

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

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APPLICATION OF BRANDY L. WREATH, ) CAUSE NO. PUD 201300002  
DIRECTOR OF THE PUBLIC UTILITY DIVISION, )  
OKLAHOMA CORPORATION COMMISSION, ) ORDER NO. **611971**  
SEEKING TO ESTABLISH AN ANNUAL )  
ASSESSMENT FACTOR FOR THE OKLAHOMA )  
UNIVERSAL SERVICE FUND FOR THE FISCAL )  
YEAR BEGINNING JULY 1, 2013 )

HEARING: May 2, 2013, in Courtroom B  
2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105  
Before James L. Myles, Administrative Law Judge

APPEARANCES: Kimberly C. Prigmore, Assistant General Counsel, *representing*  
the Public Utility Division, Oklahoma Corporation Commission  
Jack G. Clark, Jr., Attorney *representing* Verizon companies<sup>1</sup>  
John W. Gray, Jr., Attorney *representing* Southwestern Bell Telephone  
Company, d/b/a AT&T Oklahoma  
Marc Edwards, Attorney *representing* Cox Oklahoma Telcom, L.L.C.  
Ron Comingdeer and Kendall W. Parrish, Attorneys *representing*  
Atlas Telephone Company, et al.<sup>2</sup>  
Nancy Thompson, Attorney *representing* Sprint companies<sup>3</sup>,  
T-Mobile Central LLC, d/b/a T-Mobile; and tw telecom Inc.

**FINAL ORDER**

<sup>1</sup>These companies include MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services ("Verizon Access"); MCI Communications Services, Inc. d/b/a Verizon Business Services; Verizon Long Distance, LLC; NYNEX Long Distance Company; UI National, Inc.; Teleconnect Long Distance Service & Systems, d/b/a Telecom\*USA and Teleconnect; Verizon Select Services, Inc.; and Cellco Partnership and its commercial mobile radio service subsidiaries operating in the State of Oklahoma (collectively, "Verizon").

<sup>2</sup>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, 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. d/b/a (f/k/a) Oklahoma Telephone and Telegraph, 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, and Wichita Online, Inc.

<sup>3</sup>Sprint Communications Company, L.P.; Sprint Spectrum L.P; Virgin Mobile USA, L.P; and Nextel West Corp. (Collectively, "Sprint")

BY THE COMMISSION:

The Corporation Commission (“Commission”) of Oklahoma being regularly in session and the undersigned Commissioners being present and participating, there comes on for consideration the merits of the Application filed in the above styled Cause.

**I. PROCEDURAL HISTORY**

On January 7, 2013, the application in the above styled Cause was filed by Brandy L. Wreath, Director of the Commission’s Public Utility Division (“Applicant” or “Staff”). All telecommunications carriers that may be obligated to contribute to the Oklahoma Universal Service Fund (“OUSF”) were named as Respondents.

On January 7, 2013, Staff also filed a Motion to Establish Procedural Schedule and a Motion for Protective Order.

On January 10, 2013, counsel for the Verizon companies filed his entry of appearance.

On January 22, 2013, Order No. 606772, granting the Motion for Protective Order was issued by the Commission.

On January 29, 2013, and on January 30, 2013, counsel for AT&T Oklahoma and for Sprint companies, T-Mobile, and tw telecom Inc. entered their respective appearances.

On January 31, 2013, the Commission issued Order No. 607285, granting the Motion for Procedural Schedule.

On February 1, 2013, counsel for Cox Oklahoma and for Atlas Telephone Company, et al. entered their respective appearances.

On March 19, 2013, Chris Herbison, OUSF Controller (“Staff”) for the Public Utility Division (“PUD”) of the Commission filed prefiled testimony.

On May 2, 2013, the hearing on the merits was held before the undersigned Administrative Law Judge (“ALJ”).

**II. SUMMARY OF EVIDENCE**

Ms. Chris Herbison, OUSF Controller, prefiled testimony on behalf of Staff and testified at the hearing regarding this cause. Ms. Herbison noted one correction to her prefiled testimony on page 7, line 4, correcting the spelling of “Cox Oklahoma Telcom.” Noting that one correction, Ms. Herbison said her oral testimony would be the same as in her prefiled testimony.

Ms. Herbison testified that the Commission’s rules require that the OUSF contribution factor (“OUSF assessment factor” or “contribution factor”) be adjusted annually or as necessary, to provide for an appropriate amount of funds in the OUSF. This cause was filed for the purpose of establishing an appropriate OUSF assessment factor for the fiscal year beginning July 1, 2013, and ending June 30, 2014 (“FY 2014”) and to address any related issues.

Ms. Herbison explained that she asked the OUSF manager, Solix, Inc. (“Solix”), to send data requests to each Telecommunications Carrier (“Carrier”) receiving OUSF funding support. The data requests asked the Carriers to identify any planned requests that might increase or decrease OUSF expenditures in FY 2014 from current level (“FY 2013 levels”). Additionally, Solix sent a data request to each contributor to the OUSF, which asked for the telecommunications carriers’ total retail-billed Oklahoma intrastate telecommunications revenues from both regulated and unregulated telecommunications services. Solix calculated the projected total funding requirement for FY 2014 and prepared schedules of actual contributions and expenditures for FY 2013. Ms. Herbison reviewed and verified the schedules provided by Solix for accuracy and made appropriate adjustments with input from Solix. Thereafter, she performed the necessary calculations and analysis using the same methodology as was used in previous years.

Ms. Herbison explained that the OUSF was created by the Oklahoma Telecommunications Act of 1997 (17 O.S. §§ 139.101 *et seq.*) and that rules for the administration of the OUSF are set forth in OAC 165:59. As stated in 17 O.S. § 139.106 (B), the “. . . fund shall be funded and administered to promote and ensure the availability of primary universal services, at rates that are reasonable and affordable and special universal services, and to provide for reasonably comparable services at affordable rates in rural areas as in urban areas.”

As set forth in the Oklahoma Statutes and the Commission’s rules, the programs currently funded by the OUSF are Primary Universal Service, Special Universal Service, and Lifeline and Link-Up Service. The OUSF is funded in a competitively neutral manner via an assessment charged to all telecommunications service providers (“TSP”) providing intrastate retail services in Oklahoma. The assessment charged to carriers is typically referred to as a carrier’s “OUSF contribution.” A carrier’s OUSF contribution is calculated by multiplying the OUSF contribution factor by the TSP’s intrastate retail-billed telecommunications service revenues for both regulated and unregulated services. TSPs may, at their option, recover OUSF contributions from their customers through a line-item charge on customer bills.

Ms. Herbison then testified the recommended Contribution Factor for FY 2014 was 0.64%. Ms. Herbison explained the FY 2014 Contribution Factor was decreasing from FY 2013’s 3.14% because in approximately 2009 Staff had requested from the industry that all old causes be submitted to the Fund Administrator. As a result, between 2010 – 2012, there were several causes filed which covered multi-year time periods and sought multi-million dollar recoveries from the OUSF fund. The OUSF contribution factors for FYs 2010 through 2013 took those potential payouts from the OUSF fund into account. Solix has made the collections for these causes, but Staff has yet to reach a final resolution in most of these causes. In other words, those funds have been collected, but not paid out. As a result, the current fund balance has grown to \$39,153,316.00. In addition, additional collections of \$14,990,516.00 for the period of March through June 2013, the balance of FY 2013, are expected. *Reference:* Exhibit CH-1 to pre-filed testimony of Chris Herbison, Lines 15B and 16B. Ms. Herbison testified the Net Estimated Required Funding is \$9,494,072.00. *Reference:* CH-1, Line 18B.

The Administrative Law Judge then asked Ms. Herbison if she expected the multi-year, multi-million dollar causes to be completed by the end of FY 2013. She responded Staff

anticipates having the majority of those causes settled by June 30, 2013, which is the end of the current fund year.

In response to the ALJ's concern about whether or not reducing the OUSF contribution factor to the extent recommended by her in this cause would result in needing a larger increase in next year's OUSF contribution factor cause, Ms. Herbison introduced an exhibit that she had prepared, Hearing Exhibit No. 1 ("HE 1"). Ms. Herbison explained that HE 1 described the trends and the history of the OUSF Contribution Factor for the fund since its inception. HE 1 showed that the initial factor for FY 1999 was 0.456%. The factor stayed relatively stable from then to FY 2009, ranging from a low of 0.400% to a high of 0.600%. However, after FY 2009 the factor increased over the next four years, increasing to 1.940% in FY 2010, to 1.990% in FY 2011, and finally to 3.140% in FYs 2012 and 2013.

Ms. Herbison then stated that she did not have concerns about the contribution factor in FY 2015 rising to the level of FY 2012 and 2013, mainly because the large cases she had previously described would no longer be a draw on the fund. Ms. Herbison also stated that there were other factors such as the recertification for telemedicine entities and PUD 201200040, which involves the abolishment of the High Cost Fund, which could impact the future contribution factor, but these were not taken into account this fiscal year because they could not be quantified with certainty at this time. Ms. Herbison also testified that, fortunately, there is a process in the Commission rules whereby the factor can be modified with notice and a hearing, if necessary.

None of the counsel for other parties to the cause offered cross examination questions to Ms. Herbison.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Commission has jurisdiction of the subject matter and persons. Notice was given as required by law and the Rules of the Commission. Authority to grant the application arises under Article IX, Section 18 of the Oklahoma Constitution and 17 O.S. § 139.101 *et seq.*

The Commission finds that the OUSF was codified as 17 O.S. §139.101 *et seq.* The Commission enacted rules related to the OUSF, which were codified as OAC 165:59. The OUSF is "...funded and administered to promote and ensure the availability of primary universal services, at rates that are reasonable and affordable and special universal services, and to provide for reasonable comparable services at affordable rates in rural areas as in urban areas." The programs currently funded by the OUSF are Primary Universal Service, Special Universal Service, and Lifeline. The OUSF is funded in a competitively neutral manner via an assessment charged to all TSPs providing intrastate retail services in Oklahoma. The assessment charged to carriers is typically referred to as a carrier's "OUSF contribution." A carrier's OUSF contribution is calculated by multiplying the OUSF contribution factor by the TSP's intrastate retail-billed telecommunications service revenues for both regulated and unregulated services. TSPs may, at their option, recover OUSF contributions from their customers through a line-item charge on their customer bills.

The Commission further finds that the information relied upon by Staff in recommending the contribution factor is the best information available for making that evaluation.

The Commission further finds the recommended contribution factor of 0.64% to be fair and reasonable for FY 2014. The Commission also finds that there will be an increase in next year's factor as the Net Estimated Required Funding for FY 2015 will have to increase, because the 0.64% contribution factor is only designed to collect \$9,494,072.00 per year and the ongoing monthly payments of the OUSF exceed that amount. It is only because of the surplus that has accumulated in the OUSF that the amount needed to be collected during FY 2014 is less than 1/3 what has been needed in prior years.

**IV. ORDER**

THE COMMISSION THEREFORE ORDERS that the OUSF contribution factor for FY 2014 be established at 0.64%, to be effective for the fiscal year commencing July 1, 2013.

THIS ORDER SHALL BE EFFECTIVE immediately.

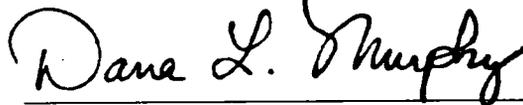
CORPORATION COMMISSION OF OKLAHOMA



PATRICE DOUGLAS, Chairman

Concurs with 0.64% Contribution Factor

BOB ANTHONY, Vice Chairman



DANA L. MURPHY, Commissioner

**CERTIFICATION**

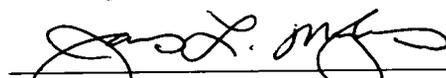
DONE AND PERFORMED by the Commissioners participating in the making of this Order, as shown by their signatures above, this 23 day of May, 2013.

[Seal]

  
PEGGY MITCHELL, Secretary

**REPORT OF THE ADMINISTRATIVE LAW JUDGE**

The foregoing findings, conclusions and order are the report and recommendations of the undersigned administrative law judge.

  
JAMES L. MYLES  
Administrative Law Judge

May 23, 2013  
Date