

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

APPLICATION OF BRANDY L. WREATH,)
DIRECTOR OF THE PUBLIC UTILITY DIVISION,)
OKLAHOMA CORPORATION COMMISSION,) CAUSE NO. PUD 201700001
SEEKING TO ESTABLISH AN ANNUAL)
ASSESSMENT FACTOR FOR THE OKLAHOMA) ORDER NO. **663838**
UNIVERSAL SERVICE FUND FOR THE FISCAL)
YEAR BEGINNING JULY 1, 2017)

HEARING: April 13, 2017, in Courtroom B
2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before Ben Jackson, Administrative Law Judge

APPEARANCES: Jack G. Clark, Jr., Attorney *representing* The Verizon Companies¹
Nancy M. Thompson, Attorney *representing* Sprint Communications
Company, L.P., Sprint Spectrum L.P., Virgin Mobile USA, L.P. and
Nextel West Corp. and T-Mobile Central LLC, d/b/a T-Mobile
J. David Jacobson, Attorney *representing* Valor Telecommunications of
Texas, LP d/b/a Windstream Communications Southwest, Windstream
Oklahoma LLC, Oklahoma Windstream LLC and Windstream NuVox
Oklahoma, Inc. and CenturyTel of Northwest Arkansas, LLC and
CenturyLink Communications, LLC
Ron Comingdeer and Kendall W. Parrish, Attorneys *representing* Atlas *et*
*al.*²
John W. Gray, Jr., Attorney *representing* Southwestern Bell Telephone
Company, d/b/a AT&T Oklahoma
Marc Edwards and C. Eric Davis, Attorneys *representing* Cox Oklahoma
Telcom, L.L.C.

INTERIM ORDER

¹ MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services; MCI Communications Services, Inc. d/b/a Verizon Business Services; Verizon Long Distance, LLC; Verizon Enterprise Solutions, LLC; TTI National, Inc.; Verizon Select Services, Inc.; and Cellco Partnership and its commercial mobile radio service subsidiaries operating in the State of Oklahoma (collectively, "Verizon").

² Atlas Telephone Company; Beggs Telephone Company; Bixby Telephone Company, Inc.; BTC Broadband, Inc.; Canadian Valley Telephone Company; Lakeland Cellular; Carnegie Telephone Company; Central Oklahoma Telephone Company; Central Cellular, Inc. d/b/a COTC Connections; Cherokee Telephone Company; Chickasaw Telephone Company; Craw Kan Telephone Cooperative, Inc.; Cross Telephone Company; Cross Wireless, LLC d/b/a Sprocket Wireless, LLC d/b/a Mobilz; Cross-Valliant Cellular Partnership; Dobson Telephone Company; Hinton Telephone Company; KanOkla Telephone Association, Inc.; Lavaca Telephone Company, Inc., d/b/a Pinnacle Communications; McLoud Telephone Company; Medicine Park Telephone Company; Oklatel Communications, Inc.; Oklahoma Western Telephone Company; Oklahoma Western Telephone Co., d/b/a OWTC Cellular d/b/a Phoenix; Ozark Telephone Company; Panhandle Telephone Cooperative, Inc.; Panhandle Telecommunications Systems, Inc.; Pioneer Telephone Cooperative, Inc.; Cellular Network Partnership d/b/a Pioneer/Enid Cellular; Santa Rosa Telephone Cooperative, Inc.; Seneca Telephone Company; Shidler Telephone Company; South Central Telephone Association, Inc.; Southwest Oklahoma Telephone Company; Terral Telephone Company; Valliant Telephone Company; Wyandotte Telephone Company; and Wichita Online, Inc. (collectively "Atlas *et al.*").

William J. Bullard and Kimberly K. Argenbright, Attorneys *representing* Chouteau *et al.*³
Kimberly K. Argenbright, Attorney *representing* Salina-Spavinaw Telephone Company and SST Long Distance Inc.
Dara M. Derryberry, Deputy Attorney General *representing* Office of Attorney General, State of Oklahoma
Curtis M. Long, Attorney *representing* Oklahoma Communication Systems, LLC and Mid-America Telephone, LLC
Michael L. Velez, Assistant General Counsel *representing* Public Utility Division, Oklahoma Corporation Commission

BY THE COMMISSION:

The Corporation Commission (the “Commission”) of the State of Oklahoma being regularly in session and the undersigned Commissioners present and participating, there comes on for consideration and action the Application of Brandy L. Wreath, Director of the Public Utility Division, Oklahoma Corporation Commission (“PUD” or “Applicant”) seeking to establish an annual Assessment Factor for the Oklahoma Universal Service Fund (“OUSF”) for the fiscal year beginning July 1, 2017.

I. PROCEDURAL HISTORY

On January 4, 2017, the Application in the above-styled cause was filed by PUD. All contributing providers that may be obligated to contribute to the OUSF or Oklahoma Lifeline Fund (“OLF”) pursuant to the Oklahoma Telecommunications Act of 1997, at 17 O.S. §§ 139.105, 139.106, and 139.107 were named as Respondents.

Also on January 4, 2017, PUD filed a Motion to Establish Procedural Schedule and a Notice of Hearing setting the Motion to Establish Procedural Schedule for hearing on January 26, 2016.

On January 5, 2017, PUD filed an Amended Notice of Hearing setting the Motion to Establish Procedural Schedule for hearing on January 26, 2017. On January 26, 2017, the Motion to Establish Procedural Schedule was heard and recommended.

On January 9, 2017, the Attorney General for the State of Oklahoma (“Attorney General”) filed an Entry of Appearance.

On January 12, 2017, Sprint Communications Company, L.P., Sprint Spectrum L.P., Virgin Mobile USA, L.P. and Nextel West Corp. (collectively, “Sprint”) filed a Motion for Protective Order and Notice of Hearing setting the Motion for Protective Order for hearing on January 19, 2017. On January 19, 2017, the Motion for Protective Order was heard and recommended.

³ Chouteau Telephone Company, Grand Telephone Company, Totah Communications, Inc., and Pine Telephone Company (collectively “Chouteau et al.”).

On January 17, 2017, T-Mobile Central LLC, d/b/a T-Mobile (“T-Mobile”) filed a Motion for Protective Order and Notice of Hearing setting the Motion for Protective Order for hearing on January 19, 2017. On January 19, 2017, the Motion for Protective Order was heard and recommended.

Also on January 17, 2017, Verizon filed a Motion for Protective Order and Notice of Hearing setting the Motion for Protective Order for hearing on January 26, 2017. The Motion for Protective Order was advanced to January 19, 2017, and was heard and recommended on that date.

On January 19, 2017, Cox Oklahoma Telcom, L.L.C. (“Cox Oklahoma”) filed their Entry of Appearance.

On January 20, 2017, Atlas *et al.* filed their Entry of Appearance.

On January 26, 2017, the Commission issued Order No. 660235, granting the Motions for Protective Order filed by Sprint, T-Mobile and Verizon.

On January 27, 2017, Southwestern Bell Telephone Company, d/b/a AT&T Oklahoma filed their Entry of Appearance.

Also on January 27, 2017, Atlas *et al.* and Chouteau *et al.* filed a Motion for Protective Order and Notice of Hearing setting the Motion for Protective Order for hearing on February 9, 2017. The Motion for Protective Order was advanced to February 2, 2017, and was heard and recommended on that date.

On February 8, 2017, CenturyTel of Northwest Arkansas, LLC and CenturyLink Communications, LLC (together “CenturyLink”) filed a Motion for Protective Order and Notice of Hearing setting the Motion for Protective Order for hearing on February 16, 2016. On February 16, 2017, the Motion for Protective Order was heard and recommended.

Also on February 8, 2017, counsel for Valor Telecommunications of Texas, LP d/b/a Windstream Communications Southwest, Windstream Oklahoma, LLC, Oklahoma Windstream, LLC and Windstream NuVox Oklahoma, Inc. (collectively, “Windstream”) filed a Motion for Protective Order and Notice of Hearing setting the Motion for Protective Order for hearing on February 16, 2017. On February 16, 2017, the Motion for Protective Order was heard and recommended.

On February 16, 2017, the Commission issued Order No. 661073, granting the Motion for Protective Order filed by Atlas *et al.* and Chouteau *et al.*

On February 17, 2017, Oklahoma Communication Systems, LLC and Mid-America Telephone, LLC filed their Entry of Appearance.

On February 24, 2017, PUD filed the Direct Testimonies of Brandy Loyd Wreath and Jeremy K. Schwartz.

On March 2, 2017, the Commission issued Order No. 661608, granting the Order Establishing Procedural Schedule and Order No. 661609, granting the Motions for Protective Order filed by CenturyLink and Windstream.

On March 3, 2017, Commissioner Bob Anthony filed a Request.

On March 7, 2017, PUD filed a Supplemental Exhibit of Brandy Loyd Wreath.

On March 20, 2017, the Attorney General filed a Notice of Withdrawal as Counsel for Vilard Mullaliu.

On March 30, 2017, the Attorney General filed a Statement of Position.

The Hearing on the Merits was held before Administrative Law Judge (“ALJ”) Jackson on April 13, 2017. The ALJ recommended the Commission set the factor at 2.16% by an interim order.

II. SUMMARY OF EVIDENCE

Jeremy K. Schwartz, Senior Public Utility Regulatory Analyst

Mr. Schwartz testified that the OUSF Administrator filed this Cause seeking the establishment of an updated annual OUSF Assessment Factor for the fiscal year beginning July 1, 2017, which consists of the period from July 1, 2017, through June 30, 2018. Mr. Schwartz testified that data requests were issued and historical documentation was utilized in the Administrator’s calculation of an updated Assessment Factor. Mr. Schwartz testified that the categories included in the calculation are as follows:

- Attorney General - \$250,000
- Oklahoma Lifeline - \$9,500
- Primary OUSF - \$14,513,000
- Special OUSF - \$16,305,000
- Management Contract Fees - \$ 196,000
- Internal Administrative, Oversight, and Accounting Expenses - \$1,500,000
- External Audits of Fund Manager and the Administrator - \$100,000
- Accounting Contracts - \$200,000
- Bank Fees - \$3,800

Mr. Schwartz testified that these costs resulted in an estimated funding requirement for the fiscal year beginning July 1, 2017, of \$33,077,300. Mr. Schwartz testified that the Administrator then took into account the estimated fund balance⁴ as of June 30, 2017, and estimated interest income⁵ for the fiscal year beginning July 1, 2017, to come up with a net estimated funding requirement of \$23,476,561.

⁴ \$9,580,739

⁵ \$20,000

Mr. Schwartz testified that the net estimated funding requirement was then divided by the total projected intrastate retail revenues to calculate an Assessment Factor of 2.15 percent.

Mr. Schwartz testified that as a part of his testimony, he prepared two (2) exhibits. The first exhibit shows each contributing provider listed by number. The second exhibit shows the numbers which correlate to the first exhibit and lists out those companies' total projected revenue, Voice over Internet Protocol ("VoIP") revenues and prepaid wireless revenues within the total projected revenue. These exhibits were introduced as part of the record, sealed as confidential, and available only to PUD, the Attorney General, and the Commission.

Brandy Loyd Wreath, Director of the PUD, the Consumer Services Division, and the Oklahoma Universal Service Fund ("OUSF") Administrator

Mr. Wreath testified that all required OUSF audits have been performed pursuant to statutory requirements. Mr. Wreath testified that operational improvements have been underway since 2012. Mr. Wreath testified that prior to that time, he cannot attest to the process utilized to hire auditors or the process utilized to conduct audits. Mr. Wreath testified that he has worked with legislators, industry, and Commissioners to push for a more transparent process to be utilized in meeting the annual audit requirements. Changes have been made to statutes and Commission rules to implement the operational modifications utilized by the current OUSF management team.

Mr. Wreath testified that he confirms the level of support included in the factor recommendation relating to the following:

- Internal Administrative Costs - \$1,500,000
- Accounting Contracts - \$200,000
- External Audits - \$100,000

Mr. Wreath testified that he recommends that the OUSF Assessment Factor remain at 2.16%, the factor that is currently in place pursuant to an Order of the Commission. Mr. Wreath testified that leaving the Assessment Factor at 2.16% will allow carriers to maintain current billing systems, alleviate the necessity for notice to consumers of a change, and create stability for consumers.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

THE COMMISSION FINDS that it has jurisdiction over this matter by virtue of Article IX, § 18, of the Oklahoma Constitution and 17 O.S. § 139.107.

THE COMMISSION FURTHER FINDS that notice was proper and given as required by law and the rules of the Commission.

THE COMMISSION FURTHER FINDS that 17 O.S. § 139.107 states, in part:

A. The Oklahoma Lifeline Fund (OLF) and the Oklahoma Universal Service Fund (OUSF) shall be funded in a competitively neutral manner not inconsistent

with federal law by all contributing providers. The funding from each contributing provider shall be based on the total intrastate retail Oklahoma Voice over Internet Protocol (VoIP) revenues and intrastate telecommunications revenues, from both regulated and unregulated services, of the contributing provider, hereinafter referred to as assessed revenues, as a percentage of all assessed revenues of the contributing providers, or such other assessment methodology not inconsistent with federal law. VoIP services shall be assessed only as provided for in the decision of the Federal Communications Commission, FCC 10-185, released November 5, 2010, or such other assessment methodology that is not inconsistent with federal law. The Commission may after notice and hearing modify the contribution methodology for the OUSF and OLF, provided the new methodology is not inconsistent with federal law.

B. The Corporation Commission shall establish the OLF assessment and the OUSF assessment at a level sufficient to recover costs of administration and payments for OUSF and OLF requests for funding as provided for in the Oklahoma Telecommunications Act of 1997. The administration of the OLF and OUSF shall be provided by the Public Utility Division of the Commission. The administrative function shall be headed by the Administrator as defined in Section 139.102 of this title. The Administrator shall be an independent evaluator. The Administrator may enter into contracts to assist with the administration of the OLF and OUSF.

THE COMMISSION FURTHER FINDS that the information relied upon by PUD in recommending the contribution factor is the best information available for making that evaluation.

THE COMMISSION FURTHER FINDS that the contribution factor for the fiscal year beginning July 1, 2017, should be 2.16% based upon the carriers' projections.

THE COMMISSION FURTHER FINDS the contribution factor of 2.16% to be fair and reasonable for the fiscal year beginning July 1, 2017, and ending June 30, 2018, and should be adopted by the Commission on an interim basis.

THE COMMISSION FURTHER FINDS that by issuing an Interim Order, the Commission may modify the OUSF factor, as needed, after notice to parties to this Cause and hearing of new evidence or circumstances that warrant the modification, without initiating a new cause.

ORDER

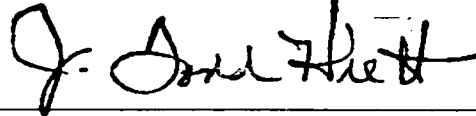
THE COMMISSION THEREFORE ORDERS that the OUSF contribution factor for the fiscal year beginning July 1, 2017, shall be 2.16% until further Order of the Commission.

THIS ORDER SHALL BE EFFECTIVE immediately.

OKLAHOMA CORPORATION COMMISSION



DANA L. MURPHY, Chairman



J. TODD HIETT, Vice Chairman

DISSENTING OPINION ATTACHED

BOB ANTHONY, Commissioner

CERTIFICATION

DONE AND PERFORMED by the Commissioners participating in the making of this
Order, as shown by their signatures above, this 18th day of May, 2017.

[SEAL]



PEGGY MITCHELL, Secretary

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

APPLICATION OF BRANDY L. WREATH,)
DIRECTOR OF THE PUBLIC UTILITY DIVISION,)
OKLAHOMA CORPORATION COMMISSION,) CAUSE NO. PUD 201700001
SEEKING TO ESTABLISH AN ANNUAL)
ASSESSMENT FACTOR FOR THE OKLAHOMA)
UNIVERSAL SERVICE FUND FOR THE FISCAL)
YEAR BEGINNING JULY 1, 2017)

Dissenting Opinion of Corporation Commissioner Bob Anthony

The current 2.16% Oklahoma Universal Service Fund (OUSF) assessment factor has allowed an OUSF monthly balance of approximately \$9 to \$12 million to exist since October 2015. In my opinion, certain Commissioners justifiably did not accept the much higher factor of 4.62% recommended for the period beginning July 1, 2015.

Respectfully, I do not support certain aspects of today's Commission order, including:

- Issuing an "Interim Order" to allow the OUSF factor to be modified without initiating a new cause.
- A 2.16% assessment factor based, in part, on a projected \$10 million increase in Primary OUSF distributions, comparing the \$4.5 million "actual" amount for July 1, 2015 through June 30, 2016 to the \$14.5 million "requested" Primary OUSF distribution for July 1, 2017 through June 30, 2018. This methodology assumes a speculative pattern of full approvals for Primary OUSF funding requests made after July 1, 2017. Surely this \$10 million increase should be discounted, unless the Commission plans to miss all of its 120-day ordering opportunities to disallow inappropriate or ineligible Primary OUSF applications.
- The finding that "the best information available" has been relied upon. For example, the 2.16% calculated factor seems not to have considered the February 23, 2017 OUSF Update showing an amount of \$13,732,902.05 (through January monthly payout) in "Portions Paid Under Interim" that indeed may be partially refundable.
- The statement "that all required OUSF audits have been performed pursuant to statutory requirements." Good and thorough oversight of OUSF operations and payment eligibility needs more than just "meeting the annual audit requirements."
- Failure to respond adequately to my request filed in this Cause on March 3, 2017 seeking,

An exhibit indicating whether subsequent OUSF operational or performance audits have addressed the "What We Found deficiencies or concerns as well as the "Prospective areas for further study" referenced by the State Auditor and Inspector "Audit Report" for the Oklahoma Corporation Commission OUSF - Special Universal Services for the time period July 1, 2012 through June 30, 2013.

Furthermore, the Administrator has not disputed my repeated assertions over several years that the OUSF has issued millions of dollars in payments that should not have been made due to noncompliance with the eligibility provisions of the fund. Over three years ago, the State Auditor and Inspector Audit, in the Report referenced above, explicitly found, "Providing special universal services funding to ineligible recipients could lead to increased fees for telecommunication consumers." In my opinion, this and related concerns, including the true-up process, need more review by a full outside performance audit. Furthermore, the scope of this State Auditor effort was restricted to "Special Universal Services" and did not include payments for Primary Universal Services funding, including those made pursuant to the troublesome "Make Whole Provision."

In addition, today's order does not address whether the OUSF is a "state fund" or "government money" and does not address tax issues potentially associated with the OUSF. Today's order and factor assessment calculation utilize an OUSF estimated interest income. Does the OUSF owe federal income tax on this interest? The attached page from the Internal Revenue Service (IRS) addressed to the OUSF assigns an Employer Identification Number and raises the topic of "an annual filing requirement" that may apply. The IRS letter is addressed to the street address of the Oklahoma Corporation Commission in care of a Public Utility Division staff member. If the OUSF is not a state fund, what is it? If instead it is an Exempt Organization or Corporation, is a tax return required? The OUSF program needs answers to these questions.

Respectfully submitted,

A handwritten signature in black ink that reads "Bob Anthony". The signature is written in a cursive, slightly slanted style.

Commissioner Bob Anthony



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
CINCINNATI OH 45999-0023

Date of this notice: 02-26-2014

Employer Identification Number:
46-4923462

Form: SS-4

Number of this notice: CP 575 E

OKLAHOMA UNIVERSAL SERVICES FUND
% JAMES JONES
2101 N LINCOLN BLVD STE 580
OKLAHOMA CITY, OK 73105

For assistance you may call us at:
1-800-829-4933

IF YOU WRITE, ATTACH THE
STUB AT THE END OF THIS NOTICE.

WE ASSIGNED YOU AN EMPLOYER IDENTIFICATION NUMBER

Thank you for applying for an Employer Identification Number (EIN). We assigned you EIN 46-4923462. This EIN will identify you, your business accounts, tax returns, and documents, even if you have no employees. Please keep this notice in your permanent records.

When filing tax documents, payments, and related correspondence, it's very important that you use your EIN along with your complete name and address exactly as shown above. Any variation may cause a delay in processing, result in incorrect information in your account, or even cause you to be assigned more than one EIN. If the information shown above isn't correct, please send us the correction using the attached tear-off stub.

Annual filing requirements

Most organizations with an EIN have an annual filing requirement, even if they engage in minimal or no activity.

A. If you are tax exempt, you may be required to file one of the following returns or notices:

Form 990, Return of Organization Exempt From Income Tax
Form 990-EZ, Short Form Return of Organization Exempt From Income Tax
Form 990-PF, Return of Private Foundation
Form 990-N, e-Postcard (available online only)

Additionally, you may be required to file your annual return electronically.

If an organization required to file a Form 990, Form 990-PF, Form 990-EZ, or Form 990-N does not do so for three consecutive years, its tax-exempt status is automatically revoked as of the due date of the third return or notice.

Please refer to www.irs.gov/990filing for the most current information on your filing requirements.

B. If you are not tax-exempt, you may be required to file one of the following returns:

Form 1120, U.S. Corporation Income Tax Return
Form 1041, U.S. Income Tax Return for Estates and Trusts
Form 1065, U.S. Return of Partnership Income

Please refer to Publication 1635, Understanding Your EIN, for more information about which forms you may be required to file.