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Docket No. 32235

In Re: **Generic Proceeding to Implement House Bill 168**

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. O.C.G.A. § 46-5-167(b) provides that the Commission shall determine the manner of contribution to the UAF using either one or a combination of the following two contribution methodologies:

(1) A charge for each working telephone number; or
(2) A proportionate amount based on each company's gross intrastate revenues from the provision of telecommunications services to end users.

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. This methodology is now codified in Commission Rule 515-12-1-.39(1) ("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.").

On October 28, 2022, BellSouth Telecommunications, LLC d/b/a AT&T Georgia ("AT&T Georgia") informed the Commission that it "mistakenly has been including affiliate transaction (internal company accounts) revenue in intrastate revenue that is subject to its contributions to the UAF," but that it will not be doing so going forward because "[u]nder GAAP, affiliate transaction

revenue is not included in revenue AT&T reports 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% on February 27, 2023. For telecommunications customers required to pay a UAF surcharge under O.C.G.A. § 46-5-167(g), the increase in the contribution factor increased the surcharge by 40%.

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, Staff recommended that the Commission initiate this 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 was 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.

On August 1, 2023, the Commission issued its Procedural and Scheduling Order on Universal Access Fund Contribution Methodology ("PSO"). The PSO identified three issues to 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)?**

AT&T Georgia and Georgia Telephone Association d/b/a Georgia Rural Telephone and Broadband Association ("GTBA") each filed briefs on September 5, 2023, and reply briefs on September 19, 2023. AT&T Georgia's briefs defend its new practice of excluding affiliate revenue. GTBA opposes the new practice. On September 5, 2023, Ringgold Telephone Company ("RTC") filed a letter stating that "[g]enerally, RTC supports the comments of" GTBA. On September 28, 2023, Georgia Cable Association, Inc., filed a letter stating that it "did not file a brief in this docket based on the issues list included in the PSO; however, if the Commission were

to consider using working telephone numbers as an alternative methodology for UAF contributions, Georgia Cable Association requests an opportunity to be heard on that issue."[1]

II. DISCUSSION

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?

The methodology that the Commission has chosen for UAF contributions is to base them on a proportionate amount of each "company's gross intrastate revenues from the provision of telecommunications services to end users." O.C.G.A. § 46-5-167(b)(2); Commission Rule 515-12-1-.39(1). Therefore, if the affiliate revenue is part of "the company's gross intrastate revenues from the provision of telecommunications services to end users," then it should be included in the calculation. If it is not, then it should be excluded.

AT&T Georgia makes two arguments to support its position that Georgia law permits the exclusion of revenues from affiliates for purposes of calculating its contributions to the UAF. First, AT&T Georgia argues that it is reasonable for AT&T Georgia to treat its affiliate revenue consistent with GAAP. AT&T Georgia then argues that, because its parent AT&T Inc. uses consolidated financial statements, none of AT&T Georgia's affiliate transaction revenues are gross intrastate revenues of AT&T Georgia under GAAP. AT&T Georgia Brief, pp. 2-3. Second, AT&T Georgia argues that affiliate transaction revenues are not included in federal Universal Service Fund ("USF") assessments and, therefore, should also be excluded from Georgia UAF assessments.

a. GAAP

In its brief, AT&T Georgia states that the statutes addressing the Commission's general authority "grant it the 'power and authority . . . to prescribe, establish, and order a uniform system of accounts . . . to be, as far as practicable, in conformity with the system of accounts prescribed by' analogous federal authorities. *See* O.C.G.A. §46-2-20(f)." Brief pp. 2-3. (emphasis deleted).[2] AT&T Georgia also states that "for ratemaking purposes, differences in specified types of income 'will be accounted for as required by generally accepted accounting principles governing all businesses,' *Id.*, §46-2-26.2, and subject to exceptions not applicable here, the Commission's rules require telephone companies to maintain books and records by adopting "the revised system of account devised by the Federal Communications Commission . . . .' Commission Rule 515-3-

[1]The UAF contribution methodology is codified in Commission Rule 515-12-1-.39(1) and cannot be changed as part of this current proceeding. While the Commission is free to consider modifications to this rule at any time, any such proposed modification would be done by initiating a Notice of Proposed Rule Making ("NOPR") under the Georgia Administrative Procedures Act. The NOPR process includes notice and opportunity to be heard to all interested parties.

[2] The statute does authorize the Commission to prescribe a uniform system of accounts; however, it says that the system should be, as far as practicable, in conformity with the system of accounts prescribed by the "Interstate Commerce Commission," not "analogous federal authorities."

1-.10(b)1." Brief p. 3 (emphasis deleted). Based on the foregoing, AT&T Georgia argues that it is permissible for it to use GAAP accounting and accounting practices devised by the Federal Communications Commission ("FCC").

AT&T Georgia states that GAAP accounting allows its parent company, AT&T Inc., to use consolidated financial statements and that GAAP directs companies which use consolidated financial statements to eliminate intra-entity transactions and profits or losses in the preparation of such statements. These transactions are eliminated from consolidated financial statements because such statements "are based on the assumption that they represent the financial position and operating results of a single economic entity." Financial Accounting Standards Board, Accounting Standards Codification (ASC) § 810-10-45-1. AT&T Georgia then concludes that "affiliate transaction 'revenues' simply are not revenues under GAAP." Brief p. 3.

GTBA argues that the Commission does not need to accept AT&T Georgia's interpretation of GAAP and FCC accounting practices. GTBA Reply Brief, p. 1. GTBA notes that O.C.G.A. § 46-2-26.2, cited by AT&T Georgia as requiring the use of GAAP, only applies to certain ratemaking issues, not the determination of UAF contributions.[3] GTBA also notes that under O.C.G.A. § 46-2-20(f) accounting systems should only be conforming when "practicable." GTBA states that "allowing certificated entities to eliminate telecommunications revenues from affiliates for determining UAF contribution base is not practical. This one interpretation changes the Commission's long-standing procedure and greatly increases the assessment factor—thereby disrupting the Commission's carefully crafted public policy." GTBA Reply Brief, p. 2.

GTBA argues that it is clear that AT&T Georgia is able to determine the revenues it receives from affiliates for the delivery of telecommunications services. At the holding company level, AT&T Inc. engages in eliminations and consolidations of ledger entries to generate consolidated financial statements. GTBA states that AT&T Inc. even tells its "investors that it analyzes its 'segments based on segment operating contribution … and equity in net income (loss) of affiliates for investments managed within each segment." GTBA Reply Brief, p. 2, (citation omitted).

As mentioned above, AT&T Georgia's conclusion is that "affiliate transaction 'revenues' simply are not revenues under GAAP." Brief p. 3. Presumably, AT&T Georgia is implying that because revenues paid to AT&T Georgia by its affiliates are eliminated from the consolidated revenues of its parent company, the affiliate revenues are not gross revenues of AT&T Georgia under O.C.G.A. § 46-5-167, but such a conclusion is not apparent.

It is difficult to imagine that when the Legislature authorized the Commission to use gross revenue as a benchmark for determining UAF contributions that it intended a methodology so

[3] In its entirety, the statute reads "46-2-26.2 *Tax accounting by utilities in rate-making proceedings*. For purposes of determining a utility's cost of service in rate-making proceedings, the income tax expense portion shall be calculated on the basis of net income before income taxes. Any difference between income based on the utility's accounting records and income determined in accordance with United States Internal Revenue Service laws and regulations will be accounted for as required by generally accepted accounting principles governing all businesses." GTBA is correct that determining a UAF contribution does not involve determining AT&T Georgia's cost of service or income tax expense.

inconstant that AT&T Georgia could unilaterally increase customers' UAF surcharges by 40% overnight simply because its parent company chose to change how it reported its financial statement to investors.

The provisions of GAAP cited by AT&T Georgia govern how its parent company, AT&T Inc., reports its financial data on a consolidated financial statement. As AT&T Georgia noted, the parent's consolidated financial statements eliminate affiliate transactions because they "are based on the assumption that they represent the financial position and operating results of a single economic entity." ASC § 810-10-45-1. The entity at issue in the UAF rule and statute, however, is not the parent company combined with all its subsidiaries. It is the company holding the "certificate of authority issued by the commission to provide services within Georgia." O.C.G.A. 46-5-167(b). In this instance, that is AT&T Georgia, not AT&T Inc.

Nothing in the USF formula provides that the Commission should look at the parent or sister companies at all, let alone look at them as a "single economic entity" or consider their expenses as offsets to the certified company's gross revenues. The legislature presumably could have written the statute to allow it to work that way, but it did not. Instead, the only thing it considers is the company holding the certificate, AT&T Georgia.

AT&T Georgia has revenue from affiliates and some of those revenues are for the provision of telecommunications services to the affiliate where the affiliate is the end user.[4] Such revenues should be considered in the determination of AT&T Georgia's gross revenue.[5] While its affiliates may have expenses corresponding to those revenues, they would presumably have those same expenses regardless of whether or not they were affiliated with the Company that sold them such services.

b. FCC USF Practice

AT&T Georgia states that "all affiliate transactions are excluded from interstate revenues on which Federal USF contributions are calculated." AT&T Georgia Brief, p. 4 (emphasis added). AT&T Georgia then argues that "excluding revenues from affiliate transactions from AT&T Georgia revenues that are subject to the UAF contribution factor is consistent with the treatment of revenues from affiliate transactions at the analogous federal level. Specifically, interstate affiliate revenues are not subject to contributions to the Federal USF." Brief, p. 4.

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[4] If the affiliate is not the end user then the revenue is not included in AT&T Geogia's gross revenue. However, this would be the case for revenues from non-affiliates as well.

[5] Hypothetically, consider the case of two certified companies in Georgia. They each serve a store that pays them $10,000 for end use intrastate telecommunications service. The store that Company 1 sells to is an affiliate of Company 1. The store to which Company 2 sells is not its affiliate. In all other respects, Company 1 and Company 2 are identical. Under AT&T Georgia's proposal, however, Company 1 would pay less to the UAF than Company 2 despite the fact that they are providing identical end use telecommunications services and charging identical rates. Further, Company 1 would either charge the store it served a UAF surcharge (See November 29, 2012 Order in Docket 36116), but then keep the fee for itself instead of remitting it to the UAF; or, it would exempt its affiliate from the surcharge, presumably giving its affiliate an advantage over its competitors who do have to pay the surcharge. Neither of these potential results appear consistent with the public interest.

Presumably, AT&T Georgia is implying that the FCC excludes affiliate revenue from USF calculations because of the FCC's system of accounts, as opposed to other reasons such as statutory construction or federal policy objectives. However, AT&T Georgia never cites to any specific provision of the FCC accounting standards or any FCC order explaining exactly what is excluded from USF contributions and why it is excluded.

While AT&T Georgia states that all affiliate transactions are excluded, GTBA argues that AT&T Georgia is incorrect. GTBA Reply Brief, pp. 2-4. First, GTBA states that AT&T Georgia's statement is conclusory and without citation. GTBA Reply Brief, p. 2. Citing to FCC Form 499-A, GTBA's argues instead that the FCC practice is to make a distinction based on whether the affiliate is expected to pay into the USF on revenues associated with the services. If they are not, then AT&T would be expected to. For example, if the affiliate resells the service as a telecommunications service, the affiliate would be the one expected to pay into the USF. If the affiliate is the end user of the services or incorporates the services into a non-telecommunications service, AT&T would pay into the USF. GTBA Reply Brief, pp. 3-4.

AT&T Georgia has not cited to any federal law or FCC rule or policy that excludes all affiliate revenues from USF contributions, and the policy that GTBA describes – a company that sells telecommunications services pays into the fund unless the services are resold as telecommunications service – appears much more in line with O.C.G.A. § 46-5-167(b)(2) and Commission Rule 515-12-1-.39(1).

However, the Commission does not need to determine which party is correct about the FCC's practice to resolve this matter. Georgia already has its own statute, rules, and formula that govern contributions to the UAF. If one were creating a new state universal service fund from scratch or considering modifying the existing fund, one might look to the FCC for guidance or best practices, but, as discussed in the prior section, there is nothing in the existing Georgia law or rule that indicates that the Commission should consider expenses of a sister company or look at the parent and all its subsidiaries as a single entity in deciding the gross revenue of AT&T Georgia.

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?

As discussed in the prior section, whether the telecommunications service is sold to an affiliate is not the determinative issue. The determinative issue is whether the revenue is from the provision of intrastate telecommunications services to end users regardless of whether the companies are affiliated.

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

The term "end user" is not specifically defined by the legislature with respect to its usage in O.C.G.A. § 46-5-167. AT&T Georgia argues that while O.C.G.A. § 46-5-210(a) defines the term as any entity "provided with a telecommunications service for its own consumption and not for resale" the Commission should not use that definition here. AT&T Georgia notes that the

definition in O.C.G.A. § 46-5-210(a) is provided for Article 6 of Chapter 5 of Title 46, which relates to telephone relay service. The UAF statute is in Article 4 of Chapter 5, not Article 6. AT&T Georgia argues that it is appropriate and permissible for AT&T Georgia to exclude revenues from affiliate transactions in accordance with the statutory and rule provisions generally addressing the Commission's power and authority as discussed in Section II.A of its Initial Brief. Brief, p. 5.

GTBA recommends the Commission not accept AT&T Georgia's analysis for the term "end user." GTBA agrees that the definition is in Article 6, but states that AT&T Georgia provides no discussion of why, in the absence of a definition of "end user' in Article 4, the Commission may not use the one in O.C.G.A. § 46-5-210(a) to clarify the term "end user."

In the absence of a specific definition, it is a general rule of statutory construction in Georgia that all words, except words of art, are given their ordinary meaning. City of Roswell v. City of Atlanta, 261 Ga. 657 (1991) (citing O.C.G.A. § 1-3-1(b)). The ordinary meaning of "end user" appears to be "the ultimate consumer" or "ultimate user" of a product. Nothing in the ordinary meaning of the term suggests an exception to this usual meaning in the circumstance where the ultimate user happens to be an affiliate.

One exception to this general rule is that when the same word is used in different parts of the same statutory scheme, it may be presumed to have the same meaning throughout. See Op. Atty Gen 94-7. (In the absence of a definition of "telephone service" in the general jurisdictional section of Title 46, it is appropriate to imply legislative intent by looking to the definition provided elsewhere in Title 46). Even though the definition of "end user" contained in O.C.G.A. § 46-5-210(a) is found in a different portion of T, 46, Ch 5, in the absence of any conflicting authority within the UAF Statute it is reasonable for the Commission to look to that definition for guidance.

The definition of "end user" contained in O.C.G.A. § 46-5-210(a) is not very different from the ordinary meaning of the term other than making the implicit explicit: If a company is reselling the telecommunications service, it is not the end user. Like the ordinary meaning of the term, nothing in the definition suggests an exception in the circumstance where the ultimate user happens to be an affiliate.

III. STAFF RECOMMENDATION

Based on the above discussion, Staff recommends that the Commission resolve the issues as follows:

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?**

No. Whether the revenue is coming from an affiliate or non-affiliate is irrelevant. The relevant question is whether the entity buying the telecommunication service is reselling the

telecommunications service. If they are reselling the telecommunications service, then they are not the company's end user and the company providing the wholesale service can exclude the revenue.[6] If they are not reselling the telecommunications service, then the certificated company must include the revenue in its UAF calculation.

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?

No. See the recommendation on Issue 1, above.

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

For precision, Staff recommends the definition found in O.C.G.A. § 46-5-210(a): any entity "provided with a telecommunications service for its own consumption and not for resale."

IV. Commission Decision

At Administrative Session on December 5, 2023, Commissioner Pridemore made the following motion:

> I move that the Commission adopt Staff's recommendation that affiliate revenue cannot be excluded from contributions to the Universal Access Fund for the reasons therein. I further move that AT&T Georgia be required to reimburse the UAF for the difference between its actual contributions and the contributions that should have been made July 1st, 2022, to February 27th, 2023. February 27th is the date that the Commission issued its order modifying Universal Access Funds contribution factor, which acknowledged AT&T Georgia's change in methodology. While the order did not approve or authorize the change in methodology, I believe this is the logical date for the purpose of determining back payments. Approximate back payments are $2.95 million.

The Pridemore motion was properly seconded by Commissioner McDonald, and the Commission unanimously voted to adopt the motion. The Commission then unanimously voted to approve Staff's recommendation as amended.

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[6] In this case, the reseller will be the ones paying the UAF costs associated with the service.

WHEREFORE, it is

ORDERED, that contributors to the Universal Access Fund must include affiliate revenue in calculating contributions, if the affiliate meets the definition of end user pursuant to O.C.G.A. § 46-5-210(a).

ORDERED FURTHER, that AT&T Georgia shall reimburse the UAF for the difference between its actual contributions and the contributions that should have been made from July 1st, 2022 to February 27th, 2023.

ORDERED FURTHER, that a motion for reconsideration, rehearing, oral argument, or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over this matter is expressly retained for the purpose of entering such further Order(s) as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 5th day of December 2023.

Sallie Tanner
Executive Secretary

12-19-23
DATE

Jason Shaw
Chairman

12-19-23
DATE