

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF BRANDY L. WREATH,
ADMINISTRATOR OF THE OKLAHOMA
UNIVERSAL SERVICE FUND, SEEKING TO
ADJUST THE CONNECTIONS-BASED
ASSESSMENT FACTOR FOR THE
OKLAHOMA UNIVERSAL SERVICE FUND

CASE NO. OSF2022-000045

ORDER NO. 730170

HEARING: June 22, 2022, and July 12, 2022, in Courtroom B (and virtually)
2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before James L. Myles, Administrative Law Judge ("ALJ")

October 4, 2022, in Room 301
2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before the Oklahoma Corporation Commission, en banc

October 13, 2022 in Courtroom B (and virtually)
2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before James L. Myles, ALJ

APPEARANCES: Jeff W. Kline, Deputy General Counsel *representing* Oklahoma Universal
Service Fund Administrator, Oklahoma Corporation Commission
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 d/b/a
CenturyLink
Ron Comingdeer, Attorney *representing* Atlas Telephone Company, et al¹
William J. Bullard and Kimberly K. Argenbright, Attorneys, *representing*
Consolidated Communications; Totah Communications, Inc.; Pine
Telephone Company, Inc.; and Grand Telephone Company, Inc.
Jack G. Clark, Jr., Attorney *representing* CTIA – The Wireless Association
Marc Edwards and C. Eric Davis, Attorneys *representing* Cox Oklahoma
Telecom, LLC
Andy N. Ferguson and Christine Chevis, Assistant Attorneys General
representing the Office of the Attorney General, State of Oklahoma

¹ @Link Services, LLC, 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, LLC d/b/a COTC Connections, Cherokee Telephone Company, Chickasaw Telephone Company, Cim-Tel Cable, LLC, Craw-Kan Telephone Cooperative, Inc., Cross Cable Television, LLC, Cross Telephone Company, Cross Wireless, LLC d/b/a Sprocket Wireless, LLC d/b/a Mobilz, Cross-Valiant Cellular Partnership, Dobson Telephone Company, Hinton Telephone Company, KanOkla Telephone Association, Lavaca Telephone Company, Inc. d/b/a Pinnacle Communications, McLoud Telephone Company, Medicine Park Telephone Company, OklaTel Communications, Oklahoma Western Telephone Company d/b/a OWTC Cellular d/b/a Phoenix, Ozark Telephone Company, Panhandle Telephone Cooperative, Panhandle Telecommunications Systems, Inc., Pioneer Telephone Cooperative, Inc., Cellular Network Partnership d/b/a Pioneer/Enid Cellular, Santa Rosa Telephone Cooperative, Seneca Telephone Company, KanOkla Shidler Telephone Company, South Central Telephone Association, Southern Plains Cable, LLC, Southwest Oklahoma Telephone Company, Terral Telephone Company, Valliant Telephone Company, Wyandotte Telephone Company, and Wichita Online, Inc.

INTERIM ORDER

This Case comes before the Corporation Commission (“Commission”) of the State of Oklahoma on the Application of the Brandy L. Wreath², Administrator of the Oklahoma Universal Service Fund, Seeking to Adjust the Connections-Based Assessment Factor for the Oklahoma Universal Service Fund (“OUSF”); and the subsequent Joint Stipulation and Settlement Agreement (“Joint Stipulation”) filed on October 3, 2022. Pages numbered 1 through 6 (ECF filed pages 1 through 8) of the Joint Stipulation are hereby incorporated by reference and appended hereto as Attachment “A.”³

I. PROCEDURAL HISTORY

The procedural history through July 15, 2022, is set forth in the Report and Recommendation of the ALJ filed on August 19, 2022 (“ALJ Report”), and is incorporated herein by reference.

In addition:

On September 2, 2022, the Attorney General of the State of Oklahoma (“Attorney General”), CTIA – The Wireless Association (“CTIA”), and Atlas Telephone Company, *et al.* (“Atlas”), filed exceptions to the ALJ Report and motions for oral argument before the Commission en banc. The filed notice of hearing set the motions for October 4, 2022.

On September 12, 2022, the Administrator of the OUSF filed a Motion to Allow Late Filing and Waiver of Commission Rule. The filed notice of hearing set the Motion for October 4, 2022. At that time the Commission remanded said Motion to the ALJ for disposition. Additional notice of hearing filed herein set the Motion for hearing before the ALJ on October 13, 2022.

On September 14, 2022, the Administrator of the OUSF, CTPG⁴, CTIA, and Atlas each filed responses to the various exceptions.

On October 3, 2022, the Joint Stipulation signed by the Administrator of the OUSF, CTPG, Atlas, and CTIA (“Stipulating Parties”) was filed. Cox Oklahoma Telecom, LLC and the Attorney General did not sign the Joint Stipulation, but neither party opposes its adoption.

Also, on October 3, 2022, the Combined Notice of Intention to Withdraw Exceptions Contingent Upon Approval of Unopposed Stipulation and Recommendation for Continuance was filed by the Attorney General.

On October 4, 2022, the exceptions and the Motion to Allow Late Filing and Waiver of Commission Rule came on for hearing before the Commission en banc. The Commission

² On June 2, 2022, Mark Argenbright was named the Director of the Public Utility Division and Administrator of the Oklahoma Universal Service Fund.

³ The instant order replaces the proposed order that was attached to the filed Joint Stipulation.

⁴ “CTPG” is: Consolidated Communications; Totah Communications, Inc.; Pine Telephone Company, Inc.; and Grand Telephone Company, Inc.

remanded the Case to the ALJ to consider the Joint Stipulation and to address the pending motion.

On October 6, 2022, the Administrator filed a Motion to Approve Joint Stipulation and Settlement Agreement and Notice of Hearing which set the motion before the ALJ on October 13, 2022.

On October 13, 2022, the ALJ heard the Motion to Approve Joint Stipulation and Settlement Agreement and the Motion to Allow Late Filing and Waiver of Commission rule and recommended both be granted.

II. SUMMARY OF EVIDENCE

A summary of the evidentiary record is set forth in the ALJ Report, and is incorporated herein by reference.

In addition, at the hearing on the Joint Stipulation on October 13, 2022, the ALJ heard testimony from Mark Argenbright, OUSF Administrator, on behalf of the Stipulating Parties and as summarized below.

A. Summary of Testimony Provided by Mark Argenbright on October 13, 2022

Mark Argenbright provided testimony in support of the Joint Stipulation. Mr. Argenbright testified that he was familiar with the Joint Stipulation and was one of the signatories. All parties signed the Joint Stipulation except Cox Oklahoma Telcom, LLC and the Attorney General. However, while Cox and the Attorney General did not sign the Joint Stipulation, it was his understanding that neither party opposes the Joint Stipulation and, further, that if the Commission approves the Joint Stipulation, the exceptions filed by Atlas, the Attorney General, and CTIA would be withdrawn.

The Stipulating Parties are requesting the Commission approve a \$1.85 per connection charge, and that this charge is supported by the evidence contained in the record of this Case. The \$1.85 per connection charge was proposed in the supplemental testimony filed in June by Mr. Farzad Khalili. Based on known obligations at the time of this hearing, the proposed per connection charge of \$1.85 is no longer expected to pay off the existing fund deficit by June 30, 2023. This is because the calculations for dealing with the deficit were done in June with the expectation that the new factor would be implemented around July 1, 2022. Because the OUSF has missed out on the increased revenue that would have come from the implementation of the \$1.85 factor in July, it will not be possible to clear the existing deficit in the current Fund Year. Despite the timing issue, a higher factor is not being sought at this time, and the Administrator only requests the Commission approve the \$1.85 per connection charge.

The Joint Stipulation contemplates implementation of the new connections-based factor as quickly as possible with the hopes of an order being issued before October 31, 2022, resulting in the first payments under the new factor being received on December 15, 2022. However, should the Commission issue an order in November, the timing of implementation of the new factor would shift where the first application of the \$1.85 factor would be based on connections at the end of November and the first payment of the \$1.85 factor would be received on January 15, 2023.

The Joint Stipulation adopts the alternative reporting mechanism that was originally proposed by Mr. Khalili and discussed during the hearing on the merits, as modified by Mr. Meredith's recommendations. Furthermore, the Joint Stipulation makes clear that the Administrator is withdrawing the proposal to modify the over-under recovery procedure. The result is that the existing rules that address over and under collection of the customer pass-through would remain in place. Adopting the Joint Stipulation is appropriate in this case and is requesting that the Commission approve the Joint Stipulation.

The general terms and conditions of the Joint Stipulation include a non-severability provision.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence and the applicable law, the Commission makes the following findings of fact and conclusions of law:

Jurisdiction and Notice

THE COMMISSION FINDS that it is vested with jurisdiction pursuant to Article IX, § 18, of the Oklahoma Constitution, 17 O.S. §§ 139.101 *et seq.*, and 17 O.S. § 139.107(A).

THE COMMISSION FURTHER FINDS that notice was proper and given as required by law and the rules of the Commission. 17 O.S. § 139.107, OAC 165:59-3-13.

Procedural Issues

THE COMMISSION FURTHER FINDS that portions of the ALJ Report filed on August 19, 2022, are adopted and incorporated by reference herein to the extent consistent with the provisions contained in the Joint Stipulation and this Order. Specifically, the following paragraphs are not adopted:

- On page 22, under the section titled "Connections-Based Methodology Should Continue," the first three paragraphs.
- On pages 23 and 24, under the section titled "Resolution of Over and/or Under Collection by Contributing Providers," all four paragraphs.

THE COMMISSION FURTHER FINDS that the ALJ's granting of the Administrator's Motion to Allow Rebuttal Testimony to be heard during the July 12, 2022, hearing on the merits as detailed in the August 19, 2022, ALJ Report was appropriate and should be approved.

THE COMMISSION FURTHER FINDS that the ALJ's recommendation that the Commission find good cause exists for the waiver of OAC 165:5-13-5(a)(2) and approval of the Administrator's Motion to Allow Late Filing and Waiver of Commission Rule should be approved.

THE COMMISSION FURTHER FINDS that based on the terms in the Joint Stipulation, the requested withdrawals of the respective exceptions filed by CTIA and Atlas should be granted.

THE COMMISSION FURTHER FINDS that pursuant to the Attorney General's Combined Notice of Intention to Withdraw Exceptions Contingent Upon Approval of Unopposed Stipulation and Recommendation for Continuance filed on October 3, 2022, the Attorney General's withdrawal of his exceptions should be granted.

THE COMMISSION FURTHER FINDS that the respective Motions for Oral Argument filed by the Attorney General, CTIA, and Atlas were withdrawn.

THE COMMISSION FURTHER FINDS that the Joint Stipulation is signed by the Administrator of the OUSF, CTPG, CTIA, and Atlas; and that Cox Oklahoma Telcom, LLC and the Attorney General did not sign the agreement, but do not oppose the approval of the Joint Stipulation.

THE COMMISSION FURTHER FINDS that the Motion to Approve Joint Stipulation and Settlement Agreement should be granted, as modified herein.

Authority Under the Oklahoma Telecommunications Act of 1997

THE COMMISSION FURTHER FINDS that the Oklahoma Telecommunications Act, as amended, established a universal service policy for Oklahoma, requiring funds to be made available 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." 17 O.S. § 139.106(B); and that the Commission is required to fund the OUSF consistent with the provisions of the Oklahoma Telecommunications Act, as amended.

THE COMMISSION FURTHER FINDS that the Commission has a statutory obligation to fund the Oklahoma Lifeline Fund ("OLF") and the OUSF at a level sufficient to recover costs of administration of the OUSF and OLF and to timely distribute payments for OUSF and OLF requests for funding as provided for in the Oklahoma Telecommunications Act of 1997, as amended.

Contribution Amount

THE COMMISSION FURTHER FINDS that the calculated OUSF funding requirement of \$82,486,417 was the amount required to meet the expected funding needs for Fund Year 2022-2023, to which the deficit balance of \$20,467,852 should be added. This deficit balance is the amount that was included in the Supplemental Testimony of Farzad Khalili, filed on June 17, 2022.

THE COMMISSION FURTHER FINDS that based on the Supplemental Testimony of Farzad Khalili, the assessment factor to meet that total funding requirement under the previous revenue-based assessment methodology would be 20.98%.

THE COMMISSION FURTHER FINDS that the charge per-connection of \$1.85, as proposed by the Administrator in the Supplemental Testimony and as recommended by the ALJ, should be adopted, effective immediately, and apply to contributions due on the fifteenth day of

the second month following the month in which this Order is issued; and that this updated charge per-connection should supersede any previously established charge.

Alternative Reporting

THE COMMISSION FURTHER FINDS that paragraph numbers 17 through 21, pages 3 and 4, of the Joint Stipulation concerning alternative reporting should be adopted by the Commission.

Quarterly Reporting

THE COMMISSION FURTHER FINDS that the OUSF Administrator should provide quarterly updates to the Commission showing current payment obligations, including the status of any deficit balance, which the Commission recognizes may vary with the passage of time from that reported in the testimony. The Commission may take any further action if or as warranted.

IV. ORDER


THE COMMISSION THEREFORE ORDERS that the Attachment “A” Joint Stipulation is hereby approved in accordance with the above Findings of Fact and Conclusions of Law.

THE COMMISSION FURTHER ORDERS that the Oklahoma Universal Service Fund assessment is hereby set at \$1.85 per connection, until further Order of the Commission. Payments of the revised assessment shall begin on January 15, 2023, based on the number of connections provided by each Contributing Provider on November 30, 2022, and reported to the Administrator by January 15, 2023.

THE COMMISSION FURTHER ORDERS the Oklahoma Universal Service Fund Administrator to provide quarterly updates to the Commission as set forth above.

[Signatures on subsequent page 7]

OKLAHOMA CORPORATION COMMISSION


DANA L. MURPHY, Chairman

DISSENT

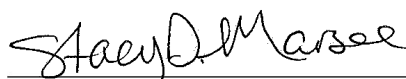
BOB ANTHONY, Vice Chairman


J. TODD HIETT, Commissioner

CERTIFICATION

DONE AND PERFORMED by the Commissioners participating in the making of this Order, as shown by their signatures above, this 29th day of November, 2022




Stacy D Marsee, Acting Secretary

Attachment "A"

CASE OSF 2022-000045 ENTRY NO. 71 FILED IN OCC COURT CLERK'S OFFICE ON 10/03/2022 - PAGE 1 OF 14

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF BRANDY L. WREATH,
ADMINISTRATOR OF THE OKLAHOMA
UNIVERSAL SERVICE FUND, SEEKING TO
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ASSESSMENT FACTOR FOR THE
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CASE NO. OSF 2022-000045

JOINT STIPULATION AND SETTLEMENT AGREEMENT

The undersigned parties to the present Case hereby present the following Joint Stipulation and Settlement Agreement ("Joint Stipulation") for the Commission's review and approval as their compromise and settlement of all issues in this proceeding between the undersigned parties to the Joint Stipulation ("Stipulating Parties"). The Stipulating Parties represent to the Commission that this Joint Stipulation represents a fair, just, and reasonable settlement of these issues and that the terms and conditions of the Joint Stipulation are in the public interest. The Stipulating Parties therefore urge the Commission to issue an Interim Order in this Case adopting and approving this Joint Stipulation.

It is hereby stipulated and agreed by and between the Stipulating Parties as follows:

General Terms and Conditions

1. This Joint Stipulation represents a negotiated settlement for the purpose of compromising and settling all issues which were raised relating to this proceeding.
2. Each of the undersigned counsel of record affirmatively represents that he or she has full authority to execute this Joint Stipulation on behalf of their client(s).
3. None of the signatories hereto shall be prejudiced or bound by the terms of this Joint Stipulation in the event the Commission does not approve this Joint Stipulation nor shall any of the Stipulating Parties be prejudiced or bound by the terms of this Joint Stipulation should any appeal of a Commission order adopting this Joint Stipulation be filed with the Oklahoma Supreme Court.
4. The Stipulating Parties agree that the provisions of this Joint Stipulation are the result of extensive negotiations, and the terms and conditions of this Joint Stipulation are interdependent. The Stipulating Parties agree that settling the issues in this Joint Stipulation is in the public interest and, for that reason, they have entered into this Joint Stipulation to settle among themselves the issues in this Joint Stipulation. This Joint Stipulation shall not constitute nor be cited as a precedent nor deemed an admission by any Stipulating Party in any other proceeding except as necessary to enforce its terms before the Commission or any state court of competent jurisdiction. The Commission's decision, if it enters an order consistent with this Joint Stipulation, will be binding as to the matters decided regarding the issues described in this Joint Stipulation, but the decision

will not be binding with respect to similar issues that might arise in other proceedings. A Stipulating Party's support of this Joint Stipulation may differ from its position or testimony in other cases. To the extent there is a difference, the Stipulating Parties are not waiving their positions in other cases. Because this is a stipulated agreement, the Stipulating Parties are under no obligation to take the same position as set out in this Joint Stipulation in other dockets.

Non-Severability

5. The Stipulating Parties stipulate and agree that the agreements contained in this Joint Stipulation have resulted from negotiations among the Stipulating Parties and are interrelated and interdependent. The Stipulating Parties hereto specifically state and recognize that this Joint Stipulation represents a balancing of positions of each of the Stipulating Parties in consideration for the agreements and commitments made by the other Stipulating Parties in connection therewith. Therefore, in the event that the Commission does not approve and adopt the terms of this Joint Stipulation in total and without modification or condition (provided, however, that the affected party or parties may consent to such modification or condition), this Joint Stipulation shall be void and of no force and effect, and no Stipulating Party shall be bound by the agreements or provisions contained herein. The Stipulating Parties agree that neither this Joint Stipulation nor any of the provisions hereof shall become effective unless and until the Commission shall have entered an Order approving all of the terms and provisions as agreed by the parties to this Joint Stipulation and such Order becomes final and non-appealable.

Jurisdiction and Notice

6. The Commission is vested with jurisdiction over the above-styled and numbered Case pursuant to Article IX, Section 18 of the Oklahoma Constitution, 17 O.S. §§ 139.101 *et seq.*, and 17 O.S. § 139.107(A).

7. Notice of this proceeding was proper and given as required by law and the rules of the Commission. 17 O.S. § 139.107, OAC 165:59-3-13.

Procedural Issues

8. No party objects to the Administrator's Motion to Allow Late Filing and Waiver of Commission Rule.

9. Exceptions to the Report and Recommendation of the Administrative Law Judge ("ALJ Report") were filed by CTIA – The Wireless Association ("CTIA"), the Attorney General of the State of Oklahoma ("Attorney General") and Atlas Telephone Company, et al ("Atlas").

10. Based on the terms in this Joint Stipulation, the respective exceptions filed by CTIA and Atlas are hereby withdrawn.

11. The Stipulating Parties request the Commission adopt the Interim Order attached hereto as "Attachment A."

Commission Should Adopt the \$1.85 Per-Connection Charge

12. No party to this Case took exception to the ultimate finding and recommendation stated in the ALJ Report that the connections-based assessment should be increased to \$1.85 per connection.
13. The recommended charge per-connection of \$1.85 is supported by the evidence.
14. The calculated OUSF funding requirement of \$82,486,417 is required to meet the expected funding needs for Fund Year 2022-2023, to which the deficit balance of \$20,467,852 must be added.
15. Based on the Supplemental Testimony of Farzad Khalili, the assessment factor to meet that funding requirement under the previous revenue-based assessment methodology would be 20.98%.
16. The Stipulating Parties agree that the Commission should adopt the \$1.85 per connection charge. Payments shall begin on December 15, 2022 based on the number of connections provided by each Contributing Provider on October 31st and reported to the Administrator by December 15th.

Alternative Reporting

17. Upon approval by the Administrator, Contributing Providers may be permitted to use data from their billing system in lieu of the number of connections on the last day of a reporting period in order to calculate contributions to the OUSF as long as the calculation is based on all connections that allow access to the Public Switched Telephone Network ("PSTN") in Oklahoma.
18. If a Contributing Provider chooses to use data from its billing system to report connections, then the number of connections reported must be consistent with the number of connections that would have been reported using the month end connections methodology.
19. Regardless of the data source utilized, the Contributing Provider shall continue to report the number of connections they provide based on the applicable definition(s) of connections as utilized for reporting on the Federal Communications Commission ("FCC") Form 477, regardless of whether or not the Contributing Provider is required by federal law to directly report on the FCC Form 477 on the dates the FCC Form 477 is due, i.e., every six months.
20. If a Contributing Provider chooses to use data from its billing system, upon written notice to the Administrator, the Contributing Provider shall report connections under both methods for six (6) months so that the Contributing Provider can demonstrate that the use of their billing system data methodology is consistent with the month end reporting methodology. The Administrator will evaluate the contributing provider's information and determine whether the Contributing Provider may prospectively use its billing system to report connections and provide written notice of the determination. The Administrator, based on the Contributing Provider's information, must be able to confirm that the Contributing Provider's use of its billing system to report connections is

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Joint Stipulation and Settlement Agreement

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consistent with the number of connections that would have been reported using the month end reporting methodology.

21. The Administrator retains the authority to audit any Contributing Provider's reporting, and may at any time, after notice to the Contributing Provider, require a Contributing Provider to revert to the monthly reporting as required by Order No. 719918, issued in Cause No. OSF 201900316, if the Administrator determines it more appropriate.

Under and Over Recovery of a Contributing Provider's Assessment

22. The Administrator's proposal to modify the under and over recovery of a Contributing Provider's assessment obligation is withdrawn. The Administrator's request for a waiver of OAC 165:59-3-46 and OAC 165:59-9-27 is also withdrawn.

23. The existing rules at OAC 165:59-3-46 and 165:59-9-27 shall remain applicable to any under and/or over recovery of the assessment obligation unless and until those rules are changed by the Commission.

Conclusion

24. Based on the foregoing terms, the Stipulating Parties submit this Joint Stipulation to the Commission as their negotiated settlement of this proceeding with respect to all issues which were raised with respect to this Application, and they respectfully request that the Commission issue the attached Interim Order.

*****Signature Pages Attached Hereto*****

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Joint Stipulation and Settlement Agreement

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Mark Argenbright
Administrator of the Oklahoma Universal Service Fund



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