

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

HOUSE BILL NO. 1815

By: Adair

AS INTRODUCED

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; prohibiting Commission from promulgating certain new rules; directing the Commission to complete a rulemaking proceeding; providing for affect on OneNet; prohibiting a

governmental entity from receiving a certificate of convenience and necessity; allowing use of governmental facilities or right-of-ways; providing for funding and administration of the Oklahoma Universal Service Fund; providing for payment to certain service providers; providing for payment into Fund; providing for collection of assessment; 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; and

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

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

9. "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;

10. "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;

11. "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 revenues, expense or investment of the company;

12. "Facilities" means any of the physical elements of a telephone plant that is needed to provide telecommunications services, including 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;

13. "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;

14. "Incremental cost" means the value of the resources used up because of offering a service, which includes both volume-sensitive incremental costs, those which are caused by the provision of additional units of a volume of a service, and volume-insensitive incremental costs, those 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 firm in total shall not be included in incremental costs;

15. "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;

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

17. "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;

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

19. "Local exchange telecommunications service" means telecommunications service provided to establish connections between customer premises within the exchange, which includes expanded calling areas;

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

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

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

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

24. "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;

25. "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;

26. "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;

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

28. "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, based on their respective total retail-billed Oklahoma intrastate revenues, excluding basic local exchange service revenues, as a percentage of the total retail-billed intrastate revenues, excluding basic local exchange service revenues. 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.

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. A governmental entity shall not receive a certificate of convenience and necessity under Section 131 of Title 17 of the Oklahoma Statutes or any other law or rule to provide

telecommunications service for which a certificate of convenience and necessity is required, nor shall a governmental entity provide any service to the public from which a certificate of convenience and necessity is required.

C. 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 Oklahoma Universal Service Fund (OUSF) as established in OCC Rule, OAC 165:55-17-21 shall be funded and administered to support a universally available telecommunications network at affordable prices and to facilitate the transition from networks established and prices set under a single provider environment to a multiple provider environment without endangering affordable universal service, and shall also permit incumbent local exchange telecommunications service providers to recover and support the costs of the networks needed for access to and from end users.

B. Support from any existing intrastate high cost support fund and the OUSF shall be paid only to the eligible local exchange telecommunications service providers who also hold certificates of convenience and necessity. Support for the OUSF shall only be paid to eligible carriers for local exchange facilities that are owned and maintained by the carrier and if the carrier meets all Commission quality of service standards.

C. The OUSF shall be funded in a competitively neutral manner by all telecommunications carriers in the state.

D. Telecommunications carriers may collect their share of the OUSF assessment from customers of the carrier.

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.

46-1-5946

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