

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

HOUSE BILL NO. 1652

By: Deutschendorf

AS INTRODUCED

An Act relating to telecommunications; amending Section 2, Chapter 408, O.S.L. 1997, as amended by Section 9, Chapter 246, O.S.L. 1998, Section 3, Chapter 408, O.S.L. 1997 and Section 6, Chapter 408, O.S.L. 1997 (17 O.S. Supp. 1998, Sections 139.102, 139.103 and 139.106), which relate to the Telecommunications Act of 1997; modifying certain definition; deleting prohibition for the Corporation Commission to perform certain rate proceeding; providing for jurisdiction by the Corporation Commission over certain telecommunications services; prohibiting telecommunications carriers from recovering certain charges from their retail customers; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 2, Chapter 408, O.S.L. 1997, as amended by Section 9, Chapter 246, O.S.L. 1998 (17 O.S. Supp. 1998, Section 139.102), is amended to read as follows:

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

1. "Access line" means the facility provided and maintained by a telecommunications service provider which permits access to or from the public switched network;

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

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

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

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

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

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

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

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

9. "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;

10. "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;

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

12. "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;

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

14. "Not-for-profit hospital" means a municipal, county or state government-owned, not-for-profit hospital, that is primarily funded by county, state or federal support, which is located in the state and is devoted primarily for the maintenance and operation of facilities for the diagnosis, treatment or care of patients admitted overnight or longer in order to obtain medical care, surgical care or obstetrical care;

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

16. "Oklahoma Lifeline Fund" means the fund established and required to be implemented by the Commission pursuant to Section 139.105 of this title;

17. "Oklahoma Universal Service Fund" means the fund established and required to be implemented by the Commission pursuant to Section 139.106 of this title;

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

19. "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;

20. "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;

21. "Public school" means all free schools supported by public taxation, and shall include grades kindergarten through twelve;

22. "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;~~

23. "Special Universal Services" means the telecommunications services supported by the OUSF which are furnished to public schools, public libraries, not-for-profit hospitals and county seats as provided for in Section 139.109 of this title;

24. "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;

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

26. "Telecommunications carrier" means a person that provides telecommunications service in this state;

27. "Telecommunications service" means the offering of telecommunications for a fee;

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

29. "Wire center" means a geographic area normally served by a central office.

SECTION 2. AMENDATORY Section 3, Chapter 408, O.S.L. 1997 (17 O.S. Supp. 1998, Section 139.103), is amended to read as follows:

Section 139.103 A. Except as provided as follows, no company shall increase or decrease any regulated telecommunications service rate without approval of the Corporation Commission, consistent with Commission rules. The Commission shall promulgate rules, to be effective no later than January 1, 1999, eliminating any regulatory disparities between the CLECs and ILECs with respect to the process of reviewing and approving tariffs.

B. Unless approved by the Legislature, no local exchange telecommunications service provider may charge a basic local exchange service rate that exceeds a basic local exchange service rate previously approved by the Commission and in effect on March 20, 1997, unless the local exchange telecommunications service provider is regulated under traditional rate base, rate of return regulation. Provided, companies serving fewer than seventy-five thousand access lines or which are subject to subsection B of Section 137 of ~~Title 17 of the Oklahoma Statutes~~ this title may adjust local exchange rates in the manner provided for in subsection B of Section 137 of ~~Title 17 of the Oklahoma Statutes~~ this title.

C. Nothing in this act shall be construed as modifying, affecting, or nullifying the responsibilities of the Commission or any telecommunications carrier as required pursuant to the National Labor Relations Act, the Communications Act of 1934 as amended by the Telecommunications Act of 1996, or the provisions relating to refund liability for overcharges pursuant to Section 121 et seq. of ~~Title 17 of the Oklahoma Statutes~~ this title.

D. Except as otherwise provided for in this subsection, nothing in this act shall be construed as abrogating any rate case

settlement agreement approved by the Corporation Commission prior to ~~the effective date of this act~~ July 1, 1997. With respect to local exchange telecommunications service providers serving fifteen percent (15%) or more of the access lines in the state:

~~1. The company shall not request and the Commission shall not approve an increase in basic local exchange service rates before February 5, 2001;~~

~~2. The Commission shall not initiate or conduct a traditional rate base, rate of return or earnings proceeding for any such company before February 5, 2001, unless such company proposes and the Commission approves an increase in a service rate that results in an increase in overall revenues of more than five percent (5%) on an annual basis for that company, excluding rate changes made pursuant to subsection E of Section 6 of this act and rate changes required or authorized by federal or state law, rules, orders or policies;~~

~~3.~~ Notwithstanding any other provision of this act, no later than July 15, 1997, each such company shall submit to the Commission, and the Commission shall approve tariff changes reducing the intrastate access rates of that company by an amount necessary to generate a reduction in the annual intrastate access revenues of that company of Five Million Dollars (\$5,000,000.00). The company may seek recovery from the OUSF of only that portion of the annual five-million-dollar revenue reduction taken as directed in this paragraph that exceeds that amount necessary to achieve parity with the interstate access rates of that company in effect on May 30, 1997. Thereafter the Commission shall continue to adjust the intrastate access rates of such company as necessary to keep such rates in parity with the interstate access rates of that company, until the intrastate access revenues of that company have been reduced by a cumulative annual amount of Eleven Million Five Hundred Thousand Dollars (\$11,500,000.00), in addition to the five-million-

dollar annual reduction taken as directed in this paragraph. The company may seek recovery of all or part of the eleven-million-five-hundred-thousand-dollar annual revenue reduction from the OUSF. If the company seeks recovery from the OUSF of such access revenue reductions described in this paragraph, the Commission shall, after notice and hearing, make a determination of the portion, if any, of the amounts requested that the company is eligible to receive from the OUSF;

~~4.~~ 2. No later than July 15, 1997, each such company shall submit to the Commission, and the Commission shall approve revised tariffs amending the terms and conditions provisions of the intrastate access tariffs of that company so that those tariffs are in parity with the terms and conditions provisions of the interstate access tariffs of that company. Thereafter, on an ongoing basis, such company shall maintain the terms and conditions provisions of the intrastate access tariffs of that company so that they are in parity with the terms and conditions provisions of the interstate access tariffs of that company; and

~~5.~~ 3. All reductions in access rates provided for in paragraph ~~3~~ 1 of this subsection shall be flowed through to customers, consistent with the Commission's Order No. 282453, as issued by the Commission in Cause No. 29217.

E. Upon application of a provider of regulated telecommunications services, the Commission may implement an alternative form of regulation other than traditional rate base, rate of return regulation. In determining whether to approve an alternative form of regulation ~~or whether to continue regulation as established in paragraph 2 of subsection D of this section beyond February 5, 2001,~~ the Commission shall consider the compliance of the company with the federal Telecommunications Act of 1996 in opening its network to local competition and implementing the interconnection and access provisions of such act.

F. Nothing in this section shall be construed as restricting any right of a consumer to complain to the Commission regarding quality of service or the authority of the Commission to enforce quality of service standards through the Commission's contempt powers or authority to revoke or rescind a certificate of convenience and necessity if the provider fails to provide adequate service. A certificate shall not be revoked or rescinded without notice, hearing, and a reasonable opportunity to correct any inadequacy.

G. The rules of the Corporation Commission governing quality of service shall apply equally to all local exchange telecommunications service providers.

H. In a manner consistent with the provisions of this act and rules promulgated by the Commission, the Commission shall retain jurisdiction over access services and rates.

I. The Corporation Commission shall retain jurisdiction over all telecommunications services offered by providers of regulated telecommunications service or their affiliates. Such telecommunications services include, but are not limited to, the printing, distribution, or sale or advertising in telephone directories, maintenance of inside wire, billing and collections services, and enhanced services. Upon a finding that a telecommunications service is subject to effective competition, the Corporation Commission may decline to exercise its jurisdiction over the pricing or tariffing of such service.

SECTION 3. AMENDATORY Section 6, Chapter 408, O.S.L. 1997 (17 O.S. Supp. 1998, Section 139.106), is amended to read as follows:

Section 139.106 A. There is hereby created within the Corporation Commission the "Oklahoma Universal Service Fund" (OUSF). Not later than January 31, 1998, the Corporation Commission shall promulgate rules implementing the OUSF so that, consistent with the

provisions of this section, funds can be made available to eligible local exchange telecommunications service providers.

B. The fund shall be funded and administered to promote and ensure the availability of primary universal services, at rates that are reasonable and affordable and special universal services, and to provide for reasonably comparable services at affordable rates in rural areas as in urban areas. The OUSF shall provide funding to local exchange telecommunications service providers that meet the eligibility criteria established in this section.

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

D. Within ninety (90) days after receipt of a request for funds from an eligible provider, the Administrator designated pursuant to Section 7 139.107 of this ~~act~~ title shall review and determine the accuracy of the request and advise the provider requesting the funds of the determination of eligibility made by the Administrator. Any affected party shall have fifteen (15) days to request reconsideration by the Commission of the determination made by the Administrator. If the Commission does not issue an order within thirty (30) days from the request for reconsideration, the request shall be deemed approved, on an interim basis, subject to refund with interest. Any refund shall include interest at a rate of not more than the interest rate established by the Commission on customer deposits and shall accrue for a period not to exceed ninety (90) days from the date the funds were received by the requesting eligible provider.

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

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

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

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

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

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

4. To reimburse eligible local exchange telecommunications service providers for providing the Special Universal Services as set forth in subsection C of Section ~~9~~ 139.109 of this ~~act~~ title;

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

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

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

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

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

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

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

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

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

- a. in the event of a Federal Communications Commission order, rule or policy, the effect of which is to decrease the federal universal service fund revenues of an eligible local exchange telecommunications service provider, the eligible local exchange telecommunications service provider shall recover the decreases in revenues from the OUSF,
- b. if, as a result of changes required by existing or future federal or state regulatory rules, orders, or policies or by federal or state law, an eligible local exchange telecommunications service provider experiences a reduction in revenues or an increase in costs, it shall recover the revenue reductions or cost increases from the OUSF, the recovered amounts being limited to the net reduction in revenues or cost increases, or
- c. if, as a result of changes made as required by existing or future federal or state regulatory rules, orders, or policies or by federal or state law, an eligible local exchange telecommunications service provider experiences a reduction in costs, upon approval by the Commission, the provider shall reduce

the level of OUSF funding it receives to a level sufficient to account for the reduction in costs.

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

L. Upon request for OUSF funding by an ILEC serving seventy-five thousand or more access lines or a CLEC, the Commission shall after notice and hearing make a determination of the level of OUSF funds, if any, that the provider is eligible to receive for the purposes contained in subsection K of this section. If the Commission fails to make a determination within one hundred twenty (120) days of the filing of the request, the request for funding shall be deemed approved. Providers who are not prohibited from applying for OUSF funds as set forth in Section ~~9~~ 139.109 of this ~~act~~ title shall receive funding for any special universal services provided and contributions made to the Oklahoma E911 Emergency Service Fund and the Oklahoma Telecommunications Technology Training Fund from the OUSF without a hearing.

M. The incumbent local exchange telecommunications service provider, its successors and assigns, which owned, maintained and provided facilities for universal service within a local exchange area on January 1, 1996, shall be the local exchange

telecommunications service provider eligible for OUSF funding within the local exchange area, except as otherwise provided for in this act.

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

- a. the other local exchange telecommunications service provider is certificated by the Commission to provide and offers the primary universal services supported by the OUSF to all customers in the universal service area designated by the Commission, using its own facilities, or a combination of its own facilities and the resale of the services or facilities of another. Universal service support under this subsection shall not begin until the other local exchange telecommunications service provider has facilities in place,
- b. the other local exchange telecommunications service provider may only receive funding for the portion of the facilities that it owns, maintains, and uses for regulated services,
- c. the other local exchange telecommunications service provider shall not receive OUSF funding at a level higher than the level of funding the incumbent local exchange telecommunications service provider is eligible to receive for the same area if the incumbent local exchange telecommunications service provider is also providing service in the same area; provided, the cost of any cost studies required to be performed

shall be borne by the party requesting such studies, unless the party performing the study utilizes the study for its own benefit,

- d. the other local exchange telecommunications service provider advertises the availability and charges for services it provides through a medium of general distribution, and
- e. it is determined by the Commission that the designation is in the public interest and the other local exchange telecommunications service provider is in compliance with all Commission rules for which a waiver has not been granted.

2. Notwithstanding the criteria set forth in this section for designation as an eligible local exchange telecommunications service provider, a commercial mobile radio service provider may, after notice and hearing, seek reimbursement from the OUSF for the provision of services supported by the OUSF, and any telecommunications carrier may seek reimbursement from the OUSF for the provision of Lifeline Service consistent with Section 5 139.105 of this ~~act~~ title and for the provision of Special Universal Services consistent with Section 9 139.109 of this ~~act~~ title.

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

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

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

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

3. When the Commission, after notice and hearing, makes a determination that it is in the public interest that another local exchange telecommunications service provider should also be deemed a carrier of last resort and be eligible to receive OUSF funding in addition to the incumbent local exchange telecommunications service provider. It shall not be in the public interest to designate another local exchange telecommunications service provider as being a carrier of last resort and eligible to receive OUSF funding if such designation would cause a significant adverse economic impact on users of telecommunications services generally or if the other carrier refuses to seek and accept carrier-of-last-resort obligations throughout the universal service area as designated by the Commission. The other local exchange telecommunications service provider shall not receive OUSF funding at a level higher than the level of funding the incumbent local exchange telecommunications service provider is eligible to receive for the same area if the incumbent local exchange telecommunications service provider is also providing service in the same area and the other local exchange

telecommunications service provider meets the requirements of subparagraphs a, b, d and e of paragraph 1 of subsection N of this section.

SECTION 4. This act shall become effective July 1, 1999.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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