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

In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board National Telecommunications Cooperative Association Petition for Clarification and/or Limited Waiver of Part 36 Jurisdictional Separations Rules	)	CC Docket No. 80-286

ORDER

Adopted: July 7, 2011 **Released: July 7, 2011**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we deny a request from the National Telecommunications Cooperative Association (NTCA) for a clarification or waiver of section 36.392 Commission's rules.[1] Specifically, NTCA requests clarification or a waiver to allow rate-of-return regulated incumbent local exchange carriers (LECs) to assign to the interstate jurisdiction all costs associated with audits of the federal universal service fund (USF) conducted by the Commission's Office of Inspector General (OIG) or the Universal Service Administrative Company (USAC).[2] We find that the rule does not need clarification and that NTCA has not demonstrated that good cause warrants waiver of this rule to allow rate-of-return incumbent LECs to directly assign the costs associated with these audits to the interstate jurisdiction.

II. BACKGROUND

2. Jurisdictional separations is the process by which incumbent local exchange carriers (LECs) apportion regulated costs between the intrastate and interstate jurisdictions. The purpose of separating costs between jurisdictions is to prevent regulated incumbent LECs from recovering the same costs in both jurisdictions.[3] Incumbent LECs perform jurisdictional separations by apportioning regulated costs between the intrastate and interstate jurisdictions in accordance with the Commission's Part 36

[1] *See* National Telecommunications Cooperative Association Petition for Clarification and/or Waiver of Part 36 Rules, CC Docket No. 80-286 (dated Aug. 29, 2008; filed Oct. 9, 2008) (Petition); 47 C.F.R. §36.392.

[2] *See* Petition at 5, 8.

[3] Jurisdictional Separations and Referral to the Federal-State Joint Board, CC Docket No. 80-286, Order and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5516, 5517, para. 2 (2006).

separations rules.[4] These costs are apportioned to the jurisdictions based upon either a relative use factor, a fixed allocator, or, when specifically allowed in the Part 36 rules, by direct assignment.[5]

3. Part 32 of the Commission's rules, the Uniform System of Accounts, requires that expenses for both internal and external audits are recorded in Account 6720-General and administrative expense.[6] The Part 36 rules require that expenses, other than Extended Area Services expense, charged to Account 6720 are allocated among the jurisdictions based on the results of the separations of the combined "Big Three Expenses."[7]

4. The objective of high-cost universal service support historically has been to help ensure that consumers have access to telecommunications services in areas where the cost of providing such services would otherwise be prohibitively high.[8] In section 254 of the Communications Act, Congress directed the Commission to preserve and advance universal service by ensuring, among other things, that consumers in rural, insular, and high-cost areas have access to telecommunications services at rates that are "reasonably comparable to rates charged for similar services in urban areas."[9]

5. NTCA requests clarification that the Commission's rules permit rate-of-return LECs to directly assign to the interstate jurisdiction all costs associated with OIG and USAC audits, rather than allocate such expenses to both the intrastate and interstate jurisdictions.[10] Alternatively, NTCA seeks a waiver of the Commission's rules so that it may assign to the interstate jurisdiction all costs associated with federal USF audits. On March 19, 2009, the Wireline Competition Bureau (Bureau) released a public notice seeking comment on NTCA's petition.[11]

6. NTCA argues that federal USF audits are solely interstate in nature, and therefore it is appropriate that audit expenses be allocated to the interstate jurisdiction.[12] NTCA further states that these

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[4] 47 C.F.R. Part 36.

[5] Costs are directly assigned when the telecommunication service is jurisdictionally whole, i.e., a service that is exclusively either intrastate or interstate in nature. For example, the cost of private line service that is wholly intrastate in nature is assigned directly to the intrastate jurisdiction. *See* 47 C.F.R. § 36.154(a).

[6] 47 C.F.R. § 32.6720(c).

[7] The Big Three Expenses are Plant Specific Expense, Non-Plant Specific Expense, and Customer Operations Expense. 47 C.F.R. § 36.392(c).

[8] *See, e.g., Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45, 97-160, Fifth Report and Order, 13 FCC Rcd 21323, para. 5 (1998) (*Fifth Report and Order*).

[9] 47 U.S.C. § 254(b)(3).

[10] *See* Petition at 1.

[11] *See Comment Sought on a Petition Filed by National Telecommunications Cooperative Association for Clarification and/or Limited Waiver of the Commission's Part 36 Jurisdictional Separations Rules*, CC Docket No. 80-286, Public Notice, 24 FCC Rcd 3250 (Wireline Comp. Bur. 2009). Comments were filed by GVNW Consulting (GVNW), Alexicon Telecommunications Consulting (Alexicon), TCA, Inc.-Telcom Consulting Associates (TCA), Missouri Small Telephone Company Group (Missouri Small Companies), and Verizon and Verizon Wireless (Verizon). Reply Comments were filed by NTCA and the State Members of the Federal-State Joint Board on Separations (State Joint Board Members).

[12] *See* Petition at 1. The Missouri Small Companies, TCA, GVNW, Alexicon, and the State Joint Board Members all support NTCA's argument that the federal USF is an interstate program and audit costs should be assigned as such. *See e.g.* Missouri Small Companies Comments at 3; TCA Comments at 1; GVNW Comments at 2; Alexicon Comments at 2; State Joint Board Members Reply Comments at 2.

audits cost rural incumbent LECs between $30,000 and $50,000 per audit, directly affect the rates that rural customers must pay to receive service, and expose rural incumbent LECs to the possibility that their state public service commission may disallow the expense.[13] NTCA states that, from both a common sense and a practical standpoint, it is reasonable and prudent that incurred costs be assigned to the cost causer and that these costs are incurred to comply with USF audits, which is an interstate program.[14]

III. DISCUSSION

7. NTCA requests clarification or waiver of section 36.392 of the Commission's rules.[15] NTCA does not provide specific details on how section 36.392 may be unclear with respect to the jurisdictional allocation of audit costs recorded in Account 6720-General and Administrative expenses. Section 36.392 states that expenses in Account 6720, other than expenses for Extended Area Service, "...are apportioned among the operations on the basis of the separation of the cost of the combined Big Three Expenses..."[16] We find that the rule is clear, and on its face requires that audit costs be apportioned among the interstate and intrastate jurisdictions. We therefore decline to "clarify" that our rules mandate an alternative result.

8. We find that NTCA has not demonstrated that special circumstances or good cause exist to warrant waiver of section 36.392 of the Commission's rules, and therefore we deny NTCA's request.[17] Federal universal service support is calculated using unseparated costs, i.e., before costs are allocated to the jurisdictions pursuant to the separations rules.[18] We find it appropriate that the costs incurred for complying with audits of universal service support be allocated to all jurisdictions that benefit from the receipt of such support. We agree with Verizon that it is reasonable to apportion USF compliance costs such as OIG and USAC audits between the federal and state jurisdictions because universal service funding is used for facilities that support both interstate and intrastate services.[19]

9. We do not find that the equities justify a waiver of section 36.392. We note that audit costs may also be eligible for additional support from the federal USF regardless of how the costs are allocated to the jurisdictions.[20] We also note that state regulatory commissions conduct their own audits,

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[13] *See* Petition at 2-3.

[14] *See* Petition at 6.

[15] *See* Petition at 1.

[16] Section 36.392 also clearly defines the Big Three Expenses. 47 C.F.R § 36.392. We note that Account 2110-General Support Facilities, Account 6110-Network Support Expenses, and Account 6120-General Support Expenses are also clearly separated on the basis of the Big Three Expenses. *See e.g.* 47 C.F.R §§ 36.111-36.112 and 36.311

[17] Generally, the Commission may waive its rules for good cause shown. *See* 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

[18] 47 C.F.R. §§ 36.611 and 54.301(b).

[19] *See* Verizon Comments at 2-3.

[20] Audit expenses are charged to Account 6720, which is an eligible expense for universal service support purposes. 47 C.F.R. §§ 32.6720, 36.611(e), 54.301(c)(5).

and those costs are apportioned between the federal and state jurisdictions.[21] We find that allocating audit costs between the jurisdictions in the manner prescribed by the separations rules, particularly in light of these factors, strikes a reasonable balance. It requires each jurisdiction to bear a fair share of the administrative costs of universal service programs.

IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the petition for waiver of sections 36.392 the Commission's rules, 47 C.F.R. §§ 36.392, filed by the National Telecommunications Cooperative Association on October 9, 2008, IS DENIED.

11. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief
Wireline Competition Bureau

[21] *See* 47 C.F.R. §§ 36.392, 36.611(e).