

In Re: Docket No. 5825-U: Universal Access Fund, Transition to Phase II for ILEC's With De Minimus Claims Under O.C.G.A. § 46-5-167

ORDER

BY THE COMMISSION:

The Georgia Public Service Commission ("Commission") issues this Order to determine the appropriate transition of the Universal Access Fund ("UAF") to Phase II for ILEC's with de minimus claims under O.C.G.A. § 46-5-167.

Background

O.C.G.A. § 46-5-167 provides the legal framework for the establishment of a fund to reimburse providers of basic local exchange services upon an application and demonstration of need for universal service support.

Docket No. 5825-U was originally opened in June of 1995 in order to fulfill the legislative mandate for a Universal Access Fund, within Georgia's Telecommunications and Competition Development Act of 1995 (O.C.G.A. §§ 46-5-160 *et seq.*) (the "Act"). This Act required the Commission to create a fund to help assure the provision of reasonably priced access to basic local exchange telephone services throughout Georgia.

On August 25, 1998, the Commission issued its Amendatory Procedural and Scheduling Order (Amendatory Order) specifying the procedure to be followed in this proceeding to implement O.C.G.A. § 46-5-167. This Amendatory Order provided that the Commission would determine the funding level, disbursement criteria, and other issues for the Universal Access Fund (UAF) for the State of Georgia. The Amendatory Order required that all Incumbent Local Exchange Companies (ILEC's) file cost studies with the Commission. It further provided that the Commission would conduct hearings to review those cost studies.

After the Amendatory Order was issued, many of the smaller ILECs argued that their reliance on any funding from the UAF would be very small or even non-existent and that it would not be an efficient use of time or resources to conduct a formal hearing on their cost studies. In its May 17, 1999 Order Modifying Amendatory Procedural and Scheduling Order for ILECs with De Minimus Claims, the Commission modified the Amendatory Order to create a procedure by which ILECs with minimal claims to the UAF could opt out of the formal hearing process. Under the procedure created by the May 17, 1999 Order, any ILEC desiring to opt out of the formal hearing process could file its notice of intent to do so with the Commission, agreeing that its UAF disbursement could not exceed the annual cap amount set by the Commission. The UAF disbursements to be made to any ILEC opting out of the formal process would be determined in the informal process. On September 8, 1999, the Commission issued its Order Setting Minimal Amount in which the Commission determined the cap amount. On February 17, 2000 the Georgia Telephone Association (GTA), on behalf of its members, filed for 31 ILECs to opt out of the formal hearing process (referred to as the "*de minimus* ILECs"). Subsequently, workshops were held on this matter and input was received from all parties of record.

Findings of Fact

After reviewing the input from the parties, the Commission Staff presented its recommendations to the Commission at the May 31, 2001 Telecommunications Committee. The Staff recommendation essentially stated that any request for funds disbursement from the UAF to *de minimus* ILECs should be accompanied by certain financial schedules such that a streamlined earnings review could take place, thus satisfying the legal requirement for cost data support mandated by O.C.G.A. § 46-5-167. In the alternative, the recommendation called for either such requests to be accompanied by a forward-looking cost study using the Synthesis Cost Model approved by the Commission and the FCC or the filing of a Traditional Rate Case by Traditionally Regulated Tier 2 ILEC's.

Upon receipt of this recommendation and upon hearing the argument by the GTA against the Staff recommendation, the Commission requested that the GTA make a filing to explain and support its legal position regarding O.C.G.A. § 46-5-166 (f)(2). No other party opposed the recommendation of the Staff. A position paper was filed by GTA on June 6, 2001. On June 7, 2001 a position paper was filed by the Commission Staff arguing against the claims of the GTA in support of the original Staff position.

In Administrative Session on June 11, 2001, the Commission considered the Staff recommendation in this matter. In addition to hearing the Staff recommendation and receiving the materials filed by the GTA concerning their disagreement, a motion was made from the bench by Commissioner Burgess that would phase-out the *de minimus* LEC's reliance on funds from the UAF. This proposal provided for a three-year phase out of funding amounts currently being disbursed to the Tier 2 ILEC's under O.C.G.A. § 46-5-166 (f)(2). Included was a provision for an increase of up to \$1.00 per access line on July 1, 2001, with any remaining requirement being received from the UAF for the period of July 1, 2001 through June 30, 2002. Any remaining requirements would be satisfied by disbursements from the UAF at a rate of 66.7% and 33.3% of the remainder for the periods July 1, 2002 through June 30, 2003 and July 1, 2003 through June 30, 2004, respectively. Any needs beyond these periods, would be satisfied under the Staff recommendation as a Section 167 disbursement. This motion was subsequently amended to eliminate the \$1.00 rate increase, which would have taken place on July 1, 2001.

Conclusions of Law

Based on the foregoing Findings of Fact, the Commission sets forth its Conclusions of Law.

The Commission has jurisdiction over this matter pursuant to O.C.G.A. § 46-5-166(f)(2) and 46-5-167 as interpreted by the courts of Georgia and other applicable statutes.

The Commission is not required to allow rate increases or disbursements from the USF under O.C.G.A. § 46-5-166(f)(2) after June 30, 2001, for any Tier 2 LEC. As explained in its prior orders creating the *de minimus* process, however, the Commission is mindful of the burden preparing detailed costs analyses places on small ILECs. After careful consideration of the facts in this matter, the Commission finds that it is appropriate to further facilitate the transition of the *de minimus* LECs away from reliance on the USF and towards limiting any future disbursements to only those instances where the company has provided detailed financial support of a need for such funding. Accordingly, limited disbursements to *de minimus* LECs shall continue without the need to file additional data demonstrating the LECs' needs for a period of three years beginning July 1, 2001 and ending June 30, 2004. In the first year, each *de minimus* LECs shall receive disbursements from the fund at the level the LEC previously received in year 5 of the phase down to interstate access parity under O.C.G.A. § 46-5-166(f)(2). These disbursements will be reduced to 66.7% of that amount for the period of

July 1, 2002 through June 30, 2003 and further reduced to 33.3% for the period July 1, 2003 through June 30, 2004.

The Commission further concludes that all such disbursements will end after the disbursements for the quarter ending June 30, 2004 have been made and that any further claims by these Tier 2 ILECs for any disbursements from the UAF must be accompanied by either the proper financial schedules required by the Commission to accomplish a streamlined earnings review, a forward-looking cost study using the Synthesis Cost Model approved by the Commission, or by filing a traditional rate case in the case of Traditionally Regulated ILECs.

WHEREFORE IT IS ORDERED that the Commission adopts the motion, as amended, as set forth in the body of this order. All findings, conclusions, and decisions contained in the body of this order are hereby by made findings of fact, conclusions of law, and orders of this Commission.

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

ORDERED FURTHER that any application for rehearing, reconsideration or oral argument and any appeal with respect to this Order shall not serve as a supersedeas and shall not stay this Order unless expressly ordered by this Commission.

The above action by the Georgia Public Service Commission this 11th day of June, 2001.

Reece McAlister
Executive Secretary

Lauren McDonald, Jr.
Chairman

Date

Date