

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

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APPLICATION OF BRANDY L. WREATH, )
ADMINISTRATOR OF THE OKLAHOMA ) CAUSE NO. OSF 201900036
UNIVERSAL SERVICE FUND, SEEKING TO )
ESTABLISH AN ASSESSMENT FACTOR FOR ) ORDER NO. 695781
THE OKLAHOMA UNIVERSAL SERVICE FUND )

HEARING: April 18, 2019, in Courtroom B
2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before Linda S. Foreman, Administrative Law Judge

APPEARANCES: Jeff W. Kline, Deputy General Counsel representing Public Utility Division,
Oklahoma Corporation Commission
A. Chase Snodgrass, Assistant Attorney General representing Office of
Attorney General, State of Oklahoma
Jack G. Clark, Jr., Attorney representing Verizon1
Marc Edwards and C. Eric Davis, Attorneys representing Cox Oklahoma
Telcom, LLC
Ron Comingdeer and Kendall W. Parrish, Attorneys representing various
Telecommunications Carriers2
Kimberly K. Argenbright and William J. Bullard, Attorneys representing
Consolidated Communications, Totah Communications, Inc., Pine Telephone
Company, Inc., and Grand Telephone Company, Inc.
Jeff Cloud, Attorney representing Pottawatomie Telephone Company;
Cimarron Telephone Company; and Cross Telephone Company

INTERIM ORDER APPROVING THE OKLAHOMA UNIVERSAL SERVICE FUND
FACTOR BEGINNING JULY 1, 2019

BY THE COMMISSION:

The Corporation Commission ("Commission") of the State of Oklahoma being regularly in
session and the undersigned Commissioners present and participating, there comes on for consideration

1 These companies include MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services; MCI
Communications Services, Inc. d/b/a Verizon Business Services; Verizon Long Distance, LLC; Verizon Enterprise Solutions, LLC;
Verizon Select Services, Inc.; and Celco Partnership and its commercial mobile radio service subsidiaries operating in the State of
Oklahoma (collectively, "Verizon").

2 @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, Inc. 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-Valliant Cellular Partnership; Dobson Telephone Company; Hinton Telephone Company; KanOkla
Telephone Association, Inc.; Lavaca Telephone Company, Inc., d/b/a Pinnacle Communications; McLoud Telephone Company;
Medicine Park Telephone Company; Oklatel Communications, Inc.; Oklahoma Western Telephone Company; Oklahoma Western
Telephone Co., d/b/a OWTC Cellular d/b/a Phoenix; Ozark Telephone Company; Panhandle Telephone Cooperative, Inc.; Panhandle
Telecommunications Systems, Inc.; Pioneer Telephone Cooperative, Inc.; Cellular Network Partnership d/b/a Pioneer/Enid Cellular;
Santa Rosa Telephone Cooperative, Inc.; Seneca Telephone Company; Shidler Telephone Company; South Central Telephone
Association, Inc.; Southern Plains Cable, LLC; Southwest Oklahoma Telephone Company; Terral Telephone Company; Valliant
Telephone Company; Wyandotte Telephone Company; and Wichita Online, Inc.

and action the Application of Brandy L. Wreath, Administrator of the Oklahoma Universal Service Fund (“OUSF”) seeking to establish an assessment factor for the OUSF beginning July 1, 2019.

## I. PROCEDURAL HISTORY

On February 13, 2019, the Application in the above-styled Cause was filed by Brandy L. Wreath, OUSF Administrator. All contributing providers that may be obligated to contribute to the OUSF or Oklahoma Lifeline Fund pursuant to the Oklahoma Telecommunications Act of 1997, at 17 O.S. §§ 139.105, 139.106, and 139.107 were named as Respondents.

Also on February 13, 2019, the OUSF Administrator filed a Motion to Establish Procedural Schedule, along with a Notice of Hearing setting the Motion to Establish Procedural Schedule for hearing on February 21, 2019. --

On February 14, 2019, Counsel for Verizon (“Verizon”) filed an Entry of Appearance, and Counsel for Cox Oklahoma Telecom, L.L.C. (“Cox”) filed an Entry of Appearance

On February 15, 2019, the Oklahoma Attorney General (“Attorney General”) filed an Entry of Appearance.

On February 21, 2019, Counsel for Consolidated Communications, Totah Communications, Inc., Pine Telephone Company, Inc., and Grand Telephone Company, Inc. filed an Entry of Appearance.

Also on February 21, 2019, the Administrative Law Judge (“ALJ”) heard and recommended the Motion to Establish Procedural Schedule. The parties prepared an OUSF Prehearing Conference Agreement, which was subsequently filed on February 22, 2019.

Also on February 22, 2019, an Entry of Appearance was filed on behalf of various Telecommunications Carriers.

On March 15, 2019, the OUSF Administrator filed the Direct Testimony of Kristi D. Prouty.

On April 4, 2019, the Attorney General’s Statement of Position was filed.

On April 11, 2019, the OUSF Administrator filed a Witness and Exhibit List.

On April 16, 2019, the OUSF Administrator filed the Summary Testimony of Brandy L. Wreath.

The Hearing on the Merits was held before the ALJ on April 18, 2019. At the hearing, the ALJ heard the testimony of Brandy L. Wreath; after which, the ALJ recommended that the OUSF Administrator’s proposed factor be recommended. Exhibit 1 – Calculation of the Assessment Factor was introduced at the hearing and filed with the Court Clerk’s Office.

On April 30, 2019, the OUSF Administrator filed a Signing Agenda Exhibit.

## II. SUMMARY OF EVIDENCE

### Brandy L. Wreath, OUSF Administrator

Brandy L. Wreath is employed by the Commission as the Director of the Public Utility Division (“PUD”), and thereby serves in a statutorily mandated position as the OUSF Administrator. Mr. Wreath adopted the Direct Testimony filed on March 15, 2019, by Kristi Prouty, the OUSF Payment Manager.

Mr. Wreath provided an overview of the current status of the OUSF caseload, as well as the improvements made to the processing of causes. Mr. Wreath described the purpose of this Application, including how often it is filed, and agreed that this process allows the Commission to review the assessment every year. Mr. Wreath explained who contributes into the OUSF, that these contributing providers pay “assessed revenues,” which are defined by statute, and that the assessment may be passed on to customers. Mr. Wreath described the audit process the OUSF Administrator conducts to ensure the correct charge is passed on to customers.

Mr. Wreath provided an overview of past OUSF assessment factors, including how much PUD recommended and then the ordered assessment factor:

Cause Number	Funding Year (“FY”)	Commission Approved	PUD Recommended
PUD 201400001	2014	0.64%	2.16%
PUD 201400341	2015	2.16%	4.77%
PUD 201500466	2016	2.16%	3.96%
PUD 201700001	2017	2.16%	2.16%
OSF 201800005	2018	1.20%	1.20%. However, PUD stated that if outstanding un-ordered requests were included, the amount should be 3.41%.

Mr. Wreath testified that the Federal Universal Service Fund is currently set at 18.8% and is established on a quarterly basis.

Mr. Wreath described the process used to establish an updated OUSF assessment factor to begin on July 1, 2019, for FY 2019 (fiscal year 2020), and continue until the Commission issues an order approving a new assessment factor. Mr. Wreath testified that historical trending data was utilized in the Administrator’s calculation of an updated assessment factor rather than issuing data requests to eligible providers of and contributors to the OUSF. The process was modified because the Administrator determined that it would be more efficient. In previous years, data request responses were often inaccurate, incomplete or duplicative. Mr. Wreath attested that it also adheres to past Commission practices of including only known and measurable estimates.

Mr. Wreath explained the below categories included in the FY 2019 Factor calculation:

Attorney General	\$250,000
Oklahoma Lifeline	\$2,100
Primary OUSF	\$28,870,000
Special OUSF - Schools, Libraries, and Telemedicine	\$12,565,000
Management Contract Fees - Fund Manager	\$180,000
Administration Expenses	\$2,150,000
External Audits of Fund Manager and Administrator	\$100,000
Expert Witness Contracts	\$400,000
Bank Fees	\$3,700

Mr. Wreath testified that since the preparation of this proposed assessment factor, new developments occurred that will almost certainly result in the need to request a different assessment factor soon. Mr. Wreath stated that the Oklahoma Supreme Court recently remanded seven (7) Primary OUSF funding requests back to the Commission with instructions; these Causes could total, subject to review, as much as \$2.7 million in funding.

Describing the factor calculation, Mr. Wreath stated that the large increase in the Primary OUSF estimate resulted from new funding from filed causes due to the abolishment of the Oklahoma High Cost Fund and new funding related to causes that have been or will be filed under 17 O.S. § 139.106(G) (“G filings”). The proposed estimated funding increased from approximately \$11,100,000 for FY 2018 to approximately \$28,800,000 for FY 2019.

Mr. Wreath also testified regarding the large increase in Administration Expense and Expert Witness Contracts for FY 2019. He stated that both proposed increases were estimated as a result of new G filings. These G filings will require additional PUD personnel, as well as continuing contracts with consultants to perform initial and on-going audits of these companies. Mr. Wreath described cost control initiatives PUD has done in relation to these contracts. The proposed estimated funding for Administration Expenses increased from approximately \$1,700,000 for FY 2018 to approximately \$2,100,000 for FY 2019. The proposed estimate for Expert Witness contracts increased from approximately \$100,000 for FY 2018 to approximately \$400,000 for FY 2019.

Mr. Wreath testified that he does not have the authority to set, or even recommend a Factor based on the impact to customers.

Mr. Wreath testified that the net estimated funding obligations resulted in a projected funding requirement for FY 2019 of \$42,988,424, which was then divided by the total projected intrastate assessable revenues of \$854,000,000 for FY 2019, as outlined in 17 O.S. § 139.107 to calculate the proposed FY 2019 OUSF assessment factor of 5.03%.

Additionally, Mr. Wreath testified that an “interim order” in this Cause is being requested due to the uncertainty related to the potential number of primary requests for OUSF funding that may result from new G filings, the impending funding obligation that may result from twenty-two (22) primary funding requests awaiting final orders, and the seven (7) causes remanded from the Oklahoma Supreme Court.

Mr. Wreath concluded by stating that if the Commission does not establish an OUSF contribution factor of 5.03%, the fund will not be able to meet its current obligations, and that the Administrator will need to follow OAC 165:59-3-60(c) to determine priority of payment. The requested start date for the 5.03% is July 1, 2019, so that the contributing providers can provide sufficient notice to affected customers.

No party offered cross examination following Mr. Wreath's direct examination.

### **Attorney General**

On April 4, 2019, the Oklahoma Attorney General, appearing on behalf of the telecommunications customers of Oklahoma, filed his Statement of Position. The Attorney General stated that he did not object to the Administrator's recommended assessment factor of 5.03 percent under current laws and regulations. However, the Attorney General continues to be concerned with the growing demand for primary universal service funding from the OUSF and the resulting financial burden on telecommunications customers in the State, who ultimately carry the burden of the OUSF assessment factor. The Attorney General proposes that the Commission work with the Legislature and telecommunications service providers to find reasonable and sustainable solutions for the support of primary universal service.

Additionally, the Attorney General stated support for the Administrator's decision to withhold primary service impacts that are not known and measurable from his funding projections and to instead seek an interim order. The Attorney General argued that most telecommunications companies recover their OUSF assessment costs directly from customers; therefore, maintaining a lower Assessment Factor will allow said customers to keep more of their money until such time that additional OUSF revenue is proven necessary under the law. While the Attorney General stated support for an interim order, he encouraged the Commission to continue its practice of reconsidering the assessment factor on at least an annual basis.

### **Brandy L. Wreath, OUSF Administrator (during the Commission's signing agenda on May 8, 2019)**

During the Commission's signing agenda meeting on May 8, 2019, Mr. Wreath described the calculations and conclusions presented in the document filed on April 30, 2019, titled Signing Agenda Exhibit. Mr. Wreath stated that this calculation includes funding for all primary universal service fund causes that are currently pending before the Commission, including those that were recently remanded back to the Commission from the Oklahoma Supreme Court. Mr. Wreath stated that the OUSF Administrator is recommending an assessment factor of 6.28%.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

THE COMMISSION FINDS that it has jurisdiction over this matter by virtue of Article IX § 18 of the Oklahoma Constitution and 17 O.S. §§ 139.101 *et seq.*

THE COMMISSION FURTHER FINDS that notice was proper and given as required by law

and the rules of the Commission.

THE COMMISSION FURTHER FINDS that 17 O.S. § 139.107 states in part,

A. The Oklahoma Lifeline Fund (OLF) and the Oklahoma Universal Service Fund (OUSF) shall be funded in a competitively neutral manner not inconsistent with federal law by all contributing providers. The funding from each contributing provider shall be based on the total intrastate retail Oklahoma Voice over Internet Protocol (VoIP) revenues and intrastate telecommunications revenues, from both regulated and unregulated services, of the contributing provider, hereinafter referred to as assessed revenues, as a percentage of all assessed revenues of the contributing providers, or such other assessment methodology not inconsistent with federal law. VoIP services shall be assessed only as provided for in the decision of the Federal Communications Commission, FCC 10-185, released November 5, 2010, or such other assessment methodology that is not inconsistent with federal law. The Commission may after notice and hearing modify the contribution methodology for the OUSF and OLF, provided the new methodology is not inconsistent with federal law.

B. The Corporation Commission shall establish the OLF assessment and the OUSF assessment at a level sufficient to recover costs of administration and payments for OUSF and OLF requests for funding as provided for in the Oklahoma Telecommunications Act of 1997....

THE COMMISSION FURTHER FINDS that the contribution factor, beginning July 1, 2019, and continuing until further order of the Commission, should be 6.28% based upon trending historical analysis, statutory requirements, historical information, recent Commission orders, pending primary universal service causes, the recently remanded orders from the Oklahoma Supreme Court, and all other costs included in the calculation.

THE COMMISSION FURTHER FINDS the contribution factor of 6.28% to be fair and reasonable, and that said factor should be adopted by the Commission on an interim basis.

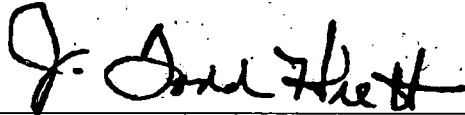
THE COMMISSION FURTHER FINDS that by issuing an Interim Order, the Commission may modify the OUSF factor, as needed, after notice to parties to this Cause and hearing of new evidence or circumstances that warrant the modification, without initiating a new cause.

**IV. ORDER**

THE COMMISSION THEREFORE ORDERS that the Oklahoma Universal Service Fund contribution factor, beginning July 1, 2019, shall be 6.28%, until further Order of the Commission.

THIS ORDER SHALL BE EFFECTIVE immediately.

OKLAHOMA CORPORATION COMMISSION



J. TODD HIETT, Chairman

SEPARATE OPINION ATTACHED

BOB ANTHONY, Vice Chairman

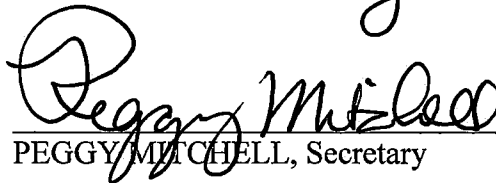


DANA L. MURPHY, Commissioner

**CERTIFICATION**

DONE AND PERFORMED by the Commissioners participating in the making of this Order, as shown by their signatures above, this 8<sup>th</sup> day of May, 2019.

[SEAL]

  
PEGGY MITCHELL, Secretary

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**FILED**  
MAY 08 2019

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OF OKLAHOMA

Separate Opinion of Commissioner Bob Anthony

Oklahoma telephone customers will soon pay a surcharge rate more than five times higher than existed in 2018, in part due to recent Oklahoma Supreme Court decisions. The new assessment rate for the Oklahoma Universal Service Fund (OUSF) will increase from 1.2% to 6.28% and pull in over \$53 million next fiscal year, largely from customers of Oklahoma wireless, landline, and Voice over Internet Protocol.

Oklahomans should pay more attention to the obscure, yet ever-increasing OUSF charges on their phone bills. Although previously most OUSF annual payouts provided support of internet service for schools, libraries and hospitals, the new higher amounts will now principally go to independent telephone companies and/or their owners.

A lot has changed since the OUSF was created by the Oklahoma Legislature in 1997. Lawmakers and ratepayers both should be curious to know how many small independent telephone companies with fewer than 1,000 total customers receive annually over \$1 million each in subsidies essentially paid mostly by phone customers of AT&T, Verizon, Cox and Sprint. Since the Oklahoma Constitution designates telephone companies as regulated *public* utilities and they get multi-million dollar subsidies, shouldn't the OUSF payouts and number of subsidized phone lines be *public*, not confidential information? As a Corporation Commissioner, I have asked how many rural phone company employees (occasionally in the same ownership family) have annual compensation over \$100,000 each. Federal phone subsidies have been even more generous than some state programs, but federal rules now reign in the worst abuse and disallow covering things like telephone company private airplanes and art work.

The Oklahoma OUSF statute includes the costly "make whole provision" whereby many independent telephone companies can receive money from the OUSF if state or federal government actions cause either their costs to go up or their revenues to go down. What a deal! As various federal subsidy programs have been cut back and abuses disallowed, some Oklahoma independent phone companies are already annually receiving OUSF



monies to be “made whole” for what the feds have stopped giving them. Without a monetary cap and other needed restrictions, more massive OUSF assessment increases are likely to hit Oklahoma ratepayers thanks to the dubious “make whole provision.” (Federal funds are collected from interstate and international carriers based on their revenues. Those funds are being used primarily for broadband now, forcing the states to shore up their own carriers.)

Without a formal rate case, this OUSF 6.26% assessment factor order leads to a noticeable increase to certain telephone and wireless customer bills and that warrants an explanation of the legislative scheme and recent Oklahoma Supreme Court decisions. Section 139.106 E of Title 17 of the Oklahoma Statutes allows “contributing providers” to the Oklahoma Universal Service Fund to recover OUSF charges from their retail customers. Under the new Commission order, recovery of OUSF charges results in a surcharge seen on the monthly customer bill, and the new surcharge will be several multiples of the amounts billed in 2018.

By statute, the money in OUSF is not state money. It is collected from what the statutes define as “contributing providers” generally providers of intrastate telecommunications, providers of telecommunications for a fee on a non-carrier-basis, providers of wireless telephone service and providers of interconnected Voice over Internet Protocol (VoIP), which commonly bill retail customers for the full amount of the mandatory company contributions to OUSF. Sprint and Verizon have argued OUSF money is really “state funds” and deserves a consequent higher level of care, treatment and accountability. Despite the record and arguments in the recent OUSF cases, Sprint and Verizon have not received the same Oklahoma Supreme Court determination as in the petroleum storage tank indemnity fund case *State ex rel Wright v. Oklahoma Corporation Commission*, 2007 OK 73, 170 P. 3d 1024.

OUSF charges are sometimes confusing to a retail customer, because the charge is for subsidies, and the money might go to a telephone company who is not serving the confused customer and might be serving customers in a distant telephone exchange. The Legislature set up the OUSF program by statute in 1997 to provide subsidies, without direct taxation, for primary universal service and free services for schools, libraries, hospitals that provide telemedicine, and county governments. Since 1997, the program has expanded to subsidize intrastate long distance service and even certain costs of highway relocations by city or state government. OCC rules contain requirements to seek alternative funding as a part of the OUSF application process. In its recent *Dobson* and *Medicine Park* decisions, the Oklahoma Supreme Court ruled that rural telephone companies may apply for OUSF money even before seeking federal money. Coming years will show Oklahoma phone customers just how much more they will pay using a new approach.

May 8, 2019