

(Chron)

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

DOCKET FILE COPY ORIGINAL

OCT 2 2 1988

OFFICE OF
MANAGING DIRECTOR

86-285

John E. Benedict, Esquire
Piper & Marbury
1200 19th Street, N.W.
Washington, D.C. 20036-2430

Re: Fee Control # 9704118140132001

Dear Mr. Benedict:

This will respond to your request for refund of an application fee filed on behalf of Cass County Telephone Company ("Cass County") in connection with its petition for waiver of sections 36.612(a) and 36.631(d) of the Commission's rules, 47 C.F.R. §§ 36.612(a) and 36.631(d).

You represent that Cass County is a "newly established" company that recently had acquired, and received an associated study area waiver for, certain rural, high cost area exchanges from GTE Midwest, Inc. ("GTE"). Given that these GTE exchanges "unexpectedly exceeded" the benchmark of 200,000 access lines, Cass County sought waiver of sections 36.612(a) and 36.631(d) to enable it to avoid a reduction in USF support.

You assert that the imposition of a filing fee in this instance is "disproportionate to the scale and scope of the relief sought by the Petition," would "inappropriately" increase the overall cost of providing service and further "add to Cass County's financial burdens." You therefore request a waiver of the filing fee requirement.

The Commission may waive filing fees only upon a showing of good cause and a finding that the public interest will be served thereby. See Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 2 FCC Rcd 947, 961 (1987); see also 47 C.F.R. §1.1117. You have represented in general terms that the imposition of the \$5,665.00 filing fee for waiver of Part 36 would represent a significant expense for Cass County and ultimately Cass County's subscribers, and thus a financial hardship. The Commission recognizes that in certain instances the payment of required fees may impose financial hardship and has waived fees where "a compelling case of financial hardship" is shown. Cf. Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), reconsideration granted, 10 FCC Rcd 12759 (1995).

In order to establish a compelling case of financial hardship, a more detailed showing is required. In this connection, you may submit information such as a balance sheet, a profit and loss statement (audited, if available), a cash flow projection (with an explanation of how it was calculated, and with and without the receipt of anticipated USF support), a list of officers and their individual compensation, together with a list of the highest paid employees and the amount of their compensation, or similar such

John E. Benedict, Esquire
Page 2

information. At this juncture, however, you have not made a showing sufficient to warrant waiver of the fee payment.

Therefore, based on the present state of the record, we are denying Cass County's request for waiver without prejudice. Cass County's refund request will be reinstated upon a more persuasive, detailed showing of financial hardship. If you have questions concerning this matter, please contact the Chief, Fee Section, at (202) 418-1995.

Sincerely,


Mark Reger
Chief Financial Officer

9704118140132001

DUPLICATE COPY

PIPER & MARBURY

L.L.P.

1200 NINETEENTH STREET, N.W.
WASHINGTON, D.C. 20036-2430

202-861-3900
FAX: 202-223-2085

BALTIMORE
NEW YORK
PHILADELPHIA
EASTON

WRITER'S DIRECT NUMBER
202-861-3864
FAX: 202-223-2085

April 9, 1997

FEDERAL EXPRESS

AAO 97-~~59~~59

Federal Communications Commission
Accounting and Audits
Post Office Box 358140
Pittsburgh, Pennsylvania 15251-5140

Re: Cass County Telephone Company;
Petition for Waiver

Dear Sir/Madam:

On behalf of Cass County Telephone Company, enclosed is a Petition for Waiver of Part 36.612 of the Commission's Rules. Also enclosed is a properly completed FCC Form 159 and check in the amount of \$5,665.00 to cover the associated filing fee. We trust that the enclosed will be found in order for filing and grant.

Should you require any further information, or have any questions regarding this filing, please call my office directly at (202) 861-3864.

Very truly yours,



John E. Benedict

Enclosures

cc: Randall B. Lowe

FEDERAL COMMUNICATIONS COMMISSION
FCC REMITTANCE ADVICE

Approved by OMB
3060-0589
Expires 2-28-97

PAGE NO. 1 OF 1

(RESERVED)

SPECIAL USE
FCC/MELLON APR 10 1997

FCC USE ONLY

(Read instructions carefully BEFORE proceeding.)

PAYOR INFORMATION

(1) FCC ACCOUNT NUMBER	Did you have a number prior to this? Enter it.	(2) TOTAL AMOUNT PAID (dollars and cents)
0 4 3 1 7 2 7 2 2 1		\$ 5,665.00

(3) PAYOR NAME (If paying by credit card, enter name exactly as it appears on your card)
Cass County Telephone Company

(4) STREET ADDRESS LINE NO. 1

192 West Broadway

(5) STREET ADDRESS LINE NO. 2

(6) CITY	(7) STATE	(8) ZIP CODE
Peculiar	MO	64078

(9) DAYTIME TELEPHONE NUMBER (Include area code)	(10) COUNTRY CODE (if not U.S.A.)
(816) 779-5510	

ITEM #1 INFORMATION

(11A) NAME OF APPLICANT, LICENSEE, REGULATEE, OR DEBTOR
Cass County Telephone Company

FCC USE ONLY

(12A) FCC CALL SIGN/OTHER ID	(13A) ZIP CODE	(14A) PAYMENT TYPE CODE	(15A) QUANTITY	(16A) FEE DUE FOR PAYMENT TYPE CODE IN BLOCK 14
	64078	B E A	1	\$5,665.00

(17A) FCC CODE 1	(18A) FCC CODE 2

(19A) ADDRESS LINE NO. 1	(20A) ADDRESS LINE NO. 2	(21A) CITY/STATE OR COUNTRY CODE
192 West Broadway		Peculiar, MO

ITEM #2 INFORMATION

(11B) NAME OF APPLICANT, LICENSEE, REGULATEE, OR DEBTOR

FCC USE ONLY

(12B) FCC CALL SIGN/OTHER ID	(13B) ZIP CODE	(14B) PAYMENT TYPE CODE	(15B) QUANTITY	(16B) FEE DUE FOR PAYMENT TYPE CODE IN BLOCK 14
				\$

(17B) FCC CODE 1	(18B) FCC CODE 2

(19B) ADDRESS LINE NO. 1	(20B) ADDRESS LINE NO. 2	(21B) CITY/STATE OR COUNTRY CODE

CREDIT CARD PAYMENT INFORMATION

(22) MASTERCARD/VISA ACCOUNT NUMBER:

Mastercard VISA

EXPIRATION DATE: /

Month Year

(23) I hereby authorize the FCC to charge my VISA or Mastercard for the service(s)/authorization(s) herein describe.

AUTHORIZED SIGNATURE _____ DATE _____

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
CASS COUNTY TELEPHONE COMPANY)
)
Petition for Waiver)
of Sections 36.612(a) or 36.631(d))
of the Commissions Rules)

To: Managing Director

REQUEST FOR WAIVER OF FILING FEE

Cass County Telephone Company ("Cass County"), by its attorneys, and pursuant to Section 1.1117 of the Commission's Rules,¹ hereby requests a waiver of the \$5,665 filing fee for the Petition for Waiver ("Petition")² filed concurrently herewith. To ensure that Cass County's Petition is processed expeditiously, and in an abundance of caution, Cass County is submitting the filing fee payment with this Request, its Petition, and FCC Form 159. Cass County submits that waiver of the filing fee and refund of this payment is appropriate and will serve the public interest. In support hereof, Cass County shows the following:

¹47 C.F.R. § 1.1117.

²47 C.F.R. §§ 36.612, 36.631(d).

In its Petition, Cass County seeks a waiver of section 36.612(a) or section 36.631(d) of the Commission's Rules so that it may receive the level of Universal Service Fund ("USF") payments as previously authorized by the Commission. Cass County is a newly established company that acquired certain rural, high cost area exchanges from GTE Midwest, Inc. The study area from which the exchanges were acquired has unexpectedly exceeded 200,000 working access lines, and Cass County seeks to avoid a corresponding reduction in its USF support. In the context of granting Cass County a study area waiver, the Commission authorized USF support for Cass County up to \$1,626,277 per year. Because Cass County's funding has been drastically reduced due to changes in the former study area, it has been forced to suspend construction in its exchanges. Cass County's Petition seeks to ensure administration of the USF in a manner consistent with the Commission's goal of assisting local exchange carriers serving high-cost areas in maintaining affordable local service rates.³

Cass County submits that waiver of the filing fee associated with its Petition is in the public interest because the \$5,665 filing fee is significantly disproportionate to the scale and scope of the relief sought by the Petition. Cass County's Petition does not present complex issues and will not require substantial Commission resources. The Commission has already determined that the customers in the acquired exchanges would be better served by Cass County and authorized interim USF funding. Cass County simply seeks to maintain this level of support. Imposition of a filing fee in this instance will inappropriately raise the overall costs of upgrading and completing construction, which has already been suspended due to lack of funds. The fee would merely add to Cass County's financial burdens.

³ See generally Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, 96 FCC 2d 781 (1984).

The Commission has the authority to waive filing fees where good cause is shown and where waiver of the fee would promote the public interest.⁴ Cass County submits that waiver is appropriate and warranted in this instance.

Respectfully submitted,

CASS COUNTY TELEPHONE COMPANY

By 

Randall B. Lowe

John E. Benedict

Piper & Marbury, L.L.P.

1200 Nineteenth Street, N.W.

Washington, D.C. 20036-2430

(202) 861-3900

Its Attorneys

April 9, 1997

⁴47 C.F.R. § 1.1117(a).

Payment Transactions Detail Report

Date: 2/10/98

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Account Number	Received Date
9704118140132001	CASS COUNTY TELEPHONE COMPANY 192 WEST BROADWAY	0431727221	04/10/97

PECULIAR MO 64078

Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
\$5,665.00	\$5,665.00	1	BEA	1		CASS COUNTY TELEPHONE COMPANY	64078		\$5,665.00	1	PMT
Total	T								\$5,665.00		

From: Warren Firschein
To: A10.A10.TPUTNAM
Date: 3/19/98 9:59am
Subject: Cass County petition

Tom,

A few weeks ago we spoke about a petition by Cass County Telephone Company to waive the filing fee associated with a petition for a waiver of one of the Commission's rules. As you requested, I am forwarding a copy of the Order in that action, which was released last week.

Please do not hesitate to contact me with any questions or comments.

--Warren Firschein

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

In the Matter of)
)
Cass County Telephone Company) AAD 97-59
)
Petition For Waiver of Sections 36.612(a))
or 36.631(d) of the Commission's Rules)

ORDER

Adopted: March 13, 1998

Released: March 13, 1998

By the Chief, Accounting and Audits Division:

I. INTRODUCTION

On April 9, 1997, Cass County Telephone Company ("Cass") filed a petition ("Petition") requesting that the Commission grant it a waiver of Sections 36.612(a) or 36.631(d) of the Commission's rules to enable it to receive high cost loop support in 1997. On May 1, 1997, the Common Carrier Bureau ("Bureau") released a public notice soliciting comment on the petition for waiver. Three parties filed comments. In this Order, we deny Cass's Petition.

II. BACKGROUND

In 1984, the Commission established high cost support mechanisms to promote the nationwide availability of telephone service at reasonable rates. Specifically, high cost loop support allows incumbent local exchange carriers ("incumbent LECs") with high local loop costs to allocate an additional portion of those costs to the interstate jurisdiction, enabling the state jurisdictions to establish lower local

exchange rates in study areas receiving such assistance. Under these rules, a carrier's high cost loop support is based on the relationship of its historical loop cost to the national average historical loop cost.

In the *Universal Service Order* released on May 8, 1997, the Commission established new federal universal service support mechanisms consistent with the Communications Act of 1934, as amended. Under the new federal universal service support mechanisms, support for high cost areas will be based upon the forward-looking economic cost of providing the supported services to a service area. Non-rural incumbent LECs will receive support based on forward-looking economic costs beginning January 1, 1999; rural incumbent LECs will begin to receive support based on forward-looking economic costs no earlier than January 1, 2001. Until an incumbent LEC's high cost loop support is based on forward-looking economic costs, its support will continue to be based on historical cost data.

In accordance with Sections 36.611 and 36.612 of the Commission's rules, on July 31 of each year, incumbent LECs submit to the National Exchange Carrier Association ("NECA") loop cost data for the prior year. NECA compiles and analyzes these data to determine the average cost per loop for each incumbent LEC as well as the nationwide average cost per loop. Each incumbent LEC's high cost loop support amount for the following year is based upon the relationship between its average cost per loop and the nationwide average cost per loop. Because the loop cost data is not submitted by carriers until seven months after the end of a calendar year and because NECA requires time to compile and analyze the data, support is not provided generally to carriers until two years after costs are incurred. This lag can be less than two years if quarterly updates are filed.

III. DISCUSSION

A. Cass's Petition

Cass is a Missouri corporation recently formed to provide local exchange service in six rural Missouri exchanges previously served by GTE Midwest, Inc. ("GTE"). On January 16, 1996, we granted Cass a study area waiver to acquire the six exchanges from GTE and on April 1, 1996, Cass began service. Because the Commission's rules require calculation of high cost loop support disbursements to be based on historical cost data, Cass, as a new company with no historical cost data, was precluded from receiving high cost loop support until 1998.

Cass states that, at the time it began the process to acquire the exchanges, "GTE's study area from which the exchanges were acquired had fewer than 200,000 working access lines." Cass also claims that, a year after the acquisition, it was notified that the "GTE study area grew beyond 200,000 working access lines." Pursuant to the Commission's rules, the high cost loop support is reduced for study areas exceeding 200,000 access lines. As a result, Cass states that GTE's high cost loop support for these exchanges for 1997 was reduced from \$722,715 to \$50,832.

7. As a result of this estimated reduction in GTE's high cost loop support, Cass states that it needs a waiver of Section 36.612(a) to permit it to receive "universal service funding not subject to GTE's study area calculations" for 1997. Cass calculates this amount to be \$722,715 for 1997. Alternatively, Cass requests a waiver of Section 36.631(d) that would "permit Cass to receive high cost loop

support as if GTE had not exceeded 200,000 working access lines."

8. Cass argues that application of the Commission's rules in this instance would be contrary to the public interest because it "would have the unintended effect of precluding an acquiring [local exchange carrier] from providing affordable service in high cost areas." Cass states that its study area is made up of fewer than 6,000 access lines, and argues that its high cost loop support has been reduced solely because its study area continues to be associated with GTE's. Accordingly, Cass asserts that the primary policy underlying section 36.612--the promotion of nationwide availability of telephone service at reasonable rates by providing support to LECs operating in high cost areas--would be frustrated. Furthermore, Cass contends that because of the reduction in high cost loop support, it has been forced to suspend construction in three exchanges.

9. Cass also argues that a waiver is mandated due to the special circumstances surrounding the delay in obtaining FCC approval. Specifically, Cass contends that during the period of regulatory review, the Commission was closed "due to a period of budgetary constraints and inclement weather." In addition, "implementation of the Telecommunications Act of 1996 further delayed the approval process as the Commission was obliged to address more pressing issues requiring resolution within short time frames."

B. Positions of the Parties

10. All commenters support Cass's request for a waiver of either Sections 36.612(a) or 36.631(d). NTCA and USTA argue that the requested waiver of the Commission's rules is "clearly in the public interest," and that application of the rules in this instance "would have the unintended effect of precluding an acquiring LEC from [providing] affordable service in high cost areas." NTCA and USTA further argue that a decision not to grant the requested waiver could adversely affect Cass's planned improvements.

11. The Missouri Commission argues that Cass relied upon substantial high cost loop support when Cass determined the financial feasibility of its plan to acquire GTE's exchanges. Furthermore, the Missouri Commission argues that a grant of Cass's request for waiver of § 36.612(a) or § 36.631(d) is consistent with the intent of the Commission's rules to provide support from the high cost loop support mechanism for rural telephone companies.

C. Discussion

12. Under section 1.3 of the Commission's rules, we are authorized to grant waivers "if good cause therefor is shown." As interpreted by the courts, this requires that a petitioner demonstrate that "special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest."

1. Petition for Waiver of Section 36.612(a).

13. It has been long-standing policy not to waive sections 36.611 and sections 36.612 of the Commission's rules. In fact,

we have granted waivers of these sections only when a requesting carrier proposes to serve or is serving previously unserved areas. Cass does not assert any special circumstances affecting it that were not faced by any of the numerous rural telephone companies that have acquired existing exchanges from incumbent LECs. As a result, Cass fails to demonstrate the special circumstances that would support the grant of a waiver of sections 36.611 and 36.612.

14. We note that the Commission's high cost loop support distribution rules related to the sale and acquisition of exchanges have been in place for many years. In negotiating the purchase price of an exchange, it is incumbent upon the purchaser and the seller to consider the necessary investments and future cash flows related to the sale. Because high cost loop support represents an important source of funds for the operation of an exchange with high cost loops, the acquiring company would undoubtedly negotiate a lower price for the exchange if there were a possibility that its high cost loop support payments were delayed than it would be willing to pay if there were no delay. Because the selling company and the acquiring company negotiated the transfer of an exchange with full knowledge of the Commission's rules that apply to the transaction, we see no reason to waive the rules to compensate the acquiring company further. Consequently, we conclude that Cass's request for a waiver of section 36.612 must be denied.

15. Cass also argues that a waiver is justified due to the "unforeseen delay in granting the study area waiver request." Cass contends that the delay was caused by the demands of implementing the 1996 Act and the fact that the Commission was closed due to a period of budgetary constraints and inclement weather. First, we disagree that the passage of the 1996 Act resulted in an extraordinary delay in approving the waiver. We issued the study area waiver on January 16, 1996 and the 1996 Act was not signed into law by the President until February 8, 1996. We also disagree that the government-wide furlough experienced during December 1995 ultimately affected the amount of high cost loop support to be received by Cass. We had planned to approve and release the study area waiver in December 1995; however, as Cass suggests, a government shutdown prevented this and we ultimately released the waiver on January 13, 1996. This delay did not affect Cass's claim for 1997 high cost loop support. If the waiver and transaction had occurred in December 1995, Cass still would have had no claim for high cost loop support in 1997. This is so because the 1997 high cost loop support claims were based on 1995 costs and Cass's 1995 costs would have been too low for it to receive support. In fact, Cass would have only incurred costs for one month's operations, December 1995, and these costs would not be enough to render Cass eligible as a high cost company. We note that Cass consummated the purchase of the exchanges 90 days after we granted the waiver. It is highly unlikely, therefore, that Cass would have consummated the purchase prior to January 1996, even if we had approved the waiver in December 1995. Accordingly, we conclude that Cass did not suffer any loss of high cost loop support due to delays caused by the government-wide furlough.

2. Petition for Waiver of Section 36.631(d).

16. Section 631(d) of the Commission's rules establishes the procedure for calculating the additional interstate expense allocation for study areas reporting more than 200,000 working loops. Cass requests a waiver of this section, permitting it to calculate high cost loop support as if GTE's Missouri study area had not surpassed 200,000 working access lines. We conclude that Cass does not have standing to request such relief. Although Cass now provides local exchange service to exchanges previously served by GTE, GTE continued

to receive the high cost loop support associated with this study area for a period of two years. Accordingly, only GTE can petition for a waiver of Section 36.631(d) during this period. Cass's Petition for Waiver of Section 36.631(d) must therefore be dismissed.

3. Request for Refund of Filing Fee.

17. Finally, we note that by separate petition filed concurrently, Cass seeks a waiver and a full refund of the filing fee as permitted by Section 1.1117 of the Commission's rules. This rule states that a filing fee may be waived when good cause is shown, and when a waiver would promote the public interest. Cass states that a waiver of the filing fee is in the public interest as the fee is significantly disproportionate to the scale and scope of the relief sought in the underlying Petition, and that imposition of the filing fee would raise the overall costs of upgrading its facilities, which has already been suspended due to lack of funds. Section 1.1117(c) of the Commission's rules requires that petitions for fee waivers be acted upon by the Managing Director after FCC Form 155 has been completed. To facilitate this aspect of the Petitioner's request, we have forwarded a copy of the petition for waiver of the filing fee and will forward a copy of this order to the Managing Director.

IV. ORDERING CLAUSE

18. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 5(c), 201, 202, 218-220, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 202, 218-220, 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 Petition of Cass County Telephone Company for Waiver of Section 36.612(a) or 36.631(d) IS DENIED to the extent discussed in this Order and otherwise IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Kenneth P. Moran
Chief, Accounting and Audits Division