

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1815

By: Adair

COMMITTEE SUBSTITUTE

An Act relating to telecommunications; creating the Telephone Competition, Rural Service and Consumer Protection Act of 1997; stating legislative intent; defining terms; providing for application of Corporation Commission Rules; authorizing the Attorney General to enforce the Act; stating powers of the Attorney General; providing oversight by the Consumer Services Division; requiring local exchange telecommunications service providers to file certain tariffs; establishing the Oklahoma Lifeline Fund; stating purpose of the Fund; providing for election by a local exchange telecommunications service provider; prohibiting certain inquiry after election; stating consumers' right to file certain complaints; limiting rates of service provider after election; providing for pricing flexibility in certain circumstances; providing certain pricing methods; providing for certain Commission oversight of pricing; allowing companies to adopt certain cost studies; providing for manner of regulation; providing for pricing flexibility for certain competitive services; allowing for termination of election; prohibiting Commission from promulgating certain new rules; directing the Commission to complete a rulemaking proceeding; providing for affect on OneNet; allowing use of governmental facilities or right-of-ways; providing for the establishment of an Oklahoma Universal Service Fund (OUSF); stating purpose of the OUSF; providing for an OUSF charge; providing for appointment of an OUSF Administrator; stating powers and duties of the Administrator; providing procedure for request of OUSF funds; providing criteria for establishing amount of OUSF charge; providing for administrative costs; allowing recovery of OUSF charges; providing for notification of charge levels; authorizing Commission to bring certain action for recovery of charges from a carrier; allowing the Commission to increase the OUSF charge for certain reasons; providing for establishment of rules to implement the OUSF; prohibiting the Commission from taking certain action before implementation of the OUSF; providing minimum criteria for the OUSF; stating criteria for funding for incumbent local exchange telecommunications service providers; providing for identifying and measuring costs for determining certain funding levels; providing for support of expanded basic local exchange services; allowing recovery of certain costs due to certain actions from the OUSF; providing for eligibility of an incumbent local exchange telecommunications service provider; providing for eligibility of other local exchange telecommunications service providers under certain

circumstances; permitting local exchange telecommunications service providers to relinquish certain designation; limiting eligibility for certain providers; declaring effect of legislative action; repealing 17 O.S. 1991, Section 137.1, as amended by Section 3, Chapter 365 O.S.L. 1993 (17 O.S. Supp. 1996, Section 137.1), which relates to alternative regulation of telecommunications service providers; providing for codification; providing for noncodification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. It is the intent of the Legislature in enacting this act to modernize and improve the system of regulation of telecommunications service in Oklahoma so that it:

1. Ensures that all Oklahoma consumers, both rural and urban, are provided telecommunications service that is of high quality from reputable providers;

2. Ensures that basic local exchange service remains available to all consumers of the state at reasonable and affordable prices;

3. Encourages investment in Oklahoma's telecommunications infrastructure and encourages the timely introduction of innovative products and services for Oklahoma consumers;

4. Provides a framework for a competitive telecommunications marketplace where competitors compete on fair and equal terms and consumers derive the benefit of competition; and

5. Recognizes the benefits to all Oklahomans of maintaining availability of affordable telecommunications services in both rural and urban areas, and apportions the costs of insuring maintenance of modern and affordable telecommunications technology in high-cost areas of the state among all telecommunications carriers doing business in the state in a competitively neutral manner.

The Legislature recognizes the changes brought about by the federal Telecommunications Act of 1996 and the need to make the

necessary changes in Oklahoma for our citizens to receive the full benefits of the new telecommunications environment.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 139.101 of Title 17, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Telephone Competition, Rural Service and Consumer Protection Act of 1997".

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 139.102 of Title 17, unless there is created a duplication in numbering, reads as follows:

As used in the Telephone Competition, Rural Service and Consumer Protection Act of 1997:

1. "Access line" means a communications facility extending from a customer's premises to a serving central office comprising a subscriber line and, if necessary, a trunk facility;

2. "Basic local exchange service" means an access line and dial tone provided to the premises of residential or single-line business customers for the transmission of two-way switched or dedicated communication for usage with the local exchange area including;

- a. a primary directory listing,
- b. dual-tone multifrequency signaling,
- c. access to operator services,
- d. access to directory assistance services,
- e. access to telecommunications relay services for the hearing impaired,
- f. access to nine-one-one service where provided by a local governmental authority or multijurisdictional authority,
- g. lifeline service, and
- h. access to interexchange long distance services;

3. "Central office" means a switching unit, in a telephone system which provides service to the general public, having the necessary equipment and operations arrangements for terminating and interconnecting subscriber lines and trunks or trunks only. There may be more than one central office in a building;

4. "Certificate of convenience and necessity" means a certificate of authority issued by the Corporation Commission to provide local exchange telecommunications service wherein the provider may provide its own facilities or use a combination of its own facilities and resell the facilities of other providers;

5. "Commission" means the Oklahoma Corporation Commission;

6. "Competitive local exchange telecommunications service provider" means a local exchange telecommunications service provider that has one or more certificates of convenience and necessity to provide local exchange telecommunications service issued on or after the passage of the federal Telecommunications Act of 1996. A competitive local exchange telecommunications service provider is a "transmission company" as that term is used in the Oklahoma Constitution and in law;

7. "Competitively neutral" means not advantaging or favoring one person over another;

8. "Competitive service" means a service provided by a local exchange telecommunications service provider for which a functionally equivalent service or product is provided by another person;

9. "Electing Company" means an incumbent local exchange telecommunications provider that has elected to be regulated pursuant to Section 6 of this act;

10. "End User Common Line (EUCL) charge" means the flat rate monthly interstate access charge required by the Federal Communications Commission that contributes to the cost of local service;

11. "Exchange" means an area established by a local exchange telecommunications service provider consisting of one or more central offices together with the associated facilities used in furnishing telecommunications services within that area. An exchange usually embraces a city or town and its environs;

12. "External factor" means a cumulative impact on a local exchange telecommunications provider's intrastate revenues of more than three percent (3%), which is attributable to federal, state or local government law, regulations or policies which change the

revenue, expense or investment of the provider, but shall not include the effect of competition on the revenue, expense or investment of the company;

13. "Facilities" means any of the physical elements of a telephone plant that is needed to provide telecommunications services including, but not limited to, wireless transmission systems, switching systems, cables, fiber optic and microwave radio transmission systems, measuring equipment, billing equipment, operating systems, billing systems, ordering systems and all other equipment and systems that a telecommunications service provider uses to provide the telecommunications service;

14. "Governmental entity" means all Oklahoma state agencies, commissions, boards, authorities and all Oklahoma public educational entities, including school districts and political subdivisions, including incorporated cities and towns and all institutions, agencies or instrumentalities of municipalities, and county governments;

15. "Incremental cost" means the value of the resources used up because of offering a service. These include volume-sensitive incremental costs, which are caused by the provision of additional units of a volume of a service, and volume-insensitive incremental costs, that are caused by the provision of a service in total, but do not vary because of additional units of a service. Costs which are common to the local exchange telecommunications service provider in total shall not be included in incremental costs;

16. "Incumbent local exchange telecommunications service provider" means a local exchange telecommunications service provider that has one or more certificate of convenience and necessity to provide local exchange telecommunications service on January 1, 1996. An incumbent local exchange telecommunications service provider shall be a "transmission company" as that term is used in the Oklahoma Constitution and laws;

17. "Interconnection" means the capability of connecting the networks of different local exchange telecommunications providers to allow for the termination of local exchange calls;

18. "Interexchange carrier" means a common carrier that provides services to the public between local exchanges on an intraLATA or interLATA basis in compliance with state or federal regulatory requirements and that is not an end user of the services provided;

19. "LATA" means Local Access and Transport Area;

20. "Local exchange telecommunications service" means telecommunications service provided to establish connections between customer premises within the exchange and to provide, at a minimum, basic local exchange service, which may include expanded calling areas, as applicable;

21. "Local exchange telecommunications service provider" means a company holding a certificate of convenience and necessity from the Oklahoma Corporation Commission to provide local exchange telecommunications service;

22. "Oklahoma High Cost Fund" means the fund established by the Corporation Commission in Cause Nos. PUD 950000117 and 950000119;

23. "OLF" means the Oklahoma Lifeline Fund established in this act;

24. "OUSF" means the Oklahoma Universal Service Fund established in OCC Rule, OAC 165:55-17-21;

25. "Person" means a natural person, partnership, association, corporation, governmental entity or any other entity;

26. "Pricing flexibility" means the ability of an electing company to price its services at market-based rates including, but not limited to, customer specific contracts, volume, term, discount and promotional pricing, zone density pricing and packaging of services;

27. "Rate" means and includes every compensation, tariff, charge, fare, toll or rental collected directly or indirectly by any telecommunications service provider for any service, product or commodity described in this act and any rules, regulations, practices or contracts affecting any such compensation, tariff, charge, fare, toll, rental or classification;

28. "Telecommunications" means the transmission, between or among points specified by the user of voice or data information of the user's choosing, without change in the form or content of the information as sent and received;

29. "Telecommunications carrier" means a person that provides telecommunications service in Oklahoma; and

30. "Telecommunications service" means the offering of telecommunications for a fee.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 139.103 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. The rules of the Corporation Commission governing quality of service shall apply to all local exchange telecommunications service providers without exception.

B. The Attorney General shall enforce the telecommunications consumer protection provision of the Telephone Competition, Rural Service and Consumer Protection Act of 1997 to insure the consumer rights of all Oklahomans are protected. This responsibility will be funded on a competitively neutral basis by all telecommunications carriers operating in Oklahoma.

C. The Attorney General shall have the power and responsibility to:

1. Mediate grievances between consumers and telecommunications carriers;

2. Provide annual reports to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Corporation Commission of the number, nature and resolution of grievances mediated during the year;

3. Make recommendations to the Commission as to how to correct abuses by telecommunications carriers; and

4. Represent consumers before the Commission in the enforcement of telecommunications consumer rights.

D. The Commission, through the Consumer Services Division, shall oversee telecommunications carriers to prevent fraud and other practices harmful to consumers and to ensure compliance with quality of service standards adopted for all local exchange

telecommunications service providers and other telecommunications carriers which operate in the state.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 139.104 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. Each local exchange telecommunications service provider shall file tariffs with the Commission implementing a program to provide a full waiver of the End User Common Line charge and a credit equal to the End User Common Line charge to the monthly basic service rate of the customer for qualifying subscribers. Eligibility criteria for this program shall comply with the provisions of 47 C.F.R., Section 69.104(k)(1) and shall be limited to subscribers who are eligible for or receive assistance or benefits under the Link-Up America Program or pursuant to the requirements established by the Department of Human Services or the appropriate state agency charged with administering public assistance programs in the state.

B. The Commission shall establish and maintain an Oklahoma Lifeline Fund (OLF) to help ensure that low-income Oklahomans are provided financial assistance in obtaining basic local exchange telecommunications service. The OLF shall be funded in a competitively neutral manner by all telecommunications carriers. The funding from each carrier shall be based on the total retail-billed Oklahoma intrastate revenues as a percentage of all carriers total retail-billed intrastate revenues. Basic local exchange service revenues shall be excluded from the funding formula. Telecommunications carriers may, at their option, recover from their customers the OLF charges paid by the telecommunications carrier. The cost of administration of the OLF shall be included in the amount collected from all telecommunications carriers. Proceeds from the OLF shall be distributed to all local exchange telecommunications service providers who are required to file Lifeline tariffs.

C. The OLF shall be administered by the administrator of the Oklahoma High Cost Fund established by the Commission.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 139.105 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. If, after the effective date of this act, an incumbent local exchange telecommunications service provider notifies the Commission in writing of its election to be regulated under incentive regulation under the Telephone Competition, Rural Service and Consumer Protection Act of 1997, the electing company shall not under any circumstance be subject to any inquiry, investigation, complaint, hearing or determination as to the reasonableness of the electing company's rates, overall revenues, rate of return, return on invested capital, return on fair market value or net income. Upon such election, the Commission shall be without authority to issue any order contrary to the provisions of this section. The tariffed rates of an electing company on file with the Commission on the effective date of the election shall be deemed to be fair, reasonable and effective rates.

B. Nothing in this section restricts any right of a consumer to complain to the Commission regarding quality of service or the authority of the Commission to enforce quality of service standards through the Commission's contempt powers or authority to revoke a certificate of convenience and necessity if the provider fails to provide adequate service. A certificate of a provider shall not be revoked without notice, a hearing and an opportunity to correct any inadequacy.

C. An incumbent local exchange telecommunications service provider electing incentive regulation under this act shall limit its rates for basic local exchange service to levels no higher than those in existence on the date of the election, and shall remain at that level for a period of two (2) years after the election. At the end of the two-year period, the electing company shall price basic local exchange service according to the provisions of subsection D and E of this section, depending on if competitors have been certified in each exchange.

D. Upon making an election under subsection A of this section, in those exchanges in which the Commission has granted a

certificate of convenience and necessity to one or more competitive local exchange telecommunications service providers, the electing company shall have pricing flexibility and be permitted to price the services offered by the company, except basic local exchange service for the two-year rate cap period provided for in subsection C of this section, at market-based rates as is determined by the electing company.

E. Upon making an election under subsection A of this section, in those exchanges in which the Commission has not granted a certificate of convenience and necessity to a competitive local exchange provider, the maximum allowable revenues for nonbasic services provided by an electing company, and the maximum allowable price for basic local exchange service following the two-year rate cap period provided for in subsection C of this section, may be annually adjusted by one of the following methods:

1. By the change in the telephone service component of the Consumer Price Index, as published by the United States Department of Commerce or its successor agency for the preceding twelve (12) months;

2. Upon request by the company and approval by the Commission, by the change in the Gross Domestic Product Price Index, as published by the United States Department of Commerce or its successor agency for the preceding twelve (12) months, minus the productivity offset established for telecommunications service by the Federal Communications Commission and adjusted for external factors; or

3. For companies subject to Section 137 of Title 17 of the Oklahoma Statutes, local exchange rates may be adjusted pursuant to Section 137 of the Oklahoma Statutes, at the option of the company.

F. In determining the appropriate pricing of new telecommunications services in exchanges where there is only one certificated provider, the Commission shall ensure that prices are not:

1. Unreasonably preferential, prejudicial or discriminatory;

2. Subsidized directly by basic local exchange service; or
3. Priced below incremental costs.

G. The Commission shall allow an incumbent local exchange telecommunications service provider that serves less than seventy-five thousand (75,000) access lines as of the effective date of this act, at the option of the company, to adopt the cost studies approved by the Commission for a local exchange telecommunications provider that serves seventy-five thousand (75,000) or more access lines or to adopt the surrogate cost studies approved by the Federal Communications Commission.

H. Except as otherwise provided for in this section, an electing company shall be regulated only to the extent and in the same manner as the Commission regulates competitive local exchange telecommunications service providers pursuant to rules adopted by the Commission in Cause No. RM 95000019.

I. Notwithstanding the other provisions of this section, all local exchange telecommunications service providers shall have pricing flexibility for all competitive services and shall be permitted to price such services at market-based rates as determined by the local exchange telecommunications service provider, regardless of whether the Corporation Commission has granted a certificate of convenience and necessity to another local exchange service provider.

J. A local exchange telecommunications service provider which elects to be regulated pursuant to this section may terminate that election by filing a notice with the Commission. Upon terminating the election, the local exchange telecommunications service provider may not elect to be regulated under this section for a period of two (2) years from the date of the termination notice made pursuant to this subsection.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 139.106 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. After the effective date of this act, the Commission shall be prohibited from promulgating new rules that increase the regulatory burdens on telecommunications carriers except upon a

showing that the benefits of such regulation exceed the cost of the regulation.

B. On or before February 1, 1998, the Commission shall have completed a rulemaking proceeding to identify and repeal all unnecessary rules relating to the provision of telecommunications service.

C. All rules promulgated by the Commission after the effective date of this act shall apply equally to all providers of local exchange telecommunications service, both incumbent and competitive.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 139.107 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. Nothing in this section shall affect the state telecommunications system known as OneNet or prevent a telecommunications carrier from utilizing government facilities or rights-of-way to provide telecommunications service.

B. All governmental entities may allow holders of certificates of convenience and necessity or others to use governmental facilities or public rights-of-way only on nondiscriminatory terms to all holders of certificates of convenience and necessity.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 139.108 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. The Corporation Commission shall adopt and enforce rules establishing an Oklahoma Universal Service Fund (OUSF).

B. The OUSF shall be funded and administered in order to promote and assure the availability of universal service at rates that are reasonable and affordable, and to provide for reasonably comparable services at affordable rates in rural areas as in urban areas. The OUSF shall provide funding to local exchange telecommunications service providers that meet the eligibility criteria established in this section, the quality of service rules established by the Commission and which provide service over

facilities owned by the local exchange telecommunications service provider.

C. The OUSF shall be funded by an OUSF charge paid by all telecommunications carriers at a level sufficient to maintain universal service and if necessary to restructure the present system of telecommunications service rates in the state as provided for in this act.

D. The Commission shall appoint an OUSF Administrator, who shall act under supervision of the Commission, to administer the OUSF in accordance with the rules and procedures established by the Commission and consistent with this section. The Administrator shall enforce and implement all rules and orders of the Commission governing the funding, collection of charges and eligibility for the OUSF. Within sixty (60) days after receipt of a request for OUSF funds, the Administrator shall review and determine the accuracy of the request and advise the entity requesting the funds of the determination of eligibility made by the Administrator. The affected party shall have fifteen (15) days to request reconsideration by the Commission of the determination made by the Administrator and shall, after notice and hearing, if requested, issue an order on the reconsideration. If the Commission does not issue an order within ninety (90) days from the request for OUSF funds, the request shall be deemed approved.

E. The OUSF charge levels shall be established by the Commission based on the provisions of this subsection and shall apply to all telecommunications carriers operating in the state. The Commission shall have the authority and power to establish and enforce the provisions of this subsection. The OUSF shall be funded in a competitively neutral manner by all telecommunications carriers operating in the state. The OUSF charge to each carrier shall be based on the total retail-billed Oklahoma intrastate revenues of the carrier as a percentage of all carriers' total retail-billed intrastate revenues. Basic local exchange service revenues shall be excluded from the OUSF charge formula. The cost of administration of the OUSF shall be included in the amount

collected from all telecommunications carriers.

Telecommunications carriers may, at their option, recover from their customers the OUSF charges paid by the telecommunications carrier. The OUSF Administrator shall notify each telecommunications carrier of the OUSF charge levels required to be paid by the carrier. If the Commission determines after notice and hearing that a carrier has acted in violation of this section, in addition to the other enforcement powers of the Commission, the Commission acting through the Administrator may bring an action on behalf of the OUSF in the appropriate district court in the state to recover any charges the Commission determines are due and payable under this section. The Administrator is authorized to bring the action and to represent the OUSF in the action to collect the charges and any costs incurred by the OUSF including but not limited to interest, administrative and adjudicative costs and attorney fees. Upon collection of the charges and costs, the Administrator shall pay the costs of the actions and deposit the remaining funds in the OUSF. The OUSF charge shall not be subject to state or local taxes or franchise fees. If necessary, the Commission may increase the OUSF charge by an amount necessary to recover the cost of administration of the OUSF.

F. The Commission shall, after notice and hearing, establish rules and procedures necessary to implement the OUSF consistent with this section. The Commission shall implement the OUSF and make funds available to local exchange telecommunications service providers no later than ninety (90) days following the effective date of this act. The Commission shall not, prior to implementation and the availability of funds from the OUSF, require local exchange telecommunications service providers to reduce rates for intrastate access services or require any local exchange telecommunications service provider to reduce the amount of funds the carrier receives from the Oklahoma High Cost Fund (HCF), or modify or remove any exemption provided to a rural telephone company as provided in the Federal Telecommunications Act of 1996. In establishing and implementing criteria for the OUSF, the Commission shall, at a minimum, provide:

1. That the OUSF shall be paid to eligible local exchange telecommunications service providers as provided for in this section, including electing and nonelecting companies;

2. That any incumbent local exchange telecommunications service provider may request funding from the OUSF as necessary to maintain rates for basic local exchange telecommunications services that are reasonable and affordable. The request submitted by the incumbent local exchange service provider for OUSF funding shall be based on all net investments, including embedded investments, and expenses incurred by the incumbent local exchange telecommunications service provider in the provision of basic local exchange service. OUSF funding shall be provided to eligible incumbent local exchange telecommunications service providers for the following:

- a. investments and expenses required to provide, maintain and support basic local exchange telecommunications services,
- b. infrastructure expenditures or mandated costs in response to facility or service requirements established by a legislative, regulatory, judicial authority or governmental entity, and
- c. for other purposes deemed necessary by the Commission to preserve and advance the public health, safety and welfare;

3. That in identifying and measuring the costs of providing basic local exchange services, exclusively for the purpose of determining OUSF funding levels under this section, the incumbent local exchange telecommunications service providers shall:

- a. calculate the costs of providing the services using fully distributed Federal Communications Commission parts 32 and 64 costs,
- b. adopt the cost studies approved by the Commission for a local exchange telecommunications service providers that serve seventy-five thousand (75,000) or more access lines,

- c. adopt surrogate cost studies approved by the Federal Communications Commission, or
- d. identify high-cost areas within the local exchange area it serves and perform a fully distributed allocation of cost and identification of associated basic local service revenue. The high-cost area shall be no smaller than a single exchange, wire center or census block group, chosen at the option of the incumbent local exchange telecommunications service provider;

4. That, after notice and hearing, allow for expanded basic local exchange services to be supported by the OUSF. The Administrator, upon approval of the Commission, shall determine the level of additional OUSF funding to be made available to an eligible incumbent local exchange telecommunications service provider which is required to recover the cost of any expansion of basic local exchange services; and

5. For incumbent local exchange telecommunications service providers serving less than seventy-five thousand (75,000) access lines and for revenue neutral recovery of changes not recovered in increases to local exchange rates of incumbent local exchange telecommunications service providers serving greater than seventy-five thousand (75,000) access lines:

- a. in the event of a Federal Communications Commission order, rule or policy made pursuant to Section 254(a)(2) of the Federal Telecommunications Act of 1996, the effect of which is to decrease the federal universal service fund revenues of an incumbent local exchange telecommunications service provider, the incumbent local exchange telecommunications service provider shall recover the decreases in revenues from the OUSF,
- b. if, as a result of changes caused by federal or state regulatory rules, orders, or policies or by federal or state law, an incumbent local exchange telecommunications service provider experiences a

reduction in revenues or an increase in costs, it shall recover the revenue reductions or cost increases from the OUSF. The recovered amounts shall be limited to the net reduction in revenues or cost increases, and

- c. the receipt of OUSF funds for any of the changes referred to in paragraph 4 of this subsection or subparagraph a or b of this paragraph shall not be conditioned upon any rate case or earning investigation by the Commission. The OUSF Administrator shall verify the calculations and accuracy of the request for OUSF funds based on a comparison of the total annual revenues received from these sources by the requesting eligible incumbent local exchange telecommunications service provider during the most recent twelve (12) months preceding the request, and the reasonable projection of total annual revenues or cost increases which will be experienced after the changes are implemented by the requesting eligible incumbent local exchange telecommunications service provider.

G. The incumbent local exchange telecommunications service provider, its successors and assigns, which owned, maintained and provided facilities for universal service within a local exchange area on January 1, 1996, shall be the local exchange telecommunications service provider eligible for OUSF funding within the local exchange area, except as otherwise provided for in this act.

H. Where the incumbent local exchange telecommunications service provider receives OUSF funds, except in areas served by an incumbent local service provider serving less than seventy-five thousand (75,000) access lines, the Commission, after notice and hearing, may designate other local exchange telecommunications service providers to be eligible for OUSF funding, provided:

1. The other local exchange telecommunications service provider accepts the responsibility to provide service to all

customers in the local exchange area of an incumbent local exchange telecommunications service provider using its own facilities, or a combination of its own facilities and the resale of the service or facilities of another. Universal service support under this subsection shall not begin until the local exchange telecommunications service provider has facilities in place and offers to serve all customers in the service areas;

2. The other local exchange telecommunications service provider may only receive funding for the portion of the facilities that it owns and maintains;

3. The other local exchange telecommunications service provider shall not receive OUSF funding at a level higher than the level of funding received by the incumbent local exchange telecommunications service provider for the same area if the incumbent local exchange telecommunications service provider is also providing service in the same area;

4. The other local exchange telecommunications service provider advertises the availability and charges for services it provides through a form of media of general distribution; and

5. It is determined by the Commission that the designation is in the public interest and the other local exchange telecommunications service provider meets the quality of service rules established by the Commission.

I. In exchanges or wire centers where the Commission has designated more than one local exchange telecommunications service provider as eligible for OUSF funding, the Commission shall permit one or more of the local exchange telecommunications service providers in the area to relinquish the designation as a local exchange telecommunications service provider eligible for OUSF funding in a manner consistent with Section 214(e)(4) of the Federal Telecommunications Act of 1996, upon a finding that at least one eligible local exchange telecommunications service provider shall continue to serve the area.

J. For any area served by an incumbent local exchange telecommunications service provider which serves less than seventy-five thousand (75,000) access lines with the state, only

the incumbent local exchange telecommunications service provider shall be eligible for OUSF funding. The company may elect to waive the right to be the only eligible local exchange telecommunications service provider within the local exchange area by filing notice with the Commission.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 139.109 of Title 17, unless there is created a duplication in numbering, reads as follows:

Pursuant to the authority vested in the Legislature by Section 35 of Article IX of the Constitution of the State of Oklahoma, the Legislature hereby expressly declares that this entire act is an amendment to, and alteration of, Sections 18 through 34 inclusive of Article IX of the Constitution of the State of Oklahoma.

SECTION 11. REPEALER 17 O.S. 1991, Section 137.1, as amended by Section 3, Chapter 365 O.S.L. 1993 (17 O.S. Supp. 1996, Section 137.1), is hereby repealed.

SECTION 12. NONCODIFICATION Section 1 of this act shall not be codified in the Oklahoma Statutes.

SECTION 13. This act shall become effective July 1, 1997.

SECTION 14. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-1-6789

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