

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4

April 6, 2016

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2616

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

and

Fields of the Senate

[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:

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

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

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

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

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

18 ~~3.~~ 5. "Competitive local exchange carrier" or "CLEC" means,
19 with respect to an area or exchange, a telecommunications service
20 provider that is certificated by the Commission to provide local
21 exchange services in that area or exchange within the state after
22 July 1, 1995;

23 ~~4.~~ 6. "Competitively neutral" means not advantaging or favoring
24 one person over another;

1 ~~5.~~ 7. "Consortium" means, as used in Section 5 of this act, two
2 or more Oklahoma Universal Service Fund Beneficiaries that choose to
3 request support under the Federal Universal Service Support
4 Mechanism or successor program or programs as a single entity;

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

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

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

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

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

20 ~~7.~~ 12. "Exchange" means a geographic area established by an
21 incumbent local exchange telecommunications provider as filed with
22 or approved by the Commission for the administration of local
23 telecommunications service in a specified area which usually
24 embraces a city, town, or village and its environs and which may

1 consist of one or more central offices together with associated
2 plant used in furnishing telecommunications service in that area;

3 ~~8.~~ 13. "Facilities" means all the plant and equipment of a
4 telecommunications service provider, including all tangible and
5 intangible real and personal property without limitation, and any
6 and all means and instrumentalities in any manner owned, operated,
7 leased, licensed, used, controlled, furnished, or supplied for, by,
8 or in connection with the ~~regulated~~ business of any
9 telecommunications service provider;

10 ~~9.~~ 14. "Federally Qualified Health Center (FQHC)" means an
11 entity which:

- 12 a. is receiving a grant under Section 330 of the Public
13 Health Service (PHS) Act, 42 U.S.C., Section 254b, or
14 is receiving funding from a grant under a contract
15 with the recipient of such a grant and meets the
16 requirements to receive a grant under Section 330 of
17 the PHS Act,
- 18 b. based on the recommendation of the Health Resources
19 and Services Administration within the Public Health
20 Service, is determined by the Secretary of the
21 Department of Health and Human Services to meet the
22 requirements for receiving a grant as described in
23 subparagraph a of this paragraph,
- 24

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

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

12 15. "Federal Universal Service Support Mechanism" is the
13 support program established by the Telecommunications Act of 1996,
14 47 U.S.C., Section 254(h). The program includes support for
15 schools, libraries and healthcare providers;

16 16. "Funding year" means for purposes of administering the
17 Oklahoma Universal Service Fund, the period of July 1 through June
18 30;

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

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

3 ~~10.~~ 18. "Hospital" means a healthcare entity that has been
4 granted a license as a hospital by the Oklahoma Department of Health
5 for that particular location;

6 ~~11.~~ 19. "Incumbent local exchange telecommunications service
7 provider" or "ILEC" means, with respect to an area or exchanges, any
8 telecommunications service provider furnishing local exchange
9 service in such area or exchanges within this state on July 1, 1995,
10 pursuant to a certificate of convenience and necessity or
11 grandfathered authority;

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

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

20 ~~13.~~ 22. "Internet" means the international research-oriented
21 network comprised of business, government, academic and other
22 networks;

23 ~~14.~~ 23. "Local exchange telecommunications service" means a
24 regulated switched or dedicated telecommunications service which

1 originates and terminates within an exchange or an exchange service
2 territory. Local exchange telecommunications service may be
3 terminated by a telecommunications service provider other than the
4 telecommunications service provider on whose network the call
5 originated. The local exchange service territory defined in the
6 originating provider's tariff shall determine whether the call is
7 local exchange service;

8 ~~15.~~ 24. "Local exchange telecommunications service provider"
9 means a company holding a certificate of convenience and necessity
10 from the Commission to provide local exchange telecommunications
11 service;

12 ~~16.~~ 25. "Not-for-profit hospital" means:

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

1 owned by a municipality, county, the state or a public
2 trust for the diagnosis, treatment, or care of
3 patients in order to obtain medical care, surgical
4 care, or obstetrical care;

5 ~~17.~~ 26. "Not-for-profit mental health and substance abuse
6 facility" means a facility operated by the Department of Mental
7 Health and Substance Abuse Services or a facility certified by the
8 Department of Mental Health and Substance Abuse Services as a
9 Community Mental Health Care Center, a Community-Based Structured
10 Crisis Center or a Community Comprehensive Addiction Recovery
11 Center;

12 ~~18.~~ 27. "Oklahoma High Cost Fund" means the fund established by
13 the Commission in Cause Nos. PUD 950000117 and 950000119;

14 ~~19.~~ 28. "Oklahoma Lifeline Fund" or "(OLF)" means the fund
15 established and required to be implemented by the Commission
16 pursuant to Section 139.105 of this title;

17 ~~20.~~ 29. "Oklahoma Universal Service Fund" or "(OUSF)" means the
18 fund established and required to be implemented by the Commission
19 pursuant to Section 139.106 of this title;

20 ~~21.~~ 30. "Oklahoma Universal Service Fund Beneficiary" means an
21 entity eligible to receive Special Universal Services support as
22 provided for in subsection A of Section 5 of this act;
23
24

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

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

7 ~~22.~~ 33. "Primary universal service" means an access line and
8 dial tone provided to the premises of residential or business
9 customers which provides access to other lines for the transmission
10 of two-way switched or dedicated communication in the local calling
11 area without additional, usage-sensitive charges, including:

- 12 a. a primary directory listing,
- 13 b. dual-tone multifrequency signaling,
- 14 c. access to operator services,
- 15 d. access to directory assistance services,
- 16 e. access to telecommunications relay services for the
- 17 deaf or hard-of-hearing,
- 18 f. access to nine-one-one service where provided by a
- 19 local governmental authority or multijurisdictional
- 20 authority, and
- 21 g. access to interexchange long distance services;

22 ~~23.~~ 34. "Public library" means a library or library system that
23 is freely open to all persons under identical conditions and which
24 is supported in whole or in part by public funds. Public library

1 shall not include libraries operated as part of any university,
2 college, school museum, the Oklahoma Historical Society or county
3 law libraries;

4 ~~24.~~ 35. "Public school" means all free schools supported by
5 public taxation, and shall include grades prekindergarten through
6 twelve and technology center schools that provide vocational and
7 technical instruction for high school students who attend the
8 technology center school on a tuition-free basis;

9 ~~25.~~ 36. "Regulated telecommunications service" means the
10 offering of telecommunications for a fee directly to the public
11 where the rates for such service are regulated by the Commission.
12 Regulated telecommunications service does not include the provision
13 of nontelecommunications services, including, but not limited to,
14 the printing, distribution, or sale of advertising in telephone
15 directories, maintenance of inside wire, customer premises
16 equipment, and billing and collection service, nor does it include
17 the provision of wireless telephone service, enhanced service, and
18 other unregulated services, including services not under the
19 jurisdiction of the Commission, and services determined by the
20 Commission to be competitive;

21 ~~26.~~ 37. "Special Universal Services" means the
22 telecommunications services supported by the OUSF which are
23 furnished to public schools, public libraries, ~~not for profit~~
24

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

3 ~~27.~~ 38. "Tariff" means all or any part of the body of rates,
4 tolls, charges, classifications, and terms and conditions of service
5 relating to regulated services offered, the conditions under which
6 offered, and the charges therefor, which have been filed with the
7 Commission and have become effective;

8 ~~28.~~ 39. "Telecommunications" means the transmission, between or
9 among points specified by the user, of ~~voice or data~~ information of
10 the user's choosing, without change in the form or content of the
11 information as sent and received;

12 ~~29.~~ 40. "Telecommunications carrier" means a person that
13 provides telecommunications service in this state;

14 ~~30.~~ 41. "Telecommunications service" means the offering of
15 telecommunications for a fee;

16 ~~31.~~ 42. "Telemedicine service" means the practice of health
17 care delivery, diagnosis, consultation and treatment including but
18 not limited to the transfer of medical data or exchange of medical
19 education information by means of audio, video or data
20 communications. Telemedicine service shall not mean a consultation
21 provided by telephone or facsimile machine;

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

1 ~~32.~~ 44. "WAN" means a wide-area network that exists over a
2 large-scale geographical area. A WAN connects different smaller
3 networks, including local area networks and metro area networks,
4 which ensures that computers and users in one location can
5 communicate with computers and users in other locations;

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

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

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

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

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

1 Universal Services, and to provide for reasonably comparable
2 services at affordable rates in rural areas as in urban areas. The
3 OUSF shall provide funding to local exchange telecommunications
4 service providers that meet the eligibility criteria established in
5 this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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
24

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~~ 5 of this act
4 shall receive funding for any ~~special universal services~~ Special
5 Universal Services provided ~~and contributions made to the Oklahoma~~
6 ~~E911 Emergency Service Fund and the Oklahoma Telecommunications~~
7 ~~Technology Training 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~~ 5 of this act.

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~~ the Oklahoma Telecommunications Act of 1997;

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

17 Section 139.107 A. The Oklahoma Lifeline Fund (OLF) and the
18 Oklahoma Universal Service Fund (OUSF) shall be funded in a
19 competitively neutral manner not inconsistent with federal law by
20 all ~~telecommunications carriers~~ contributing providers. The funding
21 from each ~~carrier~~ contributing provider shall be based on the total
22 ~~retail-billed~~ retail Oklahoma Voice over Internet Protocol (VoIP)
23 and intrastate telecommunications revenues, from both regulated and
24 unregulated services, of the ~~telecommunications carrier~~ contributing

1 provider, hereinafter referred to as assessed revenues, as a
2 percentage of all ~~telecommunications carriers' total retail-billed~~
3 ~~intrastate telecommunications~~ assessed revenues of the contributing
4 providers, from both regulated and unregulated services or such
5 other assessment methodology as may be allowed under federal law.
6 VoIP services shall be assessed only as provided for in the decision
7 of the Federal Communications Commission, FCC 10-185, released
8 November 5, 2010, or such other assessment methodology that is not
9 inconsistent with federal law. Wholesale providers of services
10 shall be assessed only as provided for in the decision of the
11 Federal Communications Commission, FCC 12-134, released November 5,
12 2012, or such other assessment methodology that is not inconsistent
13 with federal law. The Commission may after notice and hearing
14 modify the contribution methodology for the OUSF and OLF, provided
15 the new methodology is not inconsistent with federal law.

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

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

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

23 D. The monies deposited in the ~~Oklahoma Lifeline Fund~~ OLF, the
24 ~~Oklahoma Universal Service Fund~~ OUSF and the Oklahoma High Cost Fund

1 shall at no time become monies of the state and shall not become
2 part of the general budget of the Corporation Commission or any
3 other state agency. Except as otherwise authorized by ~~this act~~ the
4 Oklahoma Telecommunications Act of 1997, no monies from the ~~Oklahoma~~
5 ~~Lifeline Fund OLF~~, the ~~Oklahoma Universal Service Fund OUSF~~, or the
6 Oklahoma High Cost Fund shall be transferred for any purpose to any
7 other state agency or any account of the Corporation Commission or
8 be used for the purpose of contracting with any other state agency
9 or reimbursing any other state agency for any expense. Payments
10 from the ~~Oklahoma Lifeline Fund OLF~~, the ~~Oklahoma Universal Service~~
11 ~~Fund OUSF~~, and the Oklahoma High Cost Fund shall not become or be
12 construed to be an obligation of this state. No claims for
13 reimbursement from the ~~Oklahoma Lifeline Fund OLF~~, the ~~Oklahoma~~
14 ~~Universal Service Fund OUSF~~ or the Oklahoma High Cost Fund shall be
15 paid with state monies.

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

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

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

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

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

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

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

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

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

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

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

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

- 3 a. represents the lowest total cost proposal including
4 monthly recurring and nonrecurring charges for
5 eligible services,
- 6 b. is reasonable to meet the needs of the Oklahoma
7 Universal Service Fund Beneficiary as explicitly
8 listed in the request for bids,
- 9 c. is submitted during the same competitive bidding
10 period as the awarded bid,
- 11 d. is for the bandwidth requested for bid and selected by
12 the Oklahoma Universal Service Fund Beneficiary,
- 13 e. is for the same contract term as the bid that was
14 selected by the Oklahoma Universal Service Fund
15 Beneficiary,
- 16 f. meets the requirements specified in the request for
17 proposal by the Oklahoma Universal Service Fund
18 Beneficiary,
- 19 g. was the result of a fair and open competitive bidding
20 process that was structured in a competitive manner
21 and was open to all OUSF eligible entities serving in
22 the telephone exchange where the Oklahoma Universal
23 Service Fund Beneficiary is located, and
24

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

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

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

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

18 3. The competitive bidding requirement shall be met for:

- 19 a. any eligible service which is competitively bid by an
20 Oklahoma Universal Service Fund Beneficiary in
21 compliance with subparagraph c of paragraph 3 of
22 subsection C of this section, and
23 b. any eligible service that is competitively bid by a
24 consortium in compliance with subparagraph c of

1 paragraph 3 of subsection C of this section,
2 regardless of whether or not the individual Oklahoma
3 Universal Service Fund Beneficiary is eligible for
4 federal support.

5 c. all competitive bids that meet the following criteria:

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

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

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

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

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

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

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

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

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

18 E. The Administrator shall have the authority to investigate
19 each request for OUSF funding for Special Universal Services in
20 order to ensure that the OUSF pays only for the Special Universal
21 Services authorized in this section. The Administrator shall deny
22 requests for OUSF funding in excess of the credit amounts authorized
23 in subsection B of this section unless good cause is shown.
24

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

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

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

14 a. the Administrator shall establish an administrative
15 approval process initiated by the eligible provider
16 for the purpose of determining eligible services and
17 credit amounts for the upcoming funding year. The
18 administrative pre-approval submission process shall
19 include all necessary forms and instructions,
20 hereinafter referred to as the "OUSF administrative
21 pre-approval request". The Administrator shall
22 determine the form for the OUSF administrative pre-
23 approval requests. The form shall be posted on the
24 Commission website no later than October 1 of each

1 year to become effective for any OUSF administrative
2 pre-approval request submitted after December 31 of
3 that year. Any party may file an objection to the
4 form with the Commission within fifteen (15) days of
5 posting. The Commission shall issue a final order on
6 the objection to the form within thirty (30) days,

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

12 c. the Administrator shall issue an approval funding
13 letter to the Oklahoma Universal Service Fund
14 Beneficiary and the eligible provider within ninety
15 (90) days of receipt of a properly completed OUSF
16 administrative pre-approval request. Failure by the
17 Administrator to issue an approval funding letter
18 within the ninety-day period means the OUSF
19 administrative pre-approval request submitted by the
20 eligible provider is approved as submitted and the
21 subsequent request for reimbursement submitted by the
22 eligible provider which is consistent with the
23 information submitted in the OUSF administrative pre-
24 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

- 1 (4) competitive bidding documentation for the
2 relevant funding year,
- 3 f. issuance of an OUSF approval funding letter by the
4 Administrator shall not require a Commission order,
5 and
- 6 g. OUSF administrative pre-approval requests not filed by
7 June 30 prior to the applicable funding year shall be
8 processed by the Administrator on a first-in-first-out
9 basis.

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

- 12 a. requests for reimbursement shall be submitted per
13 procedures as set forth in subsection D of Section
14 139.106 of this title,
- 15 b. the Administrator shall post the monthly payout report
16 to the Commission website,
- 17 c. funding for eligible services, including federal
18 funding, shall not exceed actual eligible expenses,
- 19 d. any change in cost of eligible services during the
20 funding year shall be reported by the eligible
21 provider to the OUSF and:
- 22 (1) all decreases in cost shall be deemed approved
23 until the next eligible bidding period and all
24 cost savings shall be properly allocated to the

1 OUSF and the Oklahoma Universal Service Fund
2 Beneficiary, and

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

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

7 SECTION 6. REPEALER 17 O.S. 2011, Section 139.109, as
8 last amended by Section 2, Chapter 182, O.S.L. 2014 (17 O.S. Supp.
9 2015, Section 139.109), is hereby repealed.

10 ~~SECTION 7. It being immediately necessary for the preservation~~
11 ~~of the public peace, health and safety, an emergency is hereby~~
12 ~~declared to exist, by reason whereof this act shall take effect and~~
13 ~~be in full force from and after its passage and approval.~~

14 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
15 April 6, 2016 - DO PASS AS AMENDED
16
17
18
19
20
21
22
23
24