

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of)
)
Oklahoma Telephone & Telegraph, Inc.)
) CC Docket No. 96-45
Petition for Waiver of Section 36.621(a)(4) of the)
Commission's Rules (Corporate Operations)
Expense Cap))

ORDER

Adopted: September 17, 2001

Released: September 18, 2001

By the Common Carrier Bureau:

I. INTRODUCTION

1. In this Order, we deny a request filed by Oklahoma Telephone & Telegraph, Inc. (OT&T) for a waiver of section 36.621(a)(4) of the Commission's rules, which limits the amount of corporate operations expenses that a carrier may include in the high-cost loop support mechanism. We find that OT&T has not demonstrated that its high corporate operations expenses are due to exceptional circumstances that would justify a grant of a waiver.

II. BACKGROUND

2. In the First Report and Order, the Commission adopted the corporate operations expense limitation formula to "ensure that carriers use universal service support only to offer better service to their customers through prudent facility investment and maintenance consistent with their obligations under section 254(k)." Corporate operations expenses include, for example, travel, lodging, and other expenses associated with attending industry conventions and corporate meetings. In the First Reconsideration Order and the Fourth Reconsideration Order, the Commission made further refinements to the formula specifically to recognize problems of smaller carriers. The Commission explained that carrier

1 See Letter from Toney Prather, OT&T, to Dorothy Attwood, Chief, Common Carrier Bureau, dated April 11, 2001 (filed April 30, 2001) (OT&T Request).

2 Federal-State Joint Board on Universal Service, CC Docket 96-45, Report and Order, 12 FCC Rcd 8776, 8930-31, para. 283 (First Report and Order); see, also, id. at 8942, para. 307.

3 See Federal-State Joint Board on Universal Service, CC Docket 96-45, Order on Reconsideration, 12 FCC Rcd 10102-10105, paras. 17-24 (1997) (First Reconsideration Order); Federal-State Joint Board on Universal Service, CC Docket 96-45, Fourth Order on Reconsideration, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, Report and Order, 13 FCC Rcd 5318, 5376-77, paras. 94-95 (1998)(Fourth Reconsideration Order). Under the original formula, carriers with very few lines may have been unable to recover portions of corporate operations expense that do not vary with the number of lines, because corporate operations expenses eligible for universal service support were determined by a factor that is multiplied by the number of lines. On its own motion, the Commission established a floor (or minimum cap) on the corporate operations expense cap to allow carriers with relatively few lines to receive sufficient support to recover initial or fixed corporate operations (continued....)

expenditures for corporate operations expenses may be discretionary in many instances, in contrast to expenditures for maintaining plant and equipment.⁴ The Commission determined that “imposing a cap that is relatively generous to small carriers, but still imposes a limitation, is a reasonable method of encouraging carriers to assign corporate operations expenses to the proper accounts and discouraging carriers from incurring excessive expenditures.”⁵ The Commission recently further modified the corporate operations expense limitation formula to reflect changes in costs since the limitation was first imposed.⁶

3. OT&T seeks a waiver of section 36.621(a)(4) of the Commission’s rules and asks that it be permitted to include its actual corporate operations expenses in the calculation of its high-cost loop support. OT&T states that it “submits this request for waiver of the Commission’s rules at the direction of the Oklahoma Corporation Commission.”⁷ On June 7, 2000, the Oklahoma Commission granted OT&T’s request for additional funding from the Oklahoma Universal Service Fund as reimbursement for the loss of revenue associated with the federal limitation on corporate operations expenses in the high-cost loop support mechanism. Specifically, the Oklahoma Commission ordered that OT&T be reimbursed from the Oklahoma Universal Service Fund a lump sum of \$78,516 for the year 1999 and a monthly recurring amount of \$6,543 beginning January 2000.⁸ The Oklahoma Commission further ordered that the payment of such reimbursement would begin upon demonstration by OT&T that it had filed with this Commission a request to waive the corporate operations expense limitation.⁹ On May 8, 2001, we sought comment on OT&T’s request.¹⁰ No parties filed comments or reply comments.

III. DISCUSSION

4. Generally, Commission rules may be waived for good cause shown.¹¹ As noted by the

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expenses. *See First Reconsideration Order*, 12 FCC Rcd at 10103, para. 19. Subsequently, the Commission reconsidered, to a limited extent, the dollar amount of the minimum cap on allowable corporate operations expenses for small carriers. *See Fourth Reconsideration Order*, 13 FCC Rcd at 5376-77, paras. 94-95.

⁴ *See id.* at 5374, para. 92.

⁵ *See id.*

⁶ *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Report and Order, FCC 01-157, para. 69 (rel. May 23, 2001)(*Fourteenth Report and Order*). In order to reduce the need for the smallest carriers to seek a waiver of the corporate operations expense limitation rule, the Commission also raised the dollar amount of the minimum cap on allowable corporate operations expenses supported by universal service. *See id.*

⁷ OT&T Request at 1.

⁸ *See Oklahoma Corporation Commission*, Order No. 441809 (June 7, 2000) (attached to OT&T letter). OT&T requested \$78,516 for 1999 and a monthly recurring amount of \$27,230 beginning in 2000. The Oklahoma Commission staff recommended a monthly recurring amount of \$6,543 (\$78,516 ÷ 12). The staff explained that, whereas the change in the federal rule caused the loss of revenue in 1999, the increase in the following year’s corporate operations expense was caused by factors other than the change in the federal rule. *See id.* at 2.

⁹ *See id.* at 3 (“In the event that there is a federal recovery, there shall be a true up to ensure that there is no double recovery.”).

¹⁰ *See Oklahoma Telephone & Telegraph Inc. Seeks a Waiver of Section 36.621(a)(4) in Part 36 of the Commission’s Rules*, CC Docket No. 96-45, Public Notice, DA 01-1154 (May 8, 2001).

¹¹ 47 C.F.R. § 1.3.

Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.¹² The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹³ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁴ Waiver of the Commission's rules therefore is appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.

5. We conclude that OT&T has failed to demonstrate that special circumstances exist to justify a waiver of our rules. We are not persuaded by OT&T's mere assertions that its "provision of service is characterized by significant distances between exchanges and sparsely populated rural areas of Oklahoma that, collectively, lead to high operational costs."¹⁵ OT&T provides no further explanation of how its corporate operations expenses differ from those of other affected small rural carriers subject to these requirements.¹⁶ Similarly, OT&T fails to provide any support as to how a waiver would be necessary to maintain affordable rates consistent with the public interest. Although we recognize that significant distances and sparse populations may have implications for costs associated with customer operations and plant specific operations, OT&T provides no explanation as to how and to what degree these circumstances affected its corporate operations. Based on the record before us, we find that OT&T has not demonstrated that its high corporate operations expenses are due to exceptional circumstances that would justify a grant of a waiver.

6. Moreover, OT&T has not demonstrated that deviation from our current rules, which limit universal service support for corporate operations expenses to a reasonable per-line or minimum amount, is warranted. Because the amount of corporate operations expenses may result from managerial priorities and discretionary spending, the limitation helps to ensure that carriers use universal service support for the provision, maintenance, and upgrading of the facilities and services for which support is intended, consistent with section 254 of the Communications Act of 1934, as amended.¹⁷ We note, however, that due to a recently adopted change in the Commission's rules, effective July 1, 2001, OT&T will be permitted to include an increased amount of corporate operations expenses in the high-cost loop support mechanism.¹⁸

¹² *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

¹³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁴ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

¹⁵ OT&T Request at 2.

¹⁶ Nor does the attached order of the Oklahoma Commission provide additional information explaining OT&T's corporate operations expenses.

¹⁷ See 47 U.S.C. § 254(e).

¹⁸ See *Fourteenth Report and Order*, at para. 69.

IV. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201-205, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201-205, and 254, and sections 1.3, 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§1.3, 0.91, and 0.291, that the request of Oklahoma Telephone & Telegraph, Inc. for waiver of section 36.621(a)(4) of the Commission's rules IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Common Carrier Bureau