

1 ENGROSSED SENATE
2 BILL NO. 672

By: Griffin of the Senate

and

Christian of the House

3
4
5
6 [telecommunications - Oklahoma Telecommunications
7 Act of 1997 - distribution of funds - Oklahoma
8 Universal Service Fund - emergency prepaid wireless
9 telephone fee - combined fees - procedures for
10 collection and distribution of fees -
11 effective date]

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

13 SECTION 1. AMENDATORY 17 O.S. 2011, Section 139.102, as
14 last amended by Section 1, Chapter 245, O.S.L. 2014 (17 O.S. Supp.
2014, Section 139.102), is amended to read as follows:

15 Section 139.102. As used in the Oklahoma Telecommunications Act
16 of 1997:

17 1. "Access line" means the facility provided and maintained by
18 a telecommunications service provider which permits access to or
19 from the public switched network;

20 2. "Commission" means the Corporation Commission of this state;

21 3. "Competitive local exchange carrier" or "CLEC" means, with
22 respect to an area or exchange, a telecommunications service
23 provider that is certificated by the Commission to provide local
24

1 exchange services in that area or exchange within the state after
2 July 1, 1995;

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

5 5. "End User Common Line Charge" means the flat-rate monthly
6 interstate access charge required by the Federal Communications
7 Commission that contributes to the cost of local service;

8 6. "Enhanced service" means a service that is delivered over
9 communications transmission facilities and that uses computer
10 processing applications to:

11 a. change the content, format, code, or protocol of
12 transmitted information,

13 b. provide the customer new or restructured information,
14 or

15 c. involve end-user interaction with information stored
16 in a computer;

17 7. "Exchange" means a geographic area established by an
18 incumbent local exchange telecommunications provider as filed with
19 or approved by the Commission for the administration of local
20 telecommunications service in a specified area which usually
21 embraces a city, town, or village and its environs and which may
22 consist of one or more central offices together with associated
23 plant used in furnishing telecommunications service in that area;
24

1 8. "Facilities" means all the plant and equipment of a
2 telecommunications service provider, including all tangible and
3 intangible real and personal property without limitation, and any
4 and all means and instrumentalities in any manner owned, operated,
5 leased, licensed, used, controlled, furnished, or supplied for, by,
6 or in connection with the regulated business of any
7 telecommunications service provider;

8 9. "High speed Internet access service" or "broadband service"
9 means, as used in Section 139.110 of this title, those services and
10 underlying facilities that provide upstream, from customer to
11 provider, or downstream, from provider to customer, transmission to
12 or from the Internet in excess of one hundred fifty (150) kilobits
13 per second, regardless of the technology or medium used including,
14 but not limited to, wireless, copper wire, fiber optic cable, or
15 coaxial cable, to provide such service;

16 10. "Hospital" means a healthcare entity that has been granted
17 a license as a hospital by the Oklahoma Department of Health for
18 that particular location;

19 11. "Incumbent local exchange telecommunications service
20 provider" or "ILEC" means, with respect to an area or exchanges, any
21 telecommunications service provider furnishing local exchange
22 service in such area or exchanges within this state on July 1, 1995,
23 pursuant to a certificate of convenience and necessity or
24 grandfathered authority;

1 12. "Interexchange telecommunications carrier" or "IXC" means
2 any person, firm, partnership, corporation or other entity, except
3 an incumbent local exchange telecommunications service provider,
4 engaged in furnishing regulated interexchange telecommunications
5 services under the jurisdiction of the Commission;

6 13. "Internet" means the international research-oriented
7 network comprised of business, government, academic and other
8 networks;

9 14. "Local exchange telecommunications service" means a
10 regulated switched or dedicated telecommunications service which
11 originates and terminates within an exchange or an exchange service
12 territory. Local exchange telecommunications service may be
13 terminated by a telecommunications service provider other than the
14 telecommunications service provider on whose network the call
15 originated. The local exchange service territory defined in the
16 originating provider's tariff shall determine whether the call is
17 local exchange service;

18 15. "Local exchange telecommunications service provider" means
19 a company holding a certificate of convenience and necessity from
20 the Commission to provide local exchange telecommunications service;

21 16. "Not-for-profit hospital" means:

- 22 a. a hospital located in this state which has been
23 licensed as a hospital at that location pursuant to
24 Section 1-701 et seq. of Title 63 of the Oklahoma

1 Statutes for the diagnosis, treatment, or care of
2 patients in order to obtain medical care, surgical
3 care or obstetrical care and which is established as
4 exempt from taxation pursuant to the provisions of the
5 Internal Revenue Code, 26 U.S.C., Section 501(c)(3),
6 or

7 b. a hospital located in this state which is licensed as
8 a hospital at that location pursuant to Section 1-701
9 et seq. of Title 63 of the Oklahoma Statutes and is
10 owned by a municipality, county, the state or a public
11 trust for the diagnosis, treatment, or care of
12 patients in order to obtain medical care, surgical
13 care, or obstetrical care;

14 17. "Not-for-profit mental health and substance abuse facility"
15 means a facility operated by the Department of Mental Health and
16 Substance Abuse Services or a facility certified by the Department
17 of Mental Health and Substance Abuse Services as a Community Mental
18 Health Care Center, a Community-Based Structured Crisis Center or a
19 Community Comprehensive Addiction Recovery Center;

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

22 19. "Oklahoma Lifeline Fund" means the fund established and
23 required to be implemented by the Commission pursuant to Section
24 139.105 of this title;

1 20. "Oklahoma Universal Service Fund" means the fund
2 established and required to be implemented by the Commission
3 pursuant to Section 139.106 of this title;

4 21. "Person" means any individual, partnership, association,
5 corporation, governmental entity, public or private organization of
6 any character, or any other entity;

7 22. "Prepaid wireless telecommunications service" means prepaid
8 wireless telecommunications service as that term is defined in
9 paragraph 12 of subsection A of Section 1354.30 of Title 68 of the
10 Oklahoma Statutes;

11 23. "Primary universal service" means an access line and dial
12 tone provided to the premises of residential or business customers
13 which provides access to other lines for the transmission of two-way
14 switched or dedicated communication in the local calling area
15 without additional, usage-sensitive charges, including:

- 16 a. a primary directory listing,
- 17 b. dual-tone multifrequency signaling,
- 18 c. access to operator services,
- 19 d. access to directory assistance services,
- 20 e. access to telecommunications relay services for the
21 deaf or hard-of-hearing,
- 22 f. access to ~~nine-one-one~~ 9-1-1 service where provided by
23 a local governmental authority or multijurisdictional
24 authority, and

1 g. access to interexchange long distance services;

2 ~~23.~~ 24. "Public library" means a library or library system that
3 is freely open to all persons under identical conditions and which
4 is supported in whole or in part by public funds. Public library
5 shall not include libraries operated as part of any university,
6 college, school museum, the Oklahoma Historical Society or county
7 law libraries;

8 ~~24.~~ 25. "Public school" means all free schools supported by
9 public taxation, and shall include grades prekindergarten through
10 twelve;

11 ~~25.~~ 26. "Regulated telecommunications service" means the
12 offering of telecommunications for a fee directly to the public
13 where the rates for such service are regulated by the Commission.
14 Regulated telecommunications service does not include the provision
15 of nontelecommunications services, including, but not limited to,
16 the printing, distribution, or sale of advertising in telephone
17 directories, maintenance of inside wire, customer premises
18 equipment, and billing and collection service, nor does it include
19 the provision of wireless telephone service, enhanced service, and
20 other unregulated services, including services not under the
21 jurisdiction of the Commission, and services determined by the
22 Commission to be competitive;

23 ~~26.~~ 27. "Special Universal Services" means the
24 telecommunications services supported by the OUSF which are

1 furnished to public schools, public libraries, not-for-profit
2 hospitals and county seats as provided for in Section 139.109 of
3 this title;

4 ~~27.~~ 28. "Tariff" means all or any part of the body of rates,
5 tolls, charges, classifications, and terms and conditions of service
6 relating to regulated services offered, the conditions under which
7 offered, and the charges therefor, which have been filed with the
8 Commission and have become effective;

9 ~~28.~~ 29. "Telecommunications" means the transmission, between or
10 among points specified by the user, of voice or data information of
11 the user's choosing, without change in the form or content of the
12 information as sent and received;

13 ~~29.~~ 30. "Telecommunications carrier" means a person that
14 provides telecommunications service in this state;

15 ~~30.~~ 31. "Telecommunications service" means the offering of
16 telecommunications for a fee;

17 ~~31.~~ 32. "Universal service area" has the same meaning as the
18 term "service area" as defined in 47 U.S.C., Section 214(e)(5); and

19 ~~32.~~ 33. "Wire center" means a geographic area normally served
20 by a central office.

21 SECTION 2. AMENDATORY 17 O.S. 2011, Section 139.107, is
22 amended to read as follows:

23 Section 139.107. A. The Oklahoma Lifeline Fund and the
24 Oklahoma Universal Service Fund shall be funded in a competitively

1 neutral manner by all telecommunications carriers. The funding from
2 each carrier shall be based on the total retail-billed Oklahoma
3 intrastate telecommunications revenues, from both regulated and
4 unregulated services, of the telecommunications carrier as a
5 percentage of all telecommunications carriers' total retail-billed
6 intrastate telecommunications revenues, from both regulated and
7 unregulated services.

8 1. Notwithstanding subsection A of this section, the OUSF
9 charge applicable to prepaid wireless telecommunications service
10 shall be collected by the seller from the consumer on each retail
11 transaction in accordance with the procedures established under
12 Section 2843.2 of Title 63 of the Oklahoma Statutes. The OUSF
13 charge shall be remitted by the seller to the Tax Commission using
14 procedures established by Section 2843.2 of Title 63 of the Oklahoma
15 Statutes.

16 2. The rate of the OUSF charge applicable to prepaid wireless
17 telecommunications service shall be converted from a percentage to a
18 flat transaction amount by multiplying the percentage rate
19 established by the Commission by the inverse of the Federal
20 Communications Commission "safe harbor" percentage for determining
21 the interstate portion of a fixed monthly wireless charge, and then
22 multiplying the result times Twenty-five Dollars (\$25.00). Such
23 amount shall be rounded to the nearest whole cent.
24

1 3. Any rate charge approved by the Commission shall be applied
2 on July 1st of any calendar year. The Commission shall notify the
3 Tax Commission within fifteen (15) days of final approval of any
4 change in the OUSF rate applicable to prepaid wireless
5 telecommunications service. No more than one rate change shall be
6 permitted in a calendar year.

7 B. The Corporation Commission shall establish the Oklahoma
8 Lifeline Fund charges and the Oklahoma Universal Service Fund
9 charges at a level sufficient to recover costs of administration.
10 The Commission shall provide for administration of the two funds by
11 Commission employees or by contracting for such services with a
12 party having no conflicting interest in the provision of
13 telecommunications services. The administrative function shall be
14 headed by an Administrator.

15 C. If the Commission determines after notice and hearing that a
16 telecommunications carrier has acted in violation of this section,
17 in addition to the other enforcement powers of the Commission,
18 including its contempt powers and authority to revoke a provider's
19 certificate of convenience and necessity, the Commission may bring
20 an action on behalf of the Oklahoma Lifeline Fund or the Oklahoma
21 Universal Service Fund, in the district court that the Commission
22 deems appropriate, to recover any unpaid fees and charges the
23 Commission has determined are due and payable, including interest,
24 administrative and adjudicative costs, and attorney fees. Upon

1 collection of the charges and costs, the Administrator shall pay the
2 costs of the actions and deposit the remaining funds in the Oklahoma
3 Lifeline Fund or the Oklahoma Universal Service Fund as appropriate.

4 D. The monies deposited in the Oklahoma Lifeline Fund, the
5 Oklahoma Universal Service Fund and the Oklahoma High Cost Fund
6 shall at no time become monies of the state and shall not become
7 part of the general budget of the Corporation Commission or any
8 other state agency. Except as otherwise authorized by this act, no
9 monies from the Oklahoma Lifeline Fund, the Oklahoma Universal
10 Service Fund, or the Oklahoma High Cost Fund shall be transferred
11 for any purpose to any other state agency or any account of the
12 Corporation Commission or be used for the purpose of contracting
13 with any other state agency or reimbursing any other state agency
14 for any expense. Payments from the Oklahoma Lifeline Fund, the
15 Oklahoma Universal Service Fund, and the Oklahoma High Cost Fund
16 shall not become or be construed to be an obligation of this state.
17 No claims for reimbursement from the Oklahoma Lifeline Fund, the
18 Oklahoma Universal Service Fund or the Oklahoma High Cost Fund shall
19 be paid with state monies.

20 SECTION 3. AMENDATORY 63 O.S. 2011, Section 2843.2, is
21 amended to read as follows:

22 Section 2843.2. A. As used in this section, unless the context
23 otherwise requires:
24

1 1. "Combined fee" means the sum of the prepaid wireless 9-1-1
2 fee and the Oklahoma Universal Service Fund charge;

3 2. "Consumer" means a person who purchases prepaid wireless
4 telecommunications service in a retail transaction;

5 ~~2.~~ 3. "Oklahoma Universal Service Fund charge" means the charge
6 imposed under paragraph 2 of subsection A of Section 139.107 of
7 Title 17 of the Oklahoma Statutes;

8 4. "Prepaid wireless ~~nine-one-one~~ 9-1-1 fee" means the fee that
9 is required to be collected by a seller from a consumer in the
10 amount established in this section;

11 ~~3.~~ 5. "Provider" means a person who provides prepaid wireless
12 telecommunications service pursuant to a license issued by the
13 Federal Communications Commission;

14 ~~4.~~ 6. "Retail transaction" means the purchase of prepaid
15 wireless telecommunications service from a seller for any purpose
16 other than for resale; and

17 ~~5.~~ 7. "Seller" means a person who sells prepaid wireless
18 telecommunications service to another person.

19 B. There is hereby imposed a ~~prepaid wireless nine-one-one~~
20 combined fee which includes the following:

21 1. A prepaid wireless 9-1-1 fee of fifty cents (\$0.50) per
22 retail transaction ~~or, on and after the effective date of an~~
23 ~~adjusted amount per retail transaction that is established under~~
24 ~~subsection C of this section, the adjusted amount; and~~

1 2. An Oklahoma Universal Service Fund charge.

2 The amount of the fee shall be determined as provided under
3 paragraph 2 of subsection A of Section 139.107 of Title 17 of the
4 Oklahoma Statutes.

5 C. The ~~prepaid wireless nine-one-one~~ combined fee shall be
6 collected as a single amount by the seller from the consumer with
7 respect to each retail transaction occurring in this state. The
8 amount of the ~~prepaid wireless nine-one-one~~ combined fee shall
9 either be separately stated on an invoice, receipt or similar
10 document that is provided to the consumer by the seller, or
11 otherwise disclosed to the consumer.

12 D. For purposes of subsection C of this section, a retail
13 transaction that is effected in person by a consumer at a business
14 location of the seller shall be treated as occurring in this state
15 if that business location is in this state. Any other retail
16 transaction shall be sourced as follows:

17 1. When the retail transaction does not occur at a business
18 location of the seller, the retail transaction is sourced to the
19 location where receipt by the consumer, or the consumer's donee,
20 designated as such by the consumer, occurs, including the location
21 indicated by instructions for delivery to the consumer or donee,
22 known to the seller;

23 2. When the provisions of paragraph 1 of this subsection do not
24 apply, the sale is sourced to the location indicated by an address

1 for the consumer that is available from the business records of the
2 seller that are maintained in the ordinary course of the seller's
3 business when use of this address does not constitute bad faith;

4 3. When the provisions of paragraphs 1 and 2 of this subsection
5 do not apply, the sale is sourced to the location indicated by an
6 address for the consumer obtained during the consummation of the
7 sale, including the address of a consumer's payment instrument, if
8 no other address is available, when use of this address does not
9 constitute bad faith; and

10 4. When none of the previous rules of paragraphs 1, 2, and 3 of
11 this subsection apply, including the circumstance in which the
12 seller is without sufficient information to apply the previous
13 rules, then the location will be determined by the address from
14 which the service was provided, disregarding for these purposes any
15 location that merely provided the digital transfer of the product
16 sold. If the seller knows the mobile telephone number, the location
17 will be that which is associated with the mobile telephone number.

18 E. The ~~prepaid wireless nine-one-one~~ combined fee is the
19 liability of the consumer and not of the seller or of any provider,
20 except that the seller shall be liable to remit all ~~prepaid wireless~~
21 ~~nine-one-one~~ combined fees that the seller collects from the
22 consumer as provided for in this section, including all ~~charges~~
23 combined fees that the seller is deemed to collect where the amount
24 of the combined fee has not been separately stated on an invoice,

1 receipt, or other similar document provided by the consumer to the
2 seller.

3 F. If the amount of the ~~prepaid wireless nine one one~~ combined
4 fee is separately stated on the invoice, the ~~prepaid wireless nine~~
5 ~~one one~~ combined fee shall not be included in the base for measuring
6 any tax, fee, surcharge, or other charge that is imposed by the
7 state, any political subdivision of this state, or any
8 intergovernmental agency.

9 G. The ~~prepaid wireless nine one one~~ combined fee shall be
10 proportionately increased or reduced, as applicable, upon any change
11 to the amount of the ~~nine one one~~ 9-1-1 emergency wireless telephone
12 fee as provided in subsection A of Section 2843.1 of this title or
13 the Oklahoma Universal Service Fund charge as provided in paragraph
14 2 of subsection A of Section 139.107 of Title 17 of the Oklahoma
15 Statutes. ~~The~~ Any increase or reduction in the combined fee shall
16 be effective only ~~on the effective date of the change to the nine~~
17 ~~one one emergency wireless telephone fee as provided in subsection A~~
18 ~~of Section 2843.1 of this title or, if later, the first day of the~~
19 ~~first calendar month to occur at least sixty (60)~~ July 1 of any
20 calendar year, provided that not less than forty-five (45) days
21 ~~after the enactment of~~ have elapsed since the enactment or final
22 approval of the change. The Oklahoma Tax Commission shall provide
23 not less than thirty (30) days' advance notice of an increase or
24 reduction on its public website.

1 H. ~~Prepaid wireless nine-one-one~~ 911 fees collected by sellers
2 shall be remitted to the Oklahoma Tax Commission at the times and in
3 a manner provided for under the Oklahoma Sales Tax Code with respect
4 to the sales tax imposed on prepaid wireless telecommunications
5 services. The Oklahoma Tax Commission shall establish registration
6 and payment procedures that substantially coincide with the
7 registration and payment procedures that apply under the Oklahoma
8 Sales Tax Code.

9 I. A seller shall be permitted to deduct and retain three
10 percent (3%) of the ~~prepaid wireless nine-one-one~~ 9-1-1 fees
11 collected from consumers.

12 J. The audit and appeal procedures, including limitations
13 period, applicable to the Oklahoma Sales Tax Code shall apply to
14 ~~prepaid wireless nine-one-one~~ combined fees.

15 K. The Oklahoma Tax Commission shall establish procedures by
16 which a seller may document that a sale is not a retail transaction.
17 The procedures shall be in substantial conformity with the
18 procedures for document sale for resale transactions under the
19 Oklahoma Sales Tax Code.

20 L. Within thirty (30) days of receipt, the Oklahoma Tax
21 Commission shall pay ~~all remitted~~ the proportion of the combined fee
22 representing prepaid wireless ~~nine-one-one~~ 9-1-1 fees to the
23 governing bodies that the Statewide ~~Nine-One-One~~ 9-1-1 Advisory
24 Board has certified as eligible to receive funds. The certification

1 shall be provided to the Oklahoma Tax Commission annually before
2 July 1. Eligible governing bodies shall be those governing bodies
3 that have imposed, and are collecting, the ~~nine-one-one~~ 9-1-1
4 emergency wireless telephone fee as authorized in subsection A of
5 Section 2843.1 of this title or, for those counties that have not
6 assessed a ~~nine-one-one~~ 9-1-1 emergency wireless telephone fee, the
7 substate planning district designated by that county. It shall be
8 the duty and obligation of the substate planning district to hold in
9 a separate escrow account all fees paid on behalf of counties in its
10 region that have not assessed a ~~nine-one-one~~ 9-1-1 emergency
11 wireless telephone fee pursuant to Section 2843.1 of this title,
12 until such time as the county votes to assess the fee or develops
13 wireless ~~nine-one-one~~ 9-1-1 service pursuant to Section 2849 of this
14 title. Distribution shall be as follows:

15 1. Ninety-eight percent (98%) of the revenue from the 9-1-1 fee
16 is hereby allocated to the governing bodies as defined in Section
17 2843 of this title and shall be paid to the governing bodies. The
18 share for each governing body shall be determined by dividing the
19 population of the governing body by the total population of the
20 state. The Oklahoma Tax Commission shall develop the formula on the
21 basis of population residing within the governing body, as shown by
22 the latest available Federal Census estimates as of July 1, or from
23 the best information then available to the Commission when the
24

1 information is not available from the latest available Federal
2 Census; and

3 2. The remaining two percent (2%) of the revenue from the 9-1-1
4 fee shall be retained by the Oklahoma Tax Commission to reimburse
5 its direct cost of administering the collection and remittance of
6 prepaid wireless ~~nine-one-one~~ 9-1-1 fees.

7 Notwithstanding paragraphs 1 and 2 of this subsection, in the
8 fiscal year in which this act takes effect, prior to making the
9 distributions provided in paragraphs 1 and 2 of this subsection, the
10 Oklahoma Tax Commission shall retain an amount not to exceed Three
11 Hundred Thousand Dollars (\$300,000.00) to cover programming and
12 other one-time costs to implement a system to collect the prepaid
13 wireless ~~nine-one-one~~ 9-1-1 fees. Distributions to governing bodies
14 that enact the wireless ~~nine-one-one~~ 9-1-1 fee authorized under
15 Section 2843.1 of this title after the effective date of this act
16 shall commence in the calendar quarter after which the Oklahoma Tax
17 Commission has received at least one hundred twenty (120) days'
18 written notice from the governing body of the imposition of the fee.

19 M. Within thirty (30) days of receipt, the Tax Commission shall
20 pay the proportion of the combined fee representing the OUSF charge
21 to the Corporation Commission.

22 N. Money distributed by the Oklahoma Tax Commission to a
23 governing body pursuant to paragraph 1 of subsection L of this
24 section shall be used only for services related to ~~nine-one-one~~ 9-1-

1 1 emergency wireless telephone services, including automatic number
2 identification and automatic location information services.

3 ~~N.~~ O. The provisions of subsection C of Section 2817 of this
4 title shall apply to providers and sellers of prepaid wireless
5 telecommunications service.

6 ~~O.~~ P. The prepaid wireless ~~nine-one-one~~ 9-1-1 fee imposed by
7 this section shall be the only ~~nine-one-one~~ 9-1-1 funding obligation
8 imposed with respect to prepaid wireless telecommunications services
9 in this state, and no tax, fee, surcharge, or other charge shall be
10 imposed by this state, any political subdivision of this state, or
11 any intergovernmental agency, for ~~nine-one-one~~ 9-1-1 funding
12 purposes, upon any provider, seller, or consumer with respect to the
13 sale, purchase, use, or provision of prepaid wireless
14 telecommunications service.

15 ~~P.~~ Q. Money collected pursuant to this section The prepaid
16 wireless 9-1-1 fee shall be used only for services related to ~~nine-~~
17 ~~one-one~~ 9-1-1 emergency wireless telephone services, including
18 automatic number identification and automatic location information
19 services. The money remitted to the governing body and any other
20 money collected to fund the emergency wireless telephone system
21 shall be deposited in a special wireless ~~nine-one-one~~ 9-1-1 account
22 established by the governing body to which the Oklahoma Tax
23 Commission has remitted the prepaid wireless ~~nine-one-one~~ 9-1-1 fees
24 and that has established emergency wireless telephone service. The

1 special wireless ~~nine one one~~ 9-1-1 account may be the same account
2 that is or was established by the governing body under subsection C
3 of Section 2843.1 of this title. Amounts not used within a given
4 year shall be carried forward.

5 ~~O. R.~~ R. All wireless user information provided by a wireless
6 service provider shall be deemed proprietary and is not subject to
7 disclosure to the public or any other party.

8 SECTION 4. This act shall become effective November 1, 2015.

9 Passed the Senate the 11th day of March, 2015.

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11 _____
12 Presiding Officer of the Senate

13 Passed the House of Representatives the ____ day of _____,
14 2015.

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16 _____
17 Presiding Officer of the House
18 of Representatives
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