

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 HOUSE BILL 2197

By: Schwartz

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6 AS INTRODUCED

7 An Act relating to telecommunications; amending 17
8 O.S. 2011, Section 139.106, which relates to the
9 Oklahoma Universal Service Fund; deleting requirement
10 for the Corporation Commission to promulgate certain
11 rules; updating statutory citations; and providing an
12 effective date.

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

13 SECTION 1. AMENDATORY 17 O.S. 2011, Section 139.106, is
14 amended to read as follows:

15 Section 139.106. A. There is hereby created within the
16 Corporation Commission the "Oklahoma Universal Service Fund" (OUSF).
17 ~~Not later than January 31, 1998, the Corporation Commission shall~~
18 ~~promulgate rules implementing the OUSF so that, consistent with the~~
19 ~~provisions of this section, funds can be made available to eligible~~
20 ~~local exchange telecommunications service providers.~~

21 B. The fund shall be funded and administered to promote and
22 ensure the availability of primary universal services, at rates that
23 are reasonable and affordable and special universal services, and to
24 provide for reasonably comparable services at affordable rates in

1 rural areas as in urban areas. The OUSF shall provide funding to
2 local exchange telecommunications service providers that meet the
3 eligibility criteria established in this section.

4 C. The OUSF shall be funded by a charge paid by all
5 telecommunications carriers as provided for in Section 7 139.107 of
6 this ~~act~~ title, at a level sufficient to maintain universal service.

7 D. Within ninety (90) days after receipt of a request for funds
8 from an eligible provider, the Administrator designated pursuant to
9 Section 7 139.107 of this ~~act~~ title shall review and determine the
10 accuracy of the request and advise the provider requesting the funds
11 of the determination of eligibility made by the Administrator. Any
12 affected party shall have fifteen (15) days to request
13 reconsideration by the Commission of the determination made by the
14 Administrator. If the Commission does not issue an order within
15 thirty (30) days from the request for reconsideration, the request
16 shall be deemed approved, on an interim basis, subject to refund
17 with interest. Any refund shall include interest at a rate of not
18 more than the interest rate established by the Commission on
19 customer deposits and shall accrue for a period not to exceed ninety
20 (90) days from the date the funds were received by the requesting
21 eligible provider.

22 E. Telecommunications carriers may, at their option, recover
23 from their retail customers the OUSF charges paid by the
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1 telecommunications carrier. The OUSF charges shall not be subject
2 to state or local taxes or franchise fees.

3 F. The Commission shall not, prior to implementation and the
4 availability of funds from the OUSF, require local exchange
5 telecommunications service providers to reduce rates for intrastate
6 access services.

7 G. Any eligible local exchange telecommunications service
8 provider may request funding from the OUSF as necessary to maintain
9 rates for primary universal services that are reasonable and
10 affordable. OUSF funding shall be provided to eligible local
11 exchange telecommunications service providers for the following:

12 1. To reimburse eligible local exchange telecommunications
13 service providers for the reasonable investments and expenses not
14 recovered from the federal universal service fund or any other state
15 or federal government fund incurred in providing universal services;

16 2. Infrastructure expenditures or costs incurred in response to
17 facility or service requirements established by a legislative,
18 regulatory, or judicial authority or other governmental entity
19 mandate;

20 3. For reimbursement of the Lifeline Service Program credits as
21 set forth in Section ~~5~~ 139.105 of this ~~act~~ title;

22 4. To reimburse eligible local exchange telecommunications
23 service providers for providing the Special Universal Services as
24 set forth in subsection C of Section ~~9~~ 139.109 of this ~~act~~ title;

1 5. To defray the costs of administering the OUSF, including the
2 costs of an annual independent audit, if not performed by the
3 Commission staff; and

4 6. For other purposes deemed necessary by the Commission to
5 preserve and advance universal service.

6 H. In identifying and measuring the costs of providing primary
7 universal services, exclusively for the purpose of determining OUSF
8 funding levels under this section, the eligible local exchange
9 telecommunications service provider serving less than seventy-five
10 thousand access lines shall, at its option:

11 1. Calculate such costs by including all embedded investments
12 and expenses incurred by the eligible local exchange
13 telecommunications service provider in the provision of primary
14 universal service, and may identify high-cost areas within the local
15 exchange area it serves and perform a fully distributed allocation
16 of embedded costs and identification of associated primary universal
17 service revenue. Such calculation may be made using fully
18 distributed Federal Communications Commission parts 32, 36 and 64
19 costs, if such parts are applicable. The high-cost area shall be no
20 smaller than a single exchange, wire center, or census block group,
21 chosen at the option of the eligible local exchange
22 telecommunications service provider; or

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1 2. Adopt the cost studies approved by the Commission for a
2 local exchange telecommunications service provider that serves
3 seventy-five thousand or more access lines; or

4 3. Adopt such other costing or measurement methodology as may
5 be established for such purpose by the Federal Communications
6 Commission pursuant to Section 254 of the federal Telecommunications
7 Act of 1996.

8 I. In identifying and measuring the cost of providing primary
9 universal services, and exclusively for the purpose of determining
10 OUSF funding levels pursuant to this section, each ILEC which serves
11 seventy-five thousand or more access lines and each CLEC shall
12 identify high-cost areas within the local exchange and perform a
13 cost study using a Commission-approved methodology from those
14 identified in subsection H of this section. The high-cost area
15 shall be no smaller than a single exchange, wire center or census
16 block group chosen at the option of the eligible ILEC or CLEC. If
17 the Commission fails to approve the selected methodology within one
18 hundred twenty (120) days of the filing of the selection, the
19 selected methodology shall be deemed approved.

20 J. The Commission may by rule expand primary universal services
21 to be supported by the OUSF, after notice and hearing. The
22 Administrator, upon approval of the Commission, shall determine the
23 level of additional OUSF funding to be made available to an eligible
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1 local exchange telecommunications service provider which is required
2 to recover the cost of any expansion of universal services.

3 K. 1. Each request for OUSF funding by an eligible ILEC
4 serving less than seventy-five thousand access lines shall be
5 premised upon the occurrence of one or more of the following:

6 a. in the event of a Federal Communications Commission
7 order, rule or policy, the effect of which is to
8 decrease the federal universal service fund revenues
9 of an eligible local exchange telecommunications
10 service provider, the eligible local exchange
11 telecommunications service provider shall recover the
12 decreases in revenues from the OUSF,

13 b. if, as a result of changes required by existing or
14 future federal or state regulatory rules, orders, or
15 policies or by federal or state law, an eligible local
16 exchange telecommunications service provider
17 experiences a reduction in revenues or an increase in
18 costs, it shall recover the revenue reductions or cost
19 increases from the OUSF, the recovered amounts being
20 limited to the net reduction in revenues or cost
21 increases, or

22 c. if, as a result of changes made as required by
23 existing or future federal or state regulatory rules,
24 orders, or policies or by federal or state law, an

1 eligible local exchange telecommunications service
2 provider experiences a reduction in costs, upon
3 approval by the Commission, the provider shall reduce
4 the level of OUSF funding it receives to a level
5 sufficient to account for the reduction in costs.

6 2. The receipt of OUSF funds for any of the changes referred to
7 in this subsection shall not be conditioned upon any rate case or
8 earnings investigation by the Commission. The Commission shall,
9 pursuant to subsection D of this section, approve the request for
10 payment or adjustment of payment from the OUSF based on a comparison
11 of the total annual revenues received from the sources affected by
12 the changes described in paragraph 1 of this subsection by the
13 requesting eligible local exchange telecommunications service
14 provider during the most recent twelve (12) months preceding the
15 request, and the reasonable calculation of total annual revenues or
16 cost increases which will be experienced after the changes are
17 implemented by the requesting eligible local exchange
18 telecommunications service provider.

19 L. Upon request for OUSF funding by an ILEC serving seventy-
20 five thousand or more access lines or a CLEC, the Commission shall
21 after notice and hearing make a determination of the level of OUSF
22 funds, if any, that the provider is eligible to receive for the
23 purposes contained in subsection K of this section. If the
24 Commission fails to make a determination within one hundred twenty

1 (120) days of the filing of the request, the request for funding
2 shall be deemed approved. Providers who are not prohibited from
3 applying for OUSF funds as set forth in Section ~~9~~ 139.109 of this
4 ~~act~~ title shall receive funding for any special universal services
5 provided and contributions made to the Oklahoma E911 Emergency
6 Service Fund and the Oklahoma Telecommunications Technology Training
7 Fund from the OUSF without a hearing.

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

15 N. 1. Where the incumbent local exchange telecommunications
16 service provider receives or is eligible to receive monies from the
17 OUSF, except as otherwise provided in this section, the Commission,
18 after notice and hearing, may designate other local exchange
19 telecommunications service providers to be eligible for the funding,
20 provided:

21 a. the other local exchange telecommunications service
22 provider is certificated by the Commission to provide
23 and offers the primary universal services supported by
24 the OUSF to all customers in the universal service

1 area designated by the Commission, using its own
2 facilities, or a combination of its own facilities and
3 the resale of the services or facilities of another.
4 Universal service support under this subsection shall
5 not begin until the other local exchange
6 telecommunications service provider has facilities in
7 place,

8 b. the other local exchange telecommunications service
9 provider may only receive funding for the portion of
10 the facilities that it owns, maintains, and uses for
11 regulated services,

12 c. the other local exchange telecommunications service
13 provider shall not receive OUSF funding at a level
14 higher than the level of funding the incumbent local
15 exchange telecommunications service provider is
16 eligible to receive for the same area if the incumbent
17 local exchange telecommunications service provider is
18 also providing service in the same area; provided, the
19 cost of any cost studies required to be performed
20 shall be borne by the party requesting such studies,
21 unless the party performing the study utilizes the
22 study for its own benefit,

23 d. the other local exchange telecommunications service
24 provider advertises the availability and charges for

1 services it provides through a medium of general
2 distribution, and

3 e. it is determined by the Commission that the
4 designation is in the public interest and the other
5 local exchange telecommunications service provider is
6 in compliance with all Commission rules for which a
7 waiver has not been granted.

8 2. Notwithstanding the criteria set forth in this section for
9 designation as an eligible local exchange telecommunications service
10 provider, a commercial mobile radio service provider may, after
11 notice and hearing, seek reimbursement from the OUSF for the
12 provision of services supported by the OUSF, and any
13 telecommunications carrier may seek reimbursement from the OUSF for
14 the provision of Lifeline Service consistent with Section ~~5~~ 139.105
15 of this ~~act~~ title and for the provision of Special Universal
16 Services consistent with Section ~~9~~ 139.109 of this ~~act~~ title.

17 O. In exchanges or wire centers where the Commission has
18 designated more than one local exchange telecommunications service
19 provider as eligible for OUSF funding, the Commission shall permit
20 one or more of the local exchange telecommunications service
21 providers in the area to relinquish the designation as a local
22 exchange telecommunications service provider eligible for OUSF
23 funding in a manner consistent with Section 214(e)(4) of the federal
24 Telecommunications Act of 1996, upon a finding that at least one

1 eligible local exchange telecommunications service provider shall
2 continue to assume the carrier-of-last-resort obligations throughout
3 the area.

4 P. For any area served by an incumbent local exchange
5 telecommunications service provider which serves less than seventy-
6 five thousand access lines within the state, only the incumbent
7 local exchange telecommunications service provider shall be eligible
8 for OUSF funding except:

9 1. Other eligible telecommunications carriers which provide
10 Special Universal Services or Lifeline Service shall be eligible to
11 request and receive OUSF funds in the same manner as the incumbent
12 local exchange telecommunications service provider in the same area
13 pursuant to this act;

14 2. The incumbent local exchange telecommunications service
15 provider may elect to waive the right to be the only eligible local
16 exchange telecommunications service provider within the local
17 exchange area by filing notice with the Commission; or

18 3. When the Commission, after notice and hearing, makes a
19 determination that it is in the public interest that another local
20 exchange telecommunications service provider should also be deemed a
21 carrier of last resort and be eligible to receive OUSF funding in
22 addition to the incumbent local exchange telecommunications service
23 provider. It shall not be in the public interest to designate
24 another local exchange telecommunications service provider as being

1 a carrier of last resort and eligible to receive OUSF funding if
2 such designation would cause a significant adverse economic impact
3 on users of telecommunications services generally or if the other
4 carrier refuses to seek and accept carrier-of-last-resort
5 obligations throughout the universal service area as designated by
6 the Commission. The other local exchange telecommunications service
7 provider shall not receive OUSF funding at a level higher than the
8 level of funding the incumbent local exchange telecommunications
9 service provider is eligible to receive for the same area if the
10 incumbent local exchange telecommunications service provider is also
11 providing service in the same area and the other local exchange
12 telecommunications service provider meets the requirements of
13 subparagraphs a, b, d and e of paragraph 1 of subsection N of this
14 section.

15 SECTION 2. This act shall become effective November 1, 2013.

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