

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 HOUSE BILL 2606

By: Echols

4
5
6 AS INTRODUCED

7 An Act relating to the Oklahoma Corporation
8 Commission; amending 17 O.S. 2011, Section 139.106,
9 as amended by Section 4, Chapter 270, O.S.L. 2016 (17
10 O.S. Supp. 2018, Section 130.106), which relates to
11 the Oklahoma Telecommunications Act of 1997;
12 establishing procedures for payment of certain
13 telecommunications charges; defining terms; requiring
14 OUSF charge to be collected from consumers; providing
15 for remittance process; providing for calculation of
16 assessment percentage; providing for election for
17 certain entity with respect to collection; providing
18 for applicability of statutory provisions authorizing
19 deduction; providing for modification of rate by
20 Oklahoma Corporation Commission; requiring
21 notification to Oklahoma Tax Commission; providing
22 for notification to certain entities; prohibiting
23 imposition of taxes, fees, surcharges or other
24 charges; providing for audit request process;
specifying effect of provisions with respect to
regulatory jurisdiction; providing for codification;
and providing an effective date.

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

SECTION 1. AMENDATORY 17 O.S. 2011, Section 139.106, as
amended by Section 4, Chapter 270, O.S.L. 2016 (17 O.S. Supp. 2018,
Section 139.106), is amended to read as follows:

1 Section 139.106 A. There is hereby created within the
2 Corporation Commission the "Oklahoma Universal Service Fund" (OUSF).
3 Not later than January 31, 1998, the Corporation Commission shall
4 promulgate rules implementing the OUSF so that, consistent with the
5 provisions of this section, funds can be made available to eligible
6 local exchange telecommunications service providers and, consistent
7 with Section 6 of this act, funds can be made available to eligible
8 providers.

9 B. The OUSF shall be funded and administered to promote and
10 ensure the availability of primary universal services, at rates that
11 are reasonable and affordable and Special Universal Services, and to
12 provide for reasonably comparable services at affordable rates in
13 rural areas as in urban areas. The OUSF shall provide funding to
14 local exchange telecommunications service providers that meet the
15 eligibility criteria established in this section and to eligible
16 providers that meet the eligibility criteria established in Section
17 6 of this act for the provision of Special Universal Services.

18 C. The OUSF shall be funded by a charge paid by all
19 contributing providers as provided for in Section 139.107 of this
20 title, at a level sufficient to maintain universal service. In the
21 case of prepaid wireless telecommunications service, as such term is
22 defined in subsection A of Section 2 of this act, the OUSF charge
23 shall be determined, collected and paid as provided for in Section 2
24 of this act.

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

5 2. Within ninety (90) days after receipt of a request for funds
6 from an eligible local exchange telecommunications service provider
7 or an eligible provider, the Administrator as defined pursuant to
8 Section 139.102 of this title shall independently review and
9 determine the accuracy of the request and advise the eligible local
10 exchange telecommunications service provider or eligible provider
11 requesting the funds of the determination of eligibility made by the
12 Administrator. The determination shall detail the amount of funding
13 recoverable from the OUSF and OLF. Failure by the Administrator to
14 issue a determination within the ninety-day period means the request
15 for OUSF or OLF reimbursement is deemed approved on a permanent
16 basis, and funding shall be paid within forty-five (45) days without
17 an order of the Commission. If a request for reconsideration of the
18 determination of the Administrator is not filed as provided for in
19 paragraph 5 of this subsection, the determination shall be deemed
20 final on the sixteenth day following the date of the determination.
21 The OUSF funding as provided in the determination of the
22 Administrator shall be paid to the eligible local exchange
23 telecommunications service provider or eligible provider within
24 forty-five (45) days without an order of the Commission.

1 3. For requests seeking OUSF funds pursuant to Section 6 of
2 this act, provided that an OUSF approval funding letter has been
3 issued as otherwise provided for in the Oklahoma Telecommunications
4 Act of 1997, the eligible provider shall, within sixty (60) days of
5 the start of service, submit to the Administrator a request for
6 reimbursement from the OUSF. The Administrator shall have sixty
7 (60) days to issue a determination to the Oklahoma Universal Service
8 Fund Beneficiary and eligible provider detailing the amount of
9 funding recoverable from the OUSF. Failure by the Administrator to
10 issue a determination within the sixty-day period means the request
11 for OUSF reimbursement is approved as submitted. The determination
12 shall detail the amount of funding recoverable from the OUSF.
13 Failure by the Administrator to issue a determination shall mean the
14 request for OUSF reimbursement is deemed approved on a permanent
15 basis, and funding shall be paid within forty-five (45) days without
16 an order of the Commission. If a request for reconsideration of the
17 determination of the Administrator is not filed as provided for in
18 paragraph 5 of this subsection, the determination shall be deemed
19 final on the sixteenth day following the date of the determination.
20 The OUSF funding as provided in the determination of the
21 Administrator shall be paid to the eligible provider within forty-
22 five (45) days without an order of the Commission.

23 4. A request for reimbursement as provided for in paragraph 3
24 of this subsection shall be in the form as determined by the

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

11 5. Any affected party, meaning the eligible local exchange
12 telecommunications service provider, the eligible provider, any
13 service provider that pays into the OUSF, the Oklahoma Universal
14 Service Fund Beneficiary or the Attorney General, shall have fifteen
15 (15) days to file a request for reconsideration by the Commission of
16 the determination made by the Administrator. If the Commission does
17 not issue a final order within thirty (30) days from the date the
18 request for reconsideration is filed, the request shall be deemed
19 approved on an interim basis subject to refund with interest. The
20 interest rate on a refund shall be at a rate of not more than the
21 interest rate established by the Commission on customer deposits and
22 shall accrue for a period not to exceed ninety (90) days from the
23 date the funds were received by the requesting eligible local
24 exchange telecommunications service provider or eligible provider.

1 If the Commission does not issue a final order within one hundred
2 twenty (120) days of the filing of the request for reconsideration,
3 then the request for OUSF or OLF funding as filed shall be deemed
4 approved on a permanent basis without order of the Commission, and
5 the OUSF and OLF funding shall be paid without an order of the
6 Commission within forty-five (45) days.

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

10 E. Contributing providers may, at their option, recover from
11 their retail customers the OUSF charges paid by the contributing
12 provider. The OUSF charges shall not be subject to state or local
13 taxes or franchise fees.

14 F. The Commission shall not, prior to implementation and the
15 availability of funds from the OUSF, require local exchange
16 telecommunications service providers to reduce rates for intrastate
17 access services.

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

23 1. To reimburse eligible local exchange telecommunications
24 service providers for the reasonable investments and expenses not

1 recovered from the federal universal service fund or any other state
2 or federal government fund incurred in providing universal services;

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

7 3. For reimbursement of the Lifeline Service Program credits as
8 set forth in Section 139.105 of this title;

9 4. To reimburse eligible local exchange telecommunications
10 service providers for providing the Special Universal Services as
11 set forth in Section 6 of this act;

12 5. To defray the costs of administering the OUSF, including the
13 costs of administration, processing, and an annual independent
14 audit. The annual audit shall not be performed by the Commission
15 staff; and

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

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

23 1. Calculate such costs by including all embedded investments
24 and expenses incurred by the eligible local exchange

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

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

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

18 I. In identifying and measuring the cost of providing primary
19 universal services, and exclusively for the purpose of determining
20 OUSF funding levels pursuant to this section, each ILEC which serves
21 seventy-five thousand or more access lines and each CLEC shall
22 identify high-cost areas within the local exchange and perform a
23 cost study using a Commission-approved methodology from those
24 identified in subsection H of this section. The high-cost area

1 shall be no smaller than a single exchange, wire center or census
2 block group chosen at the option of the eligible ILEC or CLEC. If
3 the Commission fails to approve the selected methodology within one
4 hundred twenty (120) days of the filing of the selection, the
5 selected methodology shall be deemed approved.

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

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

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

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

1 exchange telecommunications service provider
2 experiences a reduction in revenues or an increase in
3 costs, it shall recover the revenue reductions or cost
4 increases from the OUSF, the recovered amounts being
5 limited to the net reduction in revenues or cost
6 increases, or

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

15 2. The receipt of OUSF funds for any of the changes referred to
16 in this subsection shall not be conditioned upon any rate case or
17 earnings investigation by the Commission. The Commission shall,
18 pursuant to subsection D of this section, approve the request for
19 payment or adjustment of payment from the OUSF based on a comparison
20 of the total annual revenues received from the sources affected by
21 the changes described in paragraph 1 of this subsection by the
22 requesting eligible local exchange telecommunications service
23 provider during the most recent twelve (12) months preceding the
24 request, and the reasonable calculation of total annual revenues or

1 cost increases which will be experienced after the changes are
2 implemented by the requesting eligible local exchange
3 telecommunications service provider.

4 L. Upon request for OUSF funding by an ILEC serving seventy-
5 five thousand or more access lines or a CLEC, the Commission shall
6 after notice and hearing make a determination of the level of OUSF
7 funds, if any, that the provider is eligible to receive for the
8 purposes contained in subsection K of this section. If the
9 Commission fails to make a determination within one hundred twenty
10 (120) days of the filing of the request, the request for funding
11 shall be deemed approved.

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

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

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

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

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

1 unless the party performing the study utilizes the
2 study for its own benefit,

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

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

12 2. Notwithstanding the criteria set forth in this section for
13 designation as an eligible local exchange telecommunications service
14 provider, a commercial mobile radio service provider may, after
15 notice and hearing, seek reimbursement from the OUSF for the
16 provision of services supported by the OUSF, and any
17 telecommunications carrier may seek reimbursement from the OUSF for
18 the provision of Lifeline Service consistent with Section 139.105 of
19 this title and for the provision of Special Universal Services
20 consistent with Section 6 of this act.

21 0. In exchanges or wire centers where the Commission has
22 designated more than one local exchange telecommunications service
23 provider as eligible for OUSF funding, the Commission shall permit
24 one or more of the local exchange telecommunications service

1 providers in the area to relinquish the designation as a local
2 exchange telecommunications service provider eligible for OUSF
3 funding in a manner consistent with Section 214(e)(4) of the federal
4 Telecommunications Act of 1996, upon a finding that at least one
5 eligible local exchange telecommunications service provider shall
6 continue to assume the carrier-of-last-resort obligations throughout
7 the area.

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

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

18 2. The incumbent local exchange telecommunications service
19 provider may elect to waive the right to be the only eligible local
20 exchange telecommunications service provider within the local
21 exchange area by filing notice with the Commission; or

22 3. When the Commission, after notice and hearing, makes a
23 determination that it is in the public interest that another local
24 exchange telecommunications service provider should also be deemed a

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

19 SECTION 2. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 139.107.1 of Title 17, unless
21 there is created a duplication in numbering, reads as follows:

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

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

3 2. "Provider" means a person that provides prepaid wireless
4 telecommunications service pursuant to a license issued by the
5 Federal Communications Commission;

6 3. "Prepaid wireless telecommunications service" means a
7 telecommunications wireless service that provides the right to
8 utilize mobile wireless service as well as other telecommunications
9 services including the download of digital products delivered
10 electronically, content and ancillary services, which are paid for
11 in advance and sold in predetermined units or dollars of which the
12 number declines with use in a known amount; and

13 4. "Seller" means a person who sells prepaid wireless
14 telecommunications service in a retail transaction.

15 B. The OUSF assessment shall be collected from the consumer by
16 the seller on each retail transaction sourced to the state under the
17 provisions of subsection B of Section 2865 of Title 63 of the
18 Oklahoma Statutes and shall be remitted to the Oklahoma Corporation
19 Commission under procedures proscribed by the Commission. Such
20 procedures shall be consistent with the provision of Section 2867 of
21 Title 63 of the Oklahoma Statutes.

22 C. The assessment percentage to be collected by the seller
23 shall be calculated by multiplying the OUSF assessment rate as set
24 by the Commission for Intrastate telecommunications services times

1 the sum of one minus the FCC safe harbor percentage used to
2 calculate the Interstate portion of bundled charges for the purpose
3 of assessment of the Federal Universal Service Fund charge.

4 D. Notwithstanding subsections B and C of this section, a
5 provider that is also a seller may elect not to collect the
6 assessment on retail transactions at the point of sale. Such
7 provider shall remit the assessment to the commission under the
8 provisions of Section 139.107 of Title 17 of the Oklahoma Statutes.

9 E. All provisions of Section 2867 of Title 63 of the Oklahoma
10 Statutes that are not inconsistent with the provisions of this
11 subsection shall apply to the assessment imposed by this subsection.

12 F. A seller shall be permitted to deduct and retain three
13 percent (3%) of the assessments collected from consumers under this
14 section.

15 G. The Commission shall change the assessment rate applicable
16 to prepaid wireless telecommunications service not more than once
17 per calendar year. Any rate change shall become effective on the
18 first day of a calendar quarter and only with a minimum of sixty
19 (60) days' notice to sellers.

20 H. The Oklahoma Corporation Commission shall notify the
21 Oklahoma Tax Commission of any rate changes within five (5) days of
22 final approval. The Oklahoma Tax Commission shall notify sellers
23 who are required to collect the prepaid wireless 911 fee imposed by
24 Section 2867 of Title 63 of the Oklahoma Tax Commission using the

1 same notification procedures for rate changes as apply under Section
2 2867 of Title 63 of the Oklahoma Statutes.

3 I. The assessment levied by this subsection shall be the only
4 funding obligation imposed with respect to prepaid wireless
5 telecommunications service for programs under the jurisdiction of
6 the Commission and no tax, fee, surcharge or other charge shall be
7 imposed by this state, any political subdivision of this state, or
8 any intergovernmental agency for programs under the jurisdiction of
9 the Commission on any provider, seller or consumer with respect to
10 the sale, purchase, use or provision of prepaid wireless
11 telecommunications service.

12 J. The Oklahoma Corporation Commission may request that the
13 Oklahoma Tax Commission audit sellers of prepaid wireless
14 telecommunications service as part of its audit of sellers for
15 compliance with Section 2867 of Title 63 of the Oklahoma Statutes.

16 K. The provisions of this section do not expand the regulatory
17 jurisdiction of the Oklahoma Corporation Commission to any sellers
18 of prepaid wireless telecommunications service unless such sellers
19 are providers under the regulatory authority of the Commission.

20 SECTION 3. This act shall become effective January 1, 2020.

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