

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 696

By: Shortey

4  
5  
6 AS INTRODUCED

7 An Act relating to telecommunications; amending 17  
8 O.S. 2011, Section 139.106, as amended by Section 4,  
9 Chapter 270, O.S.L. 2016 (17 O.S. Supp. 2016, Section  
10 139.106), which relates to the Oklahoma Universal  
11 Service Fund; deleting certain occurrences for which  
12 funding may be received by certain telecommunication  
13 service providers; conforming language; and declaring  
14 an emergency.

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

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

19 Section 139.106. A. There is hereby created within the  
20 Corporation Commission the "Oklahoma Universal Service Fund" (OUSF).  
21 Not later than January 31, 1998, the Corporation Commission shall  
22 promulgate rules implementing the OUSF so that, consistent with the  
23 provisions of this section, funds can be made available to eligible  
24 local exchange telecommunications service providers and, consistent  
with Section ~~6~~ 139.109.1 of this ~~act~~ title, funds can be made  
available to eligible providers.

1 B. The OUSF shall be funded and administered to promote and  
2 ensure the availability of primary universal services, at rates that  
3 are reasonable and affordable and Special Universal Services, and to  
4 provide for reasonably comparable services at affordable rates in  
5 rural areas as in urban areas. The OUSF shall provide funding to  
6 local exchange telecommunications service providers that meet the  
7 eligibility criteria established in this section and to eligible  
8 providers that meet the eligibility criteria established in Section  
9 6 of this act for the provision of Special Universal Services.

10 C. The OUSF shall be funded by a charge paid by all  
11 contributing providers as provided for in Section 139.107 of this  
12 title, at a level sufficient to maintain universal service.

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

17 2. Within ninety (90) days after receipt of a request for funds  
18 from an eligible local exchange telecommunications service provider  
19 or an eligible provider, the Administrator as defined pursuant to  
20 Section 139.102 of this title shall independently review and  
21 determine the accuracy of the request and advise the eligible local  
22 exchange telecommunications service provider or eligible provider  
23 requesting the funds of the determination of eligibility made by the  
24 Administrator. The determination shall detail the amount of funding

1 recoverable from the OUSF and OLF. Failure by the Administrator to  
2 issue a determination within the ninety-day period means the request  
3 for OUSF or OLF reimbursement is deemed approved on a permanent  
4 basis, and funding shall be paid within forty-five (45) days without  
5 an order of the Commission. If a request for reconsideration of the  
6 determination of the Administrator is not filed as provided for in  
7 paragraph 5 of this subsection, the determination shall be deemed  
8 final on the sixteenth day following the date of the determination.  
9 The OUSF funding as provided in the determination of the  
10 Administrator shall be paid to the eligible local exchange  
11 telecommunications service provider or eligible provider within  
12 forty-five (45) days without an order of the Commission.

13 3. For requests seeking OUSF funds pursuant to Section ~~6~~  
14 139.109.1 of this ~~act~~ title, provided that an OUSF approval funding  
15 letter has been issued as otherwise provided for in the Oklahoma  
16 Telecommunications Act of 1997, the eligible provider shall, within  
17 sixty (60) days of the start of service, submit to the Administrator  
18 a request for reimbursement from the OUSF. The Administrator shall  
19 have sixty (60) days to issue a determination to the Oklahoma  
20 Universal Service Fund Beneficiary and eligible provider detailing  
21 the amount of funding recoverable from the OUSF. Failure by the  
22 Administrator to issue a determination within the sixty-day period  
23 means the request for OUSF reimbursement is approved as submitted.  
24 The determination shall detail the amount of funding recoverable

1 from the OUSF. Failure by the Administrator to issue a  
2 determination shall mean the request for OUSF reimbursement is  
3 deemed approved on a permanent basis, and funding shall be paid  
4 within forty-five (45) days without an order of the Commission. If  
5 a request for reconsideration of the determination of the  
6 Administrator is not filed as provided for in paragraph 5 of this  
7 subsection, the determination shall be deemed final on the sixteenth  
8 day following the date of the determination. The OUSF funding as  
9 provided in the determination of the Administrator shall be paid to  
10 the eligible provider within forty-five (45) days without an order  
11 of the Commission.

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

24

1           5. Any affected party, meaning the eligible local exchange  
2 telecommunications service provider, the eligible provider, any  
3 service provider that pays into the OUSF, the Oklahoma Universal  
4 Service Fund Beneficiary or the Attorney General, shall have fifteen  
5 (15) days to file a request for reconsideration by the Commission of  
6 the determination made by the Administrator. If the Commission does  
7 not issue a final order within thirty (30) days from the date the  
8 request for reconsideration is filed, the request shall be deemed  
9 approved on an interim basis subject to refund with interest. The  
10 interest rate on a refund shall be at a rate of not more than the  
11 interest rate established by the Commission on customer deposits and  
12 shall accrue for a period not to exceed ninety (90) days from the  
13 date the funds were received by the requesting eligible local  
14 exchange telecommunications service provider or eligible provider.  
15 If the Commission does not issue a final order within one hundred  
16 twenty (120) days of the filing of the request for reconsideration,  
17 then the request for OUSF or OLF funding as filed shall be deemed  
18 approved on a permanent basis without order of the Commission, and  
19 the OUSF and OLF funding shall be paid without an order of the  
20 Commission within forty-five (45) days.

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

24

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

5 F. The Commission shall not, prior to implementation and the  
6 availability of funds from the OUSF, require local exchange  
7 telecommunications service providers to reduce rates for intrastate  
8 access services.

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

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

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

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

24

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

4 5. To defray the costs of administering the OUSF, including the  
5 costs of administration, processing, and an annual independent  
6 audit. The annual audit shall not be performed by the Commission  
7 staff; and

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

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

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

1 chosen at the option of the eligible local exchange  
2 telecommunications service provider;

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

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

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

22 J. The Commission may by rule expand primary universal services  
23 to be supported by the OUSF, after notice and hearing. The  
24 Administrator, upon approval of the Commission, shall determine the



1 level of additional OUSF funding to be made available to an eligible  
2 local exchange telecommunications service provider which is required  
3 to recover the cost of any expansion of universal services.

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

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

14 b. ~~if, as a result of changes required by existing or~~  
15 ~~future federal or state regulatory rules, orders, or~~  
16 ~~policies or by federal or state law, an eligible local~~  
17 ~~exchange telecommunications service provider~~  
18 ~~experiences a reduction in revenues or an increase in~~  
19 ~~costs, it shall recover the revenue reductions or cost~~  
20 ~~increases from the OUSF, the recovered amounts being~~  
21 ~~limited to the net reduction in revenues or cost~~  
22 ~~increases, or~~

23 c. ~~if, as a result of changes made as required by~~  
24 ~~existing or future federal or state regulatory rules,~~

1 ~~orders, or policies or by federal or state law, an~~  
2 ~~eligible local exchange telecommunications service~~  
3 ~~provider experiences a reduction in costs, upon~~  
4 ~~approval by the Commission, the provider shall reduce~~  
5 ~~the level of OUSF funding it receives to a level~~  
6 ~~sufficient to account for the reduction in costs.~~

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

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

1 ~~Commission fails to make a determination within one hundred twenty~~  
2 ~~(120) days of the filing of the request, the request for funding~~  
3 ~~shall be deemed approved.~~

4 M. The incumbent local exchange telecommunications service  
5 provider, its successors and assigns, which owned, maintained and  
6 provided facilities for universal service within a local exchange  
7 area on January 1, 1996, shall be the local exchange  
8 telecommunications service provider eligible for OUSF funding within  
9 the local exchange area, except as otherwise provided for in this  
10 act title.

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

17 a. the other local exchange telecommunications service  
18 provider is certificated by the Commission to provide  
19 and offers the primary universal services supported by  
20 the OUSF to all customers in the universal service  
21 area designated by the Commission, using its own  
22 facilities, or a combination of its own facilities and  
23 the resale of the services or facilities of another.  
24 Universal service support under this subsection shall

1 not begin until the other local exchange  
2 telecommunications service provider has facilities in  
3 place,

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

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

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

23 e. it is determined by the Commission that the  
24 designation is in the public interest and the other

1 local exchange telecommunications service provider is  
2 in compliance with all Commission rules for which a  
3 waiver has not been granted.

4 2. Notwithstanding the criteria set forth in this section for  
5 designation as an eligible local exchange telecommunications service  
6 provider, a commercial mobile radio service provider may, after  
7 notice and hearing, seek reimbursement from the OUSF for the  
8 provision of services supported by the OUSF, and any  
9 telecommunications carrier may seek reimbursement from the OUSF for  
10 the provision of Lifeline Service consistent with Section 139.105 of  
11 this title and for the provision of Special Universal Services  
12 consistent with Section 6 of this act.

13 ~~Θ.~~ M. In exchanges or wire centers where the Commission has  
14 designated more than one local exchange telecommunications service  
15 provider as eligible for OUSF funding, the Commission shall permit  
16 one or more of the local exchange telecommunications service  
17 providers in the area to relinquish the designation as a local  
18 exchange telecommunications service provider eligible for OUSF  
19 funding in a manner consistent with Section 214(e)(4) of the federal  
20 Telecommunications Act of 1996, upon a finding that at least one  
21 eligible local exchange telecommunications service provider shall  
22 continue to assume the carrier-of-last-resort obligations throughout  
23 the area.

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

6            1. Other eligible telecommunications carriers which provide  
7 Special Universal Services or Lifeline Service shall be eligible to  
8 request and receive OUSF funds in the same manner as the incumbent  
9 local exchange telecommunications service provider in the same area  
10 pursuant to ~~the Oklahoma Telecommunications Act of 1997~~ Section  
11 139.101 et. Seq. of this title;

12            2. The incumbent local exchange telecommunications service  
13 provider may elect to waive the right to be the only eligible local  
14 exchange telecommunications service provider within the local  
15 exchange area by filing notice with the Commission; or

16            3. When the Commission, after notice and hearing, makes a  
17 determination that it is in the public interest that another local  
18 exchange telecommunications service provider should also be deemed a  
19 carrier of last resort and be eligible to receive OUSF funding in  
20 addition to the incumbent local exchange telecommunications service  
21 provider. It shall not be in the public interest to designate  
22 another local exchange telecommunications service provider as being  
23 a carrier of last resort and eligible to receive OUSF funding if  
24 such designation would cause a significant adverse economic impact

1 on users of telecommunications services generally or if the other  
2 carrier refuses to seek and accept carrier-of-last-resort  
3 obligations throughout the universal service area as designated by  
4 the Commission. The other local exchange telecommunications service  
5 provider shall not receive OUSF funding at a level higher than the  
6 level of funding the incumbent local exchange telecommunications  
7 service provider is eligible to receive for the same area if the  
8 incumbent local exchange telecommunications service provider is also  
9 providing service in the same area and the other local exchange  
10 telecommunications service provider meets the requirements of  
11 subparagraphs a, b, d and e of paragraph 1 of subsection ~~N~~ L of this  
12 section.

13 SECTION 2. It being immediately necessary for the preservation  
14 of the public peace, health or safety, an emergency is hereby  
15 declared to exist, by reason whereof this act shall take effect and  
16 be in full force from and after its passage and approval.

17  
18 56-1-1165 CB 1/19/2017 10:32:37 PM  
19  
20  
21  
22  
23  
24