

An Act

ENROLLED HOUSE
BILL NO. 2040

By: McCall of the House

and

Leewright of the Senate

An Act relating to telecommunications; amending 17 O.S. 2011, Section 139.102, as last amended by Section 3, Chapter 270, O.S.L. 2016 (17 O.S. Supp. 2020, Section 139.102), which relates to the Oklahoma Telecommunications Act of 1997; modifying definitions; defining terms; amending Section 3, Chapter 165, O.S.L. 2020 (17 O.S. Supp. 2020, Section 139.202), as last amended by Section 1 of Enrolled Senate Bill No. 802 of the 1st Session of the 58th Oklahoma Legislature, which relates to the Rural Broadband Expansion Council; allowing legislators to have chair or co-chair position; requiring Council to develop guidelines for broadband incentive awards by certain date; requiring submission of guidelines to certain members of the Oklahoma Legislature; stating content guidelines shall encompass; and declaring an emergency.

SUBJECT: Telecommunications

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

SECTION 1. AMENDATORY 17 O.S. 2011, Section 139.102, as last amended by Section 3, Chapter 270, O.S.L. 2016 (17 O.S. Supp. 2020, 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 facilities provided and maintained by a telecommunications service provider which 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 local exchange telecommunications providers and eligible providers to request funding and an administrative submission process that allows Oklahoma Universal Service Fund Beneficiaries to submit a preapproval request directly with the Administrator. Both of the administrative processes 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. "Broadband", as used in Section 139.202 of this title, means those services and underlying facilities that provide access to and from the Internet of continuous speeds of at least twenty-five (25) megabits per second (Mbps) downstream, from the provider to the customer, and continuous speeds of at least three (3) megabits per second (Mbps) upstream, from the customer to the provider, using fixed, terrestrial facilities, including, but not limited to, wireless, copper wire, fiber-optic cable, or coaxial cable, to provide such service. The minimum Internet speeds listed in this paragraph shall be subject to change or update when, or if, the Federal Communications Commission makes new rulings related to its definition of broadband;

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

~~5.~~ 6. "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;

~~6.~~ 7. "Competitively neutral" means not advantaging or favoring one person or technology over another;

~~7.~~ 8. "Consortium" means, as used in Section ~~6~~ 139.109.1 of this ~~act~~ title, 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.~~ 9. "Contributing providers" means providers, including but not limited to providers of intrastate telecommunications, providers of intrastate telecommunications for a fee on a non-common-carrier basis, providers of wireless telephone service and providers of interconnected Voice over Internet Protocol (VoIP). Contributing providers shall contribute to the Oklahoma Universal Service Fund and Oklahoma Lifeline Fund. VoIP providers 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. 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). The term "contributing providers" may be modified to conform to the definition of contributors as defined by the FCC if adopted by the Commission, after notice and hearing;

~~9.~~ 10. "Eligible entity" means any terrestrial Internet service provider willing to go into unserved or underserved areas, as determined by the Rural Broadband Expansion Council mapping. The eligible entity shall provide at least the minimum broadband speeds pursuant to paragraph 4 of this section;

11. "Eligible ~~healthcare~~ health care 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~~ health care 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.~~ 12. "Eligible local exchange telecommunications service provider" means ILEC, CLEC and commercial radio mobile service provider as those terms are used in the Oklahoma Telecommunications Act of 1997;

~~11.~~ 13. "Eligible provider" means, for purposes of Special Universal Services, providers of telecommunications services which hold a certificate of convenience and necessity and OneNet;

~~12.~~ 14. "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;

~~13.~~ 15. "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;

~~14.~~ 16. "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;

~~15.~~ 17. "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 business of any telecommunications service provider;

~~16.~~ 18. "Federally Qualified Health Center" or "(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.;

~~17.~~ 19. "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~~ health care providers;

~~18.~~ 20. "Funding year" means, for purposes of administering the Oklahoma Universal Service Fund, the period of July 1 through June 30;

~~19.~~ 21. "High speed Internet access service" or "broadband service" means, as used in Section ~~139.110~~ 139.202 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~~ or at a constant download speed of twenty-five (25) megabits per second (Mbps) and in excess of or at a constant upload speed of three (3) megabits per second (Mbps), 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;

~~20.~~ 22. "Hospital" means a ~~healthcare~~ health care entity that has been granted a license as a hospital by the ~~Oklahoma~~ State Department of Health for that particular location;

~~21.~~ 23. "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;

~~22.~~ 24. "Installation charge" means any charge for a nonrecurring service charged by an eligible provider necessary to initiate Special Universal Services. Installation charges may not exceed the cost which would be charged for installation, if the cost were not being paid for by the OUSF;

~~23.~~ 25. "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;

~~24.~~ 26. "Internet" means the international research-oriented network comprised of business, government, academic and other networks;

~~25.~~ 27. "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;

~~26.~~ 28. "Local exchange telecommunications service provider" means a company holding a certificate of convenience and necessity from the Commission to provide local exchange telecommunications service;

~~27.~~ 29. "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;

~~28.~~ 30. "Not-for-profit mental health and substance abuse facility" means a facility, not for the sole purpose of administration, which is 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;

~~29.~~ 31. "Oklahoma High Cost Fund" means the fund established by the Commission in Cause Nos. PUD 950000117 and 950000119;

~~30.~~ 32. "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;

~~31.~~ 33. "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;

~~32.~~ 34. "Oklahoma Universal Service Fund Beneficiary" means an entity eligible to receive Special Universal Services support as provided for in subsection A of Section ~~6~~ 139.109.1 of this ~~act~~ title;

~~33.~~ 35. "Prediscount amount" means the total cost of Special Universal Services, selected pursuant to the procedures set out in ~~subparagraph~~ paragraph 5 of subsection B of Section ~~6~~ 139.109.1 of this ~~act~~ title, before charges are reduced by federal or state funding support. The prediscount amount shall not include fees or taxes;

~~34.~~ 36. "Person" means any individual, partnership, association, corporation, governmental entity, public or private organization of any character, or any other entity;

~~35.~~ 37. "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;

~~36.~~ 38. "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;

~~37.~~ 39. "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. Public school shall not include private schools, home schools or virtual schools;

~~38.~~ 40. "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;

41. "Served area" means an area or region with access to broadband at or above a defined transmission speed threshold as described in paragraph 4 of this section;

~~39.~~ 42. "Special Universal Services" means the telecommunications services supported by the OUSF which are furnished to public schools, public libraries and eligible health care entities as provided for in Section ~~6~~ 139.109.1 of this ~~act~~ title;

~~40.~~ 43. "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;

~~41.~~ 44. "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received;

~~42.~~ 45. "Telecommunications carrier" means a person that provides telecommunications service in this state;

~~43.~~ 46. "Telecommunications service" means the offering of telecommunications for a fee;

~~44.~~ 47. "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;

~~45.~~ 48. "Underserved area" means an area or region that has Internet service at speeds higher than those that meet the definition of an unserved area, but lower than those service speeds of high-speed Internet;

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

~~46.~~ 50. "Unserved area" means an area or region in which there is not at least one provider of terrestrial broadband service that is either:

- a. offering a connection to the Internet, or
- b. required, under the terms of the Federal Universal Service Fund or other federal or state grant, to provide a connection to the Internet;

51. "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;

~~47.~~ 52. "Wire center" means a geographic area normally served by a central office; ~~and~~

~~48.~~ 53. "Wireless Internet service provider" or "WISP", as used in Section 2 of this act, means a fixed wireless access provider that uses point-to-point microwave or millimeter-wave links between its towers for coverage extension and backhaul and point-to-multipoint links from the towers to the customer premises; and

54. "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 2. AMENDATORY Section 3, Chapter 165, O.S.L. 2020 (17 O.S. Supp. 2020, Section 139.202), as last amended by Section 1 of Enrolled Senate Bill No. 802 of the 1st Session of the 58th Oklahoma Legislature, is amended to read as follows:

Section 139.202 A. There is hereby created the Rural Broadband Expansion Council.

B. The Council shall consist of sixteen (16) persons to be selected as follows:

1. Three members shall be appointed by the Governor, one of whom shall be a government official who has knowledge of and experience with the technology assets and operations of the Oklahoma Department of Transportation, OneNet and the Oklahoma Office of Management and Enterprise Services and who is not and has not been previously employed by OneNet, one of whom shall be a current or past mayor of a municipality having a population of less than thirty-five thousand (35,000) persons according to the latest Federal Decennial Census or most recent population estimate and which is not part of either the Oklahoma City or Tulsa Metropolitan Statistical Area, and one of whom shall be a representative of a wireless telecommunications provider with operations in Oklahoma and at least twenty-four other states;

2. Five members shall be appointed by the Speaker of the Oklahoma House of Representatives, one of whom shall represent the interests of rural Internet service providers, one of whom shall be a private sector technology professional with expertise in broadband connectivity, access, price and related economic factors, one of whom shall represent the interests of rural health care, one of whom shall be a representative of a wireless telecommunications provider not affiliated with an incumbent local exchange carrier in Oklahoma and one who shall be a resident of this state and a wireless Internet service provider (WISP);

3. Five members shall be appointed by the President Pro Tempore of the Oklahoma State Senate, one of whom shall be a professional having academic expertise in large-scale information technology infrastructure with emphasis on rural broadband access, one of whom shall represent the interests of rural business enterprises, one of whom shall be a citizen from a community of less than fifty thousand (50,000) persons which is not part of either the Oklahoma City or Tulsa Metropolitan Statistical Areas, one of whom shall be a rural electric cooperative representative and one who shall be an Oklahoma resident and Tribal Leader of a tribe recognized in this state;

4. One nonvoting member of the Oklahoma House of Representatives to be appointed by the Speaker;

5. One nonvoting member of the Oklahoma State Senate to be appointed by the President Pro Tempore; and

6. One nonvoting member to be selected by the Oklahoma Corporation Commission who has expertise in administration of the Universal Service Fund, but who is not an elected member of the Commission.

C. The Council shall hold an organizational meeting not later than sixty (60) days from May 22, 2020, and shall select from its membership a chair and vice-chair or co-chairs. The chair or co-chair of the Council shall be a person who is not a government employee or public official, unless the person or persons are legislators.

D. A quorum of the membership of the Council shall be necessary in order to take any final action pursuant to the provisions of this act.

E. The Council shall be subject to the Oklahoma Open Meeting Act and the Oklahoma Open Records Act.

F. The Rural Broadband Expansion Council shall conduct a study of rural broadband access in the state and shall divide the state into separate geographic areas based on the information it obtains regarding existing capability for persons and businesses to access broadband telecommunication services, the cost for obtaining the services from existing service providers, the estimated costs for improving rural broadband access, the likelihood of changes in rural broadband access in the near and intermediate future based on available information regarding private or public sector plans or programs to create or enhance broadband access in rural areas, the need for change in state or local law or policy that impacts the ability for persons or business entities in rural areas to access broadband services at a reasonable price and such other information as the Council may determine to be relevant in order to establish the geographic areas.

G. The Council shall incorporate the information as described in subsection F of this section into a mapping system that depicts resources, broadband coverage, connectivity speeds and such other features as the Council deems relevant.

H. The Council shall undertake a study of incentives or programs that would have the effect of improving existing rural

broadband access and establishing broadband access to areas which currently do not have such access. The incentives or programs may include federal funds, tribal funds or resources, donated funds or funding available from foundations, endowments or similar sources, state or local tax incentives, state or local financing incentives or options or federal, tribal, state or local regulatory policies that would be conducive to improving existing broadband access or establishing such access where it does not currently exist.

I. The Council shall have the right to obtain information from the Oklahoma Corporation Commission or other state agencies, to the extent information requested is not required to be kept confidential pursuant to some other requirement, regarding any of the matters as specified in this section relevant to the Council's duties.

J. The Council shall have the right to obtain information from counties, cities, towns, school districts, career technology districts, public trusts, or other entities or instrumentalities of local government, to the extent information requested is not required to be kept confidential pursuant to some other requirement, regarding any of the matters as specified in this section relevant to the Council's duties.

K. The Council shall utilize the geographic areas it establishes pursuant to the Oklahoma Rural Broadband Expansion Act in order to develop its recommendations regarding the implementation of policies that are conducive to establishing or improving rural broadband access in the state.

L. The Council shall focus on the financial viability of broadband service providers so that a broadband network is adequately supported in its operations, that needed repairs and upgrades can be undertaken on a timely basis and that the goal of having a quality long-term broadband service delivery system for rural areas is achieved and maintained.

M. The Council shall give emphasis to maintaining the viability of the Oklahoma Universal Service Fund and give consideration to whether similar universal funds should be implemented in order to facilitate broadband expansion and operational costs for underserved areas.

N. The Council shall give emphasis to the prevention of duplication of facilities and investment when it makes policy recommendations. The Council shall establish objective standards in

order to determine whether the construction of rural broadband access constitutes duplication of facilities and investment and also the role of any recommended incentives that would benefit entities in the private sector so that public resources are effectively utilized and that duplication of efforts is avoided.

O. The Oklahoma Department of Commerce shall create a dedicated webpage or website in order to allow public access to the actions and recommendations of the Council. The webpage or website shall contain the mapping system required by subsection G of this section and its related information.

P. The Oklahoma Department of Commerce shall provide administrative support to the Council and shall utilize the Digital Transformation Program Revolving Fund for expenses related to such administrative support as provided by Section 36 of Title 62 of the Oklahoma Statutes.

Q. The Rural Broadband Expansion Council shall submit an annual report, not later than January 31, summarizing discussions, testimony, analysis, information or other actions and significant events during the preceding calendar year and containing the recommendations, if any, by the Council for legislation, action by executive branch agencies or other actions in furtherance of the mission and duties of the Council. The report shall be submitted to the Governor, the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Oklahoma State Senate.

R. On or before October 31, 2021, the Council shall develop a set of broadband incentive award guidelines for recommendation to the State Legislature. The Council shall submit a copy of the guidelines to the Speaker of the Oklahoma House of Representatives, the President Pro Tempore of the Oklahoma State Senate, and to the chairs of the appropriate legislative committees. The guidelines shall:

1. Consider a weighted approach for awarding incentives based upon the following:

- a. the area's need for services, including, but not limited to, whether the area is underserved, unserved, rural or urban,
- b. whether there are existing broadband assets in the area, based on the statewide map,

- c. whether existing federal, state, local, tribal or private resources have been allocated to broadband services in the area,
- d. a preference for federal, state, local, tribal or private partnerships, and
- e. the capacity of the provider to maintain assets for an extended period of time; and

2. Recommend any necessary controls including, but not limited to, capping the dollar amount of awards, allowing for an auditing process, and a process that allows for award clawbacks. These controls shall be in place to ensure the maximum efficiency of the incentive award and to protect against waste, fraud or abuse.

SECTION 3. It being immediately necessary for the preservation of the public peace, health or 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.

Passed the House of Representatives the 24th day of May, 2021.

Presiding Officer of the House
of Representatives

Passed the Senate the 25th day of May, 2021.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____