

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. OSF 2022-000045

ORDER NO. 736060

HEARING: July 11, 2023, in Concourse Theater, Suite C50 in the Will Rogers Building, 2401 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before the Commission en banc

APPEARANCE: Mike S. Ryan, Deputy General 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. and CenturyTel of Northwest Arkansas, LLC d/b/a CenturyLink
Ron Comingdeer and Dustin 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 and K. Christine Chevis, Assistant Attorney General *representing* the Office of Attorney General, State of Oklahoma

SECOND INTERIM 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, 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., Cellular Network Partnership d/b/a Pioneer/Enid Cellular, Santa Rosa Telephone Cooperative, Seneca Telephone Company, 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.

This Case comes before the Corporation Commission (“Commission”) of the State of Oklahoma on the Application of the Brandy L. Wreath², 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 Factor filed by OUSF Administrator, Mark Argenbright, and the subsequent Second Joint Stipulation and Settlement Agreement (“Stipulation”). The Stipulation is hereby incorporated by reference and is appended hereto as Attachment “A.”

I. PROCEDURAL HISTORY

On May 30, 2023, Mark Argenbright, Administrator of the OUSF, filed a Motion to Reopen the Record to Adjust the OUSF Assessment Factor (“Motion to Reopen”) pursuant to OAC 165:5-13-3(q). On the same date, Farzad Khalili, Public Utility Division (“PUD”) Project Manager, filed Direct Testimony in support of the Administrator’s recommendation to adjust the OUSF connections-based assessment factor from \$1.85 to \$2.02.

On June 15, 2023, the Administrator filed a Notice of Hearing setting the Motion to Reopen to be heard before an Administrative Law Judge (“ALJ”) on June 22, 2023. Also on this date, the Administrator filed a Motion to Establish Procedural Schedule and Notice of Hearing setting this motion on June 22, 2023.

On June 22, 2023, the Motion to Reopen was heard by the ALJ. There being no objection, the ALJ recommended approval of the Motion to Reopen. The Motion to Establish Procedural Schedule was continued to June 29, 2023.

On June 29, 2023, the Administrator filed the non-unanimous, but unopposed, Stipulation. On the same date the Administrator filed a Motion to Advance the Hearing on the Merits in this Case to be heard by the Commission *en banc* (“Motion to Advance”). Also on this date, the Motion to Establish Procedural Schedule was continued to July 13, 2023.

On July 6, 2023, the Administrator filed his testimony in support of the Stipulation. On the same date, the Administrator filed a Notice of Hearing, as amended on July 7, 2023, setting the Motion to Advance to be heard by the Commission *en banc* on July 11, 2023.

On July 10, 2023, Statements of Position were filed separately by the Office of Attorney General, State of Oklahoma (“Attorney General”) and CTIA – The Wireless Association (“CTIA”).

On July 11, 2023, the Motion to Reopen was heard and granted by the Commission in Order No. 735660. On this same date, the Motion to Advance was heard and, after announcing that the intervening parties to this Case agreed to waive the 5-business day notice requirement in OAC 165:5-9-2(b)(1)(A), the Commission granted the Motion to Advance and issued Order No. 735661. Thereupon, the Commission convened a Hearing on the Merits to consider the Stipulation

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

and the Administrator's recommendation to adjust the OUSF connections-based assessment factor from \$1.85 to \$2.02.

On July 13, 2023, the Motion to Establish Procedural Schedule was withdrawn.

II. SUMMARY OF EVIDENCE

Documents filed in this Case and the exhibits admitted into evidence at the Hearing on the Merits are contained in records kept by the Court Clerk of the Commission and are incorporated herein by reference.

At the Hearing on the Merits before the Commission en banc on July 11, 2023, the Commission heard testimony from Mark Argenbright, OUSF Administrator, on behalf of the Stipulating Parties and is summarized below.

A. Summary of Testimony Provided by Mark Argenbright on July 11, 2023

Mark Argenbright, OUSF Administrator, testified that the purpose of his testimony was to discuss the position and basis for support of the non-unanimous, unopposed, Stipulation filed on June 29, 2023.

Mr. Argenbright testified that on May 30, 2023, he caused to have filed a Motion to Reopen the record in this Case to seek Commission approval of an adjustment of the OUSF assessment factor to \$2.02 per connection. Additionally, he caused to have filed the testimony of PUD Programs Manager, Farzad Khalili, in support of the proposed adjustment. The Administrator and the intervening parties engaged in settlement discussions regarding the matters raised by the Administrator's Motion to Reopen and recommended OUSF assessment factor adjustment, and a settlement was reached by some of the parties, which was set forth in the Stipulation and filed on June 29, 2023.

Mr. Argenbright testified that the resulting settlement was non-unanimous, but unopposed, and contained input from the parties after thorough and robust discussion. Mr. Argenbright testified that the parties who did not sign Stipulation, but do not oppose the Stipulation, are the Attorney General, CTIA, and Cox Oklahoma Telcom, LLC ("Cox").

Mr. Argenbright testified that the Stipulating Parties recommend the factor be adjusted to \$2.02 per connection, and that this factor was established based on the net calculated funding requirement for Funding Year ("FY") 2023. Mr. Argenbright testified that this recommendation is supported by the direct testimony of Mr. Khalili, which provides the evidence supporting the calculations to arrive at this recommended per connection factor.

Mr. Argenbright testified that the projected funding requirement for FY 2023 is \$82,030,327, and that the calculated deficit balance of the OUSF as of June 30, 2023, was \$28,207,765. Therefore, the net calculated funding requirement for FY 2023 is \$110,238,092. Taking this net calculated funding requirement and dividing by the number of projected annual

connections of 54,635,749, results in a recommended OUSF assessment factor of \$2.02 per connection.

Mr. Argenbright testified that the current deficit represents \$0.52 of the total \$2.02 requested per connection assessment amount. Without the deficit, the requested assessment amount would be \$1.50 per connection. It is anticipated that the requested factor of \$2.02 per connection will eliminate the current deficit in approximately twelve (12) months beginning with the first month revenues associated with the \$2.02 per connection factor are collected. Elimination of the deficit in the projected twelve (12) month time period assumes that actual demand is consistent with the reasonable projections of demand included in the calculation methodology by Mr. Khalili in his filed testimony. When the deficit is eliminated, the factor could be adjusted downward to reflect then current demand levels. Further, the quarterly reports on the status of the OUSF required by the Interim Order in this proceeding, as well as the forthcoming rule changes in OAC 165:59 that will become effective on October 1, 2023 that additionally require quarterly reporting, will provide the Commission with information that will allow for the timely adjustment of the factor.

Mr. Argenbright testified that he appreciated the input provided by the Attorney General's Statement of Position and the recognition of the OUSF's important statutory function. Mr. Argenbright is supportive of the Attorney General's desire for improvements in the program and recognition that significant positive changes have been made through recent rulemaking, however, he agreed with the Attorney General that more can be done.

Mr. Argenbright next commented on the Statement of Position of CTIA. Mr. Argenbright testified that he rejected the claim that the method of funding the OUSF was anti-competitive. He testified that the connections-based funding mechanism was the most equitable way to administer the Fund. It was his opinion that a return to a revenue-based mechanism would, in fact, be inequitable and anti-competitive. He also noted that wireless customers can place calls, to include emergency calls, to the networks supported by the OUSF; and therefore, such wireless customers do receive benefits from the network supported by the OUSF. He concluded his comments by noting that despite its criticisms set forth in its Statement of Position, CTIA, does not oppose the Commission approving the Settlement.

Under questioning by the Commission, Mr. Argenbright testified that the Stipulating Parties were asking the Commission to enter a Second Interim Order adjusting the OUSF assessment factor to \$2.02 per connection. Mr. Argenbright clarified that the Stipulating Parties were not asking for a retroactive order taking effect July 1, 2023, but an order that would be entered preferably before July 31, 2023, or as quickly as possible, with contributions based on the \$2.02 assessment factor being submitted to the OUSF on September 15, 2023, based on the connections reported for July 31, 2023.

Mr. Argenbright took issue with the suggestion that there was a history of six increases in the factor as stated by CTIA in its Statement of Position, and noted that since adoption of the connections-based funding, the factor has only been increased one time. Mr. Argenbright also testified there have only been 2 OUSF factor assessments adopted by the Commission since its adoption of the connections-based methodology for funding the OUSF.

Mr. Argenbright agreed with Commissioner Anthony that the amount of the program dedicated to schools, libraries and telemedicine was roughly \$9 million. He then noted that most of the funding supplied by the program is dedicated to the statutory purpose of insuring the availability of primary universal service in rural areas at just and reasonable rates.

Mr. Argenbright was next questioned whether phone companies received support via the OUSF. He responded by noting that there are 37 Incumbent Local Exchange Companies eligible to receive funding via the now-former Oklahoma High Cost Fund that has now transitioned entirely into the OUSF. Although he could not testify that all these companies received OUSF support, he stated that most probably do. This transition accounts for about \$37 million of the yearly funding requirement of the OUSF.

Mr. Argenbright next testified that an application for funds under the OUSF is not based on the number of customers served by an applicant. Although a company's number of customers is considered confidential information, this information is available to the Administrator and Commission staff. Mr. Argenbright further testified that the Commission's website sets out each company's name and the amount of OUSF funding they receive. Mr. Argenbright testified that all funding requests filed pursuant to either 17 O.S. § 139.106(K) or 17 O.S. § 139.106(G) are scrutinized closely and receive an in-depth, comprehensive review by the Administrator, as well as highway relocation funding requests, and that all determinations filed by the Administrator are available on the Commission's Electronic Case Filing System and Imaging.

Mr. Argenbright testified that, in his opinion, the proposed settlement is fair, just, reasonable, and in the public interest. Mr. Argenbright concluded his direct testimony by stating that the Stipulating Parties submitted 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 the Stipulation, including the recommended adjustment of the OUSF assessment factor to \$2.02 per connection. Accordingly, the Stipulating Parties request and recommend that the Commission issue a Second Interim Order adopting and approving this Second Joint Stipulation and Settlement Agreement.

B. Summary of Statement of Position of the Attorney General

On July 10, 2023, the Attorney General filed a Statement of Position indicating he does not oppose the Non-Unanimous Joint Stipulation and Settlement Agreement. He supports the important work of the OUSF and believes in the principle of Universal Service and the Special Universal Services that support our public schools and public libraries. Universal Service is critical for our rural communities to grow and thrive. Without access to such services, we can be certain that rural Oklahoma and their communities would suffer.

However, as with all funds administered by the state, especially those that collect its revenues from the people, we must have the highest level of transparency and ensure that the expenditure of those funds are meeting the highest policy goals. For these reasons the Attorney General continues to support further review of the OUSF by the Legislature, regulators, and stakeholders, particularly 17 O.S. § 139.106(K)(1)(a).

The Attorney General indicated that though there have been positive developments, such as increased annual reporting by OUSF beneficiaries, regulators and stakeholders should continue to seek out new ways to bring increased transparency and oversight to the Fund. Additionally, the Attorney General continues to call for the Legislature to review the OUSF for the same above stated purposes.

The Attorney General indicated his openness to other reforms that ensure the OUSF is meeting the highest policy goals and continues to further increase transparency. The Attorney General is open to working with any stakeholder to achieve those ends.

At the Hearing on the Merits, counsel responded to questions/comments from Commissioners. Counsel reasserted the Attorney General's support for the important programs administered by the OUSF and their positive impact on the needs of Oklahoma's rural communities. Counsel further asserted that the Attorney General disfavors 17 O.S. § 139.106(K)(1)(a) because it prohibits the Commission from ensuring the subsidies paid are means tested and necessary to support Primary Universal Service. Counsel indicated that under 17 O.S. § 139.106(K)(1)(a), the Commission's oversight of the justification for and the use of those subsidies is unduly constrained.

C. Summary of Statement of Position of CTIA

On July 10, 2023, CTIA filed a Statement of Position neither supporting nor opposing the Non-Unanimous Joint Stipulation and Settlement Agreement, to which it is not a signatory.

CTIA's Statement of Position argued that the 2020 decision to change the OUSF's funding mechanism from revenue-based to connections-based has not brought about the stability and equity in funding that advocates for the change testified it would. CTIA noted that the proposed contribution factor of \$2.02 per connection represents a 122% increase over the initial proposal of \$0.91 per connection made in March 2020, indicating a lack of stability. CTIA also cited the growing proportion of the OUSF financial burden on wireless consumers as evidence that the change has not produced equity, arguing that the mere fact that wireless consumers may experience some benefit from the OUSF's existence does not evince "equity" when wireless consumers are responsible for the large majority of the funding burden while reaping significantly fewer benefits than the companies receiving the bulk of OUSF funding.

CTIA acknowledged that the root cause of the OUSF's flaws is tied to a need for statutory reform but urged the Commission to promote such reform efforts. CTIA also asked the Commission to take actions to mitigate the consumer impact of the OUSF, including a return to a revenues-based system of collections, an increase to monthly rates to reduce OUSF demand, and a requirement for full rate cases from carriers requesting support.

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 Joint Stipulation is signed by the Administrator of the OUSF, Atlas Telephone Company, *et al*, Valor Communications of Texas, LP d/b/a Windstream Communications Southwest, Windstream Oklahoma LLC, Oklahoma Windstream. LLC, Windstream Nu Vox Oklahoma, Inc., Consolidated Communications, Totah Communications, Inc. Pine Telephone Company, Inc, and Grand Telephone Company, Inc.

THE COMMISSION FURTHER FINDS that CTIA, Cox, and the Attorney General did not sign the agreement, but do not oppose the approval of the Stipulation.

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

THE COMMISSION FURTHER FINDS that the Oklahoma Telecommunications Act, as amended, established a universal service policy for Oklahoma, requiring funds to be made available 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.” 17 O.S. § 139.106(B); and that the Commission is required to fund the OUSF consistent with the provisions of the Oklahoma Telecommunications Act, as amended.

THE COMMISSION FURTHER FINDS that the Commission, pursuant to 17 O.S. § 139.107(B), has a statutory obligation to fund the Oklahoma Lifeline Fund (“OLF”) and the OUSF at a level sufficient to recover costs of administration of the OUSF and OLF and to timely distribute payments for OUSF and OLF requests for funding as provided for in the Oklahoma Telecommunications Act of 1997, as amended.

THE COMMISSION FURTHER FINDS that the calculated OUSF funding requirement of \$82,030,327 was the amount required to meet the expected funding needs for Funding Year 2023-2024, to which the deficit balance of \$28,207,765 must be added.

THE COMMISSION FURTHER FINDS that the charge per-connection of \$2.02, as proposed by the Administrator, is supported by the evidence, and is hereby adopted effectively immediately. The updated charge will apply to contributions due on September 15, 2023, with such contributions calculated based on the updated charge and the number of connections as of July 31, 2023. This updated charge per-connection supersedes any previously established charge.

IV. ORDER

THE COMMISSION THEREFORE ORDERS that based on the evidentiary record and the applicable law, the Second Joint Stipulation and Settlement Agreement, appended hereto as Attachment "A," is hereby approved in accordance with the Findings of Fact and Conclusions of Law set forth above.

THE COMMISSION FURTHER ORDERS that the Oklahoma Universal Service Fund contribution factor, shall be \$2.02 per connection, until further Order of the Commission. Payments based on the revised contribution factor shall begin on September 15, 2023, and will be based on the Contributing Provider's number of connections as of July 31, 2023, which will be reported to the Administrator by September 15, 2023.

CORPORATION COMMISSION OF OKLAHOMA



J. TODD HIETT, Chairman



KIM DAVID, Vice Chairman

Dissenting opinion attached

BOB ANTHONY, Commissioner

DONE AND PERFORMED THIS 27th DAY OF July, 2023.

BY ORDER OF THE COMMISSION:



STACY D. MARSEE, Acting Commission Secretary



Attachment "A"

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. OSF 2022-000045

SECOND JOINT STIPULATION AND SETTLEMENT AGREEMENT

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

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

General Terms and Conditions

1. This Second Joint Stipulation represents a negotiated settlement for the purpose of compromising and settling issues relating to this proceeding.
2. Each of the undersigned counsel of record affirmatively represents that he or she has full authority to execute this Second Joint Stipulation on behalf of their client(s).
3. None of the signatories hereto shall be prejudiced or bound by the terms of this Second Joint Stipulation in the event the Commission does not approve this Second Joint Stipulation nor shall any of the Stipulating Parties be prejudiced or bound by the terms of this Second Joint Stipulation should any appeal of a Commission order adopting this Second Joint Stipulation be filed with the Oklahoma Supreme Court.
4. The Stipulating Parties agree that the provisions of this Second Joint Stipulation are the result of negotiations, and the terms and conditions of this Second Joint Stipulation are interdependent. The Stipulating Parties agree that settling the issues addressed in this Second Joint Stipulation is in the public interest and, for that reason, they have entered into this Second Joint Stipulation to settle among themselves the issues addressed in this Second Joint Stipulation. This Second Joint Stipulation shall not constitute nor be cited as a 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. Because this is a stipulated agreement, the Stipulating Parties are under no obligation to take the same position as set out in this Second Joint Stipulation in other dockets.

Case No. OSF 2022-000045

Supplemental Joint Stipulation and Settlement Agreement

Non-Severability

5. The Stipulating Parties stipulate and agree that the agreements contained in this Second Joint Stipulation are interrelated and interdependent. The Stipulating Parties hereto specifically state and recognize that this Second 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 Second Joint Stipulation in total and without modification or condition (provided, however, that the affected party or parties may consent to such modification or condition), no Stipulating Party shall be bound by the agreements or provisions contained herein.

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.

Commission Should Adopt the \$2.02 Per-Connection Charge

8. No party to this Case objected to the recommendation stated in the Testimony of Farzad Khalili, filed on May 30, 2023, that the connections-based assessment should be increased to \$2.02 per connection.

9. The evidence supports a OUSF funding requirement of \$82,030,327 as required to meet the expected funding needs for Fund Year 2023-2024, to which the deficit balance of \$28,207,765 must be added.

10. A per-connection assessment of \$2.02 is supported by the evidence.

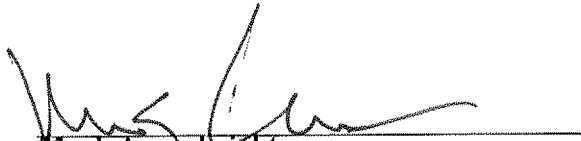
11. The Stipulating Parties agree and recommend that the Commission adopt a \$2.02 per connection assessment and issue an order to become effective on or before July 31, 2023 directing that payments to the OUSF, beginning with the assessment and reporting due September 2023, shall be made using the new assessment amount and be based on the number of connections provided by each Contributing Provider on July 31, 2023 with a reporting and due date to the Administrator on September 15, 2023.

Conclusion

12. Based on the foregoing terms, the Stipulating Parties submit this Second Joint Stipulation to the Commission as their negotiated settlement of this proceeding with respect to all issues which were raised with respect to this Application, and they respectfully request that the Commission issue a Second Interim Order adopting and approving this Second Joint Stipulation.

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

*Case No. OSF 2022-000045
Supplemental Joint Stipulation and Settlement Agreement*




Mark Argenbright
Administrator of the Oklahoma Universal Service Fund

Jack G. Clark, Jr.
Attorney for CTIA - The Wireless Association

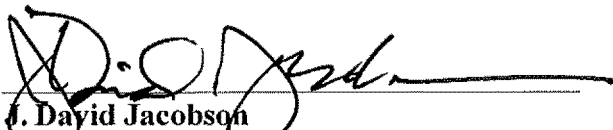
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J. David Jacobson
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Windstream Communications Southwest; Windstream
Oklahoma LLC; Oklahoma Windstream LLC; and Windstream
NuVox Oklahoma, Inc.



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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 2023 is **\$110 million**. That's more than 15 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.

The Attorney General's Statement of Position in this case repeatedly raises **transparency** issues involving OUSF and states, "as with all funds administered by the state, especially those that collect its revenues from the people, we must have the highest level of transparency and ensure that the expenditure of those funds are meeting the highest policy goals."

Four 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 \$2.02-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 better salaries, higher profits and larger dividends for a few dozen independent telephone companies and/or their owners? In truth, the entire \$110 million for the FY 2023 OUSF simply cannot be justified by the popular but relatively small \$9 million component benefiting schools, libraries, hospitals and telemedicine.

July 27, 2023

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>

Tulsa World, August 31, 2011, p. 1

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-

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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 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."

"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

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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

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 Hiett, 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," Hiett 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."