STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 2616

By: Thomsen, Roberts (Dustin), Condit, Cannaday and Hoskin of the House

and

Fields of the Senate

COMMITTEE SUBSTITUTE

[Oklahoma Universal Service Fund (OUSF) charge - codification - ~~emergency~~]

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

SECTION 1. AMENDATORY 17 O.S. 2011, Section 137.3, is amended to read as follows:

Section 137.3 The Corporation Commission may, after notice and hearing, assess a universal service fee upon all contributing providers ~~of telecommunications services,~~ as defined ~~by the rules of the Corporation Commission, and upon cellular and other radio carriers,~~ in Section 139.102 of this title to support state and federal universal service objectives.

SECTION 2. AMENDATORY 17 O.S. 2011, Section 139.102, as last amended by Section 1, Chapter 245, O.S.L. 2014 (17 O.S. Supp. 2015, Section 139.102), is amended to read as follows:

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

1. "Access line" means the ~~facility~~ facilities provided and maintained by a telecommunications service provider which ~~permits~~ permit access to or from the public switched network or its functional equivalent regardless of the technology or medium used;

2. "Administrative process" means an administrative application process which allows eligible providers to request funding and Oklahoma Universal Service Fund Beneficiaries to submit forms for support for eligible services from the Universal Service Fund by submitting forms directly with the Administrator. The administrative process shall not require an order from the Commission to determine eligibility for, allocate or disburse funds unless a request for reconsideration is filed;

3. "Administrator" means the Director of the Public Utility Division of the Corporation Commission;

4. "Commission" means the Corporation Commission of this state;

~~3.~~ 5. "Competitive local exchange carrier" or "CLEC" means, with respect to an area or exchange, a telecommunications service provider that is certificated by the Commission to provide local exchange services in that area or exchange within the state after July 1, 1995;

~~4.~~ 6. "Competitively neutral" means not advantaging or favoring one person over another;

~~5.~~ 7. "Consortium" means, as used in Section 5 of this act, two or more Oklahoma Universal Service Fund Beneficiaries that choose to request support under the Federal Universal Service Support Mechanism or successor program or programs as a single entity;

8. "Contributing provider" means an entity that provides intrastate telecommunications to the public or to such classes of users as to be effectively available to the public for a fee. A contributing provider shall be considered a telecommunications carrier providing intrastate telecommunications and shall contribute to the Oklahoma Universal Service Fund and Oklahoma Lifeline Fund. Certain other providers of intrastate telecommunications, providers of intrastate telecommunications for a fee on a non-common-carrier basis and interconnected Voice over Internet Protocol (VoIP) providers shall contribute to the Oklahoma Universal Service Fund and Oklahoma Lifeline Fund. Entities exempt from contributing to the Federal Universal Service Support Mechanisms are also exempt from contributing to the Oklahoma Universal Service Fund and Oklahoma Lifeline Fund consistent with 47 C.F.R., Section 54.706(d). If the Federal Communications Commission (FCC) expands the contributors to the Federal Universal Service Support Mechanism the term "contributing providers" shall be modified to conform to the definition of contributors as defined by the FCC if adopted by the Commission, after notice and hearing;

9. "Eligible healthcare entity" means a not-for-profit hospital, county health department, city-county health department, not-for-profit mental health and substance abuse facility or Federally Qualified Health Center in Oklahoma. Eligible healthcare entity shall also include telemedicine services provided by the Oklahoma Department of Corrections at facilities identified in Section 509 of Title 57 of the Oklahoma Statutes;

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

~~6.~~ 11. "Enhanced service" means a service that is delivered over communications transmission facilities and that uses computer processing applications to:

- a. change the content, format, code, or protocol of transmitted information,
- b. provide the customer new or restructured information, or
- c. involve end-user interaction with information stored in a computer;

~~7.~~ 12. "Exchange" means a geographic area established by an incumbent local exchange telecommunications provider as filed with or approved by the Commission for the administration of local telecommunications service in a specified area which usually embraces a city, town, or village and its environs and which may consist of one or more central offices together with associated plant used in furnishing telecommunications service in that area;

~~8.~~ 13. "Facilities" means all the plant and equipment of a telecommunications service provider, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the ~~regulated~~ business of any telecommunications service provider;

~~9.~~ 14. "Federally Qualified Health Center (FQHC)" means an entity which:

a. is receiving a grant under Section 330 of the Public Health Service (PHS) Act, 42 U.S.C., Section 254b, or is receiving funding from a grant under a contract with the recipient of such a grant and meets the requirements to receive a grant under Section 330 of the PHS Act,

b. based on the recommendation of the Health Resources and Services Administration within the Public Health Service, is determined by the Secretary of the Department of Health and Human Services to meet the requirements for receiving a grant as described in subparagraph a of this paragraph,

c. was treated by the Secretary of the Department of Health and Human Services, for purposes of part B of Section 330 of the PHS Act, as a comprehensive federally funded health center as of January 1, 1990, or

d. is an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act, 25 U.S.C., Section 450f et seq., or by an urban Indian organization receiving funds under Title V of the Indian Health Care Improvement Act, 25 U.S.C., Section 1651 et seq.;

15. "Federal Universal Service Support Mechanism" is the support program established by the Telecommunications Act of 1996, 47 U.S.C., Section 254(h). The program includes support for schools, libraries and healthcare providers;

16. "Funding year" means for purposes of administering the Oklahoma Universal Service Fund, the period of July 1 through June 30;

17. "High speed Internet access service" or "broadband service" means, as used in Section 139.110 of this title, those services and underlying facilities that provide upstream, from customer to provider, or downstream, from provider to customer, transmission to or from the Internet in excess of one hundred fifty (150) kilobits per second, regardless of the technology or medium used including,

but not limited to, wireless, copper wire, fiber optic cable, or coaxial cable, to provide such service;

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

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

~~12.~~ 20. "Installation charge" means any charge for a nonrecurring service charged by an eligible provider necessary to initiate Special Universal Services;

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

~~13.~~ 22. "Internet" means the international research-oriented network comprised of business, government, academic and other networks;

~~14.~~ 23. "Local exchange telecommunications service" means a regulated switched or dedicated telecommunications service which originates and terminates within an exchange or an exchange service territory. Local exchange telecommunications service may be terminated by a telecommunications service provider other than the telecommunications service provider on whose network the call originated. The local exchange service territory defined in the originating provider's tariff shall determine whether the call is local exchange service;

~~15.~~ 24. "Local exchange telecommunications service provider" means a company holding a certificate of convenience and necessity from the Commission to provide local exchange telecommunications service;

~~16.~~ 25. "Not-for-profit hospital" means:

a. a hospital located in this state which has been licensed as a hospital at that location pursuant to Section 1-701 et seq. of Title 63 of the Oklahoma Statutes for the diagnosis, treatment, or care of patients in order to obtain medical care, surgical care or obstetrical care and which is established as exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), or

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

~~17.~~ 26. "Not-for-profit mental health and substance abuse facility" means a facility operated by the Department of Mental Health and Substance Abuse Services or a facility certified by the Department of Mental Health and Substance Abuse Services as a Community Mental Health Care Center, a Community-Based Structured Crisis Center or a Community Comprehensive Addiction Recovery Center;

~~18.~~ 27. "Oklahoma High Cost Fund" means the fund established by the Commission in Cause Nos. PUD 950000117 and 950000119;

~~19.~~ 28. "Oklahoma Lifeline Fund" or "(OLF)" means the fund established and required to be implemented by the Commission pursuant to Section 139.105 of this title;

~~20.~~ 29. "Oklahoma Universal Service Fund" or "(OUSF)" means the fund established and required to be implemented by the Commission pursuant to Section 139.106 of this title;

~~21.~~ 30. "Oklahoma Universal Service Fund Beneficiary" means an entity eligible to receive Special Universal Services support as provided for in subsection A of Section 5 of this act;

31. "Prediscount amount" means the total cost of eligible services before charges are reduced by federal or state funding support. The prediscount amount shall not include fees or taxes;

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

~~22.~~ 33. "Primary universal service" means an access line and dial tone provided to the premises of residential or business customers which provides access to other lines for the transmission of two-way switched or dedicated communication in the local calling area without additional, usage-sensitive charges, 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 deaf or hard-of-hearing,

f. access to nine-one-one service where provided by a local governmental authority or multijurisdictional authority, and

g. access to interexchange long distance services;

~~23.~~ 34. "Public library" means a library or library system that is freely open to all persons under identical conditions and which is supported in whole or in part by public funds. Public library shall not include libraries operated as part of any university, college, school museum, the Oklahoma Historical Society or county law libraries;

~~24.~~ 35. "Public school" means all free schools supported by public taxation, and shall include grades prekindergarten through twelve and technology center schools that provide vocational and technical instruction for high school students who attend the technology center school on a tuition-free basis;

~~25.~~ 36. "Regulated telecommunications service" means the offering of telecommunications for a fee directly to the public where the rates for such service are regulated by the Commission. Regulated telecommunications service does not include the provision of nontelecommunications services, including, but not limited to, the printing, distribution, or sale of advertising in telephone directories, maintenance of inside wire, customer premises equipment, and billing and collection service, nor does it include the provision of wireless telephone service, enhanced service, and other unregulated services, including services not under the jurisdiction of the Commission, and services determined by the Commission to be competitive;

~~26.~~ 37. "Special Universal Services" means the telecommunications services supported by the OUSF which are furnished to public schools, public libraries~~, not-for-profit~~

~~hospitals~~ and ~~county seats~~ eligible health care entities as provided for in Section ~~139.109~~ 5 of this ~~title~~ act;

~~27.~~ 38. "Tariff" means all or any part of the body of rates, tolls, charges, classifications, and terms and conditions of service relating to regulated services offered, the conditions under which offered, and the charges therefor, which have been filed with the Commission and have become effective;

~~28.~~ 39. "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.~~ 40. "Telecommunications carrier" means a person that provides telecommunications service in this state;

~~30.~~ 41. "Telecommunications service" means the offering of telecommunications for a fee;

~~31.~~ 42. "Telemedicine service" means the practice of health care delivery, diagnosis, consultation and treatment including but not limited to the transfer of medical data or exchange of medical education information by means of audio, video or data communications. Telemedicine service shall not mean a consultation provided by telephone or facsimile machine;

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

~~32.~~ 44. "WAN" means a wide-area network that exists over a large-scale geographical area. A WAN connects different smaller networks, including local area networks and metro area networks, which ensures that computers and users in one location can communicate with computers and users in other locations;

45. "Wire center" means a geographic area normally served by a central office; and

46. "Wireless telephone service" means radio communication service carried on between mobile stations or receivers and land stations and by mobile stations communicating among themselves and which permits a user generally to receive a call that originates or terminates on the public switched network or its functional equivalent regardless of the radio frequencies used.

SECTION 3. AMENDATORY 17 O.S. 2011, Section 139.106, is amended to read as follows:

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

B. The fund shall be funded and administered to promote and ensure the availability of primary universal services, at rates that are reasonable and affordable and ~~special universal services~~ Special

Universal Services, 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.

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

D. 1. The procedure for eligible providers to seek and obtain OUSF and Oklahoma Lifeline Fund (OLF) funding shall be as set forth in this subsection.

2. Within ninety (90) days after receipt of a request for funds from an eligible provider, the Administrator ~~designated~~ as defined pursuant to Section ~~7~~ 139.102 of this ~~act~~ title shall independently review and determine the accuracy of the request and advise the provider requesting the funds of the determination of eligibility made by the Administrator. ~~Any affected party shall have fifteen (15) days to request reconsideration by the Commission of the determination made by the Administrator. If the Commission does not issue an order within thirty (30) days from the request for reconsideration, the request shall be deemed approved, on an interim basis, subject to refund with interest. Any refund shall include interest at a rate of not more than the interest rate established by~~

~~the Commission on customer deposits and shall accrue for a period not to exceed ninety (90) days from the date the funds were received by the requesting eligible provider.~~ The determination shall detail the amount of funding recoverable from the OUSF and OLF. Failure by the Administrator to issue a determination means the request for OUSF or OLF reimbursement is deemed approved on a permanent basis and funding shall be paid within thirty (30) days. If a request for reconsideration of the determination of the Administrator is not filed as provided for in paragraph 5 of this subsection, the determination shall be deemed final on the sixteenth day following the date of the determination. The OUSF funding as provided in the determination of the Administrator shall be paid to the eligible provider on the next scheduled payout date without an order of the Commission.

3. For requests seeking OUSF funds pursuant to Section 5 of this act, provided that an OUSF approval funding letter has been issued as otherwise provided for in the Oklahoma Telecommunications Act of 1997, the eligible provider shall, within sixty (60) days of the start of service, submit to the Administrator a request for reimbursement from the OUSF. The Administrator shall have sixty (60) days to issue a determination to the Oklahoma Universal Service Fund Beneficiary and eligible provider detailing the amount of funding recoverable from the OUSF. Failure by the Administrator to issue a determination within the sixty-day period means the request

for OUSF reimbursement is approved as submitted. The determination shall detail the amount of funding recoverable from the OUSF. Failure by the Administrator to issue a determination shall mean the request for OUSF reimbursement is deemed approved on a permanent basis and funding shall be paid within thirty (30) days. If a request for reconsideration of the determination of the Administrator is not filed as provided for in paragraph 5 of this subsection, the determination shall be deemed final on the sixteenth day following the date of the determination. The OUSF funding as provided in the determination of the Administrator shall be paid to the eligible provider on the next scheduled payout date without an order of the Commission.

4. A request for reimbursement as provided for in paragraph 3 of this subsection shall be in the form as determined by the Administrator. The form shall be posted by the Administrator no later than one hundred twenty (120) days prior to the start of the funding year to become effective July 1 for reimbursement requests submitted for eligible services provided during the funding year. Any party may file an objection to a posted form with the Commission within fifteen (15) days of the posting. The Commission shall have thirty (30) days to issue a final order on the objection to the form. If the Commission does not issue a final order on the objection within thirty (30) days, the objection shall be deemed approved.

5. Any affected party, meaning the eligible provider, the Oklahoma Universal Service Fund Beneficiary or the Attorney General, shall have fifteen (15) days to file a request for reconsideration by the Commission of the determination made by the Administrator. If the Commission does not issue a final order within thirty (30) days from the date the request for reconsideration is filed, the request shall be deemed approved on an interim basis subject to refund with interest. The interest rate on a refund shall be at a rate of not more than the interest rate established by the Commission on customer deposits and shall accrue for a period not to exceed ninety (90) days from the date the funds were received by the requesting eligible provider. If the Commission does not issue a final order within ninety (90) days of the filing of the request for reconsideration, then the request for OUSF or OLF funding as filed shall be deemed approved on a permanent basis without order of the Commission and the OUSF and OLF funding shall be paid within thirty (30) days.

6. The term "final order" as used in this subsection shall mean an order which resolves all issues associated with the request for OUSF and OLF funding.

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

F. 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.

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

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

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

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

4. To reimburse eligible local exchange telecommunications service providers for providing the Special Universal Services as set forth in ~~subsection C of~~ Section ~~9~~ 5 of this act;

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

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

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

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

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

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

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

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

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

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

b. if, as a result of changes required by existing or future federal or state regulatory rules, orders, or policies or by federal or state law, an eligible 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 being limited to the net reduction in revenues or cost increases, or

c. if, as a result of changes made as required by existing or future federal or state regulatory rules, orders, or policies or by federal or state law, an eligible local exchange telecommunications service provider experiences a reduction in costs, upon approval by the Commission, the provider shall reduce the level of OUSF funding it receives to a level sufficient to account for the reduction in costs.

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

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

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

M. 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.

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

a. the other local exchange telecommunications service provider is certificated by the Commission to provide and offers the primary universal services supported by the OUSF to all customers in the universal service area designated by the Commission, using its own facilities, or a combination of its own facilities and the resale of the services or facilities of another. Universal service support under this subsection shall not begin until the other local exchange telecommunications service provider has facilities in place,

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

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

d. the other local exchange telecommunications service provider advertises the availability and charges for services it provides through a medium of general distribution, and

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

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

O. 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 assume the carrier-of-last-resort obligations throughout the area.

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

1. Other eligible telecommunications carriers which provide Special Universal Services or Lifeline Service shall be eligible to request and receive OUSF funds in the same manner as the incumbent local exchange telecommunications service provider in the same area pursuant to ~~this act~~ the Oklahoma Telecommunications Act of 1997;

2. The incumbent local exchange telecommunications service provider 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; or

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

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

SECTION 4. AMENDATORY 17 O.S. 2011, Section 139.107, is amended to read as follows:

Section 139.107 A. The Oklahoma Lifeline Fund (OLF) and the Oklahoma Universal Service Fund (OUSF) shall be funded in a competitively neutral manner not inconsistent with federal law by all ~~telecommunications carriers~~ contributing providers. The funding from each ~~carrier~~ contributing provider shall be based on the total ~~retail-billed~~ retail Oklahoma Voice over Internet Protocol (VoIP) and intrastate telecommunications revenues, from both regulated and unregulated services, of the ~~telecommunications carrier~~ contributing provider, hereinafter referred to as assessed revenues, as a percentage of all ~~telecommunications carriers' total retail-billed intrastate telecommunications~~ assessed revenues of the contributing providers, ~~from both regulated and unregulated services~~ or such other assessment methodology as may be allowed under federal law. VoIP services shall be assessed only as provided for in the decision of the Federal Communications Commission, FCC 10-185, released November 5, 2010, or such other assessment methodology that is not inconsistent with federal law. Wholesale providers of services shall be assessed only as provided for in the decision of the Federal Communications Commission, FCC 12-134, released November 5, 2012, or such other assessment methodology that is not inconsistent with federal law. The Commission may after notice and hearing modify the contribution methodology for the OUSF and OLF, provided the new methodology is not inconsistent with federal law.

B. The Corporation Commission shall establish the ~~Oklahoma Lifeline Fund~~ OLF ~~charges~~ assessment and the ~~Oklahoma Universal Service Fund~~ OUSF ~~charges~~ assessment at a level sufficient to recover costs of administration and payments for OUSF and OLF requests for funding as provided for in the Oklahoma Telecommunications Act of 1997. The ~~Commission shall provide for~~ administration of the ~~two funds by Commission employees or~~ OLF and OUSF shall be provided by ~~contracting for such services with a party having no conflicting interest in the provision of~~

~~telecommunications services~~ the Public Utility Division of the Commission. The administrative function shall be headed by ~~an~~ the Administrator as defined in Section 139.102 of this title. The Administrator shall be an independent evaluator. The Administrator may enter into contracts to assist with the administration of the OLF and OUSF.

C. If the Commission determines after notice and hearing that a ~~telecommunications carrier~~ contributing provider has acted in violation of this section, in addition to the other enforcement powers of the Commission, including its contempt powers and authority to revoke a telecommunications service provider's certificate of convenience and necessity, the Commission may bring an action on behalf of the ~~Oklahoma Lifeline Fund~~ OLF or the ~~Oklahoma Universal Service Fund~~ OUSF, in ~~the district~~ a court of competent jurisdiction that the Commission deems appropriate, to recover any unpaid fees and ~~charges~~ assessments the Commission has determined are due and payable, including interest, administrative and adjudicative costs, and attorney fees. Upon collection of the ~~charges~~ assessments, fees and costs, the Administrator shall pay the costs of the actions and deposit the remaining funds in the ~~Oklahoma Lifeline Fund~~ OLF or the ~~Oklahoma Universal Service Fund~~ OUSF as appropriate.

D. The monies deposited in the ~~Oklahoma Lifeline Fund~~ OLF, the ~~Oklahoma Universal Service Fund~~ OUSF and the Oklahoma High Cost Fund shall at no time become monies of the state and shall not become part of the general budget of the Corporation Commission or any other state agency. Except as otherwise authorized by ~~this act~~ the Oklahoma Telecommunications Act of 1997, no monies from the ~~Oklahoma Lifeline Fund~~ OLF, the ~~Oklahoma Universal Service Fund~~ OUSF, or the Oklahoma High Cost Fund shall be transferred for any purpose to any other state agency or any account of the Corporation Commission or be used for the purpose of contracting with any other state agency or reimbursing any other state agency for any expense. Payments from the ~~Oklahoma Lifeline Fund~~ OLF, the ~~Oklahoma Universal Service Fund~~ OUSF, and the Oklahoma High Cost Fund shall not become or be construed to be an obligation of this state. No claims for reimbursement from the ~~Oklahoma Lifeline Fund~~ OLF, the ~~Oklahoma Universal Service Fund~~ OUSF or the Oklahoma High Cost Fund shall be paid with state monies.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 139.109.1 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. The following services are hereby declared to be Special Universal Services:

1. Each eligible healthcare entity in this state as defined in Section 139.102 of this title shall be eligible to receive Special Universal Services for telemedicine providers. Special Universal Services for telemedicine providers shall include the provision of

bandwidth per standards as recommended by the Federal Communications Commission sufficient for providing telemedicine services including the telemedicine line, reasonable installation and network termination equipment owned and operated by the eligible provider that is necessary to provide the eligible service. In no instance shall the OUSF provide funding for separately billed quality of service products, public access to Wi-Fi, or amounts to cover on-site support personnel beyond the repair of carrier owned equipment;

2. Each public school as defined in Section 139.102 of this title shall be eligible to receive Special Universal Services for schools. Special Universal Services for schools shall include the provision of bandwidth sufficient for providing educational services not to exceed, without good cause shown, the standards established for the relevant funding year by the State Educational Technology Directors Association (SETDA) or successor educational broadband standard including Internet access lines, WAN connections, reasonable installation, and network termination equipment owned and operated by the eligible provider that is necessary to provide the eligible service. In no instance shall the OUSF provide funding for separately billed quality of service products, or amounts to cover on-site support personnel beyond the repair of carrier owned equipment. Student counts as reported to the State Department of Education in October of the year prior to the relevant funding year shall be utilized for the purpose of determining bandwidth

recommendations established by SETDA for purposes of this paragraph. In the absence of standards prescribed for the applicable funding year, the standards for the next prescribed funding year shall be used; and

3. Each public library as defined in Section 139.102 of this title shall be eligible to receive Special Universal Services for libraries. Special Universal Services for libraries shall include the provision of bandwidth sufficient for providing library services per standards as recommended by the Federal Communications Commission including Internet access lines, reasonable installation, and network termination equipment owned and operated by the eligible provider that is necessary to provide the eligible service. In no instance shall the OUSF provide funding for separately billed quality of service products, or amounts to cover on-site support personnel beyond the repair of carrier owned equipment.

B. 1. The credit amount for the provision of Special Universal Services as provided for in subsection A of this section shall be determined as provided for in this subsection.

2. An eligible provider shall be entitled to reimbursement from the Oklahoma Universal Service Fund (OUSF) for providing Special Universal Services as described in subsection A of this section. In no case shall the reimbursement from the OUSF be made for an Internet subscriber fee or charges incurred as a result of services accessed via the Internet.

3. For eligible services that are exempt from competitive bidding as set forth in subsection C of this section or were competitively bid by the Oklahoma Universal Service Fund Beneficiary or a consortium, the credit amount shall be the total pre-discount amount of eligible services plus installation charges, less federal funding support for the same services including installation charges issued in a funding commitment letter or similar approval document for the Federal Universal Service Support Mechanism or successor program or programs for the applicable funding year if the lowest cost reasonable bid was selected in compliance with subparagraph c of paragraph 3 of subsection C of this section.

4. For eligible services associated with an Oklahoma Universal Service Fund Beneficiary that is not eligible to participate individually in one of the Federal Universal Service Support Mechanisms or successor program or programs and that are not exempt from competitive bidding as set forth in subsection C of this section and were not competitively bid by the Oklahoma Universal Service Fund Beneficiary or a consortium in compliance with subparagraph c of paragraph 3 of subsection C of this section, the credit amount shall be fifty percent (50%) of the invoiced amount until the next eligible funding year at which time the entity shall seek bids. Failure of the OUSF Beneficiary to pay the balance not paid by the OUSF may result in loss of OUSF funding.

5. For purposes of paragraph 4 of this subsection, "lowest cost reasonable qualifying bid" means a bid that:

a. represents the lowest total cost proposal including monthly recurring and nonrecurring charges for eligible services,

b. is reasonable to meet the needs of the Oklahoma Universal Service Fund Beneficiary as explicitly listed in the request for bids,

c. is submitted during the same competitive bidding period as the awarded bid,

d. is for the bandwidth requested for bid and selected by the Oklahoma Universal Service Fund Beneficiary,

e. is for the same contract term as the bid that was selected by the Oklahoma Universal Service Fund Beneficiary,

f. meets the requirements specified in the request for proposal by the Oklahoma Universal Service Fund Beneficiary,

g. was the result of a fair and open competitive bidding process that was structured in a competitive manner and was open to all OUSF eligible entities serving in the telephone exchange where the Oklahoma Universal Service Fund Beneficiary is located, and

h. results in an approved credit amount that is not more than twenty-five percent (25%) greater than other qualifying bids without good cause shown.

6. If an Oklahoma Universal Service Fund Beneficiary is eligible to participate in the Federal Universal Service Support Mechanism or successor program or programs but fails to receive federal funding for the applicable funding year, then the credit amount for the eligible services including installation charges shall be determined at the discretion of the Administrator for the applicable funding year.

C. 1. The competitive bidding requirement for the provision of Special Universal Services as provided for in subsection A of this section shall be determined as provided for in subparagraph c of paragraph 3 of subsection C of this section.

2. Oklahoma Universal Service Fund Beneficiaries shall conduct a fair and open competitive bidding process to select the services eligible for support under this section.

3. The competitive bidding requirement shall be met for:

a. any eligible service which is competitively bid by an Oklahoma Universal Service Fund Beneficiary in compliance with subparagraph c of paragraph 3 of subsection C of this section, and

b. any eligible service that is competitively bid by a consortium in compliance with subparagraph c of paragraph 3 of subsection C of this section, regardless of whether or not the individual Oklahoma Universal Service Fund Beneficiary is eligible for federal support.

c. all competitive bids that meet the following criteria:

(1) the solicitation for bids must clearly identify the bandwidth requested by the Oklahoma Universal Service Fund Beneficiary or consortium, and

(2) the Oklahoma Universal Service Fund Beneficiary or consortium may not limit bidders based upon technology, and

(3) the bidding must be open to all carriers authorized to receive OUSF funding in the exchange where the Oklahoma Universal Fund Beneficiary or the members of the consortium are located, and

(4) the bidding may not be structured in a manner to exclude carriers eligible to receive OUSF funding in the exchange where the Oklahoma Universal Service Fund Beneficiary is located.

4. If the eligible services were not competitively bid in compliance with one of the Federal Universal Service Support Mechanisms or successor program or programs, the Oklahoma Universal Service Fund Beneficiary shall conduct a fair and open competitive bidding process pursuant to the state and local or tribal

procurement rules applicable to the Oklahoma Universal Service Fund Beneficiary and follow the provisions in subparagraph c of paragraph 3 of subsection C of this section.

5. Eligible services that are exempt from competitive bidding pursuant to state law or the rules of the Federal Universal Service Support Mechanisms or successor program or programs shall be exempt from the Special Universal Services competitive bidding requirements set forth in this subsection and the Oklahoma Universal Service Fund Beneficiary must provide evidence of such exemption as part of the funding request.

D. 1. Special Universal Services shall not be sold, resold or transferred in consideration for money or any other thing of value.

2. The OUSF shall not fund more than one eligible provider for the same service at the same location for the same time period, except during a transition period from one eligible provider to another. Funding during a transition period shall not exceed thirty (30) days.

E. The Administrator shall have the authority to investigate each request for OUSF funding for Special Universal Services in order to ensure that the OUSF pays only for the Special Universal Services authorized in this section. The Administrator shall deny requests for OUSF funding in excess of the credit amounts authorized in subsection B of this section unless good cause is shown.

F. The Corporation Commission shall have authority to investigate and modify or reject in whole or in part a Special Universal Service request under subsection A of this section if the request does not meet the specified criteria, if the Corporation Commission's investigation determines that the entity has not provided sufficient justification for the requested services, or if the Corporation Commission determined that granting the request is not in the public interest due to waste, fraud, or abuse.

G. 1. The Special Universal Services approval and reimbursement procedures as set forth in this subsection shall be effective and shall apply beginning January 1, 2017, and for each applicable funding year beginning July 1, 2017.

2. The administrative pre-approval process shall be as follows:

a. the Administrator shall establish an administrative approval process initiated by the eligible provider for the purpose of determining eligible services and credit amounts for the upcoming funding year. The administrative pre-approval submission process shall include all necessary forms and instructions, hereinafter referred to as the "OUSF administrative pre-approval request". The Administrator shall determine the form for the OUSF administrative pre-approval requests. The form shall be posted on the Commission website no later than October 1 of each year to become effective for any OUSF administrative pre-approval request submitted after December 31 of that year. Any party may file an objection to the form with the Commission within fifteen (15) days of posting. The Commission shall issue a final order on the objection to the form within thirty (30) days,

b. the OUSF administrative pre-approval request for the request for bid criteria may be submitted at any time. The OUSF administrative pre-approval request for the bid evaluation may be submitted by the eligible provider any time prior to the funding year,

c. the Administrator shall issue an approval funding letter to the Oklahoma Universal Service Fund Beneficiary and the eligible provider within ninety (90) days of receipt of a properly completed OUSF administrative pre-approval request. Failure by the Administrator to issue an approval funding letter within the ninety-day period means the OUSF administrative pre-approval request submitted by the eligible provider is approved as submitted and the subsequent request for reimbursement submitted by the eligible provider which is consistent with the information submitted in the OUSF administrative pre-approval request shall be approved as submitted,

d. the approval funding letter shall inform the Oklahoma Universal Service Fund Beneficiary and the eligible provider of the preapproved services and associated credit amount for the applicable funding year. The amount of OUSF funding preapproved under this subsection may be subject to adjustments based on the amount of support received from other sources, if any, and adjustments to pricing that may occur between the time of preapproval and installation of service,

e. any OUSF administrative pre-approval request shall be submitted to the Administrator in the format outlined in instructions posted on the Commission website. The OUSF administrative pre-approval request shall include but not be limited to the following:

(1) a Special Universal Services request form as posted on the Commission's website no later than October 1 of each year for requests made after December 31 of that year,

(2) a Federal Universal Service Support Mechanism or successor program or programs form used to request federal funding support for the applicable funding year,

(3) a federal funding commitment letter for the applicable funding year, if issued, and

(4) competitive bidding documentation for the relevant funding year,

f. issuance of an OUSF approval funding letter by the Administrator shall not require a Commission order, and

g. OUSF administrative pre-approval requests not filed by June 30 prior to the applicable funding year shall be processed by the Administrator on a first-in-first-out basis.

3. The eligible provider reimbursement process shall be as follows:

a. requests for reimbursement shall be submitted per procedures as set forth in subsection D of Section 139.106 of this title,

b. the Administrator shall post the monthly payout report to the Commission website,

c. funding for eligible services, including federal funding, shall not exceed actual eligible expenses,

d. any change in cost of eligible services during the funding year shall be reported by the eligible provider to the OUSF and:

(1) all decreases in cost shall be deemed approved until the next eligible bidding period and all cost savings shall be properly allocated to the

OUSF and the Oklahoma Universal Service Fund Beneficiary, and

(2) increases in cost shall be reviewed for approval as provided for in Commission rules, and

e. issuance of a determination by the Administrator shall not require a Commission order.

SECTION 6. REPEALER 17 O.S. 2011, Section 139.109, as last amended by Section 2, Chapter 182, O.S.L. 2014 (17 O.S. Supp. 2015, Section 139.109), is hereby repealed.

~~SECTION 7. 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.~~

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