

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF BRANDY L. WREATH,
ADMINISTRATOR OF THE OKLAHOMA
UNIVERSAL SERVICE FUND, SEEKING TO
ADJUST THE CONNECTIONS-BASED
ASSESSMENT FACTOR FOR THE
OKLAHOMA UNIVERSAL SERVICE FUND

CASE NO. OSF2022-000045

ORDER NO. 742418

HEARING: June 25, 2024, in Concourse Theater, Suite C50 (live and virtual teleconference)
2401 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before the Commission en banc

APPEARANCES: Natasha M. Scott, Chief Legal Counsel *representing* Oklahoma Universal Service Fund Administrator, Oklahoma Corporation Commission
J. David Jacobson, Attorney *representing* Valor Telecommunications of Texas, LP d/b/a Windstream Communications Southwest; Windstream Oklahoma LLC; Oklahoma Windstream LLC; and Windstream NuVox Oklahoma, Inc.
Ron Comingdeer and Dustin R. Murer, Attorneys *representing* Atlas Telephone Company, et al¹
William J. Bullard and Kimberly K. Argenbright, Attorneys *representing* Consolidated Communications; Totah Communications, Inc.; Pine Telephone Company, Inc.; and Grand Telephone Company, Inc.
Jack G. Clark, Jr., Attorney *representing* CTIA – The Wireless Association
Marc Edwards and C. Eric Davis, Attorneys *representing* Cox Oklahoma Telecom, LLC
A. Chase Snodgrass, Deputy Attorney General, Thomas L. Grossnicklaus, Senior Assistant Attorney General, K. Christine Chevis and Ashley N. Youngblood, Assistant Attorneys General *representing* the Office of Attorney General, State of Oklahoma

FINAL ORDER

¹ @Link Services, LLC, Atlas Telephone Company, Beggs Telephone Company, Bixby Telephone Company, Inc., BTC Broadband, Inc., Canadian Valley Telephone Company, Lakeland Cellular, Carnegie Telephone Company, Central Oklahoma Telephone Company, Central Cellular, LLC d/b/a COTC Connections, Cherokee Telephone Company, Chickasaw Telephone Company, Cimarron Telephone Company Cim-Tel Cable, LLC., Craw-Kan Telephone Cooperative, Inc., Cross Cable Television, LLC, Cross Telephone Company, Cross Wireless, LLC d/b/a Sprocket Wireless, LLC d/b/a Mobilz, Cross-Valiant Cellular Partnership, Dobson Telephone Company, Hinton Telephone Company, KanOkla Telephone Association, Lavaca Telephone Company, Inc. d/b/a Pinnacle Communications, McLoud Telephone Company, Medicine Park Telephone Company, OklaTel Communications, Oklahoma Western Telephone Company d/b/a OWTC Cellular d/b/a Phoenix, Ozark Telephone Company, Panhandle Telephone Cooperative, Panhandle Telecommunications Systems, Inc., Pioneer Telephone Cooperative, Inc., Pottawatomie Telephone Company, Seneca Telephone Company, Syntrio Solutions, LLC, KanOkla Shidler Telephone Company, South Central Telephone Association, Southern Plains Cable, LLC, Southwest Oklahoma Telephone Company, Terral Telephone Company, Valliant Telephone Company, Wyandotte Telephone Company, and Wichita Online, Inc.

The Corporation Commission (“Commission”) of the State of Oklahoma being regularly in session, this Case comes before the Commission on the Application of Brandy L. Wreath, Administrator of the Oklahoma Universal Service Fund, Seeking to Adjust the Connections-Based Assessment Factor for the Oklahoma Universal Service Fund (“OUSF”), the Motion to Reopen the Record to Adjust the OUSF Assessment Factor (“Motion to Reopen”) filed by Mark Argenbright², Administrator of the OUSF (“OUSF Administrator” or “Administrator”), and the Third Joint Stipulation and Settlement Agreement (“Stipulation”). The Stipulation is hereby incorporated by reference and is appended hereto as Attachment “A.”

I. PROCEDURAL HISTORY

On June 3, 2024, Mark Argenbright, Administrator of the Oklahoma Universal Service Fund (“OUSF Administrator”) and Director of the Public Utility Division (“PUD”), filed a Motion to Reopen and a Motion to Advance Hearing on the Merits to be Heard by the Commission En Banc (“Motion to Advance”), along with Notices of Hearing for each Motion, setting the Motions before the Commission en banc on June 13, 2024. On the same date, the OUSF Administrator filed the Direct Testimony of Farzad Khalili.

On June 11, 2024, the OUSF Administrator filed Amended Notices of Hearing, setting the Motion to Reopen and the Motion to Advance before the Commission en banc on June 25, 2024.

On June 24, 2024, the Stipulation was filed. On the same date, the Testimony of Mark Argenbright, Administrator of the Oklahoma Universal Service Fund, In Support of the Third Joint Stipulation and Settlement Agreement was filed.

On June 25, 2024, the Motion to Reopen and the Motion to Advance were heard by the Commission en banc. There being no objection, the Motions were granted by the Commission. Thereupon, the Commission convened a hearing on the merits to consider the Stipulation and the OUSF Administrator’s recommendation to adjust the connections-based OUSF assessment factor.

Following the hearing on the merits, but prior to the close of the record, Mr. Jacobson informed the Commission that in the Stipulation he struck through the names of two clients, Brightspeed Broadband, LLC and Brightspeed of Northwest Arkansas, LLC, because he did not have authority to sign the Stipulation on their behalf. However, as of today, these two clients now support the Stipulation.

II. SUMMARY OF EVIDENCE

Documents filed in this Case and those admitted into evidence at the hearing on the merits are contained in records kept by the Commission’s Court Clerk and are incorporated herein by reference.

² On June 2, 2022, Mark Argenbright was named the Director of the Public Utility Division and Administrator of the Oklahoma Universal Service Fund.

At the hearing on the merits, the Commission heard testimony from Mark Argenbright, OUSF Administrator, on behalf of the Stipulating Parties, which is summarized below.

Summary of Testimony of Mark Argenbright on June 25, 2024

Mark Argenbright, OUSF Administrator, testified that the purpose of his testimony was to discuss the recommendation and basis for adjustment to the OUSF assessment factor (“factor”) and support of the Stipulation filed on June 24, 2024.

Mr. Argenbright testified that on June 3, 2024, he caused to be filed a Motion to Reopen in this Case to request Commission approval of a downward adjustment of the factor to \$1.63 per connection. Additionally, he caused to be filed the Direct Testimony of Programs Manager, Farzad Khalili, in support of the proposed adjustment. The OUSF Administrator and intervening parties (“Stipulating Parties”) engaged in settlement discussions regarding matters raised by the Administrator’s Motion to Reopen and recommended factor adjustment, and a settlement was reached by all but one of the parties, as is set forth in the Stipulation.

More specifically, Mr. Argenbright testified that the resulting settlement was non-unanimous, but unopposed, and contained input from the parties after thorough discussion. Mr. Argenbright testified that the party that did not sign the Stipulation, but does not oppose the settlement, is CTIA – The Wireless Association.

Mr. Argenbright testified that the Stipulating Parties are recommending the factor be adjusted to \$1.63 per connection and that this factor was established based on the net calculated funding requirement for funding year 2024 (“FY 2024”). Mr. Argenbright testified that this recommendation is supported by the Direct Testimony of Mr. Khalili which provides the detail supporting the calculations to arrive at this recommended per connection factor.

Mr. Argenbright testified that, as is explained in Mr. Khalili’s filed testimony, the calculated funding requirement for FY 2024 is \$105,414,770, and the calculated surplus balance of the OUSF as of June 30, 2024, is \$12,724,519. The net calculated funding requirement for FY 2024, therefore, is \$92,690,221. The net calculated funding requirement was further reduced to \$74,398,455 based upon July 1, 2024, through August 31, 2024, collections and disbursements. This further reduced net calculated funding requirement is divided by the number of projected annual connections of 45,768,412, resulting in a recommended factor of \$1.63 per connection.

Mr. Argenbright further testified that the projected number of Oklahoma connections for FY 2024 is consistent with projections for recent years. Specifically, Mr. Argenbright noted that the number of projected connections for FY 2023 was slightly less than that of FY 2024, while the projection for FY 2022 was slightly higher than that of FY 2024. Mr. Argenbright testified that over the last thirty (30) months, the actual number of connections has been within a variance of 1.45% to 2% of the projected connections. He explained this to mean that the number of Oklahoma connections is stable and consistent. He further explained that the low variance generally means that the data relied upon is reliable, resulting in a more accurate factor calculation. This implies stability and predictability in the OUSF Administrator’s approach to calculating the factor.

Mr. Argenbright testified that Mr. Khalili's testimony also includes quarterly reporting, as required by Interim Order No. 730170 issued in this Case on November 29, 2022, and pursuant to OAC 165:59-3-13(b). No party objected to the information provided in the quarterly reporting. As part of the reporting, Mr. Khalili's testimony states that, as of the end of April 2024, the OUSF is no longer in deficit status. The last time the factor was adjusted, it was anticipated that the requested factor of \$2.02 per connection would eliminate the then-existing deficit in approximately twelve (12) months beginning with the first month revenues associated with the \$2.02 per connection factor being collected. Mr. Khalili's testimony also states that it was anticipated that upon elimination of the deficit, the factor could again be adjusted. Now that the deficit has been eliminated, the Stipulating Parties agree that a reduction of the factor should occur.

Mr. Argenbright further testified that the Stipulating Parties agree that the Commission should adopt the \$1.63 per connection factor and should issue an order to that effect by July 1, 2024, which will continue until changed by an order of the Commission. The Stipulating Parties further agree that payments shall be calculated using the new assessment amount beginning on September 15, 2024, based upon the number of connections provided by each contributing provider on July 31, 2024, with a reporting and due date to the Administrator by September 15, 2024.

Mr. Argenbright also offered a brief history of the procedural course of this Case, explaining that the Case was initiated in April of 2022 and that the record has since been reopened twice for purposes of adjusting the factor. Mr. Argenbright stated that a final order, rather than a third interim order, would be preferable to bring the current Case to a close and to allow for an application to be filed initiating a new case when the factor next requires adjustment. He explained that a recently amended rule, OAC 165:59-3-13, requires a new case each year to consider or adjust the factor and also requires quarterly reports. Additionally, a new OUSF Administrator has been named since this Case was filed, but due to the continuation of this Case, the caption does not reflect that change. Also, the OUSF deficit has been cleared since entry of the last interim order, which marks a good conclusionary point for the Case. For these reasons and others outlined in his filed testimony, the Administrator believes that a final order is preferable and asked that the Commission consider such, rather than issuance of a third interim order.

Lastly, Mr. Argenbright testified that the Stipulation is fair, just and reasonable and in the public interest. Mr. Argenbright concluded his testimony by stating that the Stipulating Parties were submitting the negotiated Stipulation as a resolution of all issues raised with respect to this proceeding and asked the Commission to note that, while the Stipulation is non-unanimous, no parties oppose it. Accordingly, the Stipulating Parties request and recommend that the Commission issue an order adopting and approving the Third Joint Stipulation and Settlement Agreement.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

THE COMMISSION FINDS that it is vested with jurisdiction over the above-styled and numbered Case pursuant to Article IX, Section 18 of the Oklahoma Constitution, 17 O.S. §§ 139.101 *et seq.*, and 17 O.S. § 139.107(A).

THE COMMISSION FURTHER FINDS that notice was proper and given as required by law and the rules of the Commission. 17 O.S. § 139.107, OAC 165:59-3-13.

THE COMMISSION FURTHER FINDS that the Motion to Reopen the Record to Adjust the OUSF Assessment Factor and the Motion to Advance Hearing on the Merits to be Heard by the Commission En Banc are granted.

THE COMMISSION FURTHER FINDS that certain parties signed the Third Joint Stipulation and Settlement Agreement, appended hereto as Attachment “A,” and that although CTIA – The Wireless Association did not sign the Stipulation, that party does not oppose it.

THE COMMISSION FURTHER FINDS that the provisions of the Stipulation are fair, just, and reasonable and in the public interest.

THE COMMISSION FURTHER FINDS that the factor should be adjusted to \$1.63 per connection, until further order of the Commission, that payments should be calculated using the new assessment amount beginning on September 15, 2024, based upon the number of connections provided by each contributing provider on July 31, 2024, with a reporting and due date to the OUSF Administrator by September 15, 2024.

THE COMMISSION FURTHER FINDS that the Third Joint Stipulation and Settlement Agreement should be approved.

ORDER

THE COMMISSION THEREFORE ORDERS that the Third Joint Stipulation and Settlement Agreement, appended hereto as Attachment “A” and incorporated herein, is approved in accordance with the above Findings of Fact and Conclusions of Law.

[Signatures on subsequent page 6]

CORPORATION COMMISSION OF OKLAHOMA



J. TODD HIETT, Chairman



KIM DAVID, Vice Chairman

Dissenting Opinion Attached

BOB ANTHONY, Commissioner

DONE AND PERFORMED THIS 25th DAY OF June, 2024.

BY ORDER OF THE COMMISSION:



STACY D. MARSEE, Acting Commission Secretary



Attachment "A"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

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THIRD JOINT STIPULATION AND SETTLEMENT AGREEMENT

The undersigned parties ("Stipulating Parties") to the present Case hereby present the following Third Joint Stipulation and Settlement Agreement ("Third Joint Stipulation") for the Commission's review and approval as their compromise and settlement of all issues in this proceeding. The Stipulating Parties represent to the Commission that this Third Joint Stipulation represents a fair, just, and reasonable settlement of these issues and that the terms and conditions of the Third Joint Stipulation are in the public interest. The Stipulating Parties therefore urge the Commission to issue a Third Interim Order in this Case adopting and approving this Third Joint Stipulation.

It is hereby stipulated and agreed by and between the Stipulating Parties as follows:

General Terms and Conditions

1. This Third Joint Stipulation represents a negotiated settlement for the purpose of reaching compromise and settling all issues which were raised in this proceeding.
2. Each of the undersigned counsel of record affirmatively represents that he or she has full authority to execute this Third Joint Stipulation on behalf of their client(s).
3. None of the signatories hereto shall be prejudiced or bound by the terms of this Third Joint Stipulation in the event it is not approved by the Commission nor shall any of the Stipulating Parties be prejudiced or bound by the terms of this Third Joint Stipulation should any appeal of a Commission order adopting this Third Joint Stipulation be filed with the Oklahoma Supreme Court.
4. The Stipulating Parties agree that the provisions of this Third Joint Stipulation are the result of negotiations, and the terms and conditions of this Third Joint Stipulation are interdependent. The Stipulating Parties agree that settling the issues in this Third Joint Stipulation is in the public interest and, for that reason, they have entered into this Third Joint Stipulation to settle among themselves the issues raised in this Case. This Third Joint Stipulation shall not constitute nor be cited as precedent nor deemed an admission by any Stipulating Party in any other proceeding except as necessary to enforce its terms before the Commission or any state court of competent jurisdiction. The Commission's decision, if it enters an order consistent with this Third Joint Stipulation, will be binding as to the matters decided regarding the issues described in this Third Joint Stipulation, but the decision will not be binding with respect to similar issues that might arise in other proceedings. A Stipulating Party's support of this Third Joint Stipulation may differ from its position or testimony in other cases. To the extent there is a difference, the Stipulating Parties

are not waiving their positions in other cases. Because this is a stipulated agreement, the Stipulating Parties are under no obligation to take the same position as set out in this Third Joint Stipulation in other cases.

Non-Severability

5. The Stipulating Parties stipulate and agree that the agreements contained in this Third Joint Stipulation have resulted from negotiations among the Stipulating Parties and are interrelated and interdependent. The Stipulating Parties hereto specifically state and recognize that this Third Joint Stipulation represents a balancing of positions of each of the Stipulating Parties in consideration for the agreements and commitments made by the other Stipulating Parties in connection therewith. Therefore, in the event that the Commission does not approve and adopt the terms of this Third Joint Stipulation in total and without modification or condition (provided, however, that the affected party or parties may consent to such modification or condition), this Third Joint Stipulation shall be void and of no force and effect, and no Stipulating Party shall be bound by the agreements or provisions contained herein. The Stipulating Parties agree that neither this Third Joint Stipulation nor any of the provisions hereof shall become effective unless and until the Commission shall have entered an Order approving all of the terms and provisions as agreed to by the Stipulating Parties and such Order becomes final and non-appealable.

Jurisdiction and Notice

6. The Commission is vested with jurisdiction over the above-styled and numbered Case pursuant to Article IX, Section 18 of the Oklahoma Constitution, 17 O.S. §§ 139.101 *et seq.*, and 17 O.S. § 139.107(A).

7. Notice of this proceeding was proper and given as required by law and the rules of the Commission. 17 O.S. § 139.107, OAC 165:59-3-13.

The \$1.63 Per-Connection Assessment

8. No party to this Case took exception to the recommendation stated in the Direct Testimony of Farzad Khalili on behalf of the Administrator of the Oklahoma Universal Service Fund, filed on June 3, 2024, that the connections-based assessment should be reduced to \$1.63 per connection.

9. Mr. Khalili's Direct Testimony included quarterly reporting, as required by the Commission's Interim Order (Order No. 730170) issued in this Case on November 29, 2022, and pursuant to OAC 165:59-3-13(b). That reporting states, among other updates, that as of the end of April 2024, the OUSF is no longer in deficit status, including deficits from prior funding years.

10. The recommended per-connection assessment of \$1.63 is supported by the evidence presented in this Case.

11. The calculated OUSF funding requirement for Funding Year July 1, 2024, through June 30, 2025, ("FY 2024") is \$105,414,770. This calculated funding requirement is necessary to meet the expected funding needs for FY 2024.

Case No. OSF2022-000045
Third Joint Stipulation and Settlement Agreement

Page 3 of 5

12. The Stipulating Parties agree and recommend that the Commission adopt the \$1.63 per connection assessment and issue an order to that effect by July 1, 2024, and will continue until changed by an order of the Commission. If it is so ordered, payments shall be calculated using the new assessment amount beginning on September 15, 2024, based upon the number of connections provided by each Contributing Provider on July 31, 2024, with a reporting and due date to the Administrator by September 15, 2024.

Conclusion

13. Based on the foregoing terms, the Stipulating Parties submit this Third Joint Stipulation to the Commission as their negotiated settlement with respect to all issues which were raised in this Case.

*****Signature Pages Attached Hereto*****

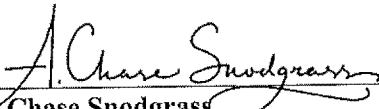
Case No. OSF2022-000045
Third Joint Stipulation and Settlement Agreement

Page 4 of 5



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Page 4 of 5

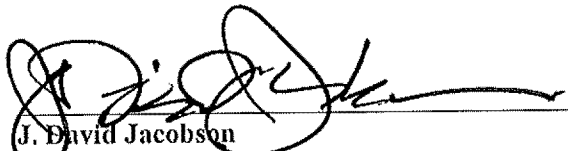


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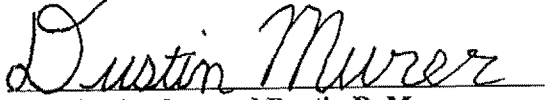


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CERTIFICATE OF SERVICE

This is to certify that on the 24th day of June, 2024, a true and correct copy of the above and foregoing was electronically served via the Electronic Case Filing System to those on the Official Electronic Case Filing Service List, or via electronic mail to the following persons:

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Oklahoma Universal Service Fund and
Oklahoma Lifeline Fund Contributing
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via the e-mail listed under "Contact Email."

Mary Ellen Sanders

Mary Ellen Sanders, Legal Secretary
Office of General Counsel

OKLAHOMA CORPORATION COMMISSION

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DISSENTING OPINION OF CORPORATION COMMISSIONER BOB ANTHONY

Twenty years ago, the OUSF collected annual revenues of just over \$7 million. (Actually, fiscal years 2002 – 2006 were all between \$7.0 and \$7.5 million).

According to today’s OCC order, the net calculated funding requirement for FY 2024 is approximately **\$93 million**. That’s more than 12 times higher than 20 years ago, and the statute still provides no cap. Also, little comfort derives from 17 O.S. § 139.107 stating the monies deposited in the government administered OUSF “shall at no time become monies of the state.” If they were “state monies,” maybe the details of this runaway program would garner more scrutiny.

Five years ago (in 2019) when I wrote to legislators who were receiving constituent complaints about massive increases in OUSF telephone surcharges, I stated:

Who is getting that \$53 million? And should current members of the Oklahoma Legislature care if **a few dozen Oklahoma independent phone companies, on average, receive subsidy payments of a million dollars annually without having to publicly disclose the most basic fundamentals of their business?** What if it were found that some of this \$53 million annual subsidy enables \$150,000+ compensation/benefit packages for numerous family members of an independent telephone company’s ownership? (Testimony by a Corporation Commission expert in a recent OUSF case said salary expense paid to several of the “corporate officers” of one of these small telephone companies “seems exorbitant.”) Unfortunately, if fee-paying customers or even the news media inquire, they will probably be told this kind of information is “confidential.”

Instead of just pennies when the OUSF started, mobile phone customers now face a \$1.63-per-line monthly charge to fund the ever-increasing OUSF subsidy program (but don’t call it a tax).

Basic **transparency and disclosure** about this program should enable the public to know: **Where do these OUSF monies actually go?** To network improvements, infrastructure build-out, and modernization? Or to higher salaries, higher profits and larger dividends for a few dozen independent telephone companies and/or their owners? In truth, the entire \$93 million for the FY 2024 OUSF simply cannot be justified by the popular but relatively small \$10 million component benefiting schools, libraries, hospitals and telemedicine.

June 25, 2024

DAILY OKLAHOMAN

Universal Service Fund increase generates calls to Corporation Commission, lawmakers



by JACK MONEY

Published: Wed, July 3, 2019 1:04 AM Updated: Wed, July 3, 2019 1:25 AM

Oklahomans who are upset about phone bill increases tied to a hike in the Oklahoma Universal Service Fund fee are phoning in their complaints.

The Oklahoma Corporation Commission, the state agency that sets the fee, already is hearing about consumers who are letting both the agency and state lawmakers know they don't like the increase, which took effect July 1.

"We already are getting calls," commission spokesman Matt Skinner said Tuesday. "As more people get their bills, we expect the number of calls will increase."

Agency officials aren't surprised.

Indeed, Corporation Commissioner Bob Anthony warned earlier this year that consumers would dislike the increase as much as he dislikes the fee itself.

Plus, both he and Commission Chairman Todd Hiatt have said they worry demands on the state's fund will continue to grow as the federal government redirects money it assesses on telephone company revenues for a companion Federal Universal Service Fund from phone to broadband services.

"This could very likely be a runaway train," Hiatt previously said, after commissioners had voted to approve seven reimbursement requests it previously had denied.

Commissioners reconsidered the requests after being told by Oklahoma's Supreme Court those denials violated Oklahoma law.

"We have exhausted all of the resources we have at the commission to try to rein it in and protect consumers. I hope the Legislature is paying attention," Hiatt said.

To account for those reversals and to meet expected needs for the current fiscal year, commissioners increased the Oklahoma Universal Service Fund fee from 1.2% to 6.28%. Including the increase, the fee is expected to raise about \$54 million for the year.

Phone companies collect the fee off revenues they get from customers who pay for mobile and landline phone services.

Throughout the year, phone companies (particularly ones in rural parts of the state) make requests for reimbursements from the fund to help keep their rates affordable for customers.

Dollars from the fund also can be allocated to companies that provide internet services at public libraries, public schools and nonprofit hospitals.

Reimbursement requests involve extensive reviews of company records by the fund's administrator, a commission employee who determines whether reimbursements should be made.

The administrator's decision is final, unless the company seeking the reimbursement or a competitor asks for it to be reviewed.

Even after the hike in Oklahoma's Universal Service Fund fee, its percentage still isn't nearly as large as the one assessed by the Federal Communications Commission for its universal service fund.

However, the FCC's assessment only is made on revenue phone companies get from customers who pay for interstate communication services.

As for the assessments, not all phone companies pass along those charges to customers on their bills.

Officials said most companies that provide fixed phone services identify the assessments on customers' bills, while most that provide wireless or prepaid phone services don't.

Anthony doesn't like language in Oklahoma's statute that allows independent telephone companies to tap the fund for reimbursements when an action by the state or federal government increases their costs or reduces their revenues.

Additionally, he is critical of the law that created the fund because it shields companies seeking reimbursements from the fund from a full public review of their revenues, numbers of customers served, expenses and other items deemed proprietary by commission rules and state law.

Earlier this year, Anthony noted the agency was told by AT&T that it would increase an average phone customer's bill by \$3.19 a month to account for the increased fund assessment.

"When that happens, people are going to want to know what's behind this," Anthony said, at the time.

"And we are going to have to tell them, 'Sorry, we have a bunch of rules and aren't going to tell you.'"

<https://oklahoman.com//article/5635319/universal-service-fund-increase-generates-calls-to-corporation-commission-lawmakers>

Agency weighs secrecy policy for firms' reports

BY CURTIS KILLMAN
World Staff Writer

The state Corporation Commission is considering whether to continue its practice of keeping confidential certain reports submitted by utility companies.

At issue is whether annual reports submitted to the commission by telecommunications compa-

nies should be shielded from public view. The commission closed the annual reports to the public in 2004.

The commission's own attorney is calling for the 2004 order to be overturned, saying the original decision to close the records is overly broad and "absurd."

Meanwhile, the state Attorney General's Office issued an opinion

stating that the commission could determine what public utility information to keep confidential so long as it protects "public utility records that it determines constitute confidential books and records or trade secrets."

The matter will be heard Thursday by a Corporation Commission administrative law judge. The judge's recommendation will

be considered later by the three-member commission.

The issue came up in June after a Corporation Commission administrator asked for an order determining what information contained in the annual reports should be deemed proprietary, confidential and competitively sensitive in ac-

SEE RECORDS A3

RECORDS

FROM A1

cordance with the state Open Records Act.

The administrator, Public Utility Division Director David Dykeman, said he had noticed that many so-called protective orders aimed at guarding the confidentiality of records submitted by telecommunications service providers had become "vague and broad."

The Corporation Commission's general counsel issued a brief stating the 2004 order should be overturned because it applied a blanket justification toward keeping annual reports confidential.

"The Open Records Act requires an individualized determination of whether a specific utility's information should be protected from public scrutiny," Andrew

Tevington, general counsel, wrote in the brief filed with the case.

Tevington noted that the reports contain otherwise public information about companies such as entity name, business address and names of the board of directors.

"What is sensitive and in need of protection about the name of a company?" Tevington wrote. "What is sensitive about whether a company is a limited liability company or a corporation?"

"The scope of the order is absurd," Tevington said, referring to the 2004 decision.

"The existing order is overbroad both as to the number of entities it covers and as to the type of information it covers," Tevington said. "It goes against the state's policy that records will be open unless a good, supportable, individualized reason exists otherwise."

Joey Senat, Oklahoma State University journalism professor, said much of the information contained in the annual reports is "just basic information," including how certain public funds are spent.

"I don't see what the problem would be in providing this," he said.

"I don't think overly burdensome should be the criteria for whether this stuff is open or not," Senat said. "We need to know how the public funds are being spent."

But another Corporation Commission administrator noted that the current policy has worked well for seven years.

"An alternative would be to have each of the approximately 350 telecommunications providers active in the state coming in every year to seek a protective order for information filed in the annual report, or seeking waiv-

ers from furnishing parts of the information," said Larry Lago, public utility analyst for the commission. "Either would make it much more difficult and time consuming for staff to receive the needed information."

William Humes, state assistant attorney general, in an opinion filed in the case, said it is up to the commission to determine what public utility information is confidential.

Nothing in the Open Records Act dictates or restricts the manner in which the commission makes such a determination, Humes wrote. Decisions can be made on a "case-by-case basis particular to a specific utility" or by determining that a category or type of information is confidential as applied to several utilities, as in the case of the annual reports, he wrote.

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Regulators debate transparency

By Jack Money
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Landline, wireless and Voice over Internet Protocol phone service users in Oklahoma pay monthly state and federal universal service fund fees.

Companies' requests for reimbursements from the Oklahoma Universal Service Fund (OUSF) are intended to help those companies keep services affordable for customers in rural Oklahoma.

Those requests involve extensive reviews by the state's fund administrator, who examines what the money is needed for and using

business records deemed confidential by the state law and commission rules governing the fund's use.

But on Tuesday, elected members of the Oklahoma Corporation Commission discussed whether more records related to those requests should be public.

The issue was brought up for discussion by Commissioner Bob Anthony, who is critical of the state law that created the fund and believes members of the public have a right to know specific details (like the number of customers served) about companies that request the aid.

"I think we have the lid

down pretty tight, that we don't have much openness or transparency," Anthony said.

Commissioners have dealt with the universal service fund issue twice in the past 60 days.

First, they agreed in early May with fund administrator Brandy Wreath, director of the commission's Public Utility Division, to increase the assessment on revenues collected by companies serving Oklahoma customers for from 1.2% to 6.28%.

The increase takes effect July 1 and is expected to raise about \$54 million for the fund to meet anticipated reimbursement requests during the coming fiscal year. The

increase also was needed to provide relief to two companies whose past requests for fund dollars were denied by the commission, but reversed by Oklahoma's Supreme Court.

Dollars from the fund also are allocated to public libraries, public schools and nonprofit hospitals throughout Oklahoma that supply their users with internet services.

The new state assessment rate, combined with the assessment collected for the Federal Universal Service Fund (administered by federal

See DEBATE, A16

A16 Wednesday, June 12, 2019 THE OKLAHOMAN | OKLAHOMAN.COM

DEBATE

From Page A14

authorities), boosts total assessments on phone companies' revenues to greater than 28% (the federal government assessment is 22%).

As for the assessments, all phone companies are required to pay those into both Oklahoma's and the federal funds, but not all phone companies pass along those charges to customers on their bills.

Still, Anthony noted Tuesday the commission already has heard from AT&T that it will increase an average phone customer's bill by \$3.19 a month to

account for the increased fund assessment.

"When that happens, people are going to want to know what's behind this," Anthony said. "And we are going to have to tell them, 'Sorry, we have a bunch of rules and aren't going to tell you.'"

He said that conflicts with enabling language for the commission contained in Oklahoma's constitution that requires it to provide records it reviews to carry out its mission to the public.

"I think that is absurd," he said.

Commissioner Dana Murphy said Tuesday she didn't necessarily agree with Anthony's assertion that commission rules conflict with the constitutional language and noted this year's

substantial assessment increase is in part because of an unwillingness by commissioners to increase the rate in past years to meet ongoing funding commitments.

"You have to take all of it in context," Murphy said.

Commission Chairman Todd Hiatt, meanwhile, said he agreed in part with Anthony's arguments, but added companies also are required to provide telecommunication services to customers in their service territories.

"I have a hard time reconciling that," Hiatt said, adding that he didn't believe the law had not been well thought out. "We are kind of stuck with it right now."

Mark Thomas, executive vice president of

the Oklahoma Press Association, said this week he understands Anthony's concerns.

While Thomas said the statute creating the fund appears to protect requesting companies' records, he said it also gives commissioners discretion to determine what are "confidential books, records or trade secrets."

"There are some records that probably should be confidential, but the scales are certainly tipped in the direction of secrecy at this point in time," Thomas said. "More transparency about records of these public utilities, particularly about those who are getting massive amounts of money such from the Universal Service Fund, is in order."