SUPREME COURT OF OKLAHOMA

# Dobson Telephone Company d/b/a McLoud Telephone Company v. State of Oklahoma ex rel. Oklahoma Corporation Commission

2019 OK 25 (Okla. 2019) · No. 116215 · Decided April 16, 2019

## SUMMARY

The Oklahoma Supreme Court reviewed the Oklahoma Corporation Commission's denial of Dobson Telephone Company's request for reimbursement from the Oklahoma Universal Service Fund. The court held that Dobson was entitled to recover increased costs incurred after the Oklahoma Department of Transportation required relocation of its telephone facilities, and that the Commission improperly imposed additional evidentiary and eligibility requirements. The Commission's order was vacated and the matter was remanded with instructions.

## CASE DETAILS

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| COURT | Supreme Court of Oklahoma |
| WRITING FOR THE COURT | Winchester, J.; Gurich, C.J.; Kauger, J.; Edmondson, J.; Darby, J.; Combs, J. |
| JURISDICTION | Oklahoma |
| DECIDED | April 16, 2019 |
| DOCKET | 116215 |
| DISPOSITION | vacated |
| PROCEDURAL POSTURE | Dobson appealed the Oklahoma Corporation Commission's denial of its application for reimbursement from the Oklahoma Universal Service Fund. The Oklahoma Supreme Court retained the appeal and made it a companion to related cases. |
| STANDARD OF REVIEW | Under Okla. Const. art. 9, § 20, the court reviews ordinary Corporation Commission orders to determine whether the Commission regularly pursued its authority and whether its findings and conclusions are sustained by the law and substantial evidence. Because the appeal involved statutory interpretation and constitutional implications, the court applied de novo review to the legal issues. |
| PRECEDENTIAL VALUE | Published Oklahoma Supreme Court opinion; precedential. |

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| **PARTIES** | Dobson Telephone Company d/b/a McLoud Telephone Company v. State of Oklahoma ex rel. Oklahoma Corporation Commission |

## TOPICS

judicial review of agency action · administrative law · statutory interpretation · plain meaning rule · appellate procedure

## PRACTICE AREAS

administrative law · telecommunications law · public utilities regulation · statutory interpretation · appellate procedure

## QUESTIONS PRESENTED

1. Whether an eligible local exchange telecommunications provider is entitled under 17 O.S. Supp. 2016, § 139.106(K)(1)(b) to recover increased costs caused by a state agency order requiring relocation of telecommunications facilities.
2. Whether the Corporation Commission could deny the reimbursement because supporting confidential documents were not publicly filed in the Commission record.
3. Whether reimbursement under § 139.106(K) may be conditioned on proof that the provider's rates are reasonable and affordable, that the funding is necessary to maintain those rates, or that project costs be allocated between primary universal and other services.
4. Whether the Corporation Commission's wholesale denial of Dobson's application was supported by the law and substantial evidence.

## HOLDINGS

1. An eligible local exchange telecommunications provider serving fewer than 75,000 access lines must recover from the OUSF the net increase in costs resulting from changes required by state or federal regulatory rules, orders, policies, or law. Dobson therefore was entitled to reimbursement for the increased costs caused by ODOT's relocation order.
2. The Commission could not discount Dobson's entire application merely because the confidential documents reviewed by the OUSF Administrator were not publicly filed in the Commission record, particularly where the Commission's rules and established practice contemplated on-site review of such materials.
3. Reimbursement under § 139.106(K) cannot be conditioned on proof that the provider's rates are reasonable and affordable or that the reimbursement is necessary to maintain those rates.
4. Section 139.106(K) does not require an applicant to allocate relocation-project costs between primary universal services and other services as a condition of recovering qualifying cost increases.

## KEY QUOTATIONS

> *“The Act mandates that where changes are "required by existing or future federal or state regulatory rules, orders, or policies or by federal or state law," and such changes cause an eligible provider to experience an increase in costs, the provider "shall recover" such "cost increases from the OUSF."”* (441 P.3d at 161-162; ¶ 19)

> *“We find the Commission was not entitled to discount Dobson's entire application merely because the documents the Administrator inspected and relied upon for his approval were not publicly filed of record before the Commission.”* (441 P.3d at 162-163; ¶ 22)

> *“We are not inclined to add requirements to a statute that the Legislature chose not to impose.”* (441 P.3d at 163; ¶ 25)

### FACTUAL BACKGROUND

Dobson, an eligible rural telecommunications provider serving fewer than 75,000 access lines, was ordered by the Oklahoma Department of Transportation to relocate telephone lines for a highway construction project. The relocation cost $231,618.67; after ODOT reimbursements and a betterment reduction, Dobson sought $22,124.88 from the Oklahoma Universal Service Fund. The OUSF Administrator reviewed Dobson's application and confidential supporting materials and approved $21,794.27, but the Corporation Commission later denied all reimbursement.

### PROCEDURAL HISTORY

Dobson applied for $22,124.88 in reimbursement for costs incurred relocating telephone facilities at the direction of the Oklahoma Department of Transportation. The OUSF Administrator approved $21,794.27, disallowing $330.61, and an administrative law judge upheld that recommendation. On reconsideration, the Corporation Commission voted 2-1 to deny the request. Dobson appealed to the Oklahoma Supreme Court.

### DISPOSITION

vacated

### REMAND INSTRUCTIONS

The Corporation Commission's order was vacated, and the matter was remanded with instructions to approve the funding request consistent with the opinion.

### CASES CITED

- Cameron v. Corporation Commission, 1966 OK 75, 414 P.2d 266, 272
- State ex rel. Cartwright v. Southwestern Bell Telephone Co., 1983 OK 40, 662 P.2d 675, 681
- Dobson Telephone Co. v. State ex rel. Oklahoma Corporation Commission, 2017 OK CIV APP 16, 392 P.3d 295
- Cox Oklahoma Telecom, LLC v. State ex rel. Oklahoma Corporation Commission, 2007 OK 55, 164 P.3d 150, 156
- Neil Acquisition, L.L.C. v. Wingrod Investment Corp., 1996 OK 125, 932 P.2d 1100, 1103

- Fanning v. Brown, 2004 OK 7, 85 P.3d 841, 845
- Public Service Co. v. State ex rel. Corporation Commission, 1997 OK 145, 948 P.2d 713, 717
- Public Service Co. v. State ex rel. Corporation Commission, 1996 OK 43, 918 P.2d 733, 738
- Minie v. Hudson, 1997 OK 26, 934 P.2d 1082, 1086-87
- Oral Roberts University v. Oklahoma Tax Commission, 1985 OK 97, 714 P.2d 1013, 1015
- Big Horn Coal Co. v. Temple, 793 F.2d 1165, 1169 (10th Cir. 1986)
- Pentagon Academy, Inc. v. Independent School District No. 1 of Tulsa County, 2003 OK 98, 82 P.3d 587, 591