

RECEIVED

DEC 28 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

DOCKET FILE COPY ORIGINAL

In the Matter of)	
)	
Petition of Roseville)	CC Docket No. <u>96-45</u>
Telephone Company)	
)	
For a Limited Waiver of)	
Section 54.309 of)	
The Commission's Rules)	
)	

**COMMENTS OF AT&T CORP. IN OPPOSITION TO
THE ROSEVILLE PETITION FOR A LIMITED WAIVER**

Pursuant to the *Public Notice* in the above-captioned proceeding,¹ AT&T Corp. ("AT&T") hereby submits its opposition to the Roseville Telephone Company ("Roseville") Petition seeking a waiver of the Commission's rule for computing Federal high-cost loop support for non-rural carriers, 47 C.F.R. § 54.309 ("§ 54.309"), and special high-cost support treatment for Roseville under Part 36 Subpart F of the Commission's rules.²

I. INTRODUCTION

Pursuant to the Telecommunications Act of 1996 and the Commission's *Tenth Report and Order* "rural" local exchange carriers must have less than 100,000 access lines in a study

¹ Public Notice, *Roseville Telephone Company Petition For Limited Waiver Of Section 54.309 of the Commission's Rules*, CC Docket No. 96-45 (rel. December 8, 2000) ("*Public Notice*").

² Petition for Waiver, *Petition of Roseville Telephone Company For a Limited Waiver of Section 54.309 of the Commission's Rules*, CC Docket No. 96-45 (filed November 13, 2000) ("*Petition*").

No. of Copies rec'd 074
LIST A B C D E

area.³ Roseville serves 132,000 lines in its study area and, therefore, is a non-rural local exchange carrier (“LEC”) under the Commission’s rules. Thus, the amount of support for which Roseville is eligible is computed under § 54.309.

Applying these standards, Roseville concedes that it is no longer eligible to receive universal service high-cost support.⁴ Roseville has, to date, avoided any reduction in the amount of universal service high-cost support that it receives on account of the interim hold-harmless provisions contained in the *Ninth Report & Order*.⁵ Roseville’s waiver petition seeks special treatment compared to the other non-rural LECs that would allow Roseville to continue to receive universal service high-cost support at the expiration of the interim hold-harmless support mechanisms.⁶

The *Petition* should be denied. An applicant for a waiver of the Commission’s rules has the burden of showing “good cause” for a waiver (47 C.F.R. § 1.3) and “faces a high-hurdle even at the starting gate.”⁷ Good cause is demonstrated only where “special circumstances” warrant

³ See *Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support For Non-Rural LECs*, Tenth Report and Order, CC Docket Nos. 96-45, 97-160, ¶ 459 (rel. November 2, 1999) (“*Tenth Report & Order*”) (adopting the definition of “non-rural local exchange carrier” contained in the Telecommunications Act of 1996, 47 U.S.C. § 153(37)).

⁴ *Petition* at 3 (“under the Commission’s new non-rural plan, Roseville would receive no high-cost support”).

⁵ See *Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High-Cost Support For Non-Rural LECs*, Ninth Report and Order, CC Docket No. 96-45, ¶ 78 (rel. November 2, 1999) (“*Ninth Report & Order*”).

⁶ See *Petition* at 1. Subsequent to the filing of Roseville’s *Petition*, the Commission adopted the Federal-State Joint Board’s recommendation to commence a three year phase-out of the interim hold-harmless provisions beginning on January 1, 2001. See *Federal-State Joint Board on Universal Service*, Thirteenth Report and Order, CC Docket No. 96-45 (rel. December 8, 2000) (“*Thirteenth Report & Order*”).

⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

deviation from the general rule, such a deviation serves the public interest, and a waiver would be consistent with the principles underlying the rule.⁸ The *Petition* satisfies none of these requirements.

II. ROSEVILLE DOES NOT MEET THE ESTABLISHED WAIVER STANDARD

Roseville has identified no “special circumstances” that could warrant deviation from the general rules, and it provides no valid reasons why the proposed waiver would serve the public interest. Moreover, Roseville does not even attempt to show that that the waiver would be consistent with the principles underlying the Commission’s rules and the requested waiver, quite plainly would not be consistent with these principles.

A. Roseville Identifies No “Special Circumstances” That Warrant Treating Roseville Differently From The Other Non-Rural LECs.

Roseville asserts that it should be excepted from the Commission’s rules on the grounds that it is unique among the other non-rural LECs. Roseville points out that it is (1) one of the smallest non-rural LECs in terms of the number of loops in its study area; (2) not affiliated with a large holding company; and (3) has two central offices.⁹ None of these facts remotely justifies an exemption from the Commission’s rules. There will, of course, always be a “smallest” non-rural LEC, but that cannot justify ignoring the rural LEC definition mandated by Congress. Likewise, a LEC’s ownership structure has little, if any, impact on its cost of providing service.

⁸ See *FPC v. Texaco Inc.*, 377 U.S. 33, 39 (1964) (an agency must adhere strictly to its rules unless an applicant demonstrates “reasons why in the public interest the rule should be waived”); *Northwest Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“[t]he agency must explain why deviation better serves the public interest and articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation”); *WAIT Radio*, 418 F.2d 1153; *Thomas Radio v. FCC*, 716 F.2d 921 (D.C. Cir. 1983).

⁹ See *Petition* at 13.

And the number of central offices served by a LEC is only one of numerous factors that might contribute to a LEC's costs.¹⁰

Tellingly, Roseville's petition does not address factors that are clearly relevant to its costs of providing service. That is because those factors unambiguously militate against granting Roseville's petition for a waiver. For instance, one of the primary drivers of a non-rural LEC's cost of providing service in a study area is the line density in that study area.¹¹ According to Roseville's own data, its average line density is 1,500 lines per square mile placing it significantly above the average for rural carriers (13 persons per square mile) and even for other non-rural carriers (150 persons per square mile).¹² Moreover, according to the California Public Utilities Commission ("CPUC"), Roseville's service area is one of the fastest growing areas in Northern California.¹³ Indeed, the number of lines served by Roseville has increased from

¹⁰ Roseville cites to the Rural Task Force White Paper 4 (September 29, 2000) ("White Paper") for the proposition that the Commission's Cost Model may either underestimate or overestimate the costs associated with a particular central office and that such errors will "average out" for carriers with many central offices but will not average out for carriers with only a few central offices. *Petition* at 7. Roseville implies, therefore, that because Roseville serves only two central offices that the Commission's Cost Model underestimates Roseville's costs of providing service. However, Roseville provides *no evidence* that this is true. Indeed, according to the White Paper (at 7) it appears to be equally likely that the Commission's Cost Model accurately estimates Roseville's cost of providing service or even *overestimates* Roseville's cost of providing service.

¹¹ *See, e.g., Tenth Report & Order* ¶ 33 ("The determination of customer locations relative to the wire center heavily influences a forward-looking cost model's design of outside plant facilities . . . which in turn will have a large impact on the cost of service and the technologies employed by the model").

¹² *See Federal-State Joint Board on Universal Service; Forward Looking Mechanism for High Cost Support for Non-Rural LECs*, Comments of MCI WorldCom, Inc., CC Docket Nos. 96-45, 97-160, at 4 (filed February 7, 2000).

¹³ *See Federal-State Joint Board on Universal Service; Forward Looking Mechanism for High Cost Support for Non-Rural LECs*, Opposition by California to Petition for Reconsideration, CC Docket Nos. 96-45, 97-160, at 3 (filed February 3, 2000) ("CPUC Comments").

128,000 to 132,000 during the past year alone.¹⁴ And, in stark contrast to the typical rural carrier, Roseville has installed state-of-the-art fiber to replace its copper facilities and has begun to install high-speed access lines in order to serve high-tech industry and other customers.¹⁵ Moreover, these favorable cost and growth characteristics in the study area that is served by Roseville have attracted numerous competitor carriers. According to CPUC, there are thirty-two facilities based competitive LECs that are authorized to provide service in Roseville's service areas.¹⁶ Thus, the cost and competitive nature of the study area served by Roseville is prototypical of the study areas served by urban LECs and bears little resemblance to the study areas typically served by rural LECs.

B. Granting The Waiver Petition Would Not Advance The Public Interest.

Roseville asserts that “[a]bsent the requested waiver, Roseville will lose its high-cost support, and will have to recover that amount from its local subscribers”¹⁷ and that “it would be contrary to the public interest to impose on Roseville and its subscribers the burden to make up for the . . . loss of Federal support.”¹⁸ This claim contradicts the findings of the Federal-State Joint Board and the Commission, and is also contrary to the positions taken by Roseville in prior state proceedings.

¹⁴ Compare Federal-State Joint Board on Universal Service, *Forward-Looking Mechanism for High Cost Support For Non-Rural LECs*, Petition for Reconsideration, CC Docket Nos. 96-45, 97-160, at 2 (filed December 30, 1999) (“*Roseville Petition for Reconsideration*”) (identifying 128,000 lines) to *Petition* at 2 (identifying 132,000 lines).

¹⁵ See CPUC Comments at 4.

¹⁶ *Id.* at 4-5.

¹⁷ *Petition* at 10.

¹⁸ *Id.* at 11.

In the *Thirteenth Report & Order* the Commission adopted the Joint Board's proposal to slowly phase-out the hold-harmless provisions over a three year time horizon, rather than terminate the hold-harmless provisions at a particular date.¹⁹ Beginning on January 1, 2001, therefore, the Commission will reduce the average monthly per-line support by \$1.00 every year until there are no non-rural LECs receiving interim hold-harmless support.²⁰ Consequently, the amount of averaged monthly per-line hold-harmless support that Roseville will receive in 2001, will be reduced by *at most* \$1.00.²¹

In implementing this measured phase-out of the hold-harmless provisions, the Commission specifically acknowledged – contrary to Roseville's assertions – that a \$1.00 (or lower) reduction in average per-line hold-harmless support would ensure “a prompt, equitable phase-down of interim hold-harmless support *without causing undue rate disruption*, consistent with the objectives . . . in the *Ninth Report and Order*”²² and that “the *public interest will be served* by expeditiously advancing the transition to forward-looking support for non-rural carriers.”²³

Moreover, even setting aside the Commission's findings, Roseville's own behavior contradicts its claims that decreasing the amount of hold-harmless support for which it is eligible would be contrary to the public interest. The California Public Utilities Commission pointed out that:

¹⁹ See *Thirteenth Report & Order* ¶ 1.

²⁰ *Id.*

²¹ *Id.* ¶ 12.

²² *Id.* ¶ 12 (emphasis provided).

²³ *Id.* ¶ 14 (emphasis provided).

While Roseville contends that the loss of hold-harmless support to non-rural carriers will cause “significant rate shock” to their customers, that contention is belied by Roseville’s most recent request to the CPUC to increase its customer rates. In its last rate case, filed in 1995 with rates effective in 1997, Roseville had proposed a monthly residential rate of \$23.60, excluding surcharges. With the addition of the federal line charge, this amount would have increased to \$27.10, excluding state surcharges. By comparison, without hold-harmless support, Roseville’s actual residential customer rates would be \$26.04 at most.²⁴

Thus, Roseville’s claims that a reduction in the amount of hold-harmless support that it receives in 2001 would contravene the public interest is clearly disingenuous.

Lastly, Roseville advances the puzzling argument that “there would be no contravening harm to the public interest [of granting its waiver petition because] . . . it constitutes only a small portion of the total Federal high-cost support budget.”²⁵ Of course, every non-rural LEC that, like Roseville, will experience a \$1.00 decrease (at most) in its average monthly per-line hold-harmless support in the year 2001 could make the exact same argument. Clearly, such a precedent could have a very significant impact on the Federal high-cost support budget.

C. Granting Roseville’s Waiver Petition Would Not Be Consistent With The Principles Underlying The Commission’s Rules.

The *Ninth and Tenth Reports and Orders* clearly establish the basic principle that universal service support will be calculated using the new forward-looking mechanism. The interim hold-harmless provisions were instituted to protect consumers from sudden rate shocks that may result from the implementation of the new forward-looking cost mechanism. Indeed, the Commission “stress[ed] that the [interim hold-harmless] provision . . . is a *transitional* provision intended to protect consumers in high-cost areas during the shift to the new federal support mechanism. . . . the hold-harmless provision should not be a perpetual entitlement, and

²⁴ CPUC Comments at 5.

²⁵ *Petition* at 11.

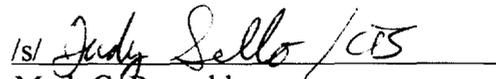
should be phased out as carriers and states adapt to the new forward-looking mechanism.”²⁶ The waiver sought by Roseville would thwart these principles by effectively extending the hold-harmless transition beyond the time required for carriers to adjust to the new forward-looking cost mechanism.

CONCLUSION

For the foregoing reasons, Roseville has failed to satisfy the Commission’s stringent standards for granting a waiver of a rule and, therefore, Roseville’s petition for a waiver of the Commission’s rules for computing high-cost support for non-rural LECs should be denied.

Respectfully Submitted,

David L. Lawson
Christopher T. Shenk
Sidley & Austin
1722 Eye St., N.W.
Washington, D.C. 20006
(202) 736-8000



Mark C. Rosenblum
Judy Sello
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-8984

Attorneys for AT&T Corporation

December 28, 2000

²⁶ *Ninth Report and Order* ¶ 88 (emphasis in original).

CERTIFICATE OF SERVICE

I, Patricia Bunyasi, do hereby certify that on this 28th day of December, 2000, I caused true and correct copies of the foregoing Comments of AT&T Corp. in Opposition to the Roseville Petition for a Limited Waiver to hand-delivered or served via U.S. first class mail, postage prepaid, to the parties listed below.

/s/ Patricia Bunyasi
Patricia Bunyasi

By Hand Delivery:

Magalie Roman Salas¹
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Sheryl Todd²
Accounting Policy Division
Common Carrier Bureau
Federal Communications Commission
445 12th St., S.W., Room 5-B540
Washington, D.C. 20554

International Transcription Service, Inc.³
1231 20th St., N.W.
Washington, D.C. 20037

By U.S. First Class Mail, Postage Prepaid:

Paul J. Feldman, Esq.
Fletcher, Heald & Hildreth, PLC
1300 North 17th St., 11th Floor
Arlington, Virginia 22209

Glenn H. Brown
McClellan & Brown
9011 East Cedar Waxwing Dr.
Chandler, Arizona 85248

¹ Four (4) copies plus original.

² Three (3) copies.

³ One (1) copy plus one (1) disk containing an electronic copy of the Comments of AT&T Corp. in Opposition to the Roseville Petition for a Limited Waiver.