities as served by Route █ calls into question the other assertions SIC made with equal confidence in its filings.

89. Nor do SIC's filings adequately demonstrate the periods of time during which the identified subscribers were subscribing to relevant, regulated common carrier services from SIC. For example, it is the carrier's relevant regulatory cost accounting and related information as of December 31st of a given year that is relevant for HCLS purposes.²⁶⁵ Even assuming *arguendo* the accuracy and authenticity of service bills submitted by SIC, such bills identify the subscriber's service only at that snapshot in time. Service start and end dates identified in the SIC Final Report Response and in what apparently is a screenshot from an unidentified database in the SIC October Submission represent nothing more than unsupported assertions.²⁶⁶ The "billing history" provided in the SIC August Submission fares no better. The origin of that information is unexplained, and the billing history does not identify the service(s) that the subscriber was purchasing—including whether the services were regulated common carrier services of relevance here—nor is it otherwise self-evident what those services would have been, particularly in light of variations in payment amounts over time.²⁶⁷

(b) Route # █

90. The Commission found that SIC did not have subscribers on Route █ in 2007, resulting in improper universal service support payments. The record here does not demonstrate otherwise. We therefore affirm the finding in the *SIC Improper Payments Order* regarding this route.

91. For example, SIC's filings are inconsistent regarding which exchange we should look to in determining whether this route served subscribers during the relevant period. During the USAC investigation, SIC provided documentation associating this route with the █ exchanges.²⁶⁸ Although the 2007 cost study listed █ as separate exchanges, there

²⁶² See SIC September Submission, Cover Page "█" and accompanying materials at 54-58; SIC October Submission, Cover Page "█" and accompanying materials at 54-58.

²⁶³ Under SIC's own claims, these two entities were the only identified subscribers served by Route █ as of December 31, 2006 through 2010. See SIC Final Report Response, Exhibit AA, Attach. 6; SIC August Submission, File "█"; SIC September Submission, Cover Page "█" and accompanying materials at 54-58; SIC October Submission, Cover Page "█" and accompanying materials at 54-58.

²⁶⁴ See Rennard Decl. at 5-6, para. 12.

²⁶⁵ 47 CFR § 54.1305(c), (d).

²⁶⁶ See Exhibit AA, Attach. 6; SIC October Submission, Cover Page "█" and accompanying materials at 56.

²⁶⁷ See, e.g., August Submission, File "█"; *id.*, File "█"; *id.*, File "█."

²⁶⁸ See USAC Routes Spreadsheet; see also USAC Investigation, Audit Inquiry -"4.5.16 E-mail Item 1- IAD Exh. 6 Analysis B_Loops per Exchange Comparison."

were no subscribers noted for either exchange.²⁶⁹ In the SIC Final Report Response, the documentation provided did not list [REDACTED] as an exchange and SIC argued that the exchange listing for this route was an error, and that it really should have been identified as located in the [REDACTED] exchange.²⁷⁰ But SIC did not substantiate this position, instead simply including documents identifying one subscriber it claims was associated with the [REDACTED] exchange, which SIC contends demonstrates that the [REDACTED] route was serving a subscriber.²⁷¹ Absent some basis beyond SIC's bare assertion for determining that Route [REDACTED] is, in fact, in the [REDACTED] exchange, it has not established the relevance of any subscribers in that exchange.

92. SIC's subsequent submissions introduce further unexplained anomalies and inconsistencies. The SIC August Submission provides information for the same one subscriber identified in the SIC Final Report Response, but with a different identified address.²⁷² SIC's submissions thereafter no longer provided information about that originally-identified subscriber, instead shifting without explanation to a different individual at the same address as that provided in the SIC Final Report Response, and with an activation date identified in the SIC September Submission as November 28, 2007—which overlaps the end of the period of service of the originally-identified subscriber as listed in the SIC Final Report Response.²⁷³ The SIC October Submission provides virtually the same information as the SIC September Submission; however, the October submission included a screenshot from an unidentified database showing a service start date for the second individual of November 30, 2007, while a bill included in the same filing continues to identify the service initiation date as November 28.²⁷⁴ SIC does not provide any explanation for the anomalies and inconsistencies in this subscriber information.

(c) Route # [REDACTED] and Route # [REDACTED] – [REDACTED]

93. The Commission found that SIC did not have subscribers on Routes [REDACTED] in 2010, resulting in improper universal service support payments. The record here does not demonstrate otherwise. We therefore affirm the finding in the *SIC Improper Payments Order* regarding these routes.

94. SIC's filings regarding Routes [REDACTED] and [REDACTED] are even more limited than that for the other routes at issue. Indeed, SIC provided no information at all to justify the existence of subscribers served by these routes beyond what was included in the SIC Final Report Response. SIC argued there that certain "F-223" documents showed 23 loops served by these routes, and that "[t]he 23 loops in [REDACTED] were not entered into [a subsequent form] the F-203 resulting in an understate[d] loop count of 23 on the F-203 and the" input into the worksheet associated with another form of universal service support—Local Switching Support (LSS).²⁷⁵ However, we are not persuaded by SIC's contention that the F-223s are "original source documents"²⁷⁶ and inherently should be treated as more reliable than the other materials. While carriers (and their consultants) might typically use data entered in F-223s for purposes of

²⁶⁹ USAC Investigation, Audit Inquiry - "270 - 2007 cost study," 154. The SIC cost study is the source document used to determine its high-cost support.

²⁷⁰ See SIC Final Report Response at 8; Exhibit AA at 5-6, Attachment 3.

²⁷¹ See SIC Final Report Response at 8; Exhibit AA at 5-6.

²⁷² See Exhibit AA, Attachment 3; SIC August Submission, File "[REDACTED]"; *id.*, File "[REDACTED]".

²⁷³ See Exhibit AA, Attachment 3; SIC September Submission, Cover Page "[REDACTED]" and accompanying materials at 17-22.

²⁷⁴ See SIC October Submission, Cover Page "[REDACTED]" and accompanying materials at 19a, 21.

²⁷⁵ Exhibit AA at 9.

²⁷⁶ *Id.*

populating other cost study materials or universal service worksheets, the F-223s are not “original source documents” in the sense of providing direct evidence of the existence of subscribers. We thus see no reason to simply assume that a discrepancy in loop counts from F-223s necessarily reflects a mere data entry error rather than a subsequent correction for the sake of accuracy. And unlike the other routes at issue for which SIC at least attempted to support its subscribership claims with additional information—albeit with their own shortcomings—SIC did not even make such an attempt regarding Routes [REDACTED].

(d) Route # [REDACTED]

95. The Commission found that SIC did not have subscribers on Route [REDACTED] for 2004-2006, resulting in improper universal service support payments. The record here does not demonstrate otherwise. We therefore affirm the finding in the *SIC Improper Payments Order* regarding this route.

96. SIC does not contest the finding that Route [REDACTED] was not serving subscribers in 2004-2005, and we affirm the finding of improper universal service support payments for those years for the reasons explained above.²⁷⁷ With respect to 2006, due to the many shortcomings in the information upon which SIC seeks to rely, we remain unpersuaded that Route [REDACTED] was serving subscribers. For one, the record is mixed regarding what exchange is associated with this route. As acknowledged in the SIC Final Report Response, SIC previously had identified the associated exchange as [REDACTED], but it then asserts it is instead associated with the [REDACTED] exchange, only to go back to referring to the route as associated with “[REDACTED]” in later filings, without justifying or fully reconciling the various statements.²⁷⁸ There also is a substantial, unexplained mismatch between the two identified subscribers for 2006—each with one line—and the working pair report in the SIC Final Report Response, which identified 27 exchange working pairs as of the December 31, 2006 study date.²⁷⁹ This route also reveals another instance where, confronted with Commission staff requests to better justify the relevance and accuracy of the information in SIC’s earlier submissions, SIC simply omitted one of the previously-identified subscribers in the SIC September Submission and the SIC October Submission.²⁸⁰ As with the other instances where this occurred, SIC’s apparent, unexplained abandonment of its efforts to defend the relevance and validity of this individual as served by Route [REDACTED] also calls into question the other assertions SIC has made.²⁸¹

(e) Route # [REDACTED]²⁸²

97. The Commission found that SIC did not have subscribers on Route [REDACTED] for 2004, resulting in improper universal service support payments. The record here does not demonstrate otherwise. We therefore affirm the finding in the *SIC Improper Payments Order* regarding this route.

98. This is yet another instance where the record is inconsistent regarding what exchange is associated with this route. The SIC Final Report Response acknowledged that it previously had identified

²⁷⁷ See *supra* Part III.B.1.b(i).

²⁷⁸ See Exhibit AA at 7-8; SIC August Submission, File “[REDACTED]”; *id.*, File “[REDACTED]”; *id.*, File “[REDACTED]”; *id.*, File “[REDACTED]”; SIC September Submission, Cover Page “[REDACTED]” at 50; SIC October Submission, Cover Page “[REDACTED]” at 50.

²⁷⁹ See Exhibit AA, Attach. 5; see also SIC August Submission, File “[REDACTED]”; *id.*, File “[REDACTED]”

²⁸⁰ See SIC September Submission, Cover Page “[REDACTED]” and accompanying materials at 50-53; SIC October Submission, Cover Page “[REDACTED]” and accompanying materials at 50-53.

²⁸¹ See *supra* Part III.B.1.b(ii)(a); *infra* Part III.B.1.b(ii)(e), (f).

²⁸² We note that SIC spells this route differently within and between documents (e.g., [REDACTED] versus [REDACTED]); however, we are assuming for our purposes that this is typographical error and these are references to the same route.

the route as part of the “██████████” exchange,²⁸³ but elsewhere identified ██████████ exchange and, apparently on that basis, claimed two subscribers with a total of 12 subscriber lines, without justifying or fully reconciling the various statements.²⁸⁴

99. Further, the 2017 submissions include unexplained anomalies and inconsistencies. With respect to one of the identified subscribers—██████████—the route map associated with that subscriber in SIC’s filings shows a circled area that is only partially within the SIC study area.²⁸⁵ The SIC October Submission also includes a screenshot from an unidentified database for this subscriber that shows a blank disconnection date, despite the fact that the SIC Final Report Response indicates six of the eight subscriber lines have been disconnected.²⁸⁶

100. With respect to the other identified subscriber—██████████—the SIC August Submission shows a different address than that included in the SIC Final Report Response.²⁸⁷ This subscriber also represents another instance where, confronted with Commission staff requests to better justify the relevance and accuracy of the information in SIC’s earlier submissions, SIC simply omitted this previously-identified subscriber in the SIC September Submission and the SIC October Submission.²⁸⁸ As with the other instances where this occurred, SIC’s apparent, unexplained abandonment of its efforts to defend the relevance and validity of this entity as served by Route ██████ also calls into question the other assertions SIC has made.²⁸⁹

(f) Route # ██████████

101. The Commission found that SIC did not have subscribers on Route ██████████ for 2004, resulting in improper universal service support payments. The record here does not demonstrate otherwise. We therefore affirm the finding in the *SIC Improper Payments Order* regarding this route.

102. This is a still further instance where the record is inconsistent regarding what exchange is associated with this route. During the USAC investigation, SIC provided a 2004 cost study that did not list an exchange for this route and, as such, there were no subscribers associated with the route.²⁹⁰ In the SIC Final Report Response, SIC stated that this route did in fact have two subscribers with 11 subscriber lines.²⁹¹ However, the supporting documents highlighted a route entitled ██████████ exchange.²⁹² The documents attached include a F-223 - Working Pair Report listing ██████████ as the exchange and an excerpt of an excel spreadsheet from a Form F-223 that identified the “study area” as ██████████ in the heading, but listed ██████████ in the “study area” data cells. It remains unclear

²⁸³ See Exhibit AA at 4.

²⁸⁴ See Exhibit AA at 4-5; *id.*, Attachment 2.

²⁸⁵ See SIC September Submission, Cover Page “██████████” and accompany materials at 2; SIC October Submission, Cover Page “██████████” and accompanying materials at 2.

²⁸⁶ See SIC October Submission, Cover Page “██████████” and accompanying materials at 4a; Exhibit AA, Attachment 2.

²⁸⁷ See Exhibit AA, Attachment 2; SIC August Submission, File “██████████”; *id.*, File “██████████”

²⁸⁸ See SIC September Submission, Cover Page “██████████” and accompany materials at 1-10; SIC October Submission, Cover Page “██████████” and accompanying materials at 1-10.

²⁸⁹ See *supra* Part III.B.1.b(ii)(a), (d); *infra* Part III.B.1.b(ii)(f).

²⁹⁰ USAC Investigation, Audit Inquiry -“270 - 2004 cost study”, 156. In the 2005 cost study, ██████████ is listed as its own exchange with four subscribers. USAC did not take exception to the costs associated with this exchange in 2005.

²⁹¹ See Exhibit AA at 7; *id.*, Attachment 4.

²⁹² See Exhibit AA, Attachment 4.

whether SIC was representing that [REDACTED] was the same as [REDACTED], or whether one or both actually were part of the [REDACTED] exchange, and there was no further explanation of how these exchanges were associated.

103. Likewise, SIC again submitted information purporting to be associated with a different route than the one at issue without justifying its reliance on that information to demonstrate subscribers for the route directly at issue. In particular, despite the route at issue being Route [REDACTED], the route listed for one of the identified subscribers in the SIC Final Report Response was “[REDACTED]”, while the other customer had no associated route listed.²⁹³ Further, the SIC September Submission and the SIC October Submission only provide information for one of the originally-identified subscribers—[REDACTED]—treating them as associated with Route [REDACTED] with no explanation or justification of how that relates to Route [REDACTED].²⁹⁴

104. With respect to the other originally-identified subscriber, this represents still another instance where, confronted with Commission staff requests to better justify the relevance and accuracy of the information in SIC’s earlier submissions, SIC simply omitted this previously-identified subscriber in the SIC September Submission and the SIC October Submission.²⁹⁵ As with the other instances where this occurred, SIC’s apparent, unexplained abandonment of its efforts to defend the relevance and validity of this individual as served by Route [REDACTED] also calls into question the other assertions SIC has made.²⁹⁶

2. Routes between Central Offices

105. As explained in the *SIC Improper Payments Order*, “the cost of C&WF applicable to interexchange facilities shall be directly assigned where feasible to CAT 3.”²⁹⁷ There are instances in which it may be proper “for a company to allocate facilities among two or more categories, which includes CAT 1.”²⁹⁸ But a company may only “allocate facilities to CAT 1 . . . if that portion of the facility qualifies as a working loop.”²⁹⁹ And even in networks that “include circuits that branch off from the main route to serve nearby subscribers,” such that some portion of the network’s cost can be allocated to CAT 1, a carrier may not directly assign the entire cost of the network to CAT 1 if the facilities at issue also “include circuits that are applicable to other categories of plant,” such as “extended area service, Host Remote or Special Access circuits.”³⁰⁰ In the *SIC Improper Payments Order*, the Commission determined that, for specified routes between central offices, SIC improperly treated costs as CAT 1 (Exception 1 A).³⁰¹ As explained further below, we reaffirm that determination here.

²⁹³ *Id.*

²⁹⁴ See SIC September Submission, Cover Page “[REDACTED]” and accompanying materials at 38-49; SIC October Submission, Cover Page “[REDACTED]” and accompanying materials at 38-49.

²⁹⁵ See SIC September Submission, Cover Page “[REDACTED]” and accompanying materials at 38-49; SIC October Submission, Cover Page “[REDACTED]” and accompanying materials at 38-49.

²⁹⁶ See *supra* Part II.B.1.b(ii)(a), (d), (e).

²⁹⁷ See *SIC Improper Payments Order*, 31 FCC Rcd at 13022-23, para. 79 (citing 47 CFR § 36.156(b)).

²⁹⁸ *Id.* at 13023, para. 82.

²⁹⁹ *Id.* at 13023-24, para. 82. See 47 CFR § 36.154(a).

³⁰⁰ *Id.* at 13024, para. 83. See 47 CFR §§ 36.154-36.157 (referencing cost direct assignment). See *supra* Part II.A.

³⁰¹ *SIC Improper Payments Order*, 31 FCC Rcd at 13022-24, paras. 79-84. The routes in dispute are listed by cost study and payment year in Exhibit C to the USAC Final Report. USAC Final Report, Exh. C (Sandwich Isles Communications, Inc. Re: USAC’s Audit Findings).

106. The Commission correctly determined that SIC had not justified treating the costs in question as Category 1. For each of the disputed routes, the Commission considered not only USAC's analysis and conclusions, but all information submitted by SIC in response—including in the SIC Final Report Response and accompanying exhibits.³⁰² SIC indicated that it directly allocated all categories, except CAT 1, based on traffic studies and allocated the remaining costs to CAT 1.³⁰³ The Commission concluded that SIC failed to make the necessary factual showing to support treating any portion of the costs of the disputed routes as CAT 1. For clarity's sake, we elaborate below and in Appendix A the reasons why, as a factual matter, SIC failed to demonstrate it was entitled to treat any portion of the costs of the disputed routes as CAT 1.

107. For certain disputed routes, SIC treated the full cost of its facilities as CAT 1.³⁰⁴ For other disputed routes, SIC treated a portion of the route cost as CAT 1.³⁰⁵ In each case, SIC asserted that CAT 1 treatment was appropriate because the facilities served in part to deliver local traffic to SIC subscribers.³⁰⁶ For all of the disputed routes, however, the documentation that SIC supplied fails to establish that any portion of the disputed costs are properly treated as CAT 1.

108. For some routes, we know that the facilities cannot have been used even in part to deliver local traffic to SIC subscribers because the SIC route maps show that no portion of the route reflects facilities between a local central office and a subscriber.³⁰⁷ In the *SIC Improper Payments Order*, the Commission affirmed USAC's finding that SIC improperly misallocated C&WF costs to category 1 for several routes in years that those routes had no subscribers.³⁰⁸

109. For routes [REDACTED], we know that the facilities cannot be used even in part to deliver local traffic to SIC subscribers because the SIC route maps show connections between two islands.³⁰⁹ At best, routes between two islands would be long distance, category 3 (Interexchange C&WF). The Commission affirmed USAC's finding that SIC misallocated costs for routes between central offices to category 1.³¹⁰

110. For routes [REDACTED], we know that facilities cannot be used even in part to deliver local traffic to SIC subscribers because the locations are both exchanges, and no portion of the route reflects facilities between a local central office and a subscriber.³¹¹ Such routes could be either category 2 (Wideband and Exchange Trunk C&WF) or category 3 (Interexchange C&WF). The Commission also affirmed USAC's finding that SIC misallocated costs to category 1 when such costs should have been allocated to other C&WF categories.³¹²

111. As Appendix A reflects, the information that SIC provided concerning the functions of the disputed routes between central offices was unclear, internally contradictory, and not reliable. As a result, USAC and the Commission cannot reasonably have been expected to determine what high-cost

³⁰² See generally *SIC Improper Payments Order*.

³⁰³ *Id.* at 13020-21, para. 72.

³⁰⁴ See *infra* App. A (routes [REDACTED]).

³⁰⁵ See *infra* App. A (routes [REDACTED]).

³⁰⁶ USAC Final Report at 13.

³⁰⁷ See *infra* App. A. See also USAC Final Report, Exh. F (showing SIC route maps).

³⁰⁸ *SIC Improper Payments Order*, 30 FCC Rcd at 13020-21, paras. 70-73.

³⁰⁹ See *infra* App. A (routes [REDACTED]).

³¹⁰ *SIC Improper Payments Order*, 30 FCC Rcd at 13020-21, paras. 70-73.

³¹¹ See *infra* App. A (routes [REDACTED]).

³¹² *SIC Improper Payments Order*, 30 FCC Rcd at 13020-21, paras. 70-73.

funding SIC might have been entitled to receive had it correctly categorized and substantiated the costs of the disputed routes.

112. *The Commission did not take a generalized position that no portion of the costs of routes between central offices can ever qualify as CAT 1.* In arguing for reconsideration on this issue, SIC seeks to turn a specific, factual dispute about the functions of the Appendix A-listed routes into a generalized, theoretical disagreement about the possible functions of facilities between central offices (and the permissible methods of cost allocation for such facilities).³¹³ Contrary to what SIC asserts, the Commission did not, in the *SIC Improper Payments Order*, take the “position that the costs of interexchange routes can never be allocated to Category 1, even when the route is also used to serve subscribers without the local central office directly connecting to subscriber premises.”³¹⁴ The language on which SIC relies, from paragraph 79 of the *SIC Improper Payments Order*, is a statement about SIC’s particular interoffice facilities, not a general declaration that no portion of the costs of facilities between central offices can ever, in any instance, qualify as CAT 1.³¹⁵ That seems clear from paragraph 79 alone, where the Commission noted that its conclusion about the “facilities” in question was based on “reviewing the data submitted by Sandwich Isles”—indicating that the Commission’s statement about “facilities” not qualifying as CAT 1 was specific to SIC’s facilities.³¹⁶ Moreover, the Commission expressly recognized in subsequent paragraphs that a DLC can branch off from an interexchange route to serve customers, and that, in such cases, some portion of the cost of the interexchange route can be treated as CAT 1.³¹⁷

113. But as the Commission also explained, when a DLC branches off from an interexchange route to serve customers, it is not the case that the entire route can be treated as category 1; there are also portions of the route that connect out to an interexchange carrier, and those portions of the route are interexchange in nature, which is category 3.³¹⁸ The portions of the route that are exchange versus interexchange must be properly determined, and the costs properly allocated pursuant to Commission rules.³¹⁹ The costs associated with DLCs branching off from various routes (including interexchange routes) to serve customers were addressed with USAC’s decision to reduce its determination of SIC’s overpayments from \$58 million to the \$26 million, which was adopted by the Commission.³²⁰

114. Although SIC claims that it applied the industry standard methodology for identifying joint and common costs on a route,³²¹ the Commission found that SIC did not in fact use the method it claims, but instead directly assigned route costs to CAT 1.³²² For example, SIC’s direct assignment of all costs to CAT 1 is reflected with its \$11 million underground cable and \$86 million underground conduit costs.³²³ SIC insists that it was not required to allocate investment costs to CAT 3 or to other categories of C&WF, because its facilities were “actually used for local exchange purposes to connect and service

³¹³ SIC Petition at 9-10.

³¹⁴ *Id.* at 8.

³¹⁵ *Id.* at 9 (referencing *SIC Improper Payments Order*, 31 FCC Rcd at 13022, para. 79).

³¹⁶ *SIC Improper Payments Order*, 31 FCC Rcd at 13022, para. 79.

³¹⁷ *See id.* at 13023-24, paras. 82-84.

³¹⁸ *See id.* at 13022-23, para. 79.

³¹⁹ *See SIC Improper Payments Order App. B*, 31 FCC Rcd at 13049, para. 14.

³²⁰ *See* USAC Final Report at 14.

³²¹ SIC Petition at 10.

³²² *SIC Improper Payments Order*, 31 FCC Rcd at 13020, para. 83.

³²³ *See* USAC Final Report at 112 (reflecting SIC’s total investments in account 2410).

subscriber premises.”³²⁴ As support for subscribers, however, SIC refers to the same information and documents it provided with the SIC Final Report Response,³²⁵ which the Commission determined are contradictory and unreliable.³²⁶ Moreover, even if those routes had subscribers, SIC ignored the use of those routes to connect central offices, and failed to allocate the cost of those routes appropriately.³²⁷

115. *There is no inconsistency on this allocation methodology issue between the SIC Improper Payments Order and the SIC NAL.* We also reject SIC’s argument on reconsideration that the *SIC Improper Payments Order* and the *SIC NAL* are inconsistent with regard to allocation methodology.³²⁸ As explained above, the Commission in paragraph 79 of the *SIC Improper Payments Order* reached a conclusion specific to SIC: SIC failed to demonstrate that any portion of the costs of its disputed interoffice facilities qualified as CAT 1.³²⁹ Similarly, in paragraph 50 of the *SIC NAL*, the Commission’s statement that, “based on our review of the record, the facilities connecting central offices could not, under program Rules, be exchange line Category 1” is clearly a factual determination (“based on our review of the record”) of “the” specific interoffice facilities that SIC identified in Exhibit C to the USAC Final Report.³³⁰ Moreover, the Commission expressly cross-referenced paragraph 79 of the *SIC Improper Payments Order* when making the statement in the *SIC NAL* that SIC now claims is inconsistent.³³¹ For all of these reasons, SIC’s claim is unpersuasive.³³²

3. Other Claimed Errors Relating to Exception 1

116. We also reject SIC’s claim that, even accepting the merits of Exception 1 in full, the universal service disbursements associated with that exception were incorrectly calculated.³³³ Other than asserting differences in the overall ICLS and HCLS support amounts it calculated associated with that exception, SIC provides no explanation of its calculation methodology, whether there were differences in calculated support for every year at issue or only some years, or other specific criticisms. Given that the support amounts associated with Exception 1 were performed by USAC and NECA using the process they regularly use for calculating support on an ongoing basis,³³⁴ SIC effectively seeks to question the

³²⁴ SIC Petition at 9-10.

³²⁵ See Rennard Decl. at 5, para. 11.

³²⁶ See *supra* Part III.B.1.

³²⁷ See 47 CFR §§ 36.153-36.157 for apportionment procedures for C&WF categories; see also *SIC Improper Payments Order App. B*, 31 FCC Rcd at 13046.

³²⁸ See SIC Petition at 8-9.

³²⁹ See *supra* paras. 104-110.

³³⁰ *SIC NAL*, 31 FCC Rcd at 12964, para. 50.

³³¹ See *SIC NAL*, 31 FCC Rcd at 12964, para. 50 & n.160.

³³² We note as well that the Commission’s position as articulated in the *SIC Improper Payments Order* and *SIC NAL* is fully consistent with USAC’s decision to reduce its determination of “[REDACTED]” SIC Petition at 8. USAC reduced its determination of overpayments because it determined that for certain routes—not the Appendix A-listed disputed routes—the routes with DLCs were not switches. See USAC Final Report at 14.

³³³ See, e.g., SIC Petition at 18-19 (asserting that there was no consumer harm or complaint about SIC’s services; claiming that there was no waste, fraud, or abuse; arguing that SIC’s actions were not “designed purposefully to ‘milk’ the USF Fund”; and stating that SIC relied on “experts with a deep, historic understanding of high-cost support rules”); Rennard Decl. at 6-7, para. 13 (arguing that claims that SIC had incentives to inflate its universal service support are mistaken because, in the absence of that support, SIC supposedly would have received funds from NECA pools that “would have substantially offset, if not exceeded” the universal service support received).

³³⁴ *SIC Improper Payments Order*, 31 FCC Rcd at 13004, para. 14 & nn.25-26.

accuracy of all such support calculations. The limited arguments that SIC raises provide no persuasive basis to do so.

117. In an abundance of caution, we also briefly address two assertions in the declaration of James Rennard that SIC submitted in support of the SIC Petition. SIC does not raise either of these assertions in the SIC Petition itself, nor does it appear that SIC has previously raised either assertion to the Commission. For these reasons, we reject both assertions on procedural grounds.³³⁵ In addition, and independently, we disagree with both assertions for the reasons explained below.

118. First, Mr. Rennard suggests that USAC should not have found an overpayment of ██████ in disbursement year 2005 when the USAC Final Report “only includes plant adjustments beginning in 2004[,] which would have its first impact in disbursement year 2006, not 2005.”³³⁶ But it is clear in context that USAC took into account plant adjustments in 2003, not just those beginning in 2004. For example, page 14 of the USAC Final Report states that USAC “reviewed certain cost study schedules to determine which exchanges were listed as serving active category 1.3 loops each year between 2002 and 2013.”³³⁷ 2003 plant adjustments are included in USAC’s calculation of the overpayment for 2005, and we find that the text on page 15 of the USAC Final Report to which Mr. Rennard seemingly alludes in his declaration is merely a typographical error.³³⁸

119. Second, Mr. Rennard asserts that the USAC Final Report “computed the HCLS overpayment assuming the company received annual HCLS payments based entirely on the latest quarterly update,” which he contends “would result in a clear and obvious overstatement” of the overpayment.³³⁹ We disagree that USAC’s reliance on the latest quarterly update resulted in a clear overstatement. USAC used the latest quarterly update because that was the most updated information available for each year. But before calculating the overpayments for each Exception using that updated data, USAC recalculated disbursement amounts annually using the same data. USAC’s use of the updated data was therefore reasonable.

C. Violation of Affiliate Transaction Rules

120. We now address, and reject, SIC’s challenge to the Commission’s determination that SIC received overpayments from the Fund by recording unreasonable affiliate transaction costs.³⁴⁰

121. Many of the “rules and principles” that determine “what is properly in a carrier’s regulated revenue requirement” aim to “deter unreasonable cost shifting . . . from affiliate transactions.”³⁴¹ The Commission, in the *SIC Improper Payments Order*, specifically addressed the rules and principles listed below:

³³⁵ See 47 CFR § 1.106(c), (d).

³³⁶ Rennard Decl. at 5, para. 10.

³³⁷ USAC Final Report at 14 (footnote omitted).

³³⁸ Rennard Decl. at 5, para. 10; see USAC Final Report at 15 (referencing “misclassified CAT 1 cable and wire costs between 2004 and 2013”).

³³⁹ Rennard Decl. at 7, para 13.

³⁴⁰ SIC Petition at 13-15.

³⁴¹ *SIC Improper Payments Order*, 31 FCC Rcd at 13028, para. 97 (quoting *Allocation of Costs Associated with Local Exchange Carrier Provision of Video Services*, 11 FCC Rcd 17211, 17216, para. 9 (1996)); see *id.* at 13029, para. 100 (discussing the incentives of rate-of-return carriers with respect to affiliate transactions).

- The “used and useful” standard, which provides that recovery through regulated rates is permitted only when a cost is “necessary to the efficient conduct of a utility’s business, presently or within a reasonable future period.”³⁴²
- 47 CFR § 32.27, a rule titled “Transactions with affiliates,” which provides, among other things, that services purchased by a carrier from an affiliate must be recorded at the lower of fair market value or fully distributed cost (or, if the affiliate exists solely to provide services to members of the carrier’s corporate family, at fully distributed cost), and that services provided by a carrier to an affiliate must be recorded at no less than the higher of fair market value or fully distributed cost.³⁴³
- 47 CFR § 54.7, which provides, in relevant part, that “[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.”³⁴⁴

122. In the *SIC Improper Payments Order*, the Commission found that, for multiple categories of expenses, SIC had failed to meet its burden of demonstrating that the high-cost funds it received were consistent with the above-listed affiliate transactions rules. The list below is an illustrative list of some (not all) of the Commission’s findings and conclusions:

- *Payments to Waimana for Rent and Office Supplies.* The record showed that SIC’s affiliate, Waimana, rented office space from a nonaffiliated commercial real estate company for ██████ per month.³⁴⁵ SIC then paid Waimana ██████ per month to lease that space.³⁴⁶ The Commission found that SIC had not provided evidence that the additional amount per month that Waimana charged SIC above the rent charged to Waimana was used to offset the costs of legitimate, used and useful office expenses.³⁴⁷
- *Other Expenses Paid to Waimana as Management Fees.* The record showed that some SIC employees were receiving a salary from both SIC and Waimana, with the costs of both recorded as an expense recovered from the Fund.³⁴⁸ The record also showed that the Fund was supporting salaries to Albert Hee’s wife and children when the children were attending college full time and living outside of Hawaii.³⁴⁹ USAC calculated that, in 2014 alone, SIC was charged at least ██████ more for services than Waimana incurred to render such services.³⁵⁰ The Commission deemed SIC’s response on these issues

³⁴² *Id.* at 13029, para. 98 (quoting *AT&T Phase II Order*, 64 FCC Rcd 2d at 38, para. 111).

³⁴³ *Id.* at 13029, para. 99 (summarizing 47 CFR § 32.27(c)).

³⁴⁴ 47 CFR § 54.7(a); see *SIC Improper Payments Order*, 31 FCC Rcd at 13032-34, paras. 110, 112, 117 (finding that SIC failed to demonstrate that its claimed office expenses and management fees to its affiliate Waimana met the requirements of Section 54.7). Although Section 54.7 was amended in May 2018, the quoted text has appeared in Section 54.7 since the rule’s adoption in 1997. The rule implements 47 U.S.C. § 254(e), which provides that high-cost funds provided to an eligible telecommunications carrier must be used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”

³⁴⁵ *Id.* at 13031-32, para. 107.

³⁴⁶ *Id.*

³⁴⁷ *Id.* at 13032-33, para. 110.

³⁴⁸ *Id.* at 13033-34, para. 115.

³⁴⁹ *Id.*

³⁵⁰ *Id.* at 13034, para. 116.

insufficient to demonstrate that SIC paid Waimana the lower of fully distributed cost or fair market value for services.³⁵¹

- *Payments to ClearCom.* In cost studies that SIC submitted for USAC’s use in calculating SIC’s high-cost support, SIC included “the costs of portions of water mains” leased from its affiliate ClearCom when SIC “was not using” those facilities.³⁵² The Commission concluded that SIC had “violated section 32.27(c)(2) of the Commission’s rules for recording the transaction between Sandwich Isles and ClearCom above the lesser of fair market value or fully distributed cost.”³⁵³ The Commission likewise concluded that SIC “failed to demonstrate that it paid the lower of fair market value and fully distributed cost” when it paid ClearCom ██████████ in prepaid rent for office space that ClearCom would construct and own on land owned by SIC, when ClearCom had only ██████████ and ClearCom “██████████”³⁵⁴
- *Ineligible Corporate Bonuses and Activities.* An additional focus of USAC’s investigation was bonus payments that SIC made to its affiliate Waimana and to SIC executives and employees. For example, in 2014—a year in which SIC received over \$368 per line per month in high-cost support, well in excess of the \$250 per line cap that the Commission has established³⁵⁵—SIC paid one employee a bonus of ██████████, which amounted to 45 percent of the employee’s previous year’s salary. SIC made that payment, and an ██████████ bonus payment to Waimana, despite the fact that the Commission’s Wireline Competition Bureau had in 2013 denied SIC’s request for a waiver of the \$250 per line per month cap, finding that SIC’s expenses were significantly higher than other companies of similar size.³⁵⁶ In light of that and other circumstances discussed in the *SIC Improper Payments Order*, the Commission determined that SIC’s bonus payment to its employee and the payment to Waimana were not reasonable or prudent under the “used and useful standard.”³⁵⁷ The Commission likewise determined “on the facts before us” that certain sponsorships and donations to organizations related to the interests of the Hawaiian Home Lands were not “necessary for the provisioning of telecommunications service.”³⁵⁸

123. As the above discussion reflects, SIC is wrong that the Commission’s determinations concerning SIC’s affiliate transactions lack any supporting “rule” or “legal basis.”³⁵⁹ The Commission cited specific rules and appropriately applied them based on the particular facts presented.

124. We likewise reject SIC’s related claim that the Commission’s case-specific analysis of SIC’s affiliate transactions was impermissibly “*ad hoc*.”³⁶⁰ SIC contends that determining whether management fees are used and useful is “utterly unsuited for case-by-case adjudication.”³⁶¹ But it is well

³⁵¹ *Id.* at 13034, paras. 116-17.

³⁵² *Id.* at 13034-35, para. 118.

³⁵³ *Id.* at 13035, para. 119.

³⁵⁴ *Id.* at 13035-36, paras. 120, 124.

³⁵⁵ *Id.* at 13039, para. 131.

³⁵⁶ *Id.*

³⁵⁷ *Id.* at 13039-40, para. 133.

³⁵⁸ *Id.* at 13040, para. 135.

³⁵⁹ SIC Petition at 14.

³⁶⁰ *Id.* at 14, 15.

³⁶¹ *Id.* at 14.

established that, “in interpreting and administering its statutory obligations under the Act, the Commission has very broad discretion to decide whether to proceed by adjudication or rulemaking.”³⁶² And the Commission determined, when first implementing Section 254(e) of the Telecommunications Act of 1996,³⁶³ that it should initially decline to adopt “elaborate rules for compliance” with the statutory requirement that carriers use Fund “support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”³⁶⁴ The Commission’s case-specific determination in the *SIC Improper Payments Order* that the payments and expenses described above were not eligible for recovery from the high-cost programs was in keeping with that decision,³⁶⁵ and with the Commission’s longstanding practice of relying on case-by-case adjudication to determine whether expenses are used and useful and thus recoverable through interstate rates. Earlier this year, the Commission explained its longstanding view that “whether an investment and expense is ‘used and useful’ depends on the ‘particular facts of each case.’”³⁶⁶

125. Contrary to what SIC contends,³⁶⁷ a recently completed proceeding in which the Commission codified a “defined, non-exclusive[] list of expense categories that are precluded from recovery via the high-cost programs of the Fund” in no way undermines our position that the Commission could reach a case-specific determination in the *SIC Improper Payments Order*.³⁶⁸ In that proceeding, the Commission cited new developments since the inception of the high-cost programs that weighed in favor of codifying rules: “large-scale abuses in the recovery of expenses” by carriers such as SIC, and increased demands on the high-cost programs from the expansion of broadband, when the program has a shrinking contribution base.³⁶⁹ The Commission emphasized, however, that the prospective rules it adopted merely codified preexisting obligations and precedent, including the used and useful standard.³⁷⁰ Its action was not “intended to undermine [that existing] precedent.”³⁷¹ And because the rules adopted did not establish “a comprehensive list of expenses ineligible for high-cost support,” the Commission emphasized that carriers remain “prohibited from seeking support for *any* expenses that are not used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”³⁷²

³⁶² See, e.g., *Neustar, Inc. v. FCC*, 857 F.3d 886, 894 (D.C. Cir. 2017) (internal quotation marks and citations omitted).

³⁶³ 47 U.S.C. § 245(e).

³⁶⁴ *Connect America Fund*, WC Docket Nos. 10-90 *et al.*, Report and Order *et al.*, FCC 18-29, 2018 WL 1452720, at *4, para. 11 (Mar. 23, 2018) (*March 2018 CAF Order*) (internal quotation marks omitted).

³⁶⁵ See also *Adak Eagle Enterprises, LLC and Windy City Cellular, LLC*, Order, 28 FCC Rcd 10194, 10200-10, paras. 21-43 (Wireline Comp. Bur. 2013) (denying petitions for waiver of the \$250 per line per month cap on high-cost support based on a case-specific determination that certain operating expenses of the carriers were excessive and unreasonable), *recon. denied*, 30 FCC Rcd 5080 (2015).

³⁶⁶ See, e.g., *March 2018 CAF Order*, 2018 WL 1452720, at *16, para. 49 (quoting *AT&T Phase II Order*, 64 F.C.C.2d at 39, para. 115).

³⁶⁷ SIC Petition at 14 (arguing that the Commission “simply ignore[d] the Commission’s March 30, 2016 USF Order [*Connect America Fund*, Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016) (*Rate-of-Return Reform Further Notice*)],” which was the further notice of proposed rulemaking that culminated in the *March 2018 CAF Order*).

³⁶⁸ *March 2018 CAF Order*, 2018 WL 1452720, at *7, para. 17.

³⁶⁹ *Id.* at *6, paras. 15-16.

³⁷⁰ *Id.* at *4, para. 10.

³⁷¹ *Id.*

³⁷² *Id.* at *7, para. 18.

126. We also reject SIC's arguments specific to the Commission's treatment of the water main payments to ClearCom and the "██████" employee bonus."³⁷³

127. Although those arguments are unclear, and need not be entertained for that reason alone, SIC appears to contend that the Commission's recognition in the *SIC Improper Payments Order* that USAC removed the costs of the unused portions of ClearCom's water mains from SIC's cost studies amounts to a concession that the water main payments are "irrelevant."³⁷⁴ That puts things backwards. The Commission recited this point to describe the means by which USAC determined that SIC had received "overpayments from the Fund for disbursement years 2004 through 2015" totaling "\$711,355."³⁷⁵ That calculation—which SIC did not dispute³⁷⁶—was evidence that SIC had recorded an affiliate transaction above the lower of fair market value or fully distributed cost.³⁷⁷ We thus reject SIC's attempt to construe the Commission's description of USAC's methodology as admission "that the ClearCom payment was reversed when it was questioned by USAC."³⁷⁸

128. We likewise disagree with SIC's suggestion that the *SIC Improper Payments Order* "admits . . . that the ██████ employee bonus was not paid during the relevant period."³⁷⁹ The *SIC Improper Payments Order* clearly states that, although disbursed in 2014, the bonus was related to the employee's salary in 2013.³⁸⁰ Both years are within the relevant period of this investigation, which covered 2002-2015.³⁸¹

129. Finally, the Commission's silence with regard to the ██████ employee bonus in the *SIC NAL* in no way undermines its determination in the *SIC Improper Payments Order* that the bonus was an improper affiliate payment not recoverable through the high-cost programs.³⁸² While the Commission did not seek to impose a forfeiture on the basis of this particular bonus, and therefore did not discuss it in the *SIC NAL*, the Commission made clear in the *SIC Improper Payments Order* that this conduct was concerning and relevant to the issue of SIC's affiliate payment. Similarly, it does not matter that the Commission did not treat employee bonuses as ineligible for high-cost recovery per se in the *2018 CAF Order* (stemming from the "March 30 USF Order" that SIC cites in its petition).³⁸³ As we have already explained, the rules adopted in that proceeding are merely a complement to the longstanding principles governing the eligibility of expenses for recovery through the high-cost programs.³⁸⁴ That proceeding in no way disturbed carriers' existing obligations to use high-cost funds only for their intended purposes (including by adhering to the rules and principles governing affiliate transactions).

³⁷³ SIC Petition at 15.

³⁷⁴ *Id.*; see *SIC Improper Payments Order*, 31 FCC Rcd at 13034-35, para. 118.

³⁷⁵ *SIC Improper Payments Order*, 31 FCC Rcd at 13034-35, para. 118.

³⁷⁶ *Id.*

³⁷⁷ *Id.* at 13035, para. 119.

³⁷⁸ SIC Petition at 15.

³⁷⁹ *Id.*

³⁸⁰ *SIC Improper Payments Order*, 31 FCC Rcd at 13037, para. 127.

³⁸¹ Additionally, the Commission concluded that the bonus was "imprudent and unreasonable" and concluded that SIC should revise its cost study for 2014 so as not to include this bonus. *Id.* at 13039-40, para. 133. The Commission also directed USAC to deny any claims from SIC that include this bonus in any future requests for recovery from the Fund. *Id.*

³⁸² SIC Petition at 15.

³⁸³ *Id.*

³⁸⁴ See *supra* paras. 163-64.

D. Statute of Limitations for Improper Payments

130. In the Debt Collection Improvement Act, Congress expressly provided that there is no statute of limitations, or any other provision of law, that limits the time during which the government may collect debts by administrative offset.³⁸⁵ In its Petition, SIC has made no attempt to refute the Commission's determination that neither 28 U.S.C. § 1658(a) nor the Commission's policy preference to initiate and complete USAC investigations within five years can trump the express language of the Debt Collection Improvement Act.³⁸⁶ For that reason alone, we decline to reconsider the Commission's determination that recovery from SIC is not time barred. For the sake of completeness, we also explain below why—independent of the Debt Collection Improvement Act—SIC is wrong that Section 1658(a) bars the Commission from recovering Fund overpayments “[REDACTED]”³⁸⁷

1. The Text, Context, Purpose, and History of Section 1658(a) Supports the Commission's Interpretation in the *SIC Improper Payments Order*

131. Section 1658(a) provides: “Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after [December 1, 1990] may not be commenced later than 4 years after the cause of action accrues.”³⁸⁸ The text, context, purpose, and history of Section 1658(a) make clear that it governs court actions, not agency proceedings to recover improperly disbursed government funds.

132. Albeit not universally,³⁸⁹ the term “action” in legal parlance most commonly means a judicial proceeding.³⁹⁰ It is particularly reasonable to apply that gloss here because Section 1658(a) includes not only the term “civil action” but also references the underlying “cause of action.”³⁹¹ Black's Law Dictionary defines “cause of action” as “[a] group of operative facts giving rise to one or more bases *for suing*; a factual situation that entitles one person to obtain a remedy *in court* from another person.”³⁹² Thus, as the Fourth Circuit recently recognized, the text of Section 1658(a) suggests that Congress was concerned with adversarial judicial proceedings.³⁹³

³⁸⁵ See 31 U.S.C. § 3716(e)(1) (“Notwithstanding any other provision of law, regulation, or administrative limitation, no limitation on the period within which an offset may be initiated or taken pursuant to [31 U.S.C. § 3716] shall be effective.”).

³⁸⁶ *SIC Improper Payments Order*, 31 FCC Rcd at 13026-27, paras. 91-92.

³⁸⁷ SIC Petition at 18.

³⁸⁸ 28 U.S.C. § 1658(a).

³⁸⁹ See *PHH Corp. v. Consumer Fin. Prot. Bureau*, 839 F.3d 1, 53 (D.C. Cir. 2016) (*PHH*), *reh'g en banc granted and order vacated*, Order (Feb. 16, 2017) (*PHH*), *pet. granted in part and order reinstated in relevant part*, 881 F.3d 75 (2018) (en banc) (*PHH II*).

³⁹⁰ See, e.g., *BP Am. Prod. Co. v. Burton*, 549 U.S. 84, 91 (2006) (interpreting “action” in 28 U.S.C. § 2415(a) to refer solely to court, not administrative, proceedings); see also *SIC Improper Payments Order*, 31 FCC Rcd at 13026, para. 91 n.189 (citing additional support); Black's Law Dictionary 32 (10th ed. 2009) (defining “action” broadly as “[a] civil or criminal judicial proceeding”).

³⁹¹ 28 U.S.C. § 1658(a); see *United States v. Searcy*, 880 F.3d 116, 124 (4th Cir. 2018).

³⁹² Black's Law Dictionary 251 (10th ed. 2009) (emphasis added); see also *id.* at 1570 (defining “sue” as “[t]o institute a lawsuit against (another party)”). This definition is unchanged in the 2014 version of Black's.

³⁹³ See *Searcy*, 880 F.3d at 124-25 (holding that a “civil action” within the meaning of Section 1658(a) did not encompass civil commitment proceedings in federal district courts); *id.* at 126 (Thacker, J., concurring in the judgment) (interpreting “civil action” to reach “any judicial proceeding, which, if conducted to a determination, will result in a judgment or decree” (internal quotation marks and emphasis omitted)).

133. Reading Section 1658(a) in broader context bolsters our reading of its text. Section 1658 was enacted as part of the Judicial Improvements Act of 1990.³⁹⁴ Title III of that Act, in which Section 1658 was enacted, is the Federal Courts Study Implementation Act of 1990.³⁹⁵ As those names would suggest, where the term “action” appears in the enacting law, it refers to formal judicial proceedings or other action by the judiciary or its governing bodies.³⁹⁶

134. Further supporting our reading of “civil action” in Section 1658(a) is the purpose behind the Judicial Improvements Act of 1990 as a whole, and the particular purpose of Section 1658. “The primary goals of [the] Act [were] to decrease delays in the federal court system as a result of overloaded case dockets, to increase overall efficiency, and to reduce costs and litigation expenses.”³⁹⁷ The purpose of Section 1658 specifically was to eliminate the need for federal courts to “borrow” the most analogous state or federal law limitations period for federal claims that lacked their own designated limitations period.³⁹⁸ That “practice create[d] a number of practical problems,” “obligat[ing] judges and lawyers to determine the most analogous state law claim” and “impos[ing] uncertainty on litigants.”³⁹⁹ In addition, from both a policy and a practical standpoint, the practice of borrowing created “undesirable variance among the federal courts and disrupt[ed] the development of federal doctrine on the suspension of limitation periods.”⁴⁰⁰ In other words, the legislative concerns that animated the enactment of Section

³⁹⁴ Pub. L. No. 101-650, 104 Stat. 5089.

³⁹⁵ Pub. L. No. 101-650, 104 Stat. 5104.

³⁹⁶ See, e.g., Civil Justice Reform Act of 1990, Pub. L. 101-650, tit. 1, § 103, 104 Stat. 5089 (referencing the “recommended actions” of a federal district court’s advisory group charged with reducing civil justice expenses and delay); Federal Judgeship Act of 1990, Pub. L. 101-650, tit. II, § 308, 104 Stat. 5098 (amending 28 U.S.C. § 636 in a section captioned, “consent to trial in civil actions”); *id.* § 310 (amending 28 U.S.C. § 1367 to add language concerning “any civil action of which the district courts have original jurisdiction”). A lone reference in the enacting law to “administrative action” appears to refer colloquially to a step or activity by a legislature or administrative body with judicial oversight responsibilities. See National Commission on Judicial Discipline and Removal Act, Pub. L. 101-650, tit. IV, § 415, 104 Stat. 5124 (1990) (“The [National Commission on Judicial Discipline and Removal] shall submit to each House of Congress, the Chief Justice of the United States, and the President a report not later than one year after the date of its first meeting. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislative or administrative action as it considers appropriate.”). That reference accordingly lends no support to SIC’s claim that the term “civil action” in Section 1658(a) encompasses administrative proceedings of the kind at issue here.

³⁹⁷ 28 U.S.C. § 1658: *A Limitation Period with Real Limitations*, 69 Ind. L.J. 477, 515 n.301 (Spring 1994) (citing *The Civil Justice Reform Act of 1990 and the Judicial Improvements Act of 1990: Hearings on S. 2027 and on S. 2648 Before the Comm. on the Judiciary United States Senate*, 101st Cong., 2d Sess. 307-12 (statements of Sen. Biden, Chairman, and Sen. Thurmond, ranking Republican member)); see also H.R. Rep. No. 101-734, at 15 (1990), reprinted in 1990 U.S.C.C.A.N. 6860, 6861 (“Taken together, . . . these reforms will substantially improve the efficiency and fairness of federal court operations.”); Report of the Federal Courts Study Committee at 3 (Apr. 2, 1990) (Study Committee Report) (“RESPONDING TO MOUNTING PUBLIC AND PROFESSIONAL CONCERN WITH the federal courts’ congestion, delay, expense, and expansion, this committee of diverse membership appointed by the Chief Justice at the direction of Congress has conducted a fifteen-month study of the problems of the federal courts and presents in this report its analysis and recommendations.”), available at <https://www.fjc.gov/sites/default/files/2012/RepFCSC.pdf>.

³⁹⁸ H.R. Rep. No. 101-734, at 24.

³⁹⁹ H.R. Rep. No. 101-734, at 24; accord 136 Cong. Rec. S17,581 (daily ed. Oct. 27, 1990) (statement of Sen. Biden).

⁴⁰⁰ H.R. Rep. No. 101-734, at 24; accord 136 Cong. Rec. S17,581.

1658, and the goals of Judicial Improvements Act of 1990 as a whole, related to proceedings in federal court, not administrative proceedings.⁴⁰¹

135. Finally, we are unaware of any instance in which Section 1658(a) has been applied to cut off administrative proceedings. And the Fourth Circuit in *Searcy* treated Section 1658(a) as limited to judicial proceedings.⁴⁰²

2. The D.C. Circuit's Decision in *PHH* Does Not Support Reconsideration of the Commission's Interpretation

136. In seeking reconsideration of the Commission's determination that Section 1658(a) does not bar the recovery of Fund payments improperly disbursed to SIC ██████████, SIC relies almost entirely on the D.C. Circuit's interpretation of 12 U.S.C. § 2614 in *PHH v. Consumer Fin. Prot. Bureau*.⁴⁰³ As an initial matter, we note that SIC did not raise the *PHH* case to the Commission's attention until petitioning for reconsideration of the *SIC Improper Payments Order*, even though the D.C. Circuit decided *PHH* in October 2016 (months before the Commission released the *SIC Improper Payments Order*).⁴⁰⁴ Because there is no reason that SIC could not have raised *PHH* sooner, we deny reconsideration pursuant to 47 CFR § 1.106 on that basis alone.⁴⁰⁵

137. Independently, we deny SIC's arguments because, applying the court's reasoning to the present matter, the Commission's enforcement of the *SIC Improper Payments Order* is not precluded by Section 1658(a)'s limitation period for civil actions. In *PHH*, the D.C. Circuit considered, among other arguments, whether an administrative enforcement action for certain conduct was time barred by the applicable statute of limitations period for "actions" brought by certain agencies.⁴⁰⁶ In its analysis, the D.C. Circuit recognized that the Supreme Court's decision in *BP America* supports "a presumption that the term 'action' means court proceedings."⁴⁰⁷ And, fundamentally, the court held, "whether the term 'actions' in a particular statute encompasses administrative actions . . . turns on the overall text, context, purpose, and history of the statute."⁴⁰⁸ In applying *PHH* to the present matter involving SIC, as we have

⁴⁰¹ See *Searcy*, 880 F.3d at 122 ("Section 1658(a) is designed to assist *courts* when Congress enacts a statute that lacks clarity or order regarding the timing of its application." (emphasis added)).

⁴⁰² See *Searcy*, 880 F.3d at 120 ("28 U.S.C. § 1658(a) addresses the time limits for bringing certain claims in federal court."); *id.* at 126 (Thacker, J., concurring) (interpreting "civil action" under the statute as reaching "*any judicial proceeding, which, if conducted to a determination, will result in a judgment or decree*" (internal quotation marks omitted)).

⁴⁰³ See *PHH*, 839 F.3d at 52-55; see SIC Petition at 15-18. SIC also asserts, under the "Statute of Limitations" heading of the SIC Petition, that the Commission "conveniently ignore[d]" that "two prior audits of SIC by USAC and the Commission's Office of Inspector General" had not raised the concerns regarding improper classification of costs that the Commission addressed in the *SIC Improper Payments Order*. SIC Petition at 15. "[H]ad the FCC acted sooner on these alleged violations," SIC contends, "SIC could have taken appropriate corrective action." *Id.* at 16. We reject this argument for the reasons stated in the portion of this Order devoted to SIC's miscellaneous equitable and due process arguments. See *infra* Part III.D.

⁴⁰⁴ Although the D.C. Circuit vacated the October 2016 panel decision when it granted rehearing en banc in February 2017, in January 2018 the en banc court reinstated the original panel decision as to the issue relevant here. See *PHH II*, 881 F.3d at 83.

⁴⁰⁵ See 47 CFR § 1.106(b)(2)(ii), (c).

⁴⁰⁶ In *PHH*, the Consumer Financial Protection Bureau (CFPB) ordered PHH to pay \$109 million in disgorgement for violating federal law. See 839 F.3d at 7. In challenging that penalty, PHH argued, among other things, "that most of its relevant activity occurred outside of the three-year statute of limitations" set forth in 12 U.S.C. § 2614. *Id.* at 50.

⁴⁰⁷ *Id.* at 53.

⁴⁰⁸ *Id.*

explained above, reading the text of 28 U.S.C. § 1658(a) and considering it in context, we find that the four-year limitations period for a “civil action” does not encompass this administrative proceeding. As we previously discussed, the history and purpose of Section 1658(a) demonstrate that a “civil action” means a judicial proceeding and, thus, the limitations period is inapplicable to the Commission’s recovery of debt from SIC.⁴⁰⁹ Moreover, *PHH* did not concern the collection of government debt at all, but rather the remedy of disgorgement and whether the CFPB could pursue civil penalties at any distance of time.⁴¹⁰ Traditional presumptions concerning time limits on penalty actions have no bearing here. The more relevant presumption, which SIC ignores, is the longstanding one that “recovery of Government funds, paid by mistake to one having no just right to keep the funds, is not barred by the passage of time.”⁴¹¹

E. For all of these reasons, we reject the arguments in the SIC Petition concerning the applicability of 28 U.S.C. § 1658(a). Other Asserted Grounds for Reconsideration

138. We address below miscellaneous additional grounds that SIC has advanced in support of reconsideration, none of which is persuasive. As an initial matter, we note that deciding the SIC Petition at this time is entirely consistent with “fundamental Due Process.”⁴¹² SIC initially urged the Commission not to act upon the Petition until “after interested parties, including SIC itself, . . . had the opportunity to comment on the issues raised in the [*SIC NAL*] and [*SIC Improper Payments Order*], including, without limitation, the specific matters addressed at paragraph 58 of the [*SIC Improper Payments Order*] and paragraph 84 of the [*SIC NAL*].”⁴¹³ Since SIC filed its petition, the Commission has sought and received public comment on the issues raised in paragraph 58 of the *SIC Improper Payments Order* and paragraph 84 of the *SIC NAL*.⁴¹⁴ Meanwhile, SIC has petitioned the D.C. Circuit (unsuccessfully) for a writ of mandamus based in part on the suggestion that the Commission has unduly delayed a decision on the SIC Petition.⁴¹⁵ Under the circumstances, SIC cannot reasonably contend that today’s decision is unfairly premature. And we reiterate, in an abundance of caution, that this Order resolves only the arguments in

⁴⁰⁹ See *supra* Section III.D.1. Contrary to what SIC contends, see SIC Petition at 17-18, the D.C. Circuit in *PHH* did not hold or imply that it would be “absurd” to allow agencies to collect debt owed to the government without limiting the time for collection.

⁴¹⁰ *PHH*, 839 F.3d at 54-55.

⁴¹¹ Numerous cases support that recovering improperly disbursed government funds does not amount to imposing a penalty. See, e.g., *Fla. Med. Ctr. v. Sebelius*, 614 F.3d 1276, 1278, 1282 (11th Cir. 2010) (holding that the recoupment of “payments to a Medicare services provider that had falsified its Medicare enrollment application” did “not qualify as a punitive fine” under the Eighth Amendment when the government merely “sought to recover money to which [the provider] was never entitled”); *Garner v. U.S. Dep’t of Labor*, 221 F.3d 822, 826 (5th Cir. 2000) (“As the Supreme Court has made abundantly clear, the denial of a noncontractual governmental benefit does not fall within the historical meaning of legislative punishment.”); *County Line Cheese Co. v. Lying*, 823 F.2d 1127, 1133 (7th Cir. 1987) (holding that requiring dairy companies to return payments received from a government settlement fund for which the companies did not qualify did not amount to punishing those companies for “wrongdoing,” but merely “rectif[ied] . . . mistakenly made payments”).

⁴¹² SIC Petition at 19.

⁴¹³ SIC Petition at 19-20.

⁴¹⁴ *Wireline Competition Bureau Seeks Comment on the 2005 Waiver that Allows Sandwich Isles to be Treated as an Incumbent Local Exchange Carrier for Purposes of Receiving High-Cost Universal Service Support*, Public Notice, 31 FCC Rcd 13326 (Wireline Comp. Bur. 2016) (allowing for public comment on or before February 3, 2017, concerning “why the Commission should not terminate the previously granted study area boundary waiver” that allows SIC to receive high-cost support, and “on the continued applicability of the study area waiver”); see, e.g., Letter from Jobie M.K. Masagatani, Chairman, Hawaiian Homes Commission, to Ajit Pai, Chairman, FCC, at 2 (Feb. 2, 2017) (asking the FCC, in considering whether to terminate the SIC study area waiver, to reach “a resolution that will best serve native Hawaiians”).

⁴¹⁵ Petition for a Writ of Mandamus by Petitioner Sandwich Isles Communications, Inc. 22, Nov. 17, 2017, Doc. No. 170515, D.C. Cir. Case No 17-1248.

the SIC Petition, and leaves pending arguments raised in other FCC proceedings involving SIC, including arguments bearing on the *SIC NAL* and SIC's study area waiver.

139. Turning to the arguments in the SIC Petition itself, we reject the claim that reconsideration is justified based on an alleged lack of any consumer harm or any improper motives on SIC's part.⁴¹⁶ The Commission has long recognized that its efforts to advance universal service must be balanced against the universal service contribution burden on all ratepayers.⁴¹⁷ When large sums from the Fund are disbursed improperly due to a carrier's violation of Commission rules, ratepayers who contribute to the Fund are harmed by bearing this burden that they should not properly have to bear.⁴¹⁸ In the *SIC Improper Payments Order*, the Commission found over \$27.2 million in high-cost program overpayments to SIC, recognized those overpayments as harm to the public interest, and acted to protect consumers and the Fund.⁴¹⁹ Recovering these funds also fulfils the Commission's obligation to pursue improper payments in accordance with the Debt Collection Improvement Act.⁴²⁰ Thus, the Commission has a responsibility to pursue recovery of this improperly disbursed universal service support irrespective of SIC's motives or incentives to engage in the conduct that led to the unjustified support payments.

140. There is a presumption of retroactivity in adjudicatory proceedings, and SIC does not persuade us to depart from that presumption here.⁴²¹ Even assuming *arguendo* that the rules at issue could be seen as ambiguous in relevant respects, ambiguity alone does not demonstrate the sort of "manifest injustice" required to justify declining to apply an interpretation retroactively in an adjudication.⁴²² Nor are we persuaded by SIC's broad claims that industry practice is to the contrary such that retroactive application of the rule interpretations here "would be grossly unfair."⁴²³ SIC provides no support for that claim, and its expectation of "wide-ranging implications for the entire rate-of-return industry" is belied by the fact that no other rate-of-return carrier filed comments in support of SIC's reconsideration petition, let alone sought reconsideration itself. To the contrary, USTelecom—which has many members that are rate-of-return carriers—urged the Commission to deny SIC's request.⁴²⁴ Whatever the state of industry practice, moreover, it cannot be authoritative. SIC thus does not demonstrate that the Commission here is substituting new law for old law that was reasonably clear in a way that would cut against retroactivity.⁴²⁵

141. We likewise are not persuaded that SIC has otherwise shown reasonable, detrimental reliance on a contrary interpretation of the rules at issue here, or that equitable considerations would counsel against retroactivity.⁴²⁶ In a number of cases, SIC does not meaningfully dispute the

⁴¹⁶ See SIC Petition at 18; see also, e.g., Letter from Carl Meyers to Office of Secretary, FCC, WC Docket No. 10-90 (filed Feb. 3, 2017); Letter from Sage Johnson to Office of Secretary, FCC, WC Docket No. 10-90 (filed Feb. 3, 2017); Letter from Elise Tafao to Office of Secretary, FCC, WC Docket No. 10-90 (filed Feb. 3, 2017).

⁴¹⁷ See, e.g., *Vt. Pub. Serv. Bd. v. FCC*, 661 F.3d 54, 65 (D.C. Cir. 2011) (noting that, in the context of section 254, "as the Commission rightly observed, it has a responsibility to be a prudent guardian of the public's resources"); *Universal Service First Report and Order*, 12 FCC Rcd at 8845-46, para. 125.

⁴¹⁸ 47 CFR § 54.712. Carriers that are required to contribute to USF may, and do, pass through this cost to their customers as USF surcharge.

⁴¹⁹ See generally *SIC Improper Payments Order*, 31 FCC Rcd 12999.

⁴²⁰ See *id.* at 13026-27, paras. 91-92.

⁴²¹ See, e.g., *Qwest Servs. Corp. v. FCC*, 509 F.3d 531, 539 (D.C. Cir. 2007).

⁴²² *Id.* at 540.

⁴²³ Rennard Decl. at 5-6, para. 12.

⁴²⁴ USTelecom Opposition at 3-4.

⁴²⁵ See *AT&T v. FCC*, 454 F.3d 329, 332 (D.C. Cir. 2006).

⁴²⁶ See *Verizon Tel. Co. v. FCC*, 269 F.3d 1098, 1110-11 (D.C. Cir. 2001) (observing that in evaluating retroactivity in adjudication, the focus should be on "notions of equity and fairness" and whether there has been reasonable,

(continued....)

Commission's interpretation of the rules in material respects, but instead challenges the Commission's factual findings or determinations that SIC did not properly implement the rules in practice, even if SIC acknowledged their proper interpretation in theory.⁴²⁷ We also reject SIC's suggestion that the Commission is precluded from holding SIC responsible for compliance with our rules because SIC was previously subject to audits where no such findings were made.⁴²⁸ As explained in the *SIC Improper Payments Order*, the absence of certain findings in previous investigations focused on different or narrower issues does not preclude the Commission from undertaking this kind of further investigation, and thus those prior audits provided no reasonable basis for comfort on SIC's part regarding the matters at issue here.⁴²⁹

142. Nor were "SIC's infrastructure plans [] presented to, and approved in advance by, the FCC and the Rural Utilities Service ('RUS')" in any way that supports SIC's claims here.⁴³⁰ SIC cites no support for that claim, nor does it provide details regarding the plan supposedly presented to the Commission and RUS, or information concerning in what respect—if at all—they were "approved." With respect to prior decisions by the Commission, as the *SIC Bureau Paniolo Order* explained, they only reflected generalized, high-level evaluations such as "whether the public interest would be served by extending service to [the Hawaiian Home Lands] and its people," supported by universal service support and NECA pooling.⁴³¹ While there was a generalized recognition that SIC "plans to make large capital investments to initiate service,"⁴³² resulting in significant costs, that precedent merely granted certain targeted rule waivers to allow SIC to participate in NECA pools and receive universal service support as a rate-of-return incumbent LEC. Those decisions did not evaluate—let alone approve recovery for—the investments and expenses at issue here.⁴³³ Nor does SIC's status as an eligible telecommunications carrier give it an entitlement to universal service support in a manner at odds with section 254(e) of the Act and the Commission's universal service rules.⁴³⁴ As also discussed in the *SIC Bureau Paniolo Order*, "the RUS application process occurred in the early 2000s, and RUS ultimately suspended its funding" to SIC, which undercuts any theoretical basis for SIC to have relied on those decisions during the time at issue here. And significantly, RUS does not have authority to interpret or implement the Commission's universal service rules in any event.

(Continued from previous page) _____
detrimental reliance on a contrary interpretation of the law) (citing *Cassell v. FCC*, 154 F.3d 478, 486 (D.C. Cir. 1998)).

⁴²⁷ See *supra* Part III.B.

⁴²⁸ See SIC Petition at 14-15; see also SIC Final Report Response at 4-5.

⁴²⁹ See *SIC Improper Payments Order*, 31 FCC Rcd at 13025-26, paras. 87-90 (discussing the prior audits and observing that "[t]hose USAC and OIG audits varied in scope and timeframe and are not similar to the investigation undertaken by USAC summarized in the USAC Report before us").

⁴³⁰ See SIC Demand Letter Pet. at 9-10.

⁴³¹ *Declaratory Ruling*, 25 FCC Rcd at 13650-51, para. 10.

⁴³² *Sandwich Isles Communications, Inc., Petition for Waiver of Section 36.611 of the Commission's Rules and Request for Clarification*, 13 FCC Rcd 2407, 2412, para. 13 (Common Carrier Bur. 1998).

⁴³³ See *Declaratory Ruling*, 25 FCC Rcd at 13650-51, para. 10 ("[] Sandwich Isles' arguments misconstrue the Commission's actions with regard to those waiver decisions; the analyses for deciding study area waivers and requests to join the NECA pool do not traditionally, and did not in this case, include a determination of what costs should ultimately be allowed in Sandwich Isles' revenue requirement.").

⁴³⁴ See, e.g., *Petition of USTelecom For Forbearance Pursuant To 47 U.S.C. § 160(c) From Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks; Lifeline and Link Up Reform and Modernization; Connect America Fund*, WC Docket Nos. 14-192, 11-42, 10-90, Memorandum Opinion and Order, 31 FCC Rcd 6157, 6227-28, para. 139 (2015).

143. In sum, following a thorough analysis of the record and SIC's claims, we are unpersuaded that reconsideration is warranted regarding the improper universal service support payments identified in the *SIC Improper Payments Order*.⁴³⁵ Not only do we find no basis for reconsideration under a direct application of the facts to our rules, but we find no equitable or other grounds for reconsideration, either.⁴³⁶

IV. ORDERING CLAUSES

144. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 4(j), 220, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(j), 254, that this Order IS ADOPTED.

145. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and section 1.106 of the Commission's rules, and 47 CFR § 1.106, that the Petition for Reconsideration filed by Sandwich Isles Communications, Inc. on January 4, 2017 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴³⁵ Thus, our evaluation of the findings in the USAC report reflect the "reasoned analysis and decision-making" that SIC claims to seek. SIC Petition at 19.

⁴³⁶ Although a filing by SIC in the record expresses certain concerns about statements by Commissioner Pai, that filing makes clear that SIC "has not requested or moved for recusal in its pleadings or comments, nor is it doing so here." Sandwich Isles Communications, Inc.'s Comments in Response to the Commission's February 14, 2017 Public Notice, WC Docket No. 10-90 et al., at 12 (filed Mar. 16, 2017). Instead, it is "requesting for the Commission and the Bureau to reach its decisions based on the facts presented and the governing legal authorities." *Id.* We have done precisely that regarding the matters addressed here. In any case, we also see no grounds for a finding of bias on the basis of Commissioner Pai's statements noting certain allegations against SIC, certain staff findings regarding SIC's expenses, and certain conduct related to Paniolo lease payments, the latter of which is not even at issue in this order. See *All Universal Service High-Cost Support Recipients Are Reminded That Support Must Be Used For Its Intended Purpose*, Public Notice, 30 FCC Rcd 11821, 11825-26 (2015) (statement of Commissioner Ajit Pai). Neither those statements, his call for an investigation of SIC, nor his characterization of the Commission's past lack of greater scrutiny of SIC as "a disgrace," *id.*, demonstrate that Commissioner Pai had "adjudged the facts as well as the law of a particular case in advance of hearing it." *Cinderella Career & Finishing Schs., Inc. v. FTC*, 425 F.2d 583, 591 (D.C. Cir. 1970).

APPENDIX A

DEFICIENCY OF SIC’S SHOWING TO SUPPORT TREATMENT OF COST AS CATEGORY 1 FOR ROUTES BETWEEN CENTRAL OFFICES

Disputed Route	SIC’s Approach	Reasons Record Fails to Support SIC’s Approach
██████████ ██████████████████ ██████████	Treated a portion of route cost as CAT 1, based on SIC’s Route and Section Allocation. ¹	SIC’s wire center report reflects these two locations as exchanges. ² No portion of the route reflects facilities between a local central office and subscriber premises (CAT 1).
██████████ ██████████████████ ██████████	Treated a portion of route cost as CAT 1, based on SIC’s Route and Section Allocation. ³	The route reflects that these facilities connect a SIC exchange/central office to a Hawaiian Telecom central office. ⁴ No portion of the route reflects facilities between a local central office and subscriber premises (CAT 1).
██████████ ██████████████████ ██████████	Treated a portion of route cost as CAT 1, based on SIC’s Route and Section Allocation. ⁵	The route reflects that these facilities connect a SIC exchange/central office to a Hawaiian Telecom central office. ⁶ No portion of the route reflects facilities between a local central office and subscriber premises (CAT 1).
██████████ ██████████████████ ██████████	Treated a portion of route cost as CAT 1, based on SIC’s Route and Section Allocation. ⁷	The route reflects inter-island leased lines from a SIC exchange/central office to a Hawaiian Telecom central office. ⁸ No portion of the route reflects facilities between a local central office and subscriber premises (CAT 1).
██████████ ██████████████████ ██████████	Treated a portion of route cost as CAT 1, based on SIC’s Route and Section Allocation. ⁹	The route reflects inter-island leased lines from a SIC exchange/central office to a Hawaiian Telecom central office. ¹⁰ No portion of the route reflects facilities between a local central office and subscriber premises (CAT 1).

¹ See USAC Final Report at 122 (showing that SIC treated ██████████ of the costs of this route as CAT 1).

² *Id.* at 134 (showing the ██████████ exchanges).

³ *Id.* at Exh. C (showing that SIC treated as CAT 1 costs of this route ranging from ██████████).

⁴ *Id.* at 140 (showing the ██████████ SIC central office and ██████████ Hawaiian Telecom central office).

⁵ *Id.* at Exh. C (showing that SIC treated as CAT 1 costs of this route ranging from ██████████).

⁶ *Id.* at 139 (showing the ██████████ SIC central office and ██████████ Hawaiian Telecom central office).

⁷ *Id.* at Exh. C (showing that SIC treated as CAT 1 costs of this route ranging from ██████████).

⁸ *Id.* at 141 (showing the ██████████, Hawaii SIC central office and ██████████, Oahu Hawaiian Telecom central office).

⁹ *Id.* at Exh. C (showing that SIC treated as CAT 1 costs of this route ranging from ██████████).

¹⁰ *Id.* at 141 (showing the ██████████, Hawaii SIC central office and ██████████, Oahu Hawaiian Telecom central office).

Disputed Route	SIC's Approach	Reasons Record Fails to Support SIC's Approach
[REDACTED]	Treated a portion of route cost as CAT 1, based on SIC's Route and Section Allocation. ¹¹	The route reflects inter-island leased lines from a SIC exchange/central office to a Hawaiian Telecom central office. ¹² No portion of the route reflects facilities between a local central office and subscriber premises (CAT 1).
[REDACTED]	Treated a portion of route cost as CAT 1, based on SIC's Route and Section Allocation. ¹³	The route reflects inter-island leased lines from a SIC exchange/central office to a Hawaiian Telecom central office. ¹⁴ No portion of the route reflects facilities between a local central office and subscriber premises (CAT 1).
[REDACTED]	Treated a portion of route cost as CAT 1, based on SIC's Route and Section Allocation. ¹⁵	The route reflects inter-island leased lines from a SIC exchange/central office to a Hawaiian Telecom central office. ¹⁶ No portion of the route reflects facilities between a local central office and subscriber premises (CAT 1).
[REDACTED]	Directly assigned the full cost of these facilities as CAT 1. ¹⁷	The route is leased, going from one SIC exchange/central office to another SIC exchange/central office. ¹⁸ The facilities thus do not carry local traffic to SIC subscribers (since such subscribers are not found outside SIC's study area). ¹⁹ SIC's bare assertion that "this route carries only local traffic" is not credible. ²⁰ Likewise, this route cannot have been one from which DLCs equivalent to last-mile facilities branched off.
[REDACTED]	Treated a portion of route cost as CAT 1, based on SIC's Route and Section Allocation. ²¹	The route is leased, going from one SIC exchange/central office to another SIC exchange/central office. ²² No portion of the route reflects facilities between a local central office and subscriber premises (CAT

¹¹ *Id.* at Exh. C (showing that SIC treated as CAT 1 costs of this route ranging from [REDACTED]).

¹² *Id.* at 141 (showing the [REDACTED], Maui SIC exchange and [REDACTED], Oahu Hawaiian Telecom central office).

¹³ *Id.* at Exh. C (showing that SIC treated as CAT 1 costs of this route ranging from [REDACTED]).

¹⁴ *Id.* at 141 (showing the [REDACTED], Hawaii SIC exchange and [REDACTED], Oahu Hawaiian Telecom central office).

¹⁵ *Id.* at Exh. C (showing that SIC treated as CAT 1 costs of this route ranging from [REDACTED]).

¹⁶ *Id.* at 141 (showing the [REDACTED], Kauai SIC exchange and [REDACTED], Oahu Hawaiian Telecom central office).

¹⁷ *Id.* at Exh. C (showing that SIC treated as CAT 1 costs of this route ranging from [REDACTED]).

¹⁸ *Id.* at 91 (showing the [REDACTED], Oahu SIC exchange and [REDACTED], Oahu leased location).

¹⁹ *Id.* at 91 ([REDACTED] Route Map).

²⁰ *Id.* at 115.

²¹ *Id.* at Exh. C (showing that SIC treated as CAT 1 costs of this route ranging from [REDACTED]).

Disputed Route	SIC's Approach	Reasons Record Fails to Support SIC's Approach
		1).
██████████ ██████████	Treated a portion of route cost as CAT 1, based on SIC's Route and Section Allocation. ²³	The route reflects that these facilities connect a Hawaiian Telecom central office (██████████) to a SIC exchange/central office (██████████). Further, SIC states this route is "Leased T1s to ██████████ switch". ²⁴ No portion of the route reflects facilities between a local central office and subscriber premises (CAT 1).
██████████ ██████████ ██████████	Treated a portion of the route cost of these facilities as CAT 1 based on SIC's Route and Section Allocation. ²⁵	From the route map that SIC provided, we know there are no facilities branching off from this route that deliver traffic to subscribers. ²⁶ No portion of the route reflects facilities between a local central office and subscriber premises (CAT 1).
██████████ ██████████ ██████████	Directly assigned the full cost of these facilities as CAT 1. ²⁷	The route reflects that these facilities connect a SIC exchange/central office to a Hawaiian Telecom central office. ²⁸ No portion of the route reflects facilities between a local central office and subscriber premises (CAT 1).
██████████ ██████████	Directly assigned the full cost of these facilities as CAT 1. ²⁹	The route reflects that these facilities connect a SIC exchange/central office to a Hawaiian Telecom central office. ³⁰ No portion of the route reflects facilities between a local central office and subscriber premises (CAT 1).
██████████ ██████████ ██████████	Treated a portion of the route cost of these facilities as CAT 1, based on SIC's Route and Section Allocation. ³¹	The route is leased, going from a SIC exchange/central office to a host switch (CAT 4) ³² No portion of the route reflects facilities between a local central office and subscriber premises (CAT 1).
██████████	Treated a portion of	The route is leased, going from a SIC

(Continued from previous page) _____

²² *Id.* at 139 (showing the ██████████ and ██████████ exchanges).

²³ *Id.* at Exh. C (showing that SIC treated as CAT 1 costs of this route ranging from ██████████).

²⁴ *Id.* at 140 (showing the ██████████ Hawaiian Telecom central office to ██████████ SIC exchange).

²⁵ *Id.* at 136 (showing that SIC treated ██████████ of the costs of this route as CAT 1).

²⁶ *Id.* at 89 (██████████ Route Map).

²⁷ *Id.* at 137 (showing that SIC treated ██████████ of the costs of this route as CAT 1).

²⁸ *Id.* at 136 (showing the ██████████, SIC exchange and ██████████ Hawaiian Telecom central office).

²⁹ *Id.* at 118 (showing that SIC treated ██████████ of the costs of this route as CAT 1).

³⁰ *Id.* at 141 (showing the ██████████ SIC exchange and ██████████ Hawaiian Telecom central office).

³¹ *Id.* at Exh. C (showing that SIC treated as CAT 1 costs of this route ranging from ██████████).

³² *Id.* at 122 (reflecting this route going to a host switch).

Disputed Route	SIC's Approach	Reasons Record Fails to Support SIC's Approach
██████████ ██████████████████ ██████████	the route cost of these facilities as CAT 1, based on SIC's Route and Section Allocation. ³³	exchange/central office to another SIC central office. ³⁴ No portion of the route reflects facilities between a local central office and subscriber premises (CAT 1).
██████████████████ ██████████████████ ██████████████████	Directly assigned the full cost of these facilities as CAT 1. ³⁵	The route is leased, going from a SIC exchange/central office to a host switch (CAT 4). ³⁶ No portion of the route reflects facilities between a local central office and subscriber premises (CAT 1).
██████████████████ ██████████████████ ██████████████████	Treated a portion of the route cost of these facilities as CAT 1, based on SIC's Route and Section Allocation. ³⁷	The route is leased, going from a SIC exchange/central office to another SIC exchange/central office. ³⁸ No portion of the segment reflects facilities between a local central office and subscriber premises (CAT 1).
██████████████████ ██████████████████ ██████████	Directly assigned the full cost of these facilities as CAT 1. ³⁹	The route is leased, going from a SIC exchange/central office to a host switch (CAT 4). ⁴⁰ No portion of the segment reflects facilities between a local central office and subscriber premises (CAT 1).
██████████████████ ██████████████████ ██████████████████	Directly assigned the full cost of these facilities as CAT 1. ⁴¹	The route is leased, going from a SIC exchange/central office to a host switch (CAT 4). ⁴² No portion of the segment reflects facilities between a local central office and subscriber premises (CAT 1).
██████████████████ ██████████████████ ██████████████████	Directly assigned the full cost of these facilities as CAT 1. ⁴³	The route is leased, going from a SIC exchange/central office to a host switch (CAT 4). ⁴⁴ No portion of the segment reflects facilities between a local central office and subscriber premises (CAT 1).
██████████████████	Directly assigned the	The route is leased, going from a SIC

³³ *Id.* at Exh. C (showing that SIC treated as CAT 1 costs of this route ranging from ██████████).

³⁴ *Id.* at 91 (showing the ██████████ SIC exchange and ██████████ SIC central office).

³⁵ *Id.* at Exh. C (showing that SIC treated as CAT 1 costs of this route ranging from ██████████).

³⁶ *Id.* at 122 (reflecting this route going to a host switch).

³⁷ *Id.* at Exh. C (showing that SIC treated as CAT 1 costs of this route ranging from ██████████).

³⁸ *Id.* at 91 (showing the ██████████ and ██████████ SIC exchanges).

³⁹ *Id.* at Exh. C (showing that SIC treated as CAT 1 costs of this route ranging from ██████████).

⁴⁰ *Id.* at 122 (reflecting this route going to a host switch).

⁴¹ *Id.* at Exh. C (showing that SIC treated as CAT 1 costs of this route ranging from ██████████).

⁴² *Id.* at 122 (reflecting this route going to a host switch).

⁴³ *Id.* at Exh. C (showing that SIC treated as CAT 1 costs of this route ranging from ██████████).

⁴⁴ *Id.* at 122 (reflecting this route going to a host switch).

Disputed Route	SIC's Approach	Reasons Record Fails to Support SIC's Approach
██████████ ██████████	full cost of these facilities as CAT 1. ⁴⁵	exchange/central office to a host switch (CAT 4). ⁴⁶ No portion of the segment reflects facilities between a local central office and subscriber premises (CAT 1).
██████████ ██████████ ██████████	Directly assigned the full cost of these facilities as CAT 1. ⁴⁷	The route reflects that these facilities connect a SIC central office to a Hawaiian Telecom central office. ⁴⁸ No portion of the route reflects facilities between a local central office and subscriber premises (CAT 1).
██████████ ██████████ ██████████	Directly assigned the full cost of these facilities as CAT 1. ⁴⁹	The route is leased, going from one SIC exchange/central office to another SIC central office. Further, SIC states that these facilities are back up leased circuits. ⁵⁰ No portion of the route reflects facilities between a local central office and subscriber premises (CAT 1).
██████████ ██████████ ██████████	Treated a portion of the route cost of these facilities as CAT 1, based on SIC's Route and Section Allocation. ⁵¹	The route is leased, going from a SIC exchange/central office to a host switch (CAT 4). ⁵² No portion of the route reflects facilities between a local central office and subscriber premises (CAT 1).
██████████ ██████████	Treated a portion of the route cost of these facilities as CAT 1, based on SIC's Route and Section Allocation. ⁵³	The route is leased, going from a SIC exchange/central office to a host switch (CAT 4). Also see route ██████ were there's no subscriber from 2004-2006 ⁵⁴ No portion of the route reflects facilities between a local central office and subscriber premises (CAT 1).
██████████ ██████████ ██████████	Directly assigned the full cost of these facilities as CAT 1. ⁵⁵	SIC states that these facilities are backup circuits. Also see route ██████ were there's no subscriber in 2010. ⁵⁶ No portion of the route

⁴⁵ *Id.* at Exh. C (showing that SIC treated as CAT 1 costs of this route ranging from ██████████).

⁴⁶ *Id.* at 122 (reflecting this route going to a host switch).

⁴⁷ *Id.* at 118 (showing that SIC treated ██████ of the costs of this route as CAT 1).

⁴⁸ *Id.* at 138 (showing the ██████ SIC central office and ██████ Hawaiian Telecom central office).

⁴⁹ *Id.* at Exh. C (showing that SIC treated as CAT 1 costs of this route ranging from ██████████).

⁵⁰ *Id.* at 125 (showing the ██████ SIC exchange and ██████ SIC central office).

⁵¹ *Id.* at Exh. C (showing that SIC treated as CAT 1 costs of this route ranging from ██████████).

⁵² *Id.* at 125 (reflecting this route going to a host switch).

⁵³ *Id.* at Exh. C (showing that SIC treated as CAT 1 costs of this route ranging from ██████████).

⁵⁴ *Id.* at 124 (reflecting this route going to a host switch).

⁵⁵ *Id.* at Exh. C (showing that SIC treated as CAT 1 costs of this route ranging from ██████████).

⁵⁶ *Id.* at 124 (reflecting this route going to backup circuits).

Disputed Route	SIC's Approach	Reasons Record Fails to Support SIC's Approach
		reflects facilities between a local central office and subscriber premises (CAT 1).
<p>██████████ ██████████</p>	<p>Treated a portion of the route cost of these facilities as CAT 1, based on SIC's Route and Section Allocation.⁵⁷</p>	<p>SIC's supporting documentation states that this "route is used for Local Interconnection with Hawaiian Tel."⁵⁸ That explanation is not supported. SIC refers the reader to a page of the USAC Final Report that does not show Route ██████.⁵⁹ And the route map that SIC provided with its response to the USAC Final Report for the island where Route ██████ is located (██████) shows only Route ██████.⁶⁰ SIC's materials thus do not establish that Route ██████ was used to connect to a Hawaiian Telecom central office.</p>

⁵⁷ *Id.* at Exh. C (showing that SIC treated as CAT 1 costs of this route ranging from ██████████).

⁵⁸ *Id.*

⁵⁹ *See id.* (citing page 139 of the USAC Final Report (Exhibit F, Page 6), which shows Routes ██████████ not Route ██████). *See also id.* at 89 (showing ██████████ SIC exchange to ██████████ central office).

⁶⁰ *Id.* at 137.