TITLE 165. CORPORATION COMMISSION
CHAPTER 59. OKLAHOMA UNIVERSAL SERVICE AND OKLAHOMA LIFELINE

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Oklahoma Universal Service Fund
Part 9. Request for OUSF Funding
165:59-3-64. Identifying and measuring the level of OUSF funding [AMENDED]
165:59-3-70. Procedures for requesting funding from the OUSF – Primary Universal
Service [AMENDED]

AUTHORITY:
Corporation Commission; Article IX, Section 18 of the Oklahoma Constitution, and 17
O.S. §§ 139.101 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET
SECRETARY:
Although the Oklahoma Corporation Commission is not subject to the requirements of
Executive Order No. 2019-11, the proposed rules were submitted to the Governor and Cabinet
Secretary on February 15, 2019.

COMMENT PERIOD:
November 7, 2018 through December 21, 2018

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ADOPTION:
February 7, 2019

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Approved May 28, 2019 by HJR 1022

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May 28, 2019

EFFECTIVE:
July 25, 2019

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

GIST/ANALYSIS:
The adopted rules remove language that is unnecessary to the minimum filing
requirements found at 165:59-3-70; add clarifying language providing that certain facilities,
pursuant to federal separations requirements, can be included in determining Oklahoma
Universal Service Fund funding levels; add language specifically excluding broadband Internet
access services, as defined in the federal rules, from Primary Universal Service; create a new
section establishing the use of an annual variance and risk-based review process in considering
subsequent funding years after the initial funding resulting from a request under 17 O.S. §
139.106(G), and limiting the use of this review process to no more than five (5) subsequent
twelve (12) month periods; create a procedure for the variance and risk-based review process; and places an aggregate five (5) percent cap on any potential funding increases that might result from a variance and risk-based review process.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF JULY 25, 2019:

SUBCHAPTER 3. OKLAHOMA UNIVERSAL SERVICE FUND

PART 9. REQUEST FOR OUSF FUNDING

165:59-3-64. Identifying and measuring the level of OUSF funding
(a) In identifying and measuring the costs of providing primary universal services, exclusively for the purpose of determining OUSF funding levels under 17 O.S. § 139.106, the eligible local exchange telecommunications service provider serving less than seventy-five thousand (75,000) 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. The cost study shall identify any investments and associated expenses jointly used for the provision of primary universal service and any other services and provide a reasonable allocation of those investments and expenses. Such calculation may be made using fully distributed FCC 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 (75,000) or more access lines; or,
(3) Adopt such other costing or measurement methodology as may be established for such purpose by the FCC pursuant to Section 254 of the Federal Telecommunications Act of 1996.
(b) In identifying and measuring the cost of providing primary universal services, and exclusively for the purpose of determining OUSF funding levels pursuant to 17 O.S. § 139.106, each ILEC which serves seventy-five thousand (75,000) 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 (a) 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) calendar days of the filing of the
selection, the selected methodology shall be deemed approved.

(c) Any cause filed pursuant to 17 O.S. § 139.106(G) shall include the most recent cost study and an order reflecting the amount to be reimbursed shall only be applicable for a twelve (12) month period, unless otherwise determined by the OUSF Administrator or ordered by the Commission. Primary Universal Service provided by an eligible local exchange telecommunications service provider may be provided using facilities, including the end user loop component and functionality, which allow access to the Internet, including access to combined consumer voice and broadband Internet service. The costs and revenues associated with such facilities, calculated pursuant to Parts 32, 36, and 64 of Title 47 of the Code of Federal Regulations, may be included in determining OUSF funding levels, consistent with applicable federal and state laws. Primary Universal Service does not include broadband Internet access service as defined at 47 C.F.R. § 8.1(b).

(d) For any cause filed pursuant to 17 O.S. § 139.106(G), the OUSF Administrator's Determination, or order issued by the Commission, may be the basis for reimbursement for no more than five (5) subsequent twelve (12) month periods beyond the initial request, subject to an annual variance and risk-based review by the OUSF Administrator, pursuant to OAC 165:59-3-70(o).

165:59-3-70. Procedures for requesting funding from the OUSF – Primary Universal Service

(a) An eligible local exchange telecommunications service provider may seek and obtain funds from the OUSF for Primary Universal Service by filing a "Request for OUSF Funding" and "Notice of Request for OUSF Funding" with the Commission's Court Clerk. On the date of filing the Request for OUSF Funding, the eligible local exchange telecommunications service provider shall deliver a filed copy of the Request for OUSF Funding to the OUSF Administrator for processing.

(b) Unless a waiver is granted by the OUSF Administrator, the following minimum filing requirements are necessary for causes filed pursuant to 17 O.S. § 139.106(G), and must be made available at the time of filing:

(1) The name and address of the eligible local exchange telecommunications service provider;
(2) A description of the provisions of the Oklahoma Telecommunications Act relied on for the request;
(3) The amount requested for funding;
(4) A chart of corporate organization listing all employees, and detailing any affiliate relationships;
(5) A list of affiliates, a description of the service(s) or goods provided to or by the requesting eligible telecommunications service provider for each affiliate, and the total expense charged to the requesting eligible local exchange telecommunications service provider by each affiliate in sufficient detail to demonstrate that any affiliate company utilizing employees or assets of the company are allocated or reimbursed in accordance with 47 C.F.R. 32.27. This information shall be provided for the reimbursement year and the previous three (3) years (4 total), and shall include, but not be limited to, all contracts, memorandum, timesheets, calculations, and studies;
(6) A written description and documentation showing how costs are separated for each regulated and non-regulated service that the requesting eligible local exchange
telecommunications service provider provides to, or receives from, any affiliate that is associated with the Request for OUSF Funding. This description must show compliance with the cost allocation standards and procedures as set forth in 47 C.F.R. 64.901. This information shall be provided for the reimbursement year and the previous three (3) years (4 total), and shall include, but not be limited to, all contracts, memorandum, timesheets, calculations, and studies;

(7) If applicable, copies of the eligible local exchange telecommunications service provider's Cost Allocation Manual (CAM), to include any changes to the CAM for the last three (3) years, including documentation supporting the cost allocation procedures and a current example of the application of the CAM's manual. If a CAM is unavailable, similar documentation must be provided;

(8) The most recent three (3) years preceding the request of audited financial statements, or if not subject to an audit, then reviewed financial statements, (including balance sheet, income statement, statement of cash flows accompanying notes, and any associated management letter);

(9) A description of network facilities, identifying all facilities included in the Request for OUSF Funding, with actual documentation available upon request by the OUSF Administrator;

(10) A description of the cost and accounting methodologies used to support the Request for OUSF Funding;

(11) A trial balance and general ledger in Excel format, or other format as agreed to by the Administrator;

(12) If applicable, a fully distributed cost study based on the FCC's Part 32, 36 and 64; provide plant reserve, rate base, income (revenue, expenses, and taxes), and other schedules included in the filing made with NECA or the FCC; a schedule of separations cost study for the reimbursement year. Underlying work-papers to be available onsite;

(13) Copies of the company's annual Federal Universal Service Fund (USF) High Cost Loop Data Collection forms for the reimbursement year and the previous three (3) years (4 total);

(14) The total number of full-time and part-time employees, officers, and/or contractors to include a listing of each of the above positions that includes title, duties, responsibilities, wages and/or salaries and benefits for the reimbursement year and the previous three (3) years (4 total);

(15) A list of expenses sought, including prior period adjustments and/or contingent liabilities that were reported on the eligible local exchange telecommunications service provider's books and records and are part of this request, including but not limited to any:

(A) reimbursed employee business expense, including travel, mileage, car rental, lodging, meals, etc.;

(B) lobbying;

(C) listing of all legal services and fees by law firm;

(D) advertising expenses;

(E) external relation costs;

(F) community outreach;

(G) entertainment;

(H) food, including travel, normal business, and company events;

(I) political contributions;

(J) charitable donations;
(K) penalties for fines or violations;
(L) membership fees and dues;
(M) gifts.

(16) The Federal tax classification (C-Corp, Sub-Chapter S, Partnership, etc.) of the eligible local exchange telecommunications service provider, and copies of the eligible local exchange telecommunications service provider's Federal and State tax returns for the reimbursement year and the previous three (3) years (4 total);
(17) A Description of the time tracking and reporting methods used by the eligible local exchange telecommunications service provider to distribute payroll dollars between regulated and non-regulated affiliates. Provide all supporting documentation for the reimbursement year and the previous three (3) years (4 total);
(18) A list of plant in-service retirements for the reimbursement year and the three (3) years prior to the reimbursement year (4 total);
(19) A plant in-service schedule by account that provides existing plant and additions for the reimbursement year and the three (3) years prior to the reimbursement year (4 total);
(20) Listing by account of all revenues, including aggregate customer revenues by category (residential, business, wholesale, etc.), that were used to off-set the eligible local exchange telecommunications service provider's OUSF funding request. This should include any amount received from the Federal USF, OUSF, and any other federal or state funding sources;
(21) The total number of customers by category (residential, business, wholesale, etc.) for the reimbursement year and the three (3) years prior to the reimbursement year (4 total);
(22) A copy of the eligible local exchange telecommunications service provider's regulated Continuing Property Records (CPR). If the CPRs do not tie to the general ledger, provide a reconciliation of the differences; and
(23) A list and copies of any audits or reviews to include letters, reports, memorandum, etc. conducted by the National Exchange Carriers Association (NECA), USAC, or FCC conducted during the reimbursement year and three (3) years prior to the reimbursement year (4 total).

(c) Unless a waiver is granted by the OUSF Administrator, the following minimum filing requirements are necessary for causes filed pursuant to 17 O.S. § 139.106(K), and must be made available at the time of filing:

(1) The name and address of the eligible local exchange telecommunications service provider;
(2) A description of the provisions of the Oklahoma Telecommunications Act relied on for the request;
(3) The amount requested for funding;
(4) Documentation necessary to substantiate the requested funding; and
(5) The most recently filed jurisdictional cost study;
(6) For highway relocation causes, the additional following minimum filing requirements are necessary:
      (A) Copies of all bids;
      (B) The request for proposal;
      (C) Copies of all invoices and work orders;
      (D) Documentation showing internal material accounting;
(E) Documentation showing internal labor accounting, including time sheets, and separate documentation showing accounting of overtime work;
(F) A certificate of completion of the relocation.

(d) No amended Requests for OUSF Funding shall be accepted. Eligible local exchange telecommunications service providers may withdraw the originally filed Request for OUSF Funding and file a new request at any time prior to the issuance of the Determination. Upon the filing of a Withdrawal of Request for OUSF Funding, the Commission's Court Clerk shall close the file, without Commission order. If a new request is filed, it shall be filed under a new cause number.

(e) Requests for OUSF Funding found to be incomplete (missing information required by the form and instruction package contained on the Commission website) may be denied.

(f) It is the intention of the OUSF Administrator that each funding request will be independently evaluated and reviewed on a case-by-case basis.

(g) The eligible local exchange telecommunications service provider requesting OUSF funding for primary universal service shall make every reasonable and timely effort to obtain funding from alternative funding sources designated to support universal service, and shall submit all documentation of the effort to obtain funding from alternative funding sources designated to support universal service as a part of its Request for OUSF Funding, or an explanation for why alternative funding is not available. Upon the eligible local exchange telecommunications service provider producing the documentation that it has sought alternative funding sources or an explanation for why alternative funding is not available, the eligible local exchange telecommunications service provider shall not be precluded from having its Request for OUSF Funding processed.

(h) If an eligible local exchange telecommunications service provider receives funding from alternative funding sources for an investment or expense already reimbursed by the OUSF, the eligible local exchange telecommunications service provider shall refund the double collection to the OUSF by either reducing a prospective funding request from the OUSF by an equivalent amount or remitting cash payment to the OUSF. Under no circumstances will double recovery be allowed.

(i) Concurrent with the filing of the Request for OUSF Funding, the eligible local exchange telecommunications service provider shall:
   (1) Provide copies of its Request for OUSF Funding and Notice of the Request for OUSF Funding to the OUSF Administrator and the Oklahoma Attorney General.
   (2) Provide Notice of the Request for OUSF Funding, which shall include the dollar amount of the request for lump sum and any recurring amounts, to the contributing providers by providing an electronic copy of such Notice to the OUSF Administrator on the date the eligible local exchange telecommunications service provider files its Request for OUSF Funding with the Commission's Court Clerk, for posting on the Commission website. The OUSF Administrator will then place the Notice on the Commission website within five (5) business days.

(j) The OUSF Administrator and/or contracted agent shall independently evaluate, review, and determine the accuracy of the complete request and issue a determination of the eligibility for funds, which details the amount of funding recoverable from the OUSF, within ninety (90) calendar days. Simultaneously with the OUSF Administrator or contracted agent advising the provider and parties to the cause, the OUSF Administrator or contracted agent shall file the written Determination in the Commission's Court Clerk and post it to the Commission's website.
The eligible local exchange telecommunications service provider shall provide a copy of the OUSF Administrator's Determination to all parties of record within five (5) calendar days after it is filed.

(k) Any affected party, as defined in 17 O.S. § 139.106(D)(5), may file a Request for Reconsideration within fifteen (15) calendar days of the Determination being filed by the OUSF Administrator, by following the procedures in OAC 165:59-3-72.

(l) If no Request for Reconsideration is filed, the Determination shall be deemed final on the sixteenth (16) calendar day after the Determination is filed, and the cause with the Commission's Court Clerk shall automatically be closed upon the filing of a Notice of Disbursement by the OUSF Administrator. The OUSF Administrator or contracted agent shall issue payment within forty-five (45) calendar days of the previously mentioned sixteenth (16) day, without an order of the Commission.

(m) Unless good cause is shown, any Request for OUSF Funding pursuant to this Section should be made within a reasonable time from the date the requesting local exchange telecommunications service provider can determine the impact of occurrence of the circumstance giving rise to the request, including receipt or notification of alternative funding designed to support universal service. However, this shall neither preclude a local exchange telecommunications service provider from filing a Request for OUSF Funding, nor shall it preclude such a Request from being processed, prior to the time a final decision is made regarding alternative funding from a program designed to support universal service.

(n) A Request for OUSF Funding, pursuant to this Section, shall be signed by an attorney for the eligible local exchange telecommunications service provider.

(o) For causes filed pursuant to 17 O.S. § 139.106(G), consistent with OAC 165:59-3-64(d), and when the OUSF Administrator has previously issued an initial Determination or a Commission final order has been issued, an eligible local exchange telecommunications service provider may file an OUSF request pursuant to 17 O.S. § 139.106(G) and request a variance and risk-based review, provided that:

1. Requests for OUSF Funding made pursuant to the variance and risk-based review shall be filed with the Commission's Court Clerk and provided on the date of filing to the OUSF Administrator for processing.
2. The above provisions in OAC 165:59-3-70(d)-(f) and (i)-(l) are applicable to causes processed using the variance and risk-based review.
3. The OUSF Administrator shall develop an annual variance and risk-based review procedure and reporting format that specifies the information to be made available for purposes of such variance and risk-based review.
4. The annual variance and risk-based review process shall include the submission of all information requested, in a format to be developed by the OUSF Administrator.
5. Such annual variance and risk-based review shall be based on comparisons between and among the documentation provided with the initial Request for OUSF Funding, and the information subsequently provided in conjunction with an annual variance and risk-based review.
6. In no case shall an increase in OUSF funding based on an annual variance and risk-based review exceed five (5) percent of the initial amount granted by the Administrator's Determination or a final order issued by the Commission.
ATTESTATION

I, the undersigned, do hereby attest that the copy enclosed herewith is a true and correct copy of amendments to OAC 165:59, Oklahoma Universal Service and Oklahoma Lifeline, which were considered finally adopted by the Oklahoma Corporation Commission on May 28, 2019, under permanent rulemaking provisions of the Administrative Procedures Act, 75 O.S., §§ 250 et seq.

I, the undersigned do hereby attest that such rules were finally adopted in substantial compliance with the Administrative Procedures Act.

__________________________
Lindsay LaFevers Archer
Rules Liaison
Oklahoma Corporation Commission
May 31, 2019
NAME OF AGENCY:  
Corporation Commission

TYPE OF DOCUMENT:  
Final Adoption of Permanent Rules

LIAISON VERIFICATION:  
I verify that I have reviewed the attached document and that it substantially conforms to filing and format requirements of the Administrative Procedures Act and the rules of the Secretary of State. Additional information may be obtained by contacting me at (405) 521-4259.

__________________________  
Lindsay LaFevers Archer  
Rules Liaison  
Oklahoma Corporation Commission  
May 31, 2019