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

In the Matter of	)	
	)	
Sandwich Isles Communications, Inc.,	)	File No.: EB-IHD-15-00019603
Waimana Enterprises, Inc.,	)	NAL/Acct. No.: 201732080004
Albert S.N. Hee	)	FRN: 0001514090

FORFEITURE ORDER

Adopted: September 30, 2020 **Released: October 1, 2020**

By the Commission: Chairman Pai issuing a statement

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Heading Paragraph #

I. INTRODUCTION

1. The Commission's Universal Service Fund is essential to delivering on the Commission's top priority, closing the digital divide. High-cost Universal Service Fund support ensures that consumers in rural, insular, and high-cost areas have access to modern communications services at rates that are reasonably comparable to those charged in urban areas of the country. Through one of the Fund's mechanisms, certain small, rural telephone companies, known as rate-of-return carriers, receive high-cost universal service support to help defray certain eligible costs of building and maintaining telecommunications networks serving rural and high-cost areas. The Commission has an ongoing obligation to protect the Fund from waste, fraud, and abuse, and to ensure that universal service support is used for its intended purposes.

2. From 2002 through 2015, Sandwich Isles Communications, Inc. (SIC), a rate-of-return carrier participating in the high-cost program, received more than $27 million in high-cost support to which it was not entitled. SIC's holding company, Waimana Enterprises, Inc., and Albert S.N. Hee, who was Waimana's sole shareholder for most relevant times and held numerous positions within SIC, Waimana, and other affiliated companies he controlled, engaged in a years-long scheme to enrich Hee and his family by falsely reporting numerous personal expenses for Hee and his immediate family members as regulated costs eligible for universal service high-cost support. On December 5, 2016, the Commission released a Notice of Apparent Liability for Forfeiture[1] against SIC for (1) failing to keep its accounts, records, and memoranda in the manner prescribed by the Commission under its rules, in violation of section 220 of the Communications Act of 1934, as amended (the Act),[2] and various provisions in Parts 32 and 36 of the Commission's rules; and (2) submitting and certifying inaccurate data in annual cost studies that were used in the calculation of SIC's high-cost support, in violation of sections 69.601(c) and 69.605(a) of the Commission's rules.[3] The proposed forfeiture in the *SIC NAL* was based upon the inaccurate cost studies submitted by SIC to the Commission in cost-study years 2010, 2011, 2012, and 2013.[4] In the *NAL,* the Commission found that SIC, Waimana, and Hee were apparently jointly and severally liable for the proposed penalty.[5]

3. SIC, Waimana, and Hee filed responses to the *SIC NAL*.[6] After reviewing each response, we find no basis to cancel, withdraw, or reduce the proposed penalty. Accordingly, as the Commission proposed in the *SIC NAL*, we impose a forfeiture penalty of $49,598,448 against SIC, jointly and

[1] *Sandwich Isles Communications, Inc., Waimana Enterprises, Inc., Albert S.N. Hee*, Notice of Apparent Liability for Forfeiture and Order, 31 FCC Rcd 12947, 12953, para. 12 (Dec. 5, 2016) (*SIC NAL*).

[2] 47 U.S.C. § 220. Pursuant to section 220 of the Act, the Commission may "prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers . . . including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys" and "shall require that each common carrier shall maintain a system of accounting methods, procedures, and techniques . . . which shall ensure a proper allocation of all costs to and among telecommunications services, facilities, and products . . ." *Id*. § 220(a)(1), (2).

[3] *SIC NAL*, 31 FCC Rcd at 12963-66, paras. 46-59. *See also* 47 CFR §§ 69.601(c), 69.605(a).

[4] *SIC NAL*, 31 FCC Rcd at 12972-73, para. 80.

[5] *Id.*

[6] Sandwich Isles Communications, Inc., Comments and Response to Notice of Apparent Liability and Forfeiture Order (FCC Order 16-165) and FCC Order 16-167 (Feb. 6, 2017) (SIC NAL Response); Waimana Enterprises, Inc., Comments to Notice of Apparent Liability for Forfeiture and Order (Feb. 3, 2017) (Waimana NAL Response); and Albert S.N. Hee, Comments to Notice of Apparent Liability for Forfeiture and Order (Feb. 3, 2017) (Hee NAL Response). The SIC NAL Response was a combined response to the *SIC NAL* and a separate Commission order issued the same day. *Sandwich Isles Communications, Inc*., Order, 31 FCC Rcd 12999 (2016) (*SIC Improper Payments Order*), *Recons. denied*, *Sandwich Isles Communications, Inc.,* Order on Reconsideration, 34 FCC Rcd 577 (2019) (*SIC Reconsideration Order*), *appeal dismissed*, *Sandwich Isles Communications, Inc. v. FCC*, No. 19-1056, 2019 WL 2564087 (D.C. Cir. May 17, 2019).

severally with Waimana and Hee. The forfeiture we impose here reflects the extraordinary gravity and extent of SIC's willful and fraudulent violations and furthers the Commission's goals of ensuring accountability for past conduct, deterring future violations, promoting compliance with our rules, and protecting the integrity of the Universal Service Fund.

II. BACKGROUND

A. Regulatory Background

4. In the context of rate-of-return regulation, the Commission seeks to ensure that carriers receiving rate-of-return universal service support obtain revenues for providing regulated interstate services at levels that allow carriers to recover their associated costs and earn a specific return on their regulated investment.[7] However, the same network facilities used to provide services that are compensable through interstate rate and support mechanisms are also used to provide nonregulated, non-compensable, and intrastate services. 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.[8] As relevant here, rate-of-return carriers must comply with Parts 32, 36, 54, 64, and 69 of the Commission's rules.[9]

5. Additionally, in order to determine the appropriate investments and expenses to be included in a rate-of-return carrier's base rate, carriers may only recover costs that are "used and useful" to providing the regulated service.[10] In determining what is "used and useful," the Commission first considers the need to compensate the providers for the use of their property and the expenses incurred in providing regulated service.[11] The Commission then considers the equitable principle that ratepayers should pay a return only on investments that can be shown to benefit them; thus, it considers whether the expense was necessary to the provision of interstate telecommunications services.[12] Finally, the Commission considers whether a carrier's investments and expenses were prudent, rather than

[7] *See SIC Reconsideration Order*, 34 FCC Rcd at 579, para. 6; *see also 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) (describing the Commission's historical efforts to determine a fair overall rate of return for AT&T).

[8] *See* 47 CFR pts. 32, 36, 54, 64, 69.

[9] *Id.*; *SIC Improper Payments Order*, 31 FCC Rcd at 13001, para. 4; *SIC Reconsideration Order*, 34 FCC Rcd at 582-83, para. 12.

[10] *See SIC Reconsideration Order*, 34 FCC Rcd at 580, para. 7. The Commission has recognized that incumbent telephone companies expend large amounts of capital investment costs. *See Moultrie Independent Telephone Company et al.,* Order, 16 FCC Rcd 18242, 18247, para. 11 (2001). A carrier's revenue requirement is the amount of money needed to cover the company's operating and capital costs of providing service to its customers. *See* 47 CFR § 69.2(c), (o), (ff). In evaluating whether particular costs can be included in a carrier's revenue requirement, the Commission allows recovery through regulated rates only when a cost is "used and useful" in the provision of regulated services—specifically, only if it is "necessary to the efficient conduct of a utility's business, presently or within a reasonable future period." *American Tel. and Tel. Co*., Phase II Final Decision and Order, 64 F.C.C. 2d 1, 38, para. 111 (1977) (*AT&T Phase II Order*). *See also SIC Improper Payments Order*, 31 FCC Rcd at 13029, para. 98 (stating that "[t]he 'used and useful' principles serve as a protection against inefficiencies and abuse.").

[11] *See AT&T Phase II Order*, 64 F.C.C. 2d at 38, para. 111.

[12] *See id*. at 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.").

excessive,[13] and whether the investment will be put in use and begin to benefit ratepayers within a reasonable period of time.[14] 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."[15]

6. It is a longstanding requirement that rate-of-return carriers must retain records to substantiate their regulatory cost accounting to receive high-cost support.[16] Under Part 32 of the Commission's rules, rate-of-return carriers record their investments, expenses, and other financial activity in accordance with the uniform system of accounts (USOA).[17] Among the categories of accounts, the Commission includes accounts for "[t]elecommunications plant," which represents an economic resource that "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."[18] The USOA divides telecommunications plant among six accounts, including, as relevant here, an account for "telecommunications plant in service."[19] The component costs of telecommunications plant in service are further allocated across several accounts,[20] including account 2410 for cable and wire facilities (C&WF).[21] C&WF includes the following types of telecommunications plant in service: poles and antenna supporting structures, aerial cable, underground cable, buried cable, submarine cable, deep sea cable, intrabuilding network cable, aerial wire, and conduit systems.[22]

7. Rate-of-return carriers must directly assign or allocate investments, expenses, and revenues between regulated and nonregulated activities using the rules contained in Part 64 (Cost Allocations),[23] and must separate the regulated investments, expenses, and revenue between the intrastate

[13] *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 F.C.C. Rcd 5693, 5695, para. 17 (1990).

[14] *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.").

[15] 47 U.S.C. § 254(e). *See also* 47 CFR § 54.7; *SIC Reconsideration Order*, 34 FCC Rcd at 581-82, para. 10. High-cost support is intended to ensure the availability of telecommunications and information services at rates that are "reasonably comparable" to rates charged for similar services in urban areas. 47 U.S.C. § 254(b)(3). *See, e.g.*, *Connect America Fund et al.,* WC Docket No. 10-90 et al., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4573, para. 50 (2011).

[16] *See, e.g.,* 47 CFR pt. 32.

[17] *See generally* 47 CFR pt. 32. In its evaluation of the facts and circumstances relevant to SIC, the Commission provided an extensive review of the relevant regulatory framework. *See SIC Improper Payments Order*, 31 FCC Rcd at 13000-04, paras. 4-15, Appx. B; *SIC Reconsideration Order*, 34 FCC Rcd at 579-91, paras. 6-24.

[18] 47 CFR § 32.2000(c)(1).

[19] 47 CFR § 32.2001.

[20] *See id.*

[21] 47 CFR § 32.2410.

[22] *See* 47 CFR § 36.151(a).

[23] *See* 47 CFR § 64.901 *et seq*. Specifically, when a rate-of-return carrier subject to the Act uses the same facilities to provide both telephone service and a nonregulated service, such as cable, the carrier must allocate the costs of such facilities between these services. *See id*. § 64.901(a)-(b); *see also* 47 CFR § 32.14(a) ("regulated accounts shall be interpreted to include the investments, revenues and expenses associated with those telecommunications products and services to which the tariff filing requirements contained in Title II of the Communications Act of 1934 . . . are applied"); 47 CFR § 32.23 (describing nonregulated activities).

and interstate jurisdictions in accordance with Part 36 (Jurisdictional Separations).[24] Jurisdictional Separations are intended to apportion costs among categories by actual use or by direct assignment.[25] The Part 36 Jurisdictional Separations rules subdivide facilities encompassed in account 2410 (C&WF) into four categories: Category 1 (Exchange Line C&WF Excluding Wideband);[26] Category 2 (Wideband and Exchange Trunk C&WF);[27] Category 3 (Interexchange C&WF);[28] and Category 4 (Host/Remote Message C&WF).[29] As relevant here, Category 1 C&WF includes facilities between local central offices and subscriber premises used for, among other things, message telephone, private line, and local channels.[30] Category 1 C&WF is further subdivided into three subcategories based on the calculated average cost per working loop and the number of working loops in each subcategory:[31] Subcategory 1.1 – intrastate private lines and intrastate wide area telephone service (WATS) lines,[32] Subcategory 1.2 – interstate private lines and interstate WATS lines,[33] and Subcategory 1.3 – subscriber or common lines jointly used for local exchange service and intrastate and interstate interexchange services.[34]

[24] *See* 47 CFR pt. 36. The separations procedures set forth in Part 36 "are designed primarily for the allocation of property costs, revenues, expenses, taxes, and reserves between state and interstate jurisdictions." 47 CFR § 36.1(b). The jurisdictional separations process begins with the USOA, under Part 32 of the Commission's rules. 47 CFR pt. 32. *See also* 47 CFR § 36.1(f). For purposes of jurisdictional separation, "the Commission distinguishes traffic sensitive costs from non-traffic sensitive costs. . . . [T]hese terms refer respectively to exchange company costs that vary with the extent of phone usage and those that do not." *City of Brookings Municipal Telephone Co. v. FCC*, 822 F.2d 1153, 1156 (D.C. Cir. 1987).

[25] 47 CFR § 36.1(c) ("The first step is the assignment of the cost of the plant to categories. The basis for making this assignment is the identification of the plant assignable to each category and the determination of the cost of the plant so identified"). Sections 36.151 through 36.157 contain explanations about the separations procedures for C&WF. "Where an entire cable or aerial wire is assignable to one category, its cost and quantity are, where practicable, directly assigned," otherwise, segregation of C&WF to the appropriate categories is based on relative use. 47 CFR § 36.153(a). *See also id.* § 36.153(a)(1)-(3), (b)-(d).

[26] 47 CFR § 36.152(a)(1).

[27] *Id*. § 36.152(a)(2).

[28] *Id*. § 36.152(b).

[29] *Id*. § 36.152(c).

[30] *See* 47 CFR § 36.152(a)(1). Relevant to cable and facilities categories are central offices and exchanges. 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." 47 CFR pt. 36, Appx. (defining "central office"). An exchange consists of one or more central offices and their associated facilities, and a call between any two points within an exchange area is a local call. *See SIC Reconsideration Order*, 34 FCC Rcd at 587, para. 17. Categories 1, 2, and 4 refer to central office(s), and categories 1, 2 and 3 refer to exchanges. *Id.* at para. 17, n.71.

[31] 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." 47 CFR pt. 36, Appx. 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]." 47 CFR § 36.154(a); *SIC Reconsideration Order*, 34 FCC Rcd at 587-88, para. 19.

[32] Subcategory 1.1 also includes private lines and WATS lines that carry both intrastate and interstate traffic if the interstate traffic on the line constitutes 10% or less of the total traffic on the line. 47 CFR § 36.154(a).

[33] Subcategory 1.2 also includes private lines and WATS lines that carry both intrastate and interstate traffic where the interstate traffic on the line constitutes more than 10% of the total traffic. *Id*.

[34] *Id*.

8. Under the Part 54 program rules, high-cost loop support (HCLS)[35] provides support for some loop costs that otherwise would be recovered in the intrastate jurisdiction, while interstate common line support (ICLS) provides support for that portion of the interstate common line revenue requirement that is not recovered from end-users through subscriber line charges.[36]

9. Rate-of-return carriers are required to use Part 69 of the Commission's rules to determine their interstate rates and other universal service support.[37] Consistent with Part 69, carriers must provide the National Exchange Carrier Association (NECA)[38] with cost-study data for each area in which the carrier operates;[39] NECA then transmits this cost study data to the Universal Service Administrative Company (USAC)[40] to determine the HCLS payments for eligible carriers.[41] In the cost study, carriers must include certain costs, such as investments and expenses, as well as the number of working loops in the study area.[42] Carriers and their agents submitting the information must certify that the information

[35] Rate-of-return carriers receive HCLS based on their unseparated loop costs, depending on the number of working loops they serve. *See* 47 CFR §§ 54.1301-54.1310; *see also Connect America Fund et al.,* WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17743, para. 216, n.347 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

[36] *See* 47 CFR §§ 54.901-54.904 (2015). The Part 54 rules containing the method for calculating HCLS and ICLS have been amended through subsequent *Connect America Fund* orders, but here we apply the rules in place at the time of SIC's relevant conduct. *See Connect America Fund et al.,* Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3247-50, Appx. A (Mar. 30, 2016) *(March 2016 CAF Order)*; *Connect America Fund et al.*, Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, 33 FCC Rcd 2990, 3057-59, Appx. A (Mar. 23, 2018) (*March 2018 CAF Order*); *Connect America Fund et al.*, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 33 FCC Rcd 11893, 11960-66, Appx. A (Dec. 13, 2018); *see also SIC Reconsideration Order*, 34 FCC Rcd at 589, para. 21.

[37] Among other things, Part 69 establishes the rate structure for access charges to be paid by interexchange carriers to local exchange carriers for the origination and termination of long-distance calls and governs how rate-of-return local exchange carriers calculate their access charge rates. *See* 47 CFR § 69.101, *et seq*.

[38] NECA is an intra-industry, not-for-profit corporation charged with administering the Commission's interstate access charge system and associated revenue pools. *See* https://www.neca.org/About_Us.aspx (last visited July 22, 2019). Pursuant to the Commission's rules, NECA is responsible for, among other duties, collecting cost data, including revenue, expense, and investment data, from all pooling carriers to develop specific revenue requirements in order to recover incurred costs allocated to the interstate jurisdiction under the Commission's Part 36 jurisdictional rules. *See* 47 CFR § 69.601(a).

[39] Carriers are required to calculate cost study data, including related subscriber data, as of December 31st. *See* 47 CFR § 54.1305(b)-(j). The cost study data is due the following July 31st. To receive high-cost support for Category 1 C&WF, the facilities must be "working loops" (*i.e*., serving subscribers) as of December 31 of the year for which the carrier is seeking high-cost support. *See* 47 CFR § 54.1305(i); *see also SIC Improper Payments Order*, 31 FCC Rcd at 13020, para. 69.

[40] USAC is the administrator of the federal universal service support mechanisms; it collects and distributes universal service funds. *See* 47 CFR §§ 54.701(a), 54.702(b).

[41] NECA analyzes cost data, performs certain calculations, and then transmits the information to USAC for use in determining HCLS payments to eligible carriers. *See* 47 CFR § 54.1307; *see also* 47 CFR § 69.605(a) ("Access revenues and cost data shall be reported by participants in association tariffs to the association for computation of monthly pool revenues distributions . . . .").

[42] *See* 47 CFR § 54.1305(b)-(j); *see also SIC Improper Payments Order*, 31 FCC Rcd at 13019-20, paras. 68-69; *SIC Reconsideration Order*, 34 FCC Rcd at 591, para. 24. As previously codified under Part 36, carriers that serve high-cost areas were permitted to allocate local loop costs to the interstate jurisdiction through a so-called "Expense Adjustment" and to recover those costs through the HCLS mechanism. *See* 47 CFR §§ 36.601-641 (2014). To determine the expense adjustment, each carrier must provide NECA with certain information for each study area in (continued….)

contained therein is accurate to the best of the certifying employee's or officer's knowledge.[43] Pursuant to section 69.601(c), carriers must certify that their data submissions to NECA "have been examined and reviewed and are complete, accurate, and consistent with the rules of the Federal Communications Commission."[44] From at least 2000 through 2013,[45] SIC submitted annual cost studies to NECA, which USAC used to determine SIC's annual HCLS payments.[46]

B. Procedural Background

10. *Albert Hee's criminal prosecution.* The investigation that resulted in the *SIC NAL* began in 2015, following the criminal tax fraud conviction of Albert Hee. On March 25, 2015, a federal grand jury sitting in the District of Hawaii charged Hee with six counts of criminal tax fraud and one count of corruptly impeding the administration of the internal revenue laws in violation of Title 26, United States Code, Sections 7212(a) and 7206(1), respectively.[47] On July 13, 2015, Hee was convicted on all counts, and on January 6, 2016, was sentenced to 46 months in federal prison.

11. During an 11-day trial by jury, the United States presented testimonial and documentary evidence that Hee directed and authorized Waimana, as well as its subsidiaries, to use corporate funds to pay personal expenses for his benefit and that of his family, from 2002 through 2013.[48] For example, from at least 2003 through 2012, Hee approved payments to his personal masseuse totaling more than $90,000 for personal massages and directed those payments to be recorded as "consulting services."[49] Hee also directed Waimana and its affiliates to reimburse him for cash advances, meals, and personal

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which the carrier operates. *See* 47 CFR § 54.1305(a). In 2014, the relevant provisions contained in Part 36 were moved to Part 54 without substantive change. *See Connect America Fund et al.*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 7051, 7169, para. 58, Appx. A (2014). The Expense Adjustment is currently codified at 47 CFR § 54.1310.

[43] 47 CFR § 69.601(c) (requiring that an officer or employee of the carrier must "certify that the data have been examined and reviewed and are complete, accurate, and consistent with the rules of the Federal Communications Commission.").

[44] *Id.* ("Persons making willful false statements in this data submission can be punished by fine or imprisonment under the provisions of the U.S. Code, Title 18, Section 1001.").

[45] Recipients of high-cost support receive support with a two-year time delay. Support is calculated for an entire year and submitted to NECA in July of the following year; program support is then disbursed in the following year. *See SIC NAL*, 31 FCC Rcd at 12959, para. 33, n.110. Thus, with respect to cost studies submitted in 2000 to 2013, the Commission determined that SIC had improperly received payments from the Fund from 2002 to June 2015. *See SIC Improper Payments Order*, 31 FCC Rcd at 13000, paras. 1-2.

[46] For rate-of-return cost companies such as SIC, NECA performs a 26-step calculation, which determines a study area's total unseparated cost per loop, and ultimately the company's HCLS payments. *See SIC Improper Payments Order*, 31 FCC Rcd at 13004, para. 14. Cost companies are those companies that receive compensation for the use of their facilities in originating and terminating interstate services on the basis of their actual interstate costs of performing those functions. *In the Matter of Nat'l Exch. Carrier Ass'n, Inc. (NECA) Proposed Modifications to the 1997 Interstate Average Schedule Formulas*, 12 FCC Rcd 6793, 6793-94, para. 2 (1997). Average schedule companies receive support based on formulas developed based on the reported costs of the cost companies. *March 2016 CAF Order*, 31 FCC Rcd at 3215, para. 337, n.814 (2016).

[47] Second Superseding Indictment, *United States v. Albert S.N. Hee*, No. 14-cr-00826-SOM (D. Haw. June 23, 2015) (ECF No. 55). The original indictment of Albert Hee was filed on September 17, 2014, and the superseding indictment was filed on December 17, 2014.

[48] For an analysis of how these expenses relate to the improper payments received by SIC, see paras. 102-117 of the *SIC Improper Payments Order*, 31 FCC Rcd at 13030-34.

[49] *See*, *e.g.*, Gov't Ex. 4-101; Trial Tr. vol. 2, 54-58 (discussing payment of Albert Hee's masseuse as "consulting services").

travel; the reimbursed expenses totaled at least $119,909.19, which included $55,232.23 for family vacations to France and Switzerland in 2008, Disney World in 2010, Tahiti in 2010, and the island of Hawaii in 2011.[50]

12. The prosecution further provided evidence that Hee directed the use of corporate funds to benefit his family. For instance, he instructed his personal assistant to use company funds to make payments towards his three children's undergraduate and graduate education expenses and directed the payments to be recorded in corporate accounts as "educational expenses."[51] Waimana paid at least $630,103.39 towards the education of Hee's children.[52] In addition, Hee directed Waimana, in 2008, to purchase a $43,000 SUV and a home in California for $1.3 million, using funds from Waimana and an affiliate company,[53] near the university that two of his children attended.[54] While enrolled at the university, the two children lived in the home and used the SUV for their personal use.[55]

13. The evidence presented at trial also demonstrated that Hee instructed Nancy Henderson to place his wife and children on Waimana's payroll and dictated their salaries and benefits.[56] Business records show that Hee's wife and children were paid a total of $1,680,685.92 in salary and benefits from 2002 through 2012, despite evidence that Hee's wife only "occasionally" was in the Waimana office and "stayed at home" to care for her family, and testimony that the Hee children were attending school and employed elsewhere during this time.[57]

14. *USAC's investigation.* On August 5, 2015, based in part on the government's evidence at trial regarding the breadth of personal expenditures by Albert Hee through Waimana and other affiliated companies, the Commission's Wireline Competition Bureau (WCB) issued a memorandum to USAC, directing USAC's Internal Audit Division to investigate whether SIC received any improper payments from the federal high-cost support mechanism from 2002 to June 2015, the period during which much of Hee's criminal conduct occurred.[58] USAC focused on SIC's affiliated entities and transactions, SIC's corporate structure, and testing of data submitted for high-cost purposes affecting disbursements between 2002 to June 2015.[59] On February 5, 2016, USAC issued a preliminary report of the exceptions to the Commission's rules[60] noted during its investigation, and provided SIC with an opportunity to respond to the preliminary report's findings.[61] After its review of SIC's additional submissions, USAC amended its

[50] Trial Tr. vol. 8, 186, 194, 197.

[51] Trial Tr. vol. 2, 62, 67, 71-72, 79; Gov't Exs. 3-103, 3-104, 3-105, 3-106, 4-82L, 4-82P, 4-820.

[52] Gov't Exs. 3-91 through 3-106, 4-82E through 4-82G, 4-82I, 4-82L, 4-82O, through 4-82Q.

[53] Gov't Exs. 3-3, 4-82K, 4-100.

[54] Gov't. Ex. 3-3, 4-100.

[55] *See* Trial Tr. vol. 4, 14, 20-25, 27-28.

[56] Trial Tr. vol. 2, 53, 73.

[57] *See*, *e.g.*, Gov't Exs. 4-86 through 4-99; Trial Tr. vol. 2, 52; Trial Tr. vol. 4, 28, 31, 33, 34; Trial Tr. vol. 5, 16, 31-32.

[58] Among other things, WCB directed USAC to determine if there were sufficient assurances that future high-cost support amounts would be used consistent with the Commission's rules.

[59] USAC Memorandum to FCC, Investigation of Sandwich Isles Communications, Inc. at 1 (May 13, 2016) (Final USAC Report).

[60] "Exceptions" to the Commission's rules used herein refers to apparent noncompliance with the Commission's rules or program procedures.

[61] SIC submitted a response to the draft report on February 25, 2016. *See* Letter from James Arden Barnett, Jr., Esq., Counsel to Sandwich Isles Communications, Inc., to Wayne M. Scott, Vice President, Internal Audit Division, (continued….)

report and issued its final report on May 13, 2016.[62] The report identified eight exceptions that resulted in a combined $27,270,390 in overpayments from the Fund to SIC for cost study years 2002 through 2013.[63] On June 13, 2016, SIC provided WCB its comments on the Final USAC Report.[64]

15. USAC's Final Report found that the vast majority of the improper payments to SIC—more than $26 million from the Fund—related to SIC's misclassification of Category 1 C&WF in cost study years 2002 through 2013.[65] USAC determined that C&WF connecting central offices should not have been allocated to Category 1 and that SIC had thus classified certain interexchange C&WF as exchange C&WF in contravention of Section 36.152(a)(1), which provides that Category 1 facilities include facilities "between local central offices and subscriber premises."[66] USAC also used maps and subscriber data provided by SIC to identify multiple routes that were not served during certain years, including certain routes SIC conceded had not served subscribers.[67] USAC concluded that SIC had submitted Category 1 C&WF costs for facilities that did not actually serve any subscriber premises from at least 2004 through 2013.[68]

16. In addition, USAC found SIC paid grossly inflated management fees to Waimana.[69] USAC determined that Waimana had been leasing office space for approximately $ per month[70] but charged SIC $ per month from 2001 through 2013 for use of space that was shared by Waimana, SIC, ClearCom, and other corporate entities owned or controlled by Hee.[71] SIC was unable to provide a valid business purpose or relevant documentation to support the additional $ Waimana was billing SIC each month.[72] USAC found these payments, as well as other fees paid by SIC to Waimana for non-business related travel and Hee family personal expenses, could not be justified as reasonable or "used and useful" for the provision of regulated services as required by the Commission's affiliate transaction rules.[73] USAC also found that SIC paid a million bonus to Albert Hee for the period of 2009 through 2012, and failed to provide adequate documentation regarding how bonus

USAC, enclosing Sandwich Isles Communications, Inc. Response to Draft USAC Report (SIC Response to Draft USAC Report).

[62] *See generally* Final USAC Report. On the same day, WCB sent a letter to SIC's legal counsel noting that any comments to the Final USAC Report should be submitted to the Commission by June 13, 2016. *See* Letter from Mathew S. DelNero, Chief, Wireline Competition Bureau, FCC, to James Arden Barnett, Jr., Esq., Counsel to Sandwich Isles Communications, Inc. (May 13, 2016).

[63] USAC also reported that it was unable to make a determination regarding the validity of Waimana's management fees because SIC did not submit specific information demonstrating how the fees related to SIC's obligations under section 54.7 of the Commission's rules.

[64] *See* Response of Sandwich Isles Communications to the Universal Service Administrative Company Final Audit Report (June 13, 2016) (SIC Response to Final USAC Report). SIC sought modification and reduction of the total net monetary effect calculated by USAC.

[65] Final USAC Report at 4.

[66] *See id.* at 7, 13; 47 CFR § 36.152(a)(1).

[67] Final USAC Report at 7-15.

[68] *Id.* at 14-15.

[69] *Id*. at 16-27.

[70] The monthly lease cost included $21,252 for base rent and an estimated $24,000 per month for operating expenses. *Id*. at 17.

[71] *Id*.

[72] *Id.*

[73] *Id.* at 16-21.

amounts were determined.[74] USAC determined that the bonus payment was not reasonable and appeared excessive, noting that SIC had reported the bonus payment in certain regulated accounts, including account 6120 (general support account).[75]

17. Among other exceptions, USAC also found that SIC overstated costs related to abandoned water mains leased from its affiliate, ClearCom,[76] and that SIC failed to provide adequate information and documents related to its affiliates for certain years,[77] preventing USAC from fully assessing SIC's compliance with the Commission's affiliate transaction rules.[78]

18. On December 5, 2016, following review of the Final USAC Report and SIC's comments on the Report, the Commission released three orders related to SIC: (1) the *SIC Improper Payments Order*,[79] (2) the *SIC Paniolo Order*,[80] and (3) the *SIC NAL*.[81] In the *SIC Improper Payments Ord*er, the Commission determined that SIC improperly received payments from the high-cost program in the amount of $27,270,390 from 2002 to June 2015.[82] The Commission concluded, among other things, that SIC (1) misclassified its Category 1 C&WF costs for cost study years 2000 to 2013 (resulting in excessive high-cost support payments from 2002 to 2015);[83] (2) inflated its management fees; [84] and (3) violated the Commission's affiliate transaction rules.[85] The Commission directed SIC to resubmit its cost studies for costs incurred in 2013, 2014, and 2015,[86] and directed USAC to undertake an investigation of SIC's compliance with the affiliate transaction rules for calendar year 2016.[87] On January 4, 2017, SIC petitioned the Commission to reconsider and set aside the *SIC Improper Payments Order*.[88] SIC argued

[74] *Id*. at 47-48.

[75] *Id*. at 48. *See* 47 CFR §§ 32.6120 (providing information on general support expenses), 35.9999 *et seq.* (providing the instructions and the chart of accounts for expenses accounts).

[76] Final USAC Report at 27-31.

[77] *Id*. at 68.

[78] *Id*. at 70. *See also* 47 CFR § 32.27(c).

[79] *SIC Improper Payments Order*, 31 FCC Rcd 12999.

[80] *AT&T Application for Review, Sandwich Isles Communications, Inc. Petition for Declaratory Ruling*, WC Docket No. 09-133, Memorandum Opinion and Order, 31 FCC Rcd 12977 (Dec. 5, 2016) (*SIC Paniolo Order*).

[81] *SIC NAL*, 31 FCC Rcd 12947.

[82] *SIC Improper Payments Order*, 31 FCC Rcd at 13000, para. 2. The Commission concluded that, pursuant to 31 U.S.C. § 3701(b)(1)(C), the overpayments to SIC were recoverable and constituted a debt due and payable to the federal government immediately. *Id.* at 13044, para. 149.

[83] *Id*. at 13014, para. 51. The Commission concluded, because of the misclassification of Category 1 C&WF, SIC had received $26,320,270 in improper payments from the Fund. *See id*. The Commission considered SIC's claim that it was entitled to reimbursement from the Fund for its cost of building out the telecommunications infrastructure for homes that were planned to be built on the Hawaiian Home Lands. *See id*. at 13021-22, paras. 75-78.

[84] *Id*. at 13030-34, paras. 102-117.

[85] *Id*. at 13034-37, paras. 118-25.

[86] *Id*. at 13043, para. 148.

[87] *Id*. at para. 146.

[88] Petition for Reconsideration, *In the Matter of Sandwich Isles Communications, Inc.*, WC Docket No. 10-90 (filed Jan. 4, 2017), *available at* https://ecfsapi.fcc.gov/file/1010454375886/SIC%20%E2%80%93%20Petition%20for%20Reconsideration%20%E2%80%93%20Redacted%20.pdf (SIC Petition). SIC requested public comment to address the potential effects of the *SIC Improper Payments Order* on end-user subscribers. *Id.* at 1. SIC included with its petition a declaration by

(continued….)

that the Commission had ignored evidence submitted by SIC that demonstrated the maximum amount of the Category 1 overpayments was significantly less than the Commission had determined.[89] SIC further argued that the Commission: (1) failed to consider SIC's documentation;[90] (2) exceeded its authority; (3) applied inconsistent standards in the *SIC Improper Payments Order* and the *SIC NAL*; (4) applied the wrong test for plant in service for several routes; (5) applied affiliate transaction rules that do not exist; and (6) ignored the applicable four-year statute of limitations.[91] SIC stated that "equities and fundamental due process" mandated reconsideration.[92] SIC once again argued that it was only responsible for approximately $4.1 million in Category 1 misallocations.[93] The Commission denied SIC's petition for reconsideration on January 3, 2019, in whole, and reiterated the framework for high-cost support, noted SIC's non-compliance, and found SIC's arguments regarding the Commission's rules and the statute of limitations unpersuasive.[94] The D.C. Circuit subsequently dismissed SIC's petitions for review of the *SIC Reconsideration Order*.[95]

19. In the *SIC Paniolo Order*, the Commission reviewed WCB's prior declaratory judgment that a certain percentage of expenses related to undersea cable leased from Paniolo, LLC should be included in SIC's revenue requirement.[96] The Commission concluded that WCB erred by failing to provide for a timely review of the reasonableness of its predictive judgments,[97] and that the equities did not support continued inclusion of the disputed Paniolo lease expenses in SIC's revenue requirement.[98]

20. In the *SIC NAL*, the Commission found that SIC had apparently violated (1) section 220 of the Act by failing to keep its accounts, records, and memoranda in the manner prescribed by the Commission under its rules,[99] (2) Parts 32 and 36 of its rules by misclassifying its C&WF costs and

Jeffrey A. Smith, Chief Executive Officer for GVNW Consulting, Inc. (GVNW) (Smith Declaration), and a declaration by James A. Rennard, Division Manager for GVNW (Rennard Declaration). SIC stated that GVNW serves as its cost consultant and had assisted SIC in the preparation of its cost studies. *See id*. at 5.

[89] SIC Petition at 1-2, 5-8.

[90] *Id*. at 5-8. During the investigation, SIC provided documents from GVNW, as well as a letter from the Department of Hawaiian Home Lands (DHHL), outlining its obligations to provide service. *See id*. at 7. DHHL is responsible for managing the Hawaiian Home Lands for the benefit of native Hawaiians under the Hawaiian Homes Commission Act of 1920, as amended.

[91] SIC Petition at 7-18.

[92] *Id*. at 4.

[93] *Id*. at 2-5, 13.

[94] *SIC Reconsideration Order*, 34 FCC Rcd 577.

[95] *Sandwich Isles Communications, Inc. v. FCC*, No. 19-1056, 2019 WL 2564087.

[96] *SIC Paniolo* Order, 31 FCC Rcd 12977. *See Sandwich Isles Communications, Inc. Petition for Declaratory Ruling*, WC Docket No. 09-133, Declaratory Ruling, 25 FCC Rcd 13647 (WCB Sept. 29, 2010). *See also* Petition for Reconsideration of Sandwich Isles Communications, Inc., WC Docket No. 09-133 (filed Oct. 29, 2010) (SIC filed a public version of its Petition on Nov. 3, 2010); Application for Review of AT&T Inc., WC Docket No. 09-133 (filed Oct. 28, 2010).

[97] *SIC Paniolo Order*, 31 FCC at 12983-84, para. 17.

[98] *Id*. at 12992-93, para. 45.

[99] *SIC NAL*, 31 FCC Rcd at 12963-64, para. 46. Pursuant to section 220, the Commission may "prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers . . . including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys" and "shall require that each common carrier shall maintain a system of accounting methods, procedures, and techniques . . . which shall ensure a proper allocation of all costs to and among telecommunications services, facilities, and products . . . ." 47 U.S.C. § 220(a)(1), (a)(2).

miscategorizing its business expenses and regulated costs,[100] and (3) sections 69.601(c) and 69.605(a) of the Commission's rules by submitting and falsely certifying inaccurate data in its cost studies filed from 2000 through 2013.[101] The Commission concluded that the inaccurate data used to calculate SIC's high-cost support included: misclassified C&WF,[102] overstated costs related to the lease of water mains with its affiliate,[103] and non-regulated expenses being reported as regulated expenses.[104] The Commission proposed a per day penalty for cost study years 2010, 2011, 2012, and 2013, which occurred within five years of the *SIC NAL*.[105] Explaining that Waimana, SIC's parent company, and Hee, SIC's former controlling owner, "are, for legal purposes, one and the same,"[106] the Commission concluded that all three parties were apparently jointly and severally liable for a forfeiture penalty totaling $49,598,448.[107]

III. DISCUSSION

21. In the *SIC NAL*, the Commission found that SIC apparently: (1) failed to keep its accounts, records, and memoranda consistent with the Commission's rules; (2) miscategorized business expenses and regulated costs; and (3) misclassified its C&WF costs—all in violation of Parts 32 and 36 of the Commission's rules.[108] The Commission found that SIC apparently committed these Part 32 and 36 violations, in part, by submitting inaccurate cost study data for cost study years 2010, 2011, 2012, and 2013, and falsely certifying the accuracy of that data in violation of sections 69.601(c) and 69.605(a) of the Commission's rules,[109] which prescribe the manner in which carriers must submit and certify to the accuracy of specified documents.[110] Based on these apparent violations, the Commission proposed a forfeiture penalty in the amount of $49,598,448, in accordance with section 220(d) of the Act and section 1.80 of the Commission's rules.[111] The *SIC Improper Payments Order* and *SIC Reconsideration Order,* which SIC unsuccessfully appealed and have now become final orders, foreclose many of SIC's arguments, and we do not revisit those questions here.[112] We further reject SIC, Waimana, and Hee's additional arguments raised in response to the NAL, which are discussed below, and accordingly impose the entire $49,598,448 forfeiture proposed in the *SIC NAL*.

[100] *SIC NAL*, 31 FCC Rcd at 12963-64, para. 46.

[101] *Id*. at 12964, para. 47.

[102] *Id.* at 12964-65, paras. 49-55.

[103] *Id.* at 12965-66, paras. 56-59.

[104] *Id.* at 12967-68, paras. 62-65.

[105] *Id.* at 12972-73, paras. 80-81. Section 220(g) provides that "[a]fter the Commission has prescribed the forms and manner of keeping of accounts, records, and memoranda to be kept . . . it shall be unlawful . . . to keep the accounts in any other manner than that prescribed or approved by the Commission." 47 U.S.C. § 220(g). Where a carrier fails to "keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission," section 220(d) imposes a per day penalty. 47 U.S.C. § 220(d). *See also* 47 CFR § 1.80(c)(2) ("In the case of a forfeiture imposed against a carrier under sections 202(c), 203(e), and 220(d), no forfeiture will be imposed if the violation occurred more than 5 years prior to the issuance of a notice of apparent liability.").

[106] *SIC NAL*, 31 FCC Rcd at 12968, para. 69.

[107] *Id*. at 12972, para. 80.

[108] *Id.* at 12963, para. 46.

[109] *Id*.

[110] 47 CFR §§ 69.601(c), 69.605(a).

[111] *SIC NAL*, 31 FCC Rcd at 12972-73, para. 80.

[112] *See Sandwich Isles Communications, Inc. v. FCC*, No. 19-1056, 2019 WL 2564087.

A. SIC Improperly Categorized Its Cable and Wire Facilities' Expenses and, as a Result, Sought and Received Improper Payments from the Universal Service Fund

22. In its NAL response, SIC argues that (1) the *SIC NAL* incorrectly relies on USAC's finding that SIC misallocated C&WF to Category 1 where there were no subscriber premises;[113] (2) the Commission ignored information provided by SIC's consultant, GVNW, in which GVNW analyzed the facts and data relied upon by USAC and concluded that the proper monetary recovery for reimbursements made to SIC from 2005 to 2015 was approximately $4,168,000 instead of the $26,320,270 overpayment determined by the Commission;[114] and (3) the Commission "summarily dismissed" the segments of its network "that were built at the direction of the Department of Hawaiian Home Lands . . . ."[115] Waimana further argues that the *SIC NAL*'s allegations of improper classification of Category 1 C&WF amount to a "disagreement" between SIC's independent accountants and USAC, and that the Rennard and Smith Declarations submitted with the SIC Petition illustrate that SIC's cost allocations were done in the same way as for other FCC regulatees.[116] The Commission fully considered and resolved each of these arguments in the now final determinations in the *SIC Improper Payments Order* and the *SIC Reconsideration Order*.[117] We incorporate these findings by reference and do not revisit them here. Below we address and reject the parties' additional challenges to the Commission's findings regarding SIC's allocation of C&WF expenses and affirm our findings in the *SIC NAL* that SIC violated Part 36 of the Commission's rules by improperly classifying certain costs as Category 1 C&WF.[118]

1. SIC Impermissibly Claimed Category 1 Treatment and Sought and Received Category 1-Based Support for Routes Between Central Offices

23. In the SIC Petition, SIC argued that the *SIC Improper Payments Order* and the *SIC NAL* are inconsistent with respect to whether the Commission's rules prohibit allocating any central office lines to Category 1, even where portions of those facilities are used to connect subscribers.[119] SIC did not specifically address this argument in its NAL response.[120] We note, however, as explained in the *SIC*

[113] SIC NAL Response at 5-6.

[114] *Id*. SIC submitted this report to USAC during USAC's investigation. SIC maintains that GVNW's report demonstrates that USAC's conclusion that there were no subscribers on several loops during the relevant time periods was factually incorrect. *Id.* at 6.

[115] *Id*.

[116] Waimana NAL Response at 8-11.

[117] *SIC Improper Payments Order*, 31 FCC Rcd at 13020-28, paras. 70-96; *SIC Reconsideration Order*, 34 FCC Rcd at 596-621, paras. 37-119.

[118] *SIC NAL*, 31 FCC Rcd at 12964-65, paras. 49-52. *See also* 47 CFR pt. 36.

[119] SIC Petition at 8-11 (stating that the *SIC NAL* "is premised on the Commission's position that 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," while the *SIC Improper Payments Order* "appears to take an entirely different view of the governing rule" in stating that "facilities used to provision traffic from one subscriber located in one exchange through a central office and out to another central office connecting with subscriber premises in a different exchange were interexchange in nature, and as a result, do not qualify as C[ategory] 1 facilities.").

[120] *See* SIC NAL Response at 4-5 (stating incorrectly that the *SIC NAL*, like the *SIC Improper Payments Order*, "relies exclusively" on USAC's Report, in which USAC also concluded that SIC "misallocated C&WF to [Category 1] where there were no subscriber premises," but failing to mention the violation associated with routes between central offices).

Reconsideration Order,[121] that there is no such inconsistency with regard to the Commission's interpretation of the cost allocation rules. The *SIC Improper Payments Order* did not take the broad position, as SIC claims, that no portion of the costs between central offices could ever be allocated as Category 1; instead, the Commission determined that in this specific case, SIC had failed to make the necessary factual showing to treat any portion of the costs of the disputed routes as Category 1.[122] Similarly, the *SIC NAL*'s factual determination that the specific disputed lines connecting SIC's central offices could not be classified as Category 1 in no way suggested that a carrier could never allocate any portion of central office costs to Category 1.[123]

2. Waimana and Albert Hee's Additional Responses Concerning the Miscategorizations of Cable and Wire Facilities Lack Merit

24. Waimana asserts that SIC had no motive to miscategorize its costs, as it would have received nearly the same amount of reimbursements over the relevant period regardless of whether the lines were properly categorized as Category 1 C&WF.[124] Waimana further argues that the FCC and USAC have imposed a "new, unprecedented" standard to find liability against SIC, where no such standard has been applied to other carriers.[125] In support of this argument, Waimana states that its accountants at GVNW classified SIC's lines in the same way those classifications are done for all other regulated entities.[126] Hee similarly states that the standard applied to SIC is "unspecific and unpredictable, as it has never been applied to any rural telecommunications company in the past" and that the NAL fails to comply with the Congressional mandate in section 254(b) of the Act, which directs the Commission to use "specific and predictable support mechanisms" for provision of universal service.[127] Hee also argues that the Commission erred in calculating the overpayments by not accounting for the amount of support payments SIC would have received had its expenditure been "correctly" categorized.[128]

25. We find no merit in Waimana's claim that SIC had no motive to deliberately miscategorize the lines because SIC would have received nearly the same amount in support payments over the relevant period from either the USF or from NECA pool funds "regardless of whether the lines

[121] *See SIC Reconsideration Order*, 34 FCC Rcd at 620, para. 115 (providing that in paragraph 79 of the *SIC Improper Payments Order* the Commission concluded that SIC failed to demonstrate that any portion of the costs of its disputed interoffice facilities qualified as Category 1; and in paragraph 50 of the *SIC NAL*, the Commission similarly made a factual determination that the specific interoffice facilities identified by SIC could not be allocated as exchange line Category 1).

[122] *Id.* at 617-20, paras. 105-14 & Appx. A.

[123] *SIC NAL*, 31 FCC Rcd at 12964, para. 50 (citing *SIC Improper Payments Order*, 31 FCC Rcd at 13022-23, para. 79).

[124] Waimana NAL Response at 12-13.

[125] *Id*. at 12.

[126] *Id.* at 9-11.

[127] Hee NAL Response at 1-2.

[128] *Id*. at 2. Hee also incorrectly states, "the NAL was issued with two and a half Commissioner votes or three Commissioner votes for the 'agreed in part' section and two Commissioner votes for the 'denied in part' section," and that the NAL does not specify which parts were "denied" by the dissenting Commissioners. *Id*. at 3. It is unclear exactly what Hee argues; on December 5, 2016, the date the *SIC NAL* was adopted, the Commission was comprised of five commissioners. No commissioner dissented; Commissioner O'Rielly voted "approving in part and concurring in part." *See SIC NAL,* 31 FCC Rcd at 12947. Finally, Hee argues that "[t]he genesis of this action is the attempt to discredit my testimony before the US Senate Committee on Indian Affairs in June of 2012." *Id.* at 1. Hee's efforts to deflect from his own malfeasance are in vain; as USAC's and the Commission's investigations into SIC's history with the high-cost program show—as recounted in great detail in the *SIC NAL*, the *SIC Improper Payments Order*, and the *SIC Reconsideration Order*—SIC's, Waimana's and Hee's actions speak for themselves.

were properly categorized as Category 1 or as a different category."[129] First, NECA pool funds are distinct from the high-cost loop support SIC sought and received from the Fund.[130] Irrespective of any hypothetical amounts SIC could have received from the NECA pools, it has no bearing on SIC's (lack of) entitlement to the high-cost support payments it claimed from the Fund. Second, the motive behind SIC's actions is not legally relevant. The Part 36 rules at issue do not include any requirements regarding a carrier's motivation or intent, and therefore whether SIC did or did not have a motive to miscategorize lines is irrelevant.[131] SIC was obligated to comply with the Commission's rules. It did not.

26. We also reject Hee's arguments that "the Commission . . . makes no attempt to calculate the amount of support dollars SIC would have received during the same period of time had the capital expenditure been 'correctly categorized'" and that "there is very little difference in the amount of support SIC would have received regardless of which way the lines were categorized."[132] The Commission addressed this argument in both the *SIC Improper Payments Order* and the *SIC Reconsideration Order*. Notwithstanding Hee's unsubstantiated argument in this regard, the Commission necessarily calculated the proper support in determining that SIC had received $26,320,270 in improper payments associated with its misclassification of Category 1 C&WF.[133] To the extent that Hee is making an argument similar to SIC's claim in its Petition that it could have classified routes without subscribers in Account 2002 as property held for future use, we note that the Commission has already rejected this argument both on its merits and as untimely.[134]

27. Waimana and Hee also claim the Commission has imposed a new and uncertain standard to find SIC liable, yet this argument ignores the fact that SIC was obligated to follow a defined regulatory scheme that governs carriers who seek high-cost support.[135] As the Commission explained in the *SIC Reconsideration Order*, our interpretation of the scope of Category 1 C&WF is derived both from the text of the relevant rules and also from the well-established principle that carriers only be compensated for costs expended on services that are "used and useful."[136] Moreover, SIC's own response supports the Commission's interpretation of what may be included in Category 1 C&WF in significant respects. In particular, SIC concedes that certain of its routes did not serve any subscribers during certain years, and that it was therefore improper for the Company to receive support based on that investment.[137] To the extent that Hee's claim is challenging our interpretation of the requirements of the accounting rules in the

[129] Waimana NAL Response at 12-13 (citing Rennard Declaration at para. 13) (claiming that, regardless of whether the lines were properly categorized for USF support, SIC would have received between $21.3 million and $23.3 million in support payments from the access charge revenue pools administered by NECA, which would have substantially offset or exceeded any overpayments from the Fund).

[130] See Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Process, Report and Order and Order to Show Cause, 10 FCC Rcd 6243, 6244, para. 1, n.2 (1995) (NECA Safeguards Order); see also 47 CFR § 69.601.

[131] *See SIC Reconsideration Order*, 34 FCC Rcd at 630, para. 139 (rejecting the claim that reconsideration is justified based on a lack of improper motive on SIC's part and explaining that "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 payments.").

[132] Hee NAL Response at 2.

[133] *SIC Improper Payments Order*, 31 FCC Rcd at 13015, para. 57; *SIC Reconsideration Order*, 34 FCC Rcd at 599, para. 47.

[134] *See SIC Reconsideration Order*, 34 FCC Rcd at 608-10, paras. 74-79.

[135] *See supra* paras. 4-9; *see also SIC Reconsideration Order*, 34 FCC Rcd at 579-91, paras. 6-24.

[136] *See SIC Reconsideration Order*, 34 FCC Rcd at 599-603, paras. 50-58.

[137] SIC Petition at 2, 12-13.

SIC Improper Payments Order,[138] that order is now final and we do not reopen that issue here. Similarly, Hee's argument that the Commission's action is not in keeping with section 254(b) of the Act relates back to the Commission's action in the *SIC Improper Payments Order*[139] and, as that decision is now final, we do not reopen that issue either.

28. Finally, in response to Waimana's attempt to frame the Commission's findings as a "good faith disagreement among accountants,"[140] the *SIC Reconsideration Order* has already explained that the Commission cannot simply defer to GNVW's assessment without an independent analysis of what our rules require and how they apply to the relevant facts.[141] The Commission fully considered GNVW's analysis (including GNVW's claims about its purported standard practice for its other clients), as it considered all evidence and arguments in this matter, but was not persuaded that the categorization done by GNVW complied with Commission's cost allocation rules.[142]

B. SIC Improperly Sought High-Cost Support Payments for Affiliate Transactions and Management Fees

29. In addition to finding that SIC apparently sought more universal service support than permitted under the high-cost rules,[143] the Commission found in the *SIC NAL* that SIC apparently misused universal service support by transferring money to Waimana and other affiliates—money which was then used for the personal benefit of Albert Hee and his immediate family.[144] The *SIC NAL* explained that Hee, by virtue of his ownership and financial control of SIC, Waimana, and other affiliated entities, directed SIC to use high-cost support funding for purposes apparently unrelated to "the provision, maintenance, and upgrading of facilities and services for which support is intended,"[145] in apparent violation of the Act and section 54.7 of the Commission's rules.[146] SIC also apparently violated the Commission's affiliate transaction rules by overstating in its cost studies the costs incurred from the lease of abandoned water mains from its affiliate, ClearCom.[147]

30. In its response, SIC argues that the Commission has failed to articulate an "objective standard" for assessing management fee-related expenses.[148] SIC also takes issue with USAC's treatment of its rent payments for office space and contends that a large portion of the contested management fees were not subject to Universal Service Fund reimbursement because of the cap on corporate operating expenses.[149] Both Waimana and Hee argue that Hee's criminal tax fraud conviction, and the evidence

[138] *See SIC Improper Payments Order*, 31 FCC Rcd at 13017-44, paras. 60-149.

[139] *See id.* at 13017, 13038, paras. 60, 130.

[140] Waimana NAL Response at 11.

[141] *SIC Reconsideration Order*, 34 FCC Rcd at 598, para. 45.

[142] *Id.* at 598-99, paras. 46-47.

[143] *SIC NAL*, 31 FCC Rcd at 12966-68, paras. 60-68.

[144] *Id.* at 12971, para. 76.

[145] 47 CFR § 54.7(a).

[146] *SIC NAL*, 31 FCC Rcd at 12968, para. 67. *See also* 47 U.S.C. § 254(e); 47 CFR § 54.7.

[147] *SIC NAL*, 31 FCC Rcd at 12965-66, paras. 56-59.

[148] SIC NAL Response at 9-11 (stating that the NAL "simply parrots the same highly subjective USAC claims that SIC's Management Fees were 'excessive,' ignoring the fact that there were no *objective* standards in place to which SIC could have referred in making what appeared to it at the time to be reasonable and normal business decisions made in the ordinary course.") (emphasis in original).

[149] *Id.* at 10-11 (citing SIC Response to Final USAC Report at 13-14).

presented at trial regarding payments from Waimana to Hee, are irrelevant to SIC and the issues raised in the *NAL*.[150]

31. We first note that the Commission already determined in the *SIC Improper Payments Order* and *SIC Reconsideration Order* that SIC failed to demonstrate its management fees and affiliate transactions met the requirements of section 54.7 and section 32.27.[151] We do not reopen the Commission's decision to disallow support for the affiliate transactions and management fees in question. We therefore also do not address SIC's arguments regarding the interpretation of its rent payments or the extent to which it apparently over-inflated its management fees.

32. Further, we reject SIC's contention that the Commission has "simply parrot[ed] the same highly subjective USAC claims that SIC's Management Fees were 'excessive'" and had "no objective standards in place" to guide SIC's business decisions.[152] This argument appears similar to SIC's claims in its Petition that the Commission's determinations concerning SIC's affiliate transactions lack any supporting "rule" or "legal basis," and that determining whether management fees are used and useful is "utterly unsuited for case-by-case adjudication."[153] As explained in the *SIC Reconsideration Order*, the Commission has cited specific rules and appropriately applied them based on the facts presented in this case.[154] The particular rules at issue here—sections 54.7 and 32.27—provide, respectively, that carriers receiving federal universal service support shall use that support only for the provision and maintenance of facilities and services for which the support is intended, and that transactions with affiliates must be recorded at the lower of fair market value or fully distributed cost.[155] These rules necessarily require a case-by-case analysis of facts to determine whether a carrier has followed the "used and useful" principle for universal support, and whether specific affiliate transactions have been recorded at fair market value or fully distributed cost.[156] In applying these rules to SIC, the Commission appropriately analyzed

[150] Waimana NAL Response at 17-18; Hee NAL Response at 3 (stating that the tax conviction "had nothing to do with SIC" and that "SIC was extensively audited by the IRS which found no crime…").

[151] *SIC Improper Payments Order*, 31 FCC Rcd at 13028-41, paras. 97-137; *SIC Reconsideration Order*, 34 FCC Rcd at 621-25, paras. 120-29. *See also* 47 CFR §§ 54.7, 32.27(c). The Commission's affiliate transaction rules focus specifically on which costs may properly be included in the regulated revenue requirement for transactions between affiliated entities. These rules require that non-tariffed services purchased by a carrier from an affiliate that are not recorded in publicly-filed agreements and do not qualify for prevailing price valuation be recorded at the lower of fair market value or fully distributed cost. When such services are provided by a carrier to an affiliate, they shall be recorded at no less than the higher of fair market value or fully distributed cost. 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. 47 CFR § 32.27(c).

[152] SIC NAL Response at 9-10.

[153] SIC Petition at 14.

[154] *SIC Reconsideration Order*, 34 FCC Rcd at 623, para. 123.

[155] 47 CFR §§ 54.7, 32.27(c).

[156] *SIC Reconsideration Order*, 34 FCC Rcd at 623-24, para. 125 (citing *March 2018 CAF Order*, 33 FCC Rcd at 3012-13, para. 49) ("The Commission for decades has applied the 'used and useful' standard in determining whether investments and expenses are reasonable under section 201 and thus may be recovered through interstate rates . . . . The Commission has identified principles to evaluate whether investment and expenses are 'used and useful' to the provision of regulated telecommunications services, including: the need to compensate LECs for investment and expenses incurred to provide service; whether the investment and expense benefits ratepayers and thus is necessary for the provision of interstate telecommunications services; and whether investment is prudent and whether the benefit from the investment will be realized within reasonable period of time. The Commission has recognized that 'these guidelines are general and subject to modification'— whether an investment and expense is 'used and useful' depends on the 'particular facts of each case.'") (internal citations omitted)).

whether expenses are "used and useful" through case-by-case adjudication.[157] This fact-based analysis is thoroughly detailed in the *SIC Improper Payments Order* and *SIC Reconsideration Order*, which explain that the management fees paid by SIC to Waimana were not reasonable relative to the services rendered and were much higher than management fees assessed by entities with a comparable number of working loops, and that the payments made to affiliate ClearCom for the lease of unused water mains were not recorded at the lesser of fair market value or fully distributed cost.[158] The Commission also detailed extensive evidence showing that SIC diverted corporate funds as payments to Waimana for the personal benefit of Albert Hee and his family, unrelated to SIC's regulated activity.[159] Again, we do not reopen the Commission's prior determination on this issue.

33. As detailed in the *SIC Improper Payments Order* and *SIC NAL*, the evidence presented at Hee's criminal trial is highly relevant to the Commission's findings regarding SIC's non-compliance with the Commission's high-cost rules. This evidence demonstrates that Hee, Waimana, and SIC miscategorized personal Hee family expenses as business expenses, which informed the inaccurate cost data submitted to NECA to determine SIC's high-cost support.[160] This question, too, has been foreclosed from collateral attack.

C. SIC Failed to Keep Its Records and Accounts in the Manner Prescribed by the Commission

34. We found in the *SIC NAL* that SIC apparently violated section 220 of the Act by failing to keep its accounts, records, and memoranda in the manner prescribed by Parts 32, 36, and 69 of the Commission's rules; apparently violated section 32.12(b) by failing to keep financial records sufficient to show the full facts pertaining to all entries in relevant accounts; apparently violated section 36.152(a)(1) by incorrectly classifying lines without subscribers as Category 1 C&WF[161] and apparently violated section 36.154(a) by assigning costs as Category 1 C&WF to routes that did not serve any subscriber premises;[162] and apparently violated sections 69.601(c) and 69.605(a) by submitting and certifying inaccurate data in annual cost studies used to calculate SIC's federal high-cost program support.[163] In their NAL responses, SIC, Waimana, and Hee state that SIC has fully disclosed SIC's financial information to USAC and the Commission, and that the Commission has only pointed to missing affiliate financial information that SIC was not responsible for providing.[164]

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[157] *SIC Reconsideration Order* at 623-24, para. 124.

[158] *SIC Improper Payments Order*, 31 FCC Rcd at 13030-37, paras. 102-25; *SIC Reconsideration Order*, 34 FCC Rcd at 622-25, paras. 122-29. *See also* Final USAC Report at 78-82.

[159] *SIC Improper Payments* Order, 31 FCC Rcd at 13009-12, paras. 32-41; *id.* at 13033-34, paras. 111-17. *See also SIC NAL*, 31 FCC Rcd 12967-68, paras. 62-66.

[160] *SIC Improper Payments* Order, 31 FCC Rcd at 13009-12, paras. 32-41; *id.* at 13033, para. 111; SIC *NAL*, 31 FCC Rcd at 12955-58, paras. 19-28; *id*. at 12967-68, para. 65.

[161] *SIC NAL*, 31 FCC Rcd at 12964, paras. 50-51.

[162] *Id.* at 12965, para. 52.

[163] *Id.* at para. 55; *id.* at 12968, para. 68; *id.* at 12970-72, paras. 77-79.

[164] SIC NAL Response at 12 (stating that SIC provided information from its own files related to transactions with its affiliates, but that the Commission has focused on SIC's non-production of information in the possession of its affiliates, "companies that are not SIC"). Waimana states that the FCC and USAC have all the information on transactions between SIC and Waimana and there is no justification for them to receive anything else. Waimana NAL Response at 18. Hee states that the affiliated companies "hide nothing relevant from the FCC," "[a]ll of their transactions with SIC are fully disclosed in SIC's financial statements," and the "Commission has the financials from SIC that show the support payments were used correctly to pay the debt service owed to the Rural Utilities Service." Hee NAL Response at 3-4.

35. We find no merit to these claims, which appear to misconstrue the Commission's allegations in the *SIC NAL* that SIC failed to keep accurate records as required by Parts 32, 36, and 69 of the Commission's rules.[165] Contrary to SIC's response, the Commission's findings regarding SIC's apparent violations are based on SIC's repeated failure to accurately classify its costs and expenses as required by the Commission's rules for participation in the high-cost program.[166] Simply put, the Commission's rules squarely place the burden of demonstrating compliance with the high-cost program's cost accounting rules on SIC. Nothing in SIC's, Waimana's, or Hee's responses provides evidence demonstrating compliance with these rules, and we thus find, by a preponderance of the evidence,[167] that SIC violated section 220 of the Act and sections 32.12(b), 36.152(a)(1), 36.154(a), 69.601(c), and 69.605(a) of the Commission's rules.

36. In the *SIC NAL*, the Commission proposed a forfeiture penalty pursuant to section 220 of the Act, which governs forfeitures in instances where a carrier fails to maintain its accounts and records in the manner prescribed by the Commission.[168] Section 220 states that the Commission may "prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers," and the Commission "shall require that each common carrier shall maintain a system of accounting methods, procedures, and techniques . . . which shall ensure a proper allocation of all costs to and among telecommunications services, facilities, and products."[169] It also bars carriers from keeping any other accounts, records, or memoranda "than those so prescribed," and from "keep[ing] the accounts in any other manner than that prescribed or approved by the Commission."[170] The Act provides a per day penalty "[i]n case of failure or refusal on the part of any such carrier to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission."[171] Section 220 provides that the carrier shall be penalized on a per day basis for the continuance of such violation ($6,000 per day, to be adjusted over time for inflation).[172]

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[165] *SIC NAL*, 31 FCC Rcd at 12963-68, paras. 46-68.

[166] *Id.* We note separately that SIC's failure to keep and provide the affiliate records related to requests for USF support is, in itself, a violation of Part 32 of the Commission's rules. Section 32.12(b) requires that financial records be kept "with sufficient particularity to show fully the facts pertaining to all entries" in the relevant accounts, which would include the affiliate information necessary for NECA and USAC to calculate support for the affiliate transactions recorded in SIC's cost studies. *See SIC NAL*, 31 FCC Rcd at 12968, paras. 66-68.

[167] *See, e.g., IDT Corp.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 10805, 10810, para. 8 (2008) (*IDT NAL*) (stating that, following the issuance of an NAL and the opportunity for response, the "Commission will then issue a forfeiture if it finds, by a preponderance of the evidence, that the person has violated the Act or a Commission rule.").

[168] *Compare* 47 U.S.C. § 220 *with* Hee NAL Response at 4 (stating that the Commission does not have the authority to do what the *NAL* orders).

[169] 47 U.S.C. § 220(a)(1), (a)(2).

[170] *Id.* § 220(g).

[171] *Id.* § 220(d).

[172] *Id.* The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No. 114-74, § 701, 129 Stat. 599 (2015), requires the Commission to adjust its forfeiture penalties annually for inflation. *See* 28 U.S.C. § 2461 note. Prior to the 2015 amendment, the Commission was required to adjust its forfeiture penalties every four years. *See* Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, § 31001, 110 Stat. 1321 (1996) (DCIA). The DCIA specified that any inflationary adjustment "shall apply only to violations which occur after the date the increase takes effect." Pub. L. No. 104-134, § 31001, 110 Stat. 1321, 28 U.S.C. § 2461 note (c). We apply the forfeiture penalties in effect at the time the violations took place. Relevant here, the inflation-adjusted statutory forfeitures that were effective for violations of section 220(d) from December 6, 2011 through July 31, 2016 were $9,600 per day, and $11,362 per day for

(continued….)

37. The requirement that carriers all conform to the Commission's prescribed uniform system of accounts is a longstanding and critical component of the effectiveness of the enforcement regime embodied in Title II of the Communications Act. Section 220 was "taken from section 20 ([paragraphs] 5-8) of the Interstate Commerce Act,"[173] which in turn had been added in 1906 by the Hepburn Act amendments to the latter.[174] The absence of such authority was one of the "principal defects" of the Interstate Commerce Act[175] that had led to "[s]erious difficulties . . . in administration" of the regulation of common carriers.[176] The problem of either "delay or mis-statement" had prevented the Interstate Commerce Commission from ensuring equality of treatment of all shippers, efficiency, honesty in operation, accurate ratemaking, and other public policy goals, which required a uniform prescription for preparation of accounts.[177] Thus, Congress intended to assess penalties for the "wrongful making" of accounts,[178] such as "the failure to make full, true, and correct entries" in such accounts.[179] In an early case, for example, the Supreme Court rejected a carrier's argument that this provision did not govern a dispute about where to book certain costs, *i.e.*, that its requirement was merely one of "form" and not "substance."[180] As the Court recognized, "it is obviously essential that charges and credits shall be allocated under the proper headings."[181] The statutory bar on keeping accounts in any other way reinforces this requirement. Thus, the Commission has repeatedly interpreted section 220 to authorize the

violations continuing past August 1, 2016, when a new inflation adjustment increase took place. *See* Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation, 23 FCC Rcd 9845 (EB 2008); *see also* Inflation Adjustment of Maximum Forfeiture Penalties, 73 Fed. Reg. 44663 (July 31, 2008) (setting Sept. 2, 2008 as the effective date for increases); Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, 28 FCC Rcd 10785 (EB 2013); Inflation Adjustment of Monetary Penalties, 78 Fed. Reg. 49370 (Aug. 14, 2013) (setting Sept. 13, 2013 as the effective date for the increases); Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, 31 FCC Rcd 6793 (EB 2016); Adjustment of Civil Monetary Penalties to Reflect Inflation, 81 Fed. Reg. 42554 (June 30, 2016) (setting Aug. 1, 2016 as the effective date for the increases).

[173] S. Rep. No. 781, 73d Cong., 2d Sess. 5 (1934). A number of provisions of title II of the 1934 Act "copied verbatim" from the Interstate Commerce Act. *Id.* at 2. The 1934 Act attempted "to preserve the value of court and commission interpretation of that act," except where modified "so as to provide adequately for the regulation of communications common carriers." H. R. Rep. No. 1850, 73d Cong., 2d Sess. 3-4 (1934). *See also American Telephone & Telegraph Co. v. United States*, 14 F. Supp. 121, 125 (S.D.N.Y. 1936) (citing "that section 404 and section 220(a) of the Communications Act are identical with section 14(1) and section 20(5) of the Interstate Commerce Act," discussing "the practice of the Interstate Commerce Commission" in implementing those provisions of the Interstate Commerce Act, and concluding that "the incorporation of these sections in the Communications Act is an indication that Congress approved this administrative interpretation"). *Cf. Civil Aeronautics Board v. United Airlines, Inc.*, 542 F.2d 394 (7th Cir. 1976) (describing similar incorporation in Federal Aviation Act).

[174] Act of June 29, 1906, ch. 3591, § 7, 34 Stat. 584, 593-94 (1906).

[175] Clyde B. Aitchison, *The Evolution of the Interstate Commerce Act: 1887-1937*, 5 Geo. Wash. L. Rev. 289, 325 n.98 (1937).

[176] *Id.* at 330.

[177] W.Z. Ripley, Railroads: Rates and Regulation 515-20 (1912). As the Supreme Court concluded, the uniform system of accounts permitted the agency to "know just how the business is carried on," so as to discharge these responsibilities. *ICC v. Goodrich Transit Co.*, 224 U.S. 194, 211-14 (1912).

[178] H.R. Rep. No. 591, 59th Cong., 1st Sess. 5-6 (1906).

[179] *United States v. Louisville & Nashville Railroad Co.*, 236 U.S. 318, 333 (1915).

[180] *Kansas City S. Railway Co. v. United States*, 231 U.S. 423, 440 (1913).

[181] *Id.* at 441. The Supreme Court, in a case under section 20 of the Interstate Commerce Act, likewise recognized the agency's discretion in drawing lines regarding accounting matters. *Norfolk & W. Ry. Co. v. United States*, 287 U.S. 134, 141 (1932).

assessment of forfeitures on a daily basis where costs are accounted for in violation of the uniform system of accounts prescribed by Commission rules.[182]

38. Under section 220 of the Act, carriers must "ensure a proper allocation of all costs to and among telecommunications services, facilities, and products."[183] Parts 32 and 36 of the Commission's rules establish the method by which rate-of-return carriers such as SIC must record and allocate their regulated activities.[184] The rules in Part 69 govern how carriers are to submit this cost data generated in compliance with Parts 32 and 36: section 69.605(a) requires access pooling carriers to submit cost data to NECA,[185] and section 69.601(c) requires that carriers include with their data submissions a certification providing "that the data have been examined and reviewed and are complete, accurate, and consistent with the rules" of the Commission.[186] In adopting the certification requirement, the Commission stated that "[c]ost studies are important tools for determining the proper allocation of [local exchange carrier] costs"[187] and "[w]e believe that this certification will improve the quality, completeness, and accuracy of data provided."[188] The Commission further stated that the certification would not impose additional burdens on carriers because "they already have an obligation to give NECA accurate and complete data that are consistent with our rules."[189]

39. By failing to classify important expenses "under the proper heading,"[190] SIC, in turn, also failed to provide accurate information in its cost studies, and thus, impeded the goal of determining proper allocation of costs. The Commission concluded in the *SIC Improper Payments Order*, and affirmed in the *SIC Reconsideration Order*, that SIC, among other things, misclassified its C&WF costs.[191] SIC filed and certified—and in most cases revised and certified again—inaccurate cost studies for cost study years 2010, 2011, 2012, 2013—the relevant years in the *SIC NAL*.[192]

40. SIC violated the Commission's rules for more than a decade. Year after year, SIC submitted and certified cost studies that contained inaccurate data, which NECA and USAC relied upon to award SIC's high-cost support. By failing to accurately report data in its cost studies, SIC received approximately $27 million more than it was entitled to receive under program rules.[193] Thus, we find, by a preponderance of the evidence, that SIC violated section 220 of the Act by failing to keep its accounts,

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[182] *See, e.g., Verizon Tel. Cos., Inc.,* Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 18796, 18803, para. 16 (2003) (*Verizon NAL*); *Ameritech Tel. Operating Cos.*, Order to Show Cause, 10 FCC Rcd 5606, 5608-09, para. 15 (1995) *(Ameritech Order).*

[183] 47 U.S.C. § 220(a)(2).

[184] *See generally* 47 CFR pt. 32 & pt. 34.

[185] 47 CFR § 69.605(a) ("Access revenues and cost data shall be reported by participants in association tariffs to the association for computation of monthly pool revenues distributions in accordance with this subpart.").

[186] 47 CFR § 69.601(c) (requiring that an officer or employee "certify that the data have been examined and reviewed and are complete, accurate, and consistent with the rules of the Federal Communications Commission," and stating that "[p]ersons making willful false statements in this data submission can be punished by fine or imprisonment under the provisions of the U.S. Code, Title 18, Section 1001").

[187] *NECA Safeguards Order*, 10 FCC Rcd at 6266, para. 63.

[188] *Id*. at 6264, para. 56.

[189] *Id*.

[190] *See supra* para. 37 and note 181.

[191] *SIC Improper Payments Order*, 31 FCC Rcd at 13020-13028, paras. 70-96; *SIC Reconsideration Order*, 34 FCC Rcd at 598, para. 46.

[192] *SIC NAL*, 31 FCC Rcd at 12972-73, para. 80.

[193] *SIC Improper Payments Order*, 31 FCC Rcd at 13014, para. 51.

records, and memoranda in the manner prescribed by the Commission in Parts 32 and 36 and sections 69.601(c) and 69.605(a) of the Commission's rules by submitting and certifying inaccurate data in annual cost studies.

D. SIC, Waimana, and Albert Hee's Procedural Challenges Raised in Response to the Notice of Apparent Liability Are Without Merit

41. SIC, Waimana, and Hee raise several procedural challenges in their respective NAL responses. Waimana argues that the Commission failed to provide Waimana with adequate "fair notice" prior to the release of the *SIC NAL*, that Waimana has been given no opportunity to examine evidence against it, confront witnesses, or present evidence in its favor, and that Waimana has been denied a neutral decision-maker in this proceeding.[194] Hee makes only a general argument in his response that the "NAL tramples my Constitutional rights, especially my rights to due process," without providing any specifics.[195] Finally, all three parties claim that the Commission seeks to impose a forfeiture penalty beyond the four-year statute of limitations prescribed by 28 U.S.C. § 1658(a).[196] These arguments are far afield of relevant laws and rules, and are therefore unpersuasive. We also recognize SIC's response regarding the *NAL's* "show cause" provision,[197] but do not address these arguments in this Forfeiture Order.

1. SIC, Waimana, and Albert Hee Were Afforded Adequate Time to Respond to the Notice of Apparent Liability and Additional Due Process Protections

42. Waimana argues it should have been provided with notice that the Commission was going to issue a Notice of Apparent Liability.[198] Waimana argues the failure to provide it with this pre-NAL notice deprived it of its constitutional due process rights to present evidence and have a meaningful opportunity to be heard.[199] We find this argument meritless. The Commission is under no obligation to inform the subject of an investigation that it is being investigated. The Commission's statutory forfeiture process provides for a meaningful opportunity to be heard at the time a determination of violations carries significant legal effects—when the Commission issues an NAL that could lead to a forfeiture order imposing actual liability.[200] This is what due process requires, not an opportunity to be heard at an earlier point.[201] Once the NAL is issued, the target is then given a reasonable period of time, usually within thirty days of the NAL, to file a written statement supported by appropriate documentation and affidavits seeking reduction or cancellation of the proposed forfeiture.[202] The Commission will then issue a forfeiture order if it finds that the target has violated the Act or a Commission rule.[203]

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[194] Waimana NAL Response at 5-8.

[195] Hee NAL Response at 2.

[196] *See* SIC NAL Response at 7-8; Waimana NAL Response at 13; *see also* Hee NAL Response at 2 (arguing that "the Commission disregards the statute of limitations").

[197] *See* SIC NAL Response at 15.

[198] Waimana NAL Response at 5-6.

[199] *Id.* at 5-8.

[200] *See* 47 CFR § 1.80(f).

[201] *Orton Motor Inc. v. HHS*, 884 F.3d 1205, 1214-16 (D.C. Cir. 2018) (holding that a Food and Drug Administration warning letter that does not carry legally significant consequences absent subsequent enforcement action does not implicate due process concerns).

[202] *SIC NAL*, 31 FCC Rcd at 12974-75, paras. 86, 88. *See also* 47 CFR § 1.80(f)(3).

[203] *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002); *IDT NAL*, 23 FCC Rcd at 10810, para. 8.

43. The Commission followed these notice requirements in issuing the *NAL*, to which all three parties were afforded the opportunity to respond, and indeed did respond. In this case, the Commission allowed the parties sixty days to file their responses to the *SIC NAL*—an extension of thirty days beyond the response deadline specified in the *SIC NAL*.[204] We note that Waimana responded to the NAL through counsel, making substantive arguments that we address in detail elsewhere in this order. As a practical matter, Waimana availed itself of the opportunity to respond to the NAL as it saw fit and was not deprived of due process.[205]

44. We also reject Waimana and Hee's more general due process arguments.[206] As noted above, they have received the due process to which they are entitled under the Commission's forfeiture rules. Furthermore, in addition to the notice and forfeiture process provided by the Commission's rules, parties may obtain judicial review of a forfeiture order or receive additional due process in a trial de novo in district court in any proceeding to enforce a forfeiture order.[207] The parties also had the opportunity to obtain, and did seek, legal review of the *SIC Improper Payments Order* and *SIC Reconsideration Order*.[208]

2. The Proposed Forfeiture in the Notice of Apparent Liability Was Calculated in Accordance with the Five-Year Limitations Period in the Commission's Rules

45. SIC and Waimana argue in their NAL responses that the Commission did not apply any limitation period in the NAL and should have applied the four-year statute of limitations in 28 U.S.C. § 1658(a) to calculate the amount of the forfeiture.[209] Hee, too, argues that the Commission "disregards the statute of limitations."[210] These arguments are simply incorrect. Contrary to the arguments of all three parties, the statute of limitations in 28 U.S.C. § 1658(a) is not applicable to this enforcement action; instead, section 1.80 of the Commission's rules, which governs forfeiture proceedings, applies and provides that, "[i]n the case of a forfeiture imposed against a carrier under section[] . . . 220(d), no forfeiture will be imposed if the violation occurred more than 5 years prior to the issuance of a notice of apparent liability."[211] This action against SIC, Waimana, and Hee is based on violations of section 220 of

[204] The *SIC NAL* was issued on December 5, 2016. Waimana and Hee filed their responses on February 3, 2017. SIC filed its response on February 6, 2017.

[205] *See Beall Constr. Co. v. OSHA*, 507 F.2d 1041, 1045 (8th Cir. 1974); *Brennan v. Winters Battery Mfg. Co.*, 531 F.2d 317, 324-35 (6th Cir. 1976).

[206] *See* Waimana NAL Response at 6-8; Hee NAL Response at 2.

[207] 47 U.S.C. § 504(a) ("any suit for the recovery of a forfeiture imposed pursuant to the provisions of this chapter shall be a trial de novo"). *See, e.g., Pleasant Broad. Co. v. FCC*, 564 F.2d 496, 497 (D.C. Cir. 1977) (holding that "section 504 of the Communications Act of 1934…vests exclusive jurisdiction in the district courts to review, in the first instance, licensee challenges to forfeiture orders…"); *Dougan v. FCC,* 21 F.3d 1488, 1491 (9th Cir. 1994) ("We hold that 47 U.S.C. § 504(a) vests exclusive jurisdiction in the district courts to hear enforcement suits by the government, *and* suits by private individuals seeking to avoid enforcement.") (emphasis in original).

[208] *See Sandwich Isles Communications, Inc. v. FCC*, No. 19-1056, 2019 WL 2564087.

[209] *See* SIC NAL Response at 7-9 (arguing that the NAL "completely ignores" the statute of limitations and "[t]o the extent that the FCC wants recompense for alleged violations, it needs to recognize Congress' 4 year statute of limitations and only seek redress for the period covered by it."); Waimana NAL Response at 13 (arguing that there is a four-year statute of limitations applicable to these proceedings but the "FCC purports to go back more than ten years to get the large liability they are seeking from SIC. . . .").

[210] Hee NAL Response at 2.

[211] 47 CFR § 1.80(c)(2). *See, e.g., USF/ICC Transformation Order*, 26 FCC Rcd at 17679, para. 475, n.779 (citing "the five-year limitation on imposition of forfeitures for violations of section 220(d) of the Act," pursuant to section (continued….)

the Act and Parts 32, 36, and 69 of the Commission's rules; thus the five-year limitations period for section 220(d) forfeitures applies.[212] Moreover, the forfeiture amount was expressly calculated based on this five-year limitations period.[213]

46. The text, purpose, and history of Section 1658(a) make clear that the provision is intended to govern court actions, and not agency proceedings such as this one. 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."[214] Section 1658(a) "addresses the time limits for bringing certain claims *in federal court*."[215] The terms "civil action" and "cause of action" indicate that the statute applies to civil judicial proceedings, not an agency's administrative enforcement activities.[216] The history of Section 1658(a) further supports this reading: Section 1658 was enacted as part of the Judicial Improvements Act of 1990,[217] the purpose of which was "to decrease delays in the federal court system as a result of overloaded case dockets, to increase overall

1.80(c)(2) of the Commission's rules); *IDT NAL*, 23 FCC Rcd at 10815-16, para. 22, n.66 (applying five-year limitations period for apparent violations of section 220 and the rules adopted thereunder); *Verizon NAL*, 18 FCC Rcd at 18798, para. 5, n.13 (stating that the statute of limitations for violations of section 220(d) of the Act and rules adopted thereunder is five years); *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, Report and Order, 22 FCC Rcd 16372, 16383-84 & 16385-86, para. 24, n.71 & para. 28, n.84 (2007) (acknowledging "the five-year statute of limitations for violations of section 220(d) of the Act" and noting "that under our rules a notice of apparent liability must be issued within five years of a violation of sections 202(c), 203(e), and 220(d) of the Act."). Section 220 violations stand in contrast to other violations for which the Act does not establish a specific forfeiture amount. In cases where there is no prescribed penalty, forfeiture determinations are governed by Section 503 of the Act. *See* 47 U.S.C. § 503(b)(1) (explaining that this subsection shall not apply to any conduct that is subject to forfeiture under Title II of the Act).

[212] *See IDT NAL*, 23 FCC Rcd at 10815-16, para. 22 (finding carrier apparently liable for violations of section 220(d), as well as two Commission rules, where the Commission "expressly relied upon section 220, among other provisions, as a statutory basis for its adoption of [those rules]," and applying five-year limitations period for these apparent violations).

[213] *See SIC NAL*, 31 FCC Rcd at 12972, para. 80 (noting that "the proposed forfeiture is specifically based on apparent violations for cost study years 2010, 2011, 2012, and 2013, which occurred within five years of this NAL"). SIC asserts that the Commission has taken the position that there is no limitations period applicable to this administrative forfeiture proceeding, and that such a position is inconsistent with a 2016 court decision, *PHH Corp. v. Consumer Financial Protection Bureau*, 839 F.3d 1 (D.C. Cir. 2016). *See* SIC NAL Response at 8-9. However, the Commission clearly applied the five-year limitations period in section 1.80(c)(2) of its rules and therefore SIC's reliance on *PHH Corp*. is misplaced.

[214] 28 U.S.C. § 1658(a). Neither SIC nor Waimana addresses the statute's text restricting application to Acts of Congress enacted after December 1, 1990. Section 220(a)(2) was added in technical amendments to the Communications Assistance for Law Enforcement Act in 1994. *See* Pub. L. No. 103-414, § 303(a)(7), 108 Stat. 4279, 4294 (1994). However, Section 220(d) is the basis for this forfeiture order, and as noted above, it formed an integral part of the application to communications common carriers in the 1934 Act of similar provisions of the Hepburn Act. *See supra* para. 37. Thus, we do not believe this provision lies within the ambit of 28 U.S.C. § 1658(a). In any event, the text, purpose, and history of section 1658(a) make clear that the provision is intended to govern court actions, not agency proceedings such as this one.

[215] *United States v. Searcy*, 880 F.3d 116, 120 (4th Cir. 2018) (emphasis added).

[216] *See id*. at 124-25 (analyzing the terms "civil action" and "cause of action" and holding that Section 1658(a) encompasses judicial proceedings generally, but not civil commitment proceedings in federal district courts); *id*. at 126 (Thacker, J., concurring in the judgment) (citing Black's Law Dictionary's definition of "action" as including "*any judicial proceeding, which, if conducted to a determination, will result in a judgment or decree*") (internal quotation marks omitted); *cf. BP America Production Co. v. Burton*, 549 U.S. 84, 91-92 (2006) (interpreting the term "action" in the context of 28 U.S.C. § 2415(a) to refer solely to court, not administrative, proceedings).

[217] Pub. L. No. 101-650, 104 Stat. 5089, 5115 (1990).

efficiency, and to reduce costs and litigation expenses."[218] More specifically, the purpose of Section 1658 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.[219] These goals related to proceedings in federal court, and not administrative ones.

47. In the *SIC NAL*, the Commission proposed a forfeiture penalty for the five-year period between December 6, 2011, and December 5, 2016, for cost study years 2010, 2011, 2012, and 2013.[220] Although the Commission concluded that SIC had submitted inaccurate data in cost studies filed from 2002 to 2013, it did not propose any forfeiture penalty beyond the five-year period permitted under section 1.80(c)(2).[221] The Commission, therefore, assessed the penalty consistent with its regulations and the applicable five-year limitations period.

3. The Commission Will Address SIC's Authorizations in a Separate Proceeding

48. In the *NAL*, the Commission ordered SIC to submit a report, explaining why the Commission should not initiate proceedings against SIC to revoke its Commission authorizations, including but not limited to, its Section 214 authorizations.[222] In its response, SIC states that the "show cause clauses" are substantively baseless and procedurally defective.[223] The sole question in the instant Forfeiture Order is whether to impose a previously proposed forfeiture, not a show cause proceeding. The Commission will address SIC's authorizations in an appropriate separate order.

E. Reduction or Cancellation of the Proposed Forfeiture Is Not Warranted

49. As discussed above, SIC violated section 220 of the Act.[224] Section 220(d) identifies a prescribed amount for forfeitures for violations of section 220 of the Act—a per day penalty for each day of the violation, for each violation.[225] The Commission relied on this per day methodology to calculate the proposed forfeiture penalty of $49,598,448.[226]

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[218] Kimberly Jade Norwood, *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, 101st Cong., 2d Sess. 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.").

[219] *See* H.R. Rep. No. 101-734, at 24; *Searcy*, 880 F.3d at 121.

[220] *SIC NAL*, 31 FCC Rcd at 12972, para. 80.

[221] *See id*.; 47 CFR § 1.80(c)(2).

[222] *SIC NAL*, 31 FCC Rcd at 12974, para. 84.

[223] SIC NAL Response at 15.

[224] *See supra* Section III, A-C.

[225] *See* 47 U.S.C. § 220(d); 47 CFR § 1.80(b)(8), note, section III (2016) (showing amounts as adjusted for inflation); *see also Ameritech Order*, 10 FCC Rcd at 5608, para. 15 ("Section 220(d) of the Act authorizes us to impose forfeitures of up to $6000 per carrier *per day* for accounting-related violations.") (emphasis added); *supra* note 172 (explaining inflation adjustments to the statutory amount).

[226] *SIC NAL*, 31 FCC Rcd at 12968, para. 80. The Commission calculated the penalty based on the certification date for each cost study year. *Id*. These dates represent the point at which SIC revealed that its accounting for a given cost study year violated the Part 32 and Part 36 rules, and thus also represent the dates the violations of sections 69.601(c) and 69.605(a) began for each study year.

50. SIC argues in its NAL response that a $49 million forfeiture is without merit, unprecedented, and unconstitutionally excessive.[227] In support of its position, SIC claims that in other cases where the Commission has used section 220 as a basis of liability and for calculating a forfeiture, it has not imposed the per day penalty because to do so would be excessive.[228] SIC also argues in its response that the Commission has improperly levied a forfeiture before SIC has an opportunity to resubmit its 2013, 2014, and 2015 cost studies to USAC, as directed by the Commission in the *Improper Payments Order*.[229] SIC contends that the forfeiture is "premature" before USAC has the opportunity to recalculate the appropriate amount of support and the total amount of inflated management fees based on these corrected cost studies.[230]

51. We affirm the Commission's conclusions in the *SIC NAL* regarding the nature, circumstances, extent, and gravity of SIC's violations.[231] Given the scope and duration of violations in this case, the per day forfeiture penalty under section 220 is appropriate and not excessive. That the Commission, in its discretion, chose not to assess a per day penalty in the section 220 cases cited by SIC is not conclusive. In those cases, the Commission made clear that this determination was based on the particular circumstances of the respective cases.[232] In the *Verizon NAL* and *IDT NAL*, the violations at issue were more limited in scope, magnitude, and duration compared to SIC's conduct. The proposed forfeiture in the *Verizon NAL* was based solely on violations of one section of the Commission's affiliate transaction accounting rules (section 32.27(c)), all of which took place over the course of one year and went uncorrected for between eight and 28 months.[233] Similarly, the *IDT NAL* involved conduct that occurred over a period of less than a year and involved a limited set of filing violations.[234] Here, in contrast, SIC has violated several of the Commission's rules over the course of at least thirteen years, through the filing of inaccurate cost studies for years 2000 through 2013, which then resulted in SIC receiving excessive high-cost support payments from 2002 to 2015.[235] The proposed forfeiture penalty covers four years of inaccurate cost studies (2010, 2011, 2012, and 2013), which continued to include inaccurate data even after SIC subsequently resubmitted and recertified amended cost studies.[236] SIC improperly received more than $27 million in high-cost support based on the inaccurate data in the original and amended cost studies.[237] In addition, unlike the conduct at issue in the *Verizon* or *IDT NALs*,

[227] SIC NAL Response at 12-14. SIC maintains that the Commission "inflated the dollar value of the alleged violations of Commission Rules in an attempt to justify the imposition of a mammoth, unprecedented forfeiture." *Id*. at 9.

[228] *Id*. at 14 (citing *Verizon NAL*, 18 FCC Rcd at 18803, para. 17, and *IDT NAL*, 23 FCC Rcd at 10816-17, para. 24).

[229] SIC NAL Response at 13.

[230] *Id.*

[231] *SIC NAL*, 31 FCC Rcd at 12972-74, paras. 80-84.

[232] *See Verizon NAL*, 18 FCC Rcd at 18803, para. 17 ("We do not propose that the forfeiture amount…include the…per day amount because, *under the circumstances of this case*, we believe the result would be excessive.") (emphasis added); *IDT NAL*, 23 FCC Rcd at 10816, para. 24 ("If we were to apply strictly the per day forfeiture dictated by section 220(d)…our calculation would yield an amount that we find excessive *under the circumstances*.") (emphasis added).

[233] *See Verizon NAL*, 18 FCC Rcd at 18802, 18804, paras. 13, 17.

[234] *See IDT NAL*, 23 FCC Rcd at 10816-17, para. 24.

[235] *SIC Improper Payments Order*, 31 FCC Rcd at 13015, para. 57; *SIC NAL*, 31 FCC Rcd at 12972-73, para. 80.

[236] *SIC NAL*, 31 FCC Rcd at 12972-73, para. 80.

[237] *SIC Improper Payments Order*, 31 FCC Rcd at 13015, para. 57.

here SIC's conduct willfully circumvented the Commission's rules to defraud the Commission and gain millions of dollars in unearned universal service support for personal gain.[238]

52. Based on the extent and gravity of SIC's violations, the Commission, within its discretion, proposed to fine SIC for each day its cost studies continued to contain inaccurate data, for the five years allowed by the Commission's rules.[239] Whether SIC resubmitted its cost studies as ordered by the Commission in the *Improper Payments Order*[240] has no impact on the calculation of the forfeiture for the *past* period of continuing violations from December 6, 2011, through December 5, 2016 for the 2010 through 2013 cost study years. In addition, because the Commission used the per day methodology to propose a forfeiture based on the continuing inaccurate data in SIC's cost studies,[241] any re-calculation of the magnitude of inflated management fees is not relevant to the forfeiture calculation.

53. The Commission's rules prescribe forfeiture amounts for various Title II violations but also provide that these prescribed amounts may be adjusted using the downward adjustment criteria for section 503 forfeitures.[242] The four downward adjustment criteria are: (1) whether the violation is minor in nature; (2) whether there has been good faith or voluntary disclosure of the violation; (3) whether the regulatee has a history of overall compliance with the rules; and (4) whether the regulatee has demonstrated an inability to pay the forfeiture.[243] We find that none of these criteria apply here. Nothing in this case suggests that a downward adjustment of the forfeiture penalty is appropriate. SIC's violations of the Commission's rules, set forth above and in the Commission's other orders are not minor, but instead spanned many years and resulted in the receipt of approximately $27 million more in universal service support than SIC was entitled to receive under the high-cost program.[244] SIC did not voluntarily disclose any of its rule violations and has a long history of non-compliance, as it filed cost studies found to have been inaccurate dating as far back as 2002.[245] And in response to the *NAL*, neither SIC, Waimana, or Hee claimed an inability to pay the proposed forfeiture penalty.[246]

54. Additionally, none of the bases advanced by SIC for reduction of the proposed forfeiture are persuasive. In its NAL response, SIC refers to a review conducted by its consultant, GVNW, in which GVNW concluded that the proper monetary recovery based upon SIC's misallocation of Category 1 C&WF is approximately $4,168,000.[247] In so doing, SIC acknowledges misclassification of Category 1 C&WF and, therefore, concedes serious violations of the Commission's cost accounting rules. We are not persuaded that SIC's estimate of misallocated Category 1 C&WF warrants a reduction in the forfeiture penalty. As discussed, the Commission rejected SIC's estimate and instead determined that SIC received $26,320,270 in improper payments associated with its misclassification of Category 1 C&WF—an amount far greater than SIC claims.[248]

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[238] *See SIC NAL*, 31 FCC Rcd at 12967-68, paras. 65-67.

[239] *Id.* at 12972-73, para.80. *See also* 47 CFR § 1.80(c)(2).

[240] *SIC Improper Payments Order*, 31 FCC Rcd at 13043, para. 148.

[241] *SIC NAL*, 31 FCC Rcd at 12972-73, para. 80.

[242] *See* 47 CFR § 1.80(b)(8), note, section III (2016) (referencing the downward adjustment criteria in section II of the note).

[243] 47 CFR § 1.80(b)(8), note, section II (2016).

[244] *See SIC Improper Payments Order*, 31 FCC Rcd at 13044, para. 149.

[245] *See supra* para. 18.

[246] *See* SIC NAL Response; Waimana NAL Response; Hee NAL Response.

[247] SIC NAL Response at 5.

[248] *SIC Improper Payments Order*, 31 FCC Rcd at 13015, para. 57; *SIC Reconsideration Order*, 34 FCC Rcd at 599, para. 47.

55. Finally, SIC argues that the forfeiture is "unconstitutionally out of proportion" with the violations.[249] The standard for determining whether a fine violates the Eighth Amendment as unconstitutionally "excessive" is whether the amount of the fine is "grossly disproportional" to the gravity of the offense.[250] Courts have held there is a strong presumption of constitutionality where a fine falls within the prescribed statutory range for the underlying offense.[251] Additionally, courts will look to the nature of the harm caused by the sanctioned entity or person's conduct when assessing whether a fine violates the Eight Amendment's Excessive Fines Clause.[252]

56. In the *SIC NAL*, the Commission proposed a forfeiture amount calculated as the per day penalty prescribed by section 220(d).[253] The penalty therefore falls within the statutory limits, a factor that strongly favors a finding of constitutionality.[254] The Commission also described in the *SIC NAL*, the *Improper Payments Order*, and the *SIC Reconsideration Order*—and we do so here in this Forfeiture Order—the egregious nature and extent of SIC's violations; SIC's, Waimana's and Hee's efforts to conceal the violations; and the substantial harm resulting to the high-cost program and the entire Universal Service Fund from SIC's conduct. Moreover, the forfeiture penalty here, $49,598,448, is less than twice the $27,270,390 that SIC defrauded the Fund, which is proportionate to the significant impact SIC, Waimana, and Hee had on the Fund.[255] The burden to establish that a forfeiture is grossly disproportionate lies with the party challenging the forfeiture.[256] SIC has failed to satisfy this burden. None of the arguments in SIC's, Waimana's, or Hee's NAL responses advance evidence that contradicts the Commission's findings of significant violations of the high-cost rules, which resulted in considerable loss to the Universal Service Fund.

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[249] SIC NAL Response at 12.

[250] *United States v. Bajakajian*, 524 U.S. 321, 334 (1998) ("The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish . . . We now hold that a punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant's offense.").

[251] *See, e.g., United States v. Sperrazza*, 804 F.3d 1113, 1127 (11th Cir. 2015) (noting that a forfeiture within the permissible statutory range is "'almost certainly'" not excessive) (quoting *United States v. 817 N.E. 29th Dr., Wilton Manors, Fla*., 175 F.3d 1304, 1310 (11th Cir. 1999)); *United States v. Malewicka*, 664 F.3d 1099, 1106 (7th Cir. 2011) ("There is a strong presumption of constitutionality where the value of a forfeiture falls within the fine range prescribed by Congress . . . These pronouncements reflect the considered legislative judgment as to what is excessive, and a court should be hesitant to substitute its opinion for that of the people."); *Newell Recycling Co. v. EPA*, 231 F.3d 204, 210 (5th Cir. 2000) ("No matter how excessive (in lay terms) an administrative fine may appear, if the fine does not exceed the limits prescribed by the statute authorizing it, the fine does not violate the Eighth Amendment."); *see also Bajakajian*, 524 U.S. at 336 ("judgments about the appropriate punishment for an offense belong in the first instance to the legislature").

[252] *See, e.g., U.S. Sec. & Exch. Commission v. Metter*, 706 F. App'x 699, 703-05 (2d Cir. 2017) (applying the *Bajakajian* framework to a civil SEC enforcement action and assessing the nature of harm to uphold a challenged disgorgement penalty).

[253] *SIC NAL*, 31 FCC Rcd at 12972-73, para. 80.

[254] *See, e.g., Sperrazza*, 804 F.3d at 1127; *Malewicka*, 664 F.3d at 1106; *Newell Recycling Co.*, 231 F.3d at 210.

[255] *See Pharaon v. Bd. of Governors of Federal Reserve System*, 135 F.3d 148, 156-57 (D.C. Cir. 1998) (holding that $37 million forfeiture against a company and the individual that controlled it was not grossly disproportional to violation for $23 million foreign bank's secret purchase of domestic bank). We separately note that in the context of punitive damages in civil cases, courts have found even more significant ratios between punitive and actual damages consistent with the Due Process Clause. *See, e.g., Williams v. First Advantage LNS Screening Solutions Inc.*, 947 F.3d 735, 765-66 (11th Cir. 2020) (4:1 ratio); *May v. Nationstar Mortgage, LLC*, 852 F.3d 806, 818 (8th Cir. 2017) (8:1 ratio).

[256] *See United States v. Viloski*, 814 F.3d 104, 109 (2d Cir. 2016).

57. The forfeiture here was derived using a per day methodology specified in the applicable statute, which the Commission has repeatedly recognized as within its authority, and was based on substantial factual evidence.[257] The Commission stayed within the statutory limits; the Commission also considered whether any downward adjustment was warranted in accordance with the Commission's rules, and found no basis for such a downward adjustment.[258]

58. The facts of this case involve multiple, significant, intentional violations over the course of many years, resulting in a substantial loss to the Universal Service Fund. Thus, for the reasons discussed in the *SIC NAL* and above, we find nothing in the record that warrants mitigation of the forfeiture. We conclude that $49,598,448 is the appropriate forfeiture penalty.

F. SIC, Waimana, and Albert Hee Are All Jointly and Severally Liable for the Payment of the Penalty

59. In the *SIC NAL*, the Commission concluded that SIC, Waimana and Hee were "for legal purposes, one and the same" and consequently were jointly and severally liable for the proposed forfeiture penalty.[259] Waimana and Hee assert in their NAL responses that they are separate entities under the law and should not be held liable for the payment of the forfeiture penalty.[260] Waimana also maintains that the record shows it had no role in SIC's cost studies or C&WF classification, and therefore cannot be liable for any violation.[261]

60. As explained in the *SIC NAL*, the Commission may hold an entity or individual liable for the acts or omissions of a different, related entity: (i) where there is a common identity of officers, directors, or shareholders; (ii) where there is common control between the entities; and (iii) when it is necessary to preserve the integrity of the Act and to prevent the entities from defeating the purpose of statutory provisions.[262] Where these factors are satisfied, as a practical matter, the Commission has held an individual liable for the acts of a separate, corporate entity where the named individual possesses significant operational control of the entity, and his or her actions have furthered the unlawful conduct. For example, in *Telseven*, the Commission held the sole owner of the company at issue in that case jointly and severally liable along with the company, as an "egregious violator[ ] of the Act who create[d] sham corporate forms to evade liability."[263]

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[257] *SIC NAL*, 31 FCC Rcd at 12972-73, para. 80. *See also Verizon NAL*, 18 FCC Rcd at 18803, para. 16; *Ameritech Order*, 10 FCC Rcd at 5608-09, para. 15. Indeed, the *Verizon NAL*—cited by SIC itself—suggests that per-day penalties for inaccurate accounting entries under section 220(d) can be calculated through the time that the accounting violations are corrected. *Verizon NAL*, 18 FCC Rcd at 18803, para. 17.

[258] *SIC NAL*, 31 FCC Rcd at 12973, para. 80. *See supra* paras. 49-56.

[259] *SIC NAL*, 31 FCC Rcd at 12968, para. 69.

[260] Hee NAL Response at 3 (arguing that Hee cannot be held liable as a former stockholder of an unregulated corporation and that Waimana cannot be held liable as a holding structure used to incorporate SIC); Waimana NAL Response at 5 ("No legal authority, anywhere in the United States, authorizes the piercing of [Waimana's] corporate veil for enforcement of a money judgment merely by the recitation that the corporation was the owner of a different corporation and some of its officers and/or directors overlapped at some times.").

[261] Waimana NAL Response at 9. Waimana disclaims any responsibility for the cost studies, since they were performed by SIC's accountants, and states that "this good faith disagreement among accountants gives no basis to justify a monetary forfeiture against W[aimana]." *Id*. at 11.

[262] *SIC NAL*, 31 FCC Rcd at 12969, para. 70 & n.200.

[263] *Telseven, LLC, and Patrick Hines*, Forfeiture Order, 31 FCC Rcd 1629 (2016) (*Telseven Forfeiture Order*) (piercing the corporate veil to find Patrick Hines jointly and severally liable for, among other things, his corporation's failure to contribute fully to the Fund).

61. We address Waimana's joint and several liability as SIC's direct holding company. First, there is clearly a common identity of officers, directors, and shareholders among Waimana and SIC.[264] Waimana does not dispute that the two companies were commonly owned by Albert Hee, with Hee serving as the sole shareholder of Waimana, which in turn was the sole shareholder of SIC from at least 2002 through 2013.[265] In addition to Hee's complete ownership over the two companies, SIC and Waimana also shared common officers and directors during the relevant period.[266]

62. Second, there was common control between the two entities at all relevant times.[267] Hee exercised almost complete control over both companies and their operations.[268] It is also undisputed that SIC and Waimana shared the same operational space during the relevant period—one in which SIC paid almost all of the lease expense.[269] Evidence from USAC's investigation showed that Waimana and other identified SIC affiliates only existed to service each other,[270] and that Waimana's corporate structure consisted of several affiliate agreements "without which, it appears that many of the entities would not be able to operate."[271] Hee moved or assigned employees from one company to another to perform work and used SIC employees to sustain the affiliates who altogether had few, if any, employees.[272] SIC, Waimana, and the other affiliated companies did not possess corporate credit cards; rather, Hee used his personal credit cards for purchases made by SIC, Waimana, and other affiliated companies.[273] SIC and Waimana's finances were also completely commingled—large volumes of affiliate transactions flowed through SIC's accounts and nearly all of Waimana's total revenue came from the management fees it received from SIC.[274]

63. Finally, it is necessary to pierce the corporate veil and reach Waimana "to preserve the integrity of the Act and to prevent the entities from defeating the purpose of statutory provisions."[275] The Commission's findings in the *SIC Improper Payments Order* and *SIC NAL* establish that SIC improperly sought and received high-cost support under the guise of fraudulent management fees to Waimana, an entity that existed solely to service SIC and its other affiliates, and funnel money Hee and his family.[276] The Commission concluded that millions of dollars in management fees paid by SIC to Waimana were not "used and useful" to SIC's provision of telecommunications services—as required by section 201 of the Act and our high-cost rules—but instead were effectively a scheme to provide funding to Waimana for the personal benefit of the Hee family.[277] In this case we must "look beyond the corporate name and

[264] *See Telseven Forfeiture Order,* 31 FCC Rcd at 1632-33, paras. 9-10.

[265] *SIC NAL*, 31 FCC Rcd at 12969, para. 71.

[266] *Id.*

[267] *See Telseven Forfeiture Order,* 31 FCC Rcd at 1632-33, paras. 9-10.

[268] *SIC NAL*, 31 FCC Rcd at 12969, para. 71.

[269] *Id.* at 12970, para. 72; *SIC Improper Payments Order*, 31 FCC Rcd at 13031-32, para. 107. *See also* Final USAC Report at 17-27.

[270] *SIC NAL*, 31 FCC Rcd at 12970, para. 73.

[271] *Id.* (quoting Final USAC Report at 70-71).

[272] *Id.*

[273] *Id*. at para. 74.

[274] *Id.*

[275] *See Telseven Forfeiture Order,* 31 FCC Rcd at 1631, para. 8.

[276] *See SIC Improper Payments Order*, 31 FCC Rcd at 13031, paras. 104-06; *SIC NAL*, 31 FCC Rcd at 12962, 12968, paras. 43, 66.

[277] *See SIC Improper Payments Order*, 31 FCC Rcd at 13033, paras. 112-14.

take 'cognizance of the identity of ownership and control' between [the entities] in order to advance core statutory directives and our implementing rules."[278] To find otherwise would be to allow SIC and Waimana to defeat the purpose of the Act and the Commission's rules.[279] Waimana's contention that it had no involvement in SIC's cost studies is irrelevant to our decision to pierce the corporate veil and treat SIC and Waimana as one entity.

64. We also affirm our determination that Hee be held jointly and severally liable for SIC's violations of the Commission's rules. With respect to the first veil-piercing factor, the evidence clearly demonstrates a common identity of officers, directors, and shareholders between Hee and SIC.[280] From at least 2002 to 2013, Hee held complete ownership of SIC as the sole shareholder of Waimana, which in turn was the sole shareholder of SIC.[281] Hee was also the sole director on Waimana's board of directors from approximately 2001 to 2013, and held several positions as a board member and/or officer at SIC and each of its affiliates during the relevant period.[282]

65. The second factor—common control—is also clearly satisfied here.[283] The Commission has presented overwhelming evidence showing that Hee used his near total control of Waimana, SIC, and their affiliates to enrich himself and his family, often through the misuse of public funds.[284] Witnesses at Hee's criminal trial also testified that Hee exercised near complete control of Waimana's and SIC's operations.[285] This included Hee's control of the accounting within SIC and all of its affiliated companies, including Waimana.[286] As detailed during his criminal trial, Hee directed SIC employees to falsely identify personal expenses as business expenses.[287] Waimana paid Hee's personal expenses, then billed and was reimbursed for such "management" expenses by SIC, which in turn sought and received support from the USF for these expenses.[288] SIC awarded a $ million bonus to Hee in 2014, at the same time it was failing to pay its obligations under its Rural Utility Services (RUS) loan.[289] According to evidence presented at trial, Hee spent corporate funds for his personal use, including more

[278] *Telseven Forfeiture Order,* 31 FCC Rcd at 1632, para. 9 (quoting *Capital Tel. Co., Inc. v. FCC*, 498 F.2d 734,738 (D.C. Cir. 1974)).

[279] *Id*. at 1635-36, para. 19 ("[i]n an investigation such as this one, where the activities of the corporate enterprise consisted of significant violations of the rules governing telecommunications providers' payments to contribution and regulatory fee programs, and the corporation has since sold its assets and then filed for bankruptcy protection, we find that statutory purposes would otherwise be frustrated if we permitted Hines to hide behind his corporate entities and avoid personal liability for such violations."); *Ernesto Bustos Licensee of Station WTBL-CD Lenoir, North Carolina*, Forfeiture Order, 29 FCC Rcd 1898, 1900-01, para. 14 (2014) (finding that "Catawba Broadcasting and Ernesto Bustos are the same 'person' for purposes of analysis under Section 503(b)(6)(B)" and stating that "[a] corporation will be looked upon as a legal entity 'until sufficient reason to the contrary appears; but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons.'") (quoting *Capital Tel. Co., Inc.*, 498 F.2d at 738)).

[280] *See Telseven Forfeiture Order,* 31 FCC Rcd at 1632, para. 10.

[281] *SIC NAL*, 31 FCC Rcd at 12952, 12954, paras. 10, 13.

[282] *Id.* at 12953-54, paras. 12-13.

[283] *See Telseven Forfeiture Order,* 31 FCC Rcd at 1632, para. 10.

[284] *SIC NAL*, 31 FCC Rcd at 12971, para. 76.

[285] *Id.* at 12969, para. 71.

[286] *SIC Improper Payments Order*, 31 FCC Rcd at 13030-31, para. 104; *SIC NAL*, 31 FCC Rcd at 12967, para. 64.

[287] *SIC Improper Payments Order*, 31 FCC Rcd at 13030-31, para. 104; *SIC NAL*, 31 FCC Rcd at 12967-68, paras. 64-65.

[288] *SIC NAL*, 31 FCC Rcd at 12970, para. 73.

[289] *Id.* at 12967, para. 63; *SIC Improper Payments Order*, 31 FCC Rcd at 13039, para. 132.

than $90,000 for personal massages, which Waimana deducted for tax purposes as "consulting services"[290] This scheme was only made possible through Hee's complete control over Waimana, SIC, and its other affiliates.

66. Lastly, as with Waimana, we find it necessary to hold Hee jointly and severally liable for SIC's wrongful conduct in order to preserve the integrity of the Communications Act and to prevent entities such as SIC from defeating the purpose of statutory provisions and the Commission's rules.[291] Hee cannot evade liability where he abused the corporate form to use SIC and its affiliates' participation in the high-cost program for significant personal gain, including by directing that his family's personal expenses be falsely classified as business expenses to be reimbursed by the Fund.[292]

67. We find, by a preponderance of the evidence, that the Commission correctly recognized the common identity and common control of SIC, Waimana, and Hee, and determined that each are jointly and severally responsible for the payment of the penalty. SIC, Waimana, and Hee have failed to provide any evidence to refute the Commission's finding that they are essentially one and the same. As discussed above, failure to hold Waimana and Hee, respectively, responsible for the violations described here and in the *SIC NAL* would defeat the purpose of the Act and the Commission's rules and would undermine the Commission's ability to achieve compliance, enforcement, and the recovery of improper payments and penalties for conduct that violates our rules. We therefore find no reason to reverse our conclusion and now affirm that SIC, Waimana, and Albert Hee are jointly and severally liable for the $49,598,448 forfeiture penalty.

IV. CONCLUSION

68. Based on the record before us, we conclude that SIC violated section 220(d) of the Act by failing to keep its accounts, records, and memoranda in the manner prescribed by the Commission in Parts 32 and 36 of its rules, and violated sections 69.601(c) and 69.605(a) of the Commission's rules by submitting and certifying inaccurate data in annual cost studies used to calculate SIC's federal high-cost program support. We decline to cancel, withdraw, or reduce the $49,598,448 forfeiture proposed in the *SIC NAL*.

V. ORDERING CLAUSES

69. Accordingly, **IT IS ORDERED** that Sandwich Isles Communications, Inc., Waimana Enterprises, Inc., and Albert S.N. Hee, pursuant to section 220(d) of the Communications Act of 1934, as amended, and section 1.80 of the Commission's rules, [293] **ARE JOINTLY AND SEVERALLY LIABLE FOR A MONETARY FORFEITURE** in the amount of forty-nine million, five hundred and ninety-eight thousand, and four hundred and forty-eight dollars ($49,598,448) for violating the Act and the Commission's rules.

70. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within thirty (30) calendar days after the release of this Forfeiture Order.[294]

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[290] *SIC NAL*, 31 FCC Rcd at 12957, para. 26.

[291] *See, e.g., Telseven Forfeiture Order*, 31 FCC Rcd at 1631, para. 8, n.20 ("The Commission and the courts have long stated that '[w]here the statutory purpose could ... be easily frustrated through the use of separate ... entities, the Commission is entitled to look through corporate form and treat the separate entities as one and the same for purpose of regulation.'") (quoting *Improving Public Safety Communications in the 800 MHz Band*, Fifth Report and Order, Eleventh Report and Order, Sixth Report and Order, and Declaratory Ruling, 25 FCC Rcd 13874, 13887-88, para. 33 (2010) (citing *General Tel. Co. of the S.W. v. United States*, 449 F.2d 846, 854 (5th Cir. 1971))); *Capital Tel. Co., Inc.*, 498 F.2d at 738.

[292] *See SIC NAL*, 31 FCC Rcd at 12967-68, paras. 63-65.

[293] 47 CFR § 1.80.

[294] *Id.*

Sandwich Isles Communications, Inc., Waimana Enterprises, Inc., and Albert S.N. Hee shall send electronic notification of payment to Rakesh Patel, Enforcement Bureau, Federal Communications Commission, at Rakesh.Patel@fcc.gov, and Meghan Ingrisano, Enforcement Bureau, Federal Communications Commission, at Meghan.Ingrisano@fcc.gov, on the date said payment is made. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act.[295]

71. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),[296] or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[297]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN). For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.
- Payment by credit card must be made by using the Commission's Fee Filer website at https://apps.fcc.gov/FeeFiler/login.cfm. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the "Pay by Credit Card" option. Please note that there is a $24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Fee Filer website at https://apps.fcc.gov/FeeFiler/login.cfm. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

72. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.[298] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

[295] 47 U.S.C. § 504(a).

[296] Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

[297] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

[298] *See* 47 CFR § 1.1914.

73. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to (1) Sandwich Isles Communications, Inc., 1003 Bishop Street, Suite 2700, Honolulu, Hawaii 96813 and P.O. Box 893189, Mililani, Hawaii 96789; (2) Waimana Enterprises, Inc., 1003 Bishop Street, Suite 2700, Honolulu, Hawaii 96813 and P.O. Box 893128, Mililani, Hawaii 96789; (3) Albert S.N. Hee, 1155 Akipola Street, Kailua, Hawaii 96734; (4) James Arden Barnett, Jr., Esq., RDML (ret.) USN, Stephen R. Freeland, Esq., Ian Volner, Esq., and Christopher Boone, Esq., Venable LLP, 600 Massachusetts Avenue NW, Washington, D.C. 20001; and (5) Lex R. Smith, Esq., Kobayashi, Sugita & Goda, LLP, First Hawaiian Center, 999 Bishop Street, Suite 2600, Honolulu, Hawaii 96813.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

STATEMENT OF
CHAIRMAN AJIT PAI

Re: *In the Matter of Sandwich Isles Communications, Inc., Waimana Enterprises, Inc., Albert S.N. Hee*, EB-IHD-15-00019603

Over the course of nearly 15 years, Sandwich Isles Communications received millions of dollars through the Commission's Universal Service Fund. This was taxpayer money intended to support deployment and maintenance of communications networks for the benefit of the people living in the Hawaiian Homelands. But Albert Hee—then the sole shareholder of Sandwich Isles and its parent company, Waimana Enterprises—had different ideas.

Hee was engaged in a long-running scheme to use corporate funds from Sandwich Isles, Waimana, and several other affiliated companies he controlled to pay numerous personal expenses for himself and members of his family, including more than $90,000 to his personal masseuse, family vacations to Europe and the South Pacific, his children's college tuition, vehicles, and inflated salaries for his wife and children. In 2016, Hee was sentenced to nearly five years in federal prison in connection with this scheme. And following an investigation by USAC that uncovered Hee's and Sandwich Isles' misappropriation of Universal Service Fund money, the Commission barred Sandwich Isles from siphoning any more money from the Fund and sought to recover the $27 million Sandwich Isles overcharged the Fund. We also proposed to impose a forfeiture of $49.6 million on the company.

As the Commission determined in 2016, and reaffirmed last year, Sandwich Isles has no claim to a single dime of the $27 million it improperly obtained from the Fund. And this was no accounting error or honest misunderstanding of the Commission's rules. It was a willful effort to defraud the Universal Service Fund—essentially, all taxpayers—for private gain. That's why I am so pleased that the Commission today has imposed a forfeiture against Sandwich Isles, Waimana, and Albert Hee of $49.6 million, the maximum allowed by law for their violations of the Commission's rules. This is one of the largest forfeitures the Commission has ever imposed, period—let alone on a participant in the Commission's high-cost universal service program. It's well-deserved in this case, given the repeated, willful violations involved, and it serves to reaffirm the Commission's commitment to stamping out waste, fraud, and abuse in the Universal Service Fund.

The American people, and particularly, those living in the Hawaiian Homelands, deserve better. And thankfully, there is good news ahead. Next month, bidding will kick off in the $16 billion Rural Digital Opportunity Fund Phase I auction, and unserved parts of Sandwich Isles' former service area will be eligible for bidding by service providers who will use taxpayer dollars to bring broadband to unserved Americans living there—not for massages, vacations, and cars.

It is impossible to say how many current and former staff throughout the agency have contributed in one way or another to the many facets of this decade-long saga, but it's a lot and I am grateful to each one, including those that worked hard on the item we adopt today: Pam Gallant, Rosemary Harold, Meghan Ingrisano, Shannon Lipp, Mercedeh Momeni, Keith Morgan, Rakesh Patel, Raphael Sznajder, David Sobotkin, Adam Suppes, and Romanda Williams of the Enforcement Bureau; Richard Mallen, Linda Oliver, Bill Richardson, and Derek Yeo of the Office of General Counsel; and Alex Minard, Dangkhoa Nguyen, Ryan Palmer, Gilbert Smith of the Wireline Competition Bureau.