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DOCKET# 32235
DOCUMENT# 205317

Docket No. 32235

In Re: Generic Proceeding to Implement House Bill 168

PROCEDURAL AND SCHEDULING ORDER ON UNIVERSAL ACCESS FUND CONTRIBUTION METHODOLOGY

I. BACKGROUND

O.C.G.A. § 46-5-167 directs the Georgia Public Service Commission ("Commission") to administer the universal access fund ("UAF") and requires all telecommunications companies holding a certificate of authority issued by the Commission to contribute quarterly to the fund. In its November 23, 2010 Order Implementing House Bill 168, the Commission found that it "is reasonable to base calculations for contributions to the UAF on gross intrastate revenues." *Order Implementing House Bill 168,* p. 8.

On October 28, 2022, BellSouth Telecommunications, LLC d/b/a AT&T Georgia ("AT&T Georgia") informed the Commission that it "has been including affiliate transaction revenue in intrastate revenue that is subject to its contributions to the UAF," but that it will not be doing so going forward because GAAP does not require this revenue be reported publicly to investors and this revenue is "not included in revenue that is subject to AT&T's contributions to the Federal Universal Service Fund."

Due to the significant impact on UAF revenues as a result of AT&T Georgia's change in calculating its contributions, the Commission approved an increase in the UAF contribution factor from 3.75% to 5.25%.

II. STAFF RECOMMENDATION

On April 14, 2023, Staff issued data requests to AT&T Georgia in order to better understand how and why it altered its contribution methodology. AT&T Georgia provided responses on May 15, 2023. After reviewing AT&T Georgia's responses, it was unclear to Staff that AT&T Georgia is permitted to exclude affiliate revenues for intrastate telecommunications services provided to its affiliates. For this reason, the Staff recommended that the Commission initiate a proceeding within Docket No. 32235 to consider this matter. Because the question of whether affiliate revenue can or should be excluded is largely if not entirely legal in nature, Staff concluded that an evidentiary hearing is not necessary. Staff therefore recommended that the Commission instead issue a procedural and scheduling order establishing a briefing schedule to allow AT&T Georgia and other interested parties to present their arguments for or against the contribution methodology currently being employed by AT&T Georgia.

III. PROCEDURAL SCHEDULE

All filings, including testimony, briefs and proposed orders, shall be filed pursuant to the Commission's Alternative Electronic Filing Procedures.

September 5, 2023

Briefs must be filed with the Commission by 4:00 p.m.

September 19, 2023

Reply briefs must be filed with the Commission by 4:00 p.m.

IV. LEGAL AUTHORITY AND JURISDICTION

The Commission has general supervisory authority over telephone companies. O.C.G.A. §§ 46-2-20 and 21. The Commission has authority over telecommunications companies pursuant to the Telecommunications Act, O.C.G.A. § 46-5-160 through 174. The Commission is authorized to administer the universal access fund pursuant to O.C.G.A. § 46-5-167(a).

V. STATUTES INVOLVED

Georgia Statutes

This proceeding will involve the Telecommunications Act, including but not limited to O.C.G.A. § 46-5-167.

Commission Utility Rules

515-2-1-.06 Parties of Record

(1) At the hearing on all applications, petitions and complaints, the Chairman of the Commission shall call for and enter the names of all parties desiring to become a party of record, either for or against the docketed case being heard. In the discretion of the Commission, parties having made written intervention prior to the hearing may be entered as a party of record.
(2) The Commission may, in its discretion and for good cause shown, authorize the late filing, or entering, of a notice of intervention.
(3) The Commission may, in its discretion, permit any person to present a statement of his position and views in sworn form, but such person shall not be entitled to receive copies of notices, motions, Orders or other pleadings and documents, filed or issued in the proceeding, unless otherwise directed by the Commission on good cause shown.

Rule 515-12-1-.39. Universal Access Fund

(1) **Quarterly Contributions**. All telecommunications companies holding a certificate of authority issued by the Commission to provide services within Georgia shall contribute quarterly to the Universal Access Fund. The contribution is calculated by multiplying a company's gross intrastate revenues from the provision of telecommunications services to end users by a factor set by order of the Commission.

(2) **Universal Access Fund Surcharge**. A telecommunications company holding a certificate of authority issued by the Commission may add a surcharge to customer bills after filing a letter providing notice to the Commission of its intent to do so. Customers shall be given at least 30 days' notice prior to implementation of the surcharge. The surcharge shall appear on customer bills as "Georgia Universal Access Fund Surcharge." If the number of characters in "Georgia Universal Access Fund Surcharge" exceeds the number of characters allowed in the company's billing software or if the full text will not fit on one line, "Georgia UAF Surcharge" or "GA UAF Surcharge" may be used instead.

(3) **Quarterly Reports and Remission of Funds**. Each telecommunications company that is required to contribute to the Universal Access Fund shall submit quarterly via email a report to the Commission Staff calculating the required contribution for each quarter. The report shall be submitted to the Staff and the contribution shall be remitted to the fund designated for the Universal Access Fund no later than the thirtieth calendar day following the close of each quarter.

(4) **Applications for Distributions from the Universal Access Fund**. The Commission shall determine any such distributions upon application, demonstration, and good cause

shown that the reasonable actual costs to provide basic local exchange services exceed the maximum fixed price permitted for such basic local exchange services. Costs shall be determined based on the most recent commission-approved rate of return and the statutory state and federal income tax rates in effect for the application period. Applications for distributions from the Universal Access Fund shall be limited to local exchange carriers subject to rate of return regulation.

(a) **Filing Deadline**. Applications shall be filed no later than December 15 of each year.

(b) **General Filing Requirements**. Applications shall be made based on losses incurred from July 1 of the prior year through June 30 of the filing year, excluding non-regulated costs, and shall include the following:

1. Publicly-disclosed earnings report (Tab 1) in fully-functional Excel format

2. Publicly-disclosed Form M (Tab 2) in word-searchable format

3. Separations-based cost study (Tab 3)

4. Cost study workpapers (Tab 4)

5. Subjective support for regulated and non-regulated costs (Tab 5)

6. Information related to affiliated transactions (Tab 6)

(c) **Enhanced Filing Requirements**.

1. Trial Balance reports for June 30 of the preceding year, December 31 of the preceding year and June 30 of the filing year (these trial balances may be redacted as needed to remove names and CPNI information).

2. The most recent un-redacted audited financial reports with accompanying notes for each company and its parent company (if applicable).

3. Identification of the depreciation rates applicable to each plant account during the fiscal year.

4. A copy of the company's current Cost Allocation Manual or equivalent documentation that identifies the company's organizational structure

and procedures for segregating costs between regulated and nonregulated operations.

5. Documents demonstrating that basic residential local rates are set at the top of the limits allowed by the GPSC or that foregone revenues are imputed.

6. All information necessary to demonstrate that grant funded assets and related expenses are excluded from the UAF request.

(d) **Executive Compensation and Corporate Operations Expense**. Allowable costs for executive compensation and/or corporate operations expense shall be constrained based upon the greater disallowance calculated based upon the following limits:

1. Executive Costs (USOA Account 6711 or 6710 as indicated by company accounting practice) shall be limited to the lesser of actual cost or $200,000 plus $78 times the number of access lines reported on Form 5322 as of December 31 of the preceding year.

2. The overall corporate operations expenses (USOA accounts 6711 through 6728 or 6710 and 6720 as indicated by company accounting practice) shall be equal to the lesser of the average monthly per loop corporate operations expense cap provisions of Sections 36.621(a)(4)(i) and 36.621(a)(4)(ii) of the FCC's rules and regulations (USF Corporate Operations Expense capping mechanism as of December 31, 2010) times the number of access lines reported on Federal USF cost reporting (Data Line 070, total loops) as of December 31 of the preceding year and annualized.

(e) **Reactive Engagements**. Each application for reimbursement from the Universal Access Fund will undergo a reactive engagement conducted by a contractor chosen by the Commission. The procedures employed by the contractor will be determined by the Commission. The cost of the reactive engagement will be borne by the party that filed the application. At the conclusion of the reactive engagement, the Staff will file a report containing the findings, if any, of the contractor.

(f) **Hearing Requests**. Any interested party may file a request for a hearing on any individual application within 14 calendar days of the date of filing of the Reactive Engagement report.

VI. ISSUES INVOLVED

The following issues shall be addressed in this proceeding:

1. Does Georgia law permit a contributor to the Universal Access Fund to exclude revenues from affiliates for purposes of calculating contributions to the Universal Access Fund?

2. Should affiliate transactions be excluded from intrastate revenues on which UAF contributions are calculated? If so, what constitutes an affiliate transaction for purposes of inclusion in or exclusion from the intrastate revenues?

3. What is the meaning of an "end user" within O.C.G.A. § 46-5-167(b)(2)?

VII. INTERVENTION AND HEARING PROCEDURES

The following are certain procedures to which the parties should adhere with respect to this docket.

A. Intervention

Intervention Period

(1) Any person or party that is not automatically a party to this case, has not already petitioned for intervention in this case, or any party on whom a statute does not confer an unconditional right to intervene, must file an application for leave to intervene not later than thirty (30) days after the issuance of this Procedural and Scheduling Order.

Application Requirements

(2) Applications must clearly specify the docket in which the applicant seeks to intervene. In addition to the requirements prescribed by O.C.G.A. § 46-2-59 for applications for leave to intervene, the applicant must:

a. identify other intervening parties or intervening party applicants whose interest is similar to that of the applicant, along with an explanation of why the identified intervening parties or intervening party will not adequately represent the applicant's interest; and

b. state the applicant's present intention to submit testimony and by whom and on what subject. The requirements identified herein shall constitute obligation of the applicant or intervening party. Any objections to applications must be filed in conformance with O.C.G.A. § 46-2-59(d).

Late Applications for Intervention

(3) Any application for leave to intervene that is filed late must state the reason why such application was not timely submitted. Objections to late intervention application must be filed in conformance with the requirements of O.C.G.A. § 46-2-59(d).

Rulings on Intervention Applications

(4) The Commission will take up and rule on applications for leave to intervene at the first hearing date set in this docket.

B. Service

It shall be the responsibility of each party to serve copies of any documents filed with the Commission upon each party's representative, intervenor, and intervenor applicant. Furthermore, in the case of documents filed prior to the deadline for intervention established above, copies shall also be served upon each party of record recognized in Commission Docket No. 32235 according to the service list established in this docket.

C. Applications to intervene and Commission approval thereof are covered by O.C.G.A. § 46-2-59 and Commission Utility Rule 515-2-1-.06. Each applicant shall submit fifteen (15) copies of its application to intervene to the Commission along with an electronic version, addressed to:

Sallie Tanner
Executive Secretary
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, GA 30334-9052

D. Witnesses' Testimony

(1) Summations of testimony will take no longer than 15 minutes or, at the discretion of the Commission, no longer than 30 minutes.

(2) Summations should be limited to testimony and exhibits in the pre-filed testimony.

(3) Demonstrative handouts intended to be used during summations of the pre-filed testimony or in opening or closing statements, if applicable, must be pre-filed at least five (5) days prior to the hearing and must be limited to the scope of the testimony and exhibits in the pre-filed testimony.

(4) Except for good cause shown, corrections to testimony must be pre-filed at least five (5) days prior to the hearing.

(5) In the absence of a valid objection made and sustained to prefiled testimony, the prefiled testimony and exhibits, with corrections, will be admitted into the record as if orally given prior to the witness' summation, subject to a motion to strike after admission or other relevant objection.

(6) Where the testimony of a panel of witnesses is presented, cross-examination may either be addressed to the panel, in which case any member of the panel may answer, or cross-examination may be addressed to an individual panel member, in which case that panel member shall give the answer.

(7) Motions to strike any portion of pre-filed testimony must be filed at least two days prior to the hearing.

E. Hearing Exhibits

For the record in all hearings, it shall be the responsibility of the party sponsoring any exhibits to see that the Hearing Reporter and all parties of record, plus the Commissioners, receive copies of the hearing exhibits at the time of introducing the exhibits at the hearings.

VIII. DISCOVERY

This proceeding also shall be deemed "complex litigation" as that phrase is used in O.C.G.A. § 9-11-33(a). Discovery procedures shall accordingly apply. The Commission authorizes the Staff to issue discovery pursuant to O.C.G.A. 46-2-57(a). The Staff may conduct depositions and use any other methods of formal and informal discovery in this docket. The use of any informal discovery methods shall not augment or abridge existing discovery rights and responsibilities. Responses to Staff discovery should be provided contemporaneously to all parties. To the extent that such responses include information that an applicant deems trade secret, any disclosure of that information to other interested parties should be handled consistent with the Commission's trade secret rule and any confidentiality agreements that the applicant may have with the interested parties.

IX. RIGHTS OF PARTIES

The parties have the following rights in connection with this hearing:

(1) To respond to the matters asserted in this document and to present evidence on any relevant issue;
(2) To be represented by counsel at its expense;
(3) To subpoena witnesses through the Commission by filing requests with the Executive Secretary of the Commission; and
(4) Such other rights as are conferred by law and the rules and regulations of the Commission.

X. ORDERING PARAGRAPHS

WHEREFORE IT IS ORDERED, that the Commission initiates this proceeding, subject to the conditions and procedures set forth herein.

ORDERED FURTHER, that all findings, conclusions and decisions contained within the preceding sections of this Order are adopted as findings of fact, conclusions of law, and decisions of regulatory policy of this Commission.

ORDERED FURTHER, that any motion for reconsideration, rehearing or oral argument shall not stay the effectiveness of this Order unless expressly so ordered by the Commission.

ORDERED FURTHER, that jurisdiction over this proceeding is expressly retained for the purpose of entering such further order or orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 1st day of August, 2023.

Sallie Tanner
Executive Secretary

8-1-23
Date

Jason Shaw
Chairman

8-1-23
Date