

IN THE MATTER OF A PERMANENT)
RULEMAKING OF THE OKLAHOMA)
CORPORATION COMMISSION AMENDING) CAUSE NO. RM 201400006
OAC 165:59, OKLAHOMA UNIVERSAL)
SERVICE)

SUPPLEMENTAL COMMENTS OF KELLOGG & SOVEREIGN® CONSULTING, LLC
Regarding PUD's Amended Proposed Rules January 23, 2015

1. Introduction

Kellogg & Sovereign® Consulting, LLC (KSLLC) on behalf of the schools, libraries and health care providers (HCPs) for which it consults submits these comments on the proposed rules dated January 23, 2015.

KSLLC has been managing federal universal service applications since 1998. Our professional staff works with the FCC's Rural Health Care programs and E-Rate programs on a daily basis on behalf of over 350 clients with annual filing of approximately 650 applications accounting for funding in excess of \$100 million each year. Accordingly, we have an in-depth knowledge and are well versed in all areas of the Federal Communications Commission (FCC) programs administered by the Universal Service Administrative Company (USAC).

KSLLC appreciates the opportunity to provide input to the Oklahoma Corporation Commission ("OCC" or "Commission") on the proposed rule changes.

II. Schools, Libraries and Healthcare Providers funding sources

Schools and Libraries have three sources of funding for their broadband connections. The first is the Federal Universal Service Fund, commonly referred to as the E-Rate program. The second source of funding is the Oklahoma Special Universal Service Fund ("OUSF"). The third source of funding is the school district itself, which is required to collect through taxes the funds necessary to operate the school district for that fiscal year.

Health care providers have a similar arrangement. Their first source of funding is the Federal Universal Service Fund, through either the Telecommunications Program or the Healthcare Connect Fund. Their second source of funding is the OUSF. In cases where these two sources of funding do not cover the complete cost of the broadband circuit, the third source of funding is the health care provider itself.

KSLLC urges the Commission to give full consideration to the multiple sources of funding for Schools, Libraries and Healthcare Providers. Rules for one program (OUSF) which are entirely contradictory to rules in a different program (Federal programs) harm the residents of Oklahoma. OUSF and E-Rate are designed to meet a common public interest goal – bringing broadband into the classroom for Schools and bringing broadband access to the community through the public library for the Libraries. OUSF and the federal health care funding programs also have a common goal – providing broadband so that patients have access to telemedicine services, which can improve healthcare outcomes.

The rules enacted by the Commission should be complementary, not contradictory, in order to effectively achieve common public interest goals. In the case of Schools and Libraries, which are eligible for funding for the equivalent cost of a 1.5 Mbps circuit, these funds are essential to allowing it to meet the public interest goal. A 1.5 Mbps circuit is not sufficient bandwidth for a school. But this credit allows the school to close the gap between the actual cost of the bandwidth and funding from the E-Rate program, from which the majority of the Schools and Libraries' funding derives.

In the case of Schools and Libraries, having contradictory rules between the federal and state funding programs creates a unique situation. Because the majority of funding derives from the federal program, and the federal program issues commitments prior to the Commission, Schools and Libraries are incentivized to ensure compliance with the federal program and their own procurement requirements. They are potentially risking losing out on funding from the OUSF, even though they are entirely compliant with stringent and long-held federal competitive bidding requirements. And the residents of the impacted Schools and Libraries have paid into the Special Universal Service Fund and derived no benefit from the same, and in fact will either see services cut at the School or Library to make up for a revenue shortfall or see their property taxes increase to make up for the lost funding from OUSF. This benefits no one and is contradictory to the public interest goals for which the Special Universal Service Fund was created.

Healthcare Providers are also in a unique situation, but one which is completely different than Schools and Libraries. In our experience, applicant healthcare providers who are eligible for funding can receive discounts between 65 and 90 percent of actual eligible costs. If the applicant receives federal funding, the remainder usually is paid by OUSF. If there is any difference remaining, the Healthcare Provider would pay the remainder using its general revenue.

Oklahoma statute provides that eligible Healthcare providers can receive, at no cost, one telemedicine broadband connection. Because of this language, the incentive for Healthcare Providers is exactly the opposite of that of Schools and Libraries. Instead of being restricted to funding of just 1.5 Mbps, Healthcare Providers' funding is only restricted to the broadband necessary for telemedicine. While applicants are required to request funding from the federal program first, if their request is denied, the OUSF will pay for the broadband connection used for telemedicine. In the face of choosing between being compliant with the federal program and being compliant with the state program, Healthcare Providers are incentivized to be compliant with the state program, not the federal program. It is the difference between funding for 100% of the cost of the broadband connection vs. only 65 to 90% of the cost of the broadband connection.

Thus, as outlined throughout these comments, it is in the best interest of all parties involved that the Commission enact rules that are complementary, and not contradictory, to the federal universal service fund programs.

III. Competitive Bidding

We support the establishment of reasonable competitive bidding requirements for schools, libraries, and telemedicine recipients of funding. However, as we stated in our comments dated October 27, 2014, we strongly recommend that the Commission align their procedures regarding competitive bidding with the FCC programs for funding support for schools, libraries, and telemedicine. All of the FCC's programs for support require adherence to strict competitive bidding requirements. The FCC's competitive bidding requirements for applicants are well established, having been in place since 1998. The FCC has long held that competitive bidding is a corner stone of preventing waste, fraud and abuse in the federal program and as such requires all applicants undergo competitive bidding with very few exceptions as detailed in the Health Care Connect Fund Order¹ and the E-rate Modernization Order².

A. COMPETITIVE BIDDING FOR SCHOOLS AND LIBRARIES

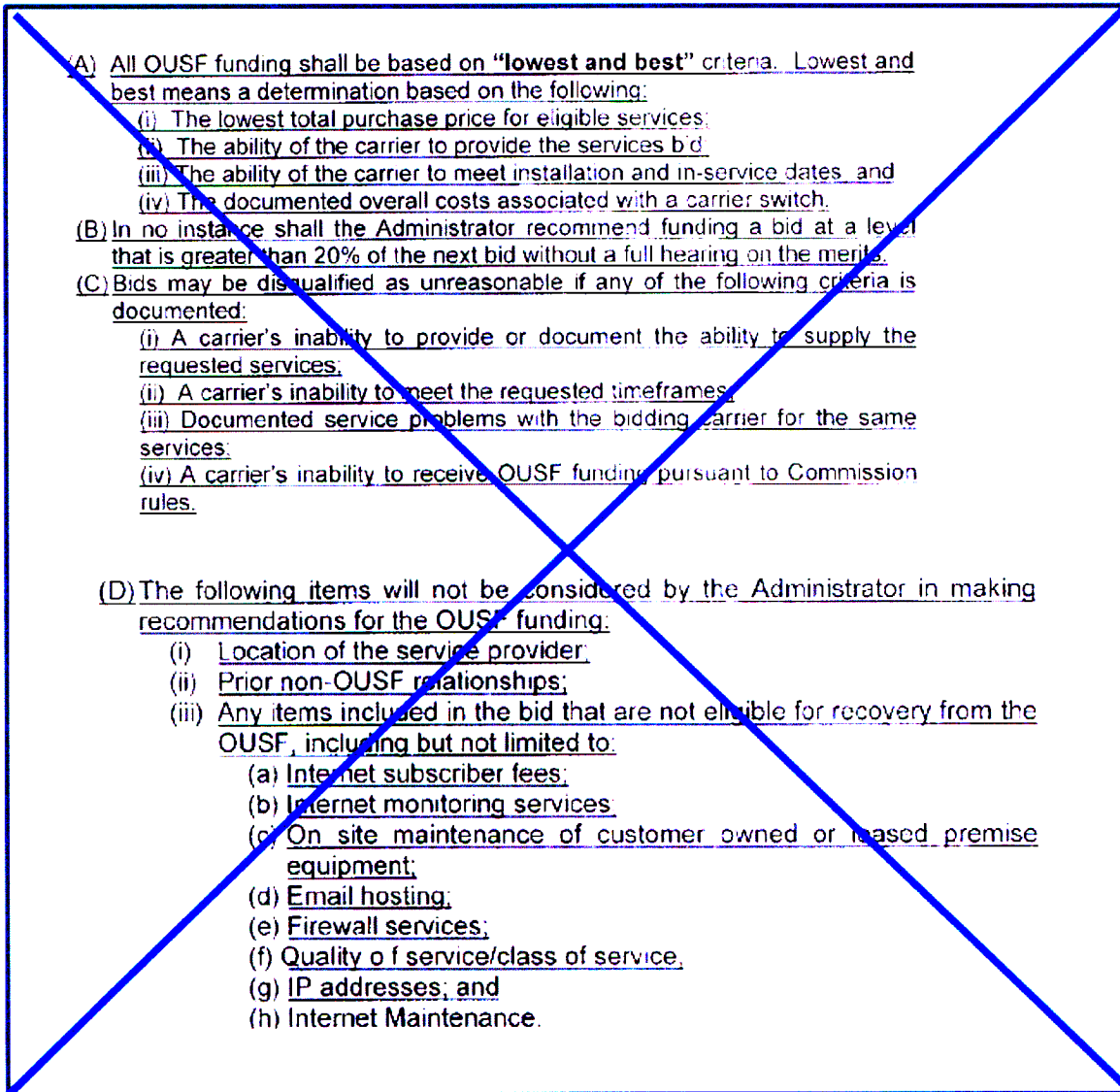
In the proposed rules dated January 23, 2015, we therefore support the following language regarding competitive bidding as stated in 165:59-7-1 (e)(1) "Competitive bidding should be used for all services where OUSF funding will be sought, including costs for Internet access to schools and libraries for the balance not paid by E-Rate, up to the eligible 1.5 Mbps building credit equivalent." This language requires applicants to competitively bid for services.

However, for the various reasons we provided in our comments dated October 27, 2014, we do not agree with the language regarding "lowest and best" criteria set forth in 165: 59-7-1 (e) paragraphs (A) through (D). We believe that requiring a separate competitive bidding criteria and additional evaluation criteria sets up the participating recipients as well as the OUSF fund itself for unintended consequences that can result in undue financial hardship for the schools and libraries that the program was intended to support.

WE RECOMMEND THAT THE COMMISSION STRIKE THE FOLLOWING LANGUAGE FROM THE PROPOSED RULES. By removing this language, the recipients of OUSF support for schools and libraries will be required to comply with the FCC's competitive bidding requirements without a second layer of additional standards.

¹ *In the Matter of Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, FCC 12-150, 27 FCC Rcd 16678, ¶ 226-269 (2012) (*Healthcare Connect Fund Order*). See also 47 C.F.R. § 54.636, 54.638, and 54.642.

² *In the Matter of Schools and Libraries Universal Service Support Mechanism*, WC Docket No. 02-6, Order, FCC 12-150, 29 FCC Rcd 8870, ¶ 155-186 (2014) (*E-Rate Modernization Order*). Competitive bidding rules for Universal Support for Schools and Libraries ("E-Rate") can be found at 47 C.F.R. § 54.503.



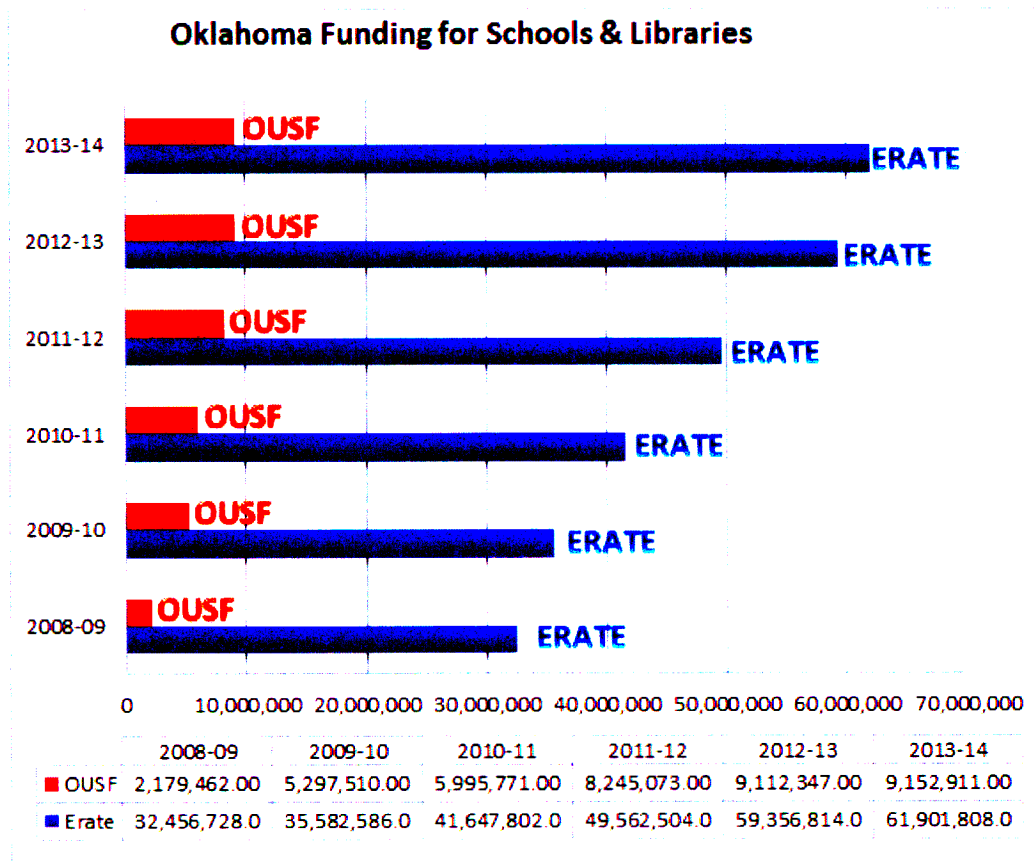
The FCC’s programs already have very strict guidelines regarding competitive bidding. Additionally, in the E-Rate program, the FCC requires that service providers comply with the “Lowest Corresponding Price Rule” that states:

Providers of eligible services shall not submit bids for or charge schools, school districts, libraries, library consortia, or consortia including any of these entities a price above the lowest corresponding price for supported services, unless the Commission, with respect to interstate services or the state commission with respect to intrastate services, finds that the lowest corresponding price is not compensatory. Promotional rates offered by a service provider for a period of more than 90 days must be included among the comparable rates upon which the lowest corresponding price is determined.³

³ 47 C.F.R. § 54.511(b). Please note, this rule applies only to the E-Rate program and does not apply to the Rural Health Care Support Mechanism.

The FCC has an extensive case history regarding implementation and enforcement of their competitive bidding rules and there is absolutely no reason for the Commission to establish and maintain a separate standard.

Serious negative unintended consequences could result from having a second set of competitive bidding standards. The following table⁴ shows the amount of E-Rate funding received by schools and libraries in Oklahoma over the past six years compared to OUSF funding support budgeted for schools and libraries.



The amount of funding from the FCC’s E-Rate program is significantly greater than the funds expended by OUSF. If the Commission implements a second set of mandated evaluation criteria that adds more confusion and uncertainty as to how to be compliant with these requirements, along with denials for non-compliance, then the FCC’s funding for schools and libraries in Oklahoma is at risk. In fact, as we stated in our comments in October, the school or library is required to pay their non-discount share. In many instances, the non-discount share is being paid by OUSF. If OUSF does not pay the non-discount share, then the school or library would no longer be in compliance with the federal program and would in turn be required to pay 100% of their E-Rate funding back to the FCC for non-compliance. This is certainly not the result Oklahomans would like to see.

⁴ OUSF budgets per PUD Cause numbers: 200900010, 201000006, 201100002, 201200005, 201300002, and 201400001. FCC E-Rate funding for Oklahoma per funding commitment tool dated 2/3/2015: www.usac.org/sl

Schools and libraries are not easily able to pay for the non-discount share. They are relying on the funding from OUSF to pay the majority, if not all of, the non-discount share. When the School or Library learns two years after the start of the broadband service that OUSF funding has been denied, the school cannot just go back and re-open the financial books from two years prior. Due to the ad valorem tax support component of school and library budgets, extensive procedures must be followed regarding payment of services related to closed out prior year budgets. In most cases, legal counsel and tax payer hearings are required along with formal notices and tax assessments.

Schools and libraries are already “capped out” at the T-1 rate. There is no reason to add another layer of compliance or to risk the FCC funding that our schools and libraries depend on in order to provide our students and library patrons in Oklahoma with the broadband access to resources we need to educate our students and connect our citizens to information online.

B. COMPETITIVE BIDDING FOR TELEMEDICINE PROVIDERS

For telemedicine providers, the same unintended negative results could occur by implementing a second competitive bidding standard. For telemedicine, effective January 2013, the Corporation Commission added a requirement that health care providers who are eligible to participate in the FCC’s rural health care programs should request funding support from the FCC programs first.⁵ This one change alone is expected to result in significant relief for the Oklahoma fund. With the new Health Care Connect fund, rural health care providers as well as urban health care providers who are able to participate in a consortium can receive funding support for 65% of the cost of their Internet Access and broadband data connections.

As an example, funding received from two health care consortiums in Oklahoma recently resulted in funding awards from the FCC of \$1.57 million. *These funds would otherwise have been paid by the Oklahoma fund.*

The role of the Commission should be to encourage health care providers to participate in both funds and not to discourage them by creating two separate competitive bidding standards with additional bureaucracy to navigate added at the state level.

In the proposed rules dated January 23, 2015, we support the recommended change for competitive bidding as stated in 165:59-7-1 (f)(1) “Competitive bidding should be used for all services where OUSF funding will be sought.”

However, we do NOT agree with the “lowest and best” criteria set forth in 165: 59-7-1 (f) paragraphs (A) through (D).

⁵ 165:49-3-62 (b) states “the eligible local exchange telecommunications service provider requesting OUSF funding for primary universal service shall make every reasonable and timely effort to obtain funding from alternative funding sources designated to support universal service”.

By requiring a separate competitive bidding criteria and additional evaluation criteria, the new procedures would create unintended negative consequences and financial hardship on the recipients of the program it is intended to support.

Even though there are good intentions by the Commission to control costs, creating a secondary competitive bidding criteria will create a situation where a bureaucratic process overrides the selection of service providers for the provision of health care. The selection and evaluation process needs to remain with the experts in technology retained by health care providers for the provision of quality health care. A wide range of criteria is used by health care providers across the state to meet their unique needs in providing quality telemedicine care for Oklahomans. By requiring the recipients of Oklahoma's telemedicine funding to participate in the FCC programs and to require compliance with competitive bidding is already a significant step in reducing the demand on the Oklahoma fund.

WE RECOMMEND THAT THE COMMISSION STRIKE THE FOLLOWING LANGUAGE FROM THE PROPOSED RULES. By removing this language, the recipients of OUSF telemedicine support will be required to comply with the FCC's competitive bidding requirements without a second layer of additional standards.

~~(f) The Commission will utilize the following procedures when evaluating a request for OUSF funding for a telemedicine line:~~

~~(1) Competitive bidding should be used for all services where OUSF funding will be sought.~~

~~(A) All OUSF funding shall be based on "lowest and best" criteria. Lowest and best means a determination based on the following:~~

~~(i) The lowest total purchase price for eligible services;~~

~~(ii) The ability of the carrier to provide the services bid;~~

~~(iii) The ability of the carrier to meet installation and in-service dates; and~~

~~(iv) The documented overall costs associated with a carrier switch.~~

~~(B) In no instance shall the Administrator recommend funding a bid at a level that is greater than 20% of the next bid without a full hearing on the merits.~~

~~(C) Bids may be disqualified as unreasonable if any of the following criteria is documented:~~

~~(i) A carrier's inability to provide requested services;~~

~~(ii) A carrier's inability to meet the requested timeframes;~~

~~(iii) Documented service problems with the bidding carrier for the same services;~~

~~(iv) A carrier's inability to receive OUSF funding pursuant to Commission rules.~~

~~(D) The following items will not be considered by the Administrator in making recommendations for the OUSF funding:~~

~~(i) Location of the service provider;~~

~~(ii) Prior non OUSF relationships;~~

~~(iii) Any items included in the bid that are not eligible for recovery from the OUSF, include but not limited to:~~

~~(a) Internet subscriber fees;~~

~~(b) Internet monitoring services;~~

~~(c) On site maintenance of customer owned or leased premise equipment;~~

~~(d) Email hosting;~~

~~(e) Firewall services;~~

~~(f) Quality of service/class of service;~~

~~(g) IP addresses; and~~

~~(h) Internet Maintenance;~~

~~(i) Router Configuration~~

As stated in Section II of these comments, the unintended negative consequence that the Commission is creating is to incentivize Healthcare Providers to be compliant with the state requirements. The state requirement to choose the “lowest and best” service provider is contradictory to the FCC requirement that the Healthcare Provider choose the “most cost effective”. When faced with the choice between some funding from the federal program or 100% funding from OUSF, applicants will ensure compliance with the requirement to choose “lowest and best”. Doing so means they will be denied funding from the federal program when the “lowest and best” is not the same as the “most cost effective”. When this happens, OUSF will be disbursing more funding than it would need to otherwise. This is not beneficial for any of the parties involved, and not in the best interest of the residents of Oklahoma.

C. RECOMMENDATION

There is no public interest argument for creating two different standards for competitive bidding – one state standard and one federal standard. The federal requirement for all applicants to choose the “most cost effective” service provider has endured since 1998 and is a nationwide standard. “Lowest and best” is ***not the same*** as “most cost effective”. While the Commission is attempting to create safeguards for the fund, it is in fact doing the opposite. Schools, Libraries and Healthcare providers should be able to participate in, and receive funding from both the federal and state programs. Doing so is in the best interest of all Oklahomans. It is not in the best interest of any of the parties for the Commission to create adverse incentives which results in the exact opposite of its intentions. The majority of funding for Schools, Libraries and Healthcare Providers comes from the federal program. The Commission should not enact any rules or regulations which jeopardizes that funding.

IV. Timing of OUSF Funding approval

As stated in our comments dated October 27, 2014, timing of the approval of OUSF funding is problematic in that approval of OUSF support for a new service can be as late as two years after the applicant school, library or health care provider has signed contracts with a service provider and commenced service.

The current procedure followed by the Corporation Commission of reviewing orders submitted by the service provider within 18 months of the start of service is not a problem if the Commission approves the amount requested. Problems arise when the amount of support anticipated by the service provider and recipient of service differs from the actual support amount approved.

In order to mitigate the problems that arise with the timing of OUSF funding approval, we recommend the following:

A. NOTIFICATION TO END USER – SCHOOL, LIBRARY OR TELEMEDICINE RECIPIENT OF FUNDING

Proper notice of estimated funding should be provided prior to the start of the funding year.

1. The Corporation Commission should provide notice to the recipient of service when action is taken at the Corporation Commission on behalf of a recipient. Several contacts should be notified including the primary administrative contact (e.g. CEO or school superintendent), technical contact (e.g. IT director), and payables contact (e.g. CFO, payables department manager, school treasurer).
2. Provide clear guidance on determining expected OUSF support prior to start of service (July 1).
 - a. The telemedicine recertification process provides telemedicine recipients with an understanding of maximum approved bandwidth levels. This process gives recipients advance notice and information that can be relied upon prior to the start of the funding year (July 1).
 - b. Schools and libraries in most cases have already received audits or verification of building counts. Any change in approval should be provided in writing by the Commission prior to the start of the funding year (July 1).
 - c. Schools and libraries need to have assurance of the T-1 rate x building count. If the Commission will be reducing support below the approved T-1 rate x building count then notice needs to be provided to the school or library prior to the start of the funding year (July 1).
3. Provide quarterly reporting of disbursements made on behalf of a school, library, or telemedicine recipient of funding.
 - a. By providing reports to the designated contacts at the school, library or telemedicine recipient, there will be an early warning system for the recipient. This will allow changes to be made by the recipient if the amount of funding support is not as expected. Increased accountability and transparency in the program will result in not only better oversight from all levels but also less “after the fact” problems in funding not identified until well after the close of the funding year.
 - b. Provide a funding commitment tool on the Corporation Commission web site similar to the one implemented by USAC⁶ for the Schools & Libraries Program (“E-rate”). The ability to run reports state-wide will give not only the individual recipients and service providers the ability to review funding at the state level but also provide access to stakeholders to analyze data and identify trends in funding in order to evaluate the effect of procedural and rule changes.

B. PRE-APPROVAL PROCESS – IMPLEMENT PROCEDURE FOR RECIPIENT OF FUNDING

The pre-approval process is helpful but there needs to be a mechanism by which the authorized decision maker for the school, library or telemedicine funding recipient can initiate the pre-approval process. We understand that the service provider has to submit the request for pre-approval, however, a streamlined process that would allow the recipient to initiate the pre-approval process would be extremely effective.

Currently, most recipients of OUSF funding are not aware of the pre-approval process and even if they are aware, they do not have a mechanism to initiate the pre-approval process. They often do not know how to get in contact with the correct person with their service provider who is designated to represent

⁶ <http://www.usac.org/sl/tools/commitments-search/Default.aspx>

the service provider before the Commission. By the time their request for pre-approval makes it to the correct person within the service provider’s organization, the time requirement to file their application with the FCC program would in most cases have passed well before a response to the pre-approval process would have been received.

One idea would be to provide a “Pre-Approval Process” request form on the Corporation Commission web site. The authorized administrator for the school, library or telemedicine recipient would be able to complete the form with the basic facts in their situation then submit to the Corporation Commission.

If the questions raised were of a simplified nature that could be answered by the Commission staff, a response could be received by the recipient of funding in less than 30 days. This would reduce staff time later required to process a pre-approval request that may not have been necessary.

If, however, the Commission staff determines that the inquiry requires a formal pre-approval process, the Commission could then notify the recipient’s service provider representative to the Commission.

The current pre-approval process initiated by the service provider would not need to be changed.

The “pre-approval” application form would streamline the process for the recipient of funding and give them the ability to notify the Commission and receive guidance on how to initiate the process with their service provider.

V. Program Sustainability

A. REDUCTION IN THE CONTRIBUTION FACTOR TO 0.64% ADVERSELY AFFECTED THE FUND BALANCE.

The following table shows the history of the OUSF contribution factor per the Commission’s proceeding PUD 201400341 to establish an annual contribution factor:

HISTORY OF OUSF FACTOR CALCULATION (PUD 201400341 - Exhibit CH-2)

	6/30/2012	6/30/2013	6/30/2014	6/30/2015	6/30/2016
PUD Cause no.	201100002	201200005	201300002	201400001	201400341
Contribution Base	1,676,538,393	1,543,809,009	1,484,410,006	1,277,283,598	1,156,202,137
Revenue Required	41,706,453	45,451,251	63,662,904	49,809,803	68,905,676
Carryover Balance	(10,939,763)	(2,600,806)	54,168,832	22,200,227	13,782,727
Net Rev Require	52,646,216	48,052,057	9,494,072	27,609,576	55,122,949
Calculated Factor	3.1402%	3.1126%	0.6396%	2.1616%	4.7676%
Established Factor	3.14%	3.14%	0.64%	2.16%	4.77%

The following analysis shows that if the Commission had kept the contribution factor constant at 3.14% for 6/30/2014 and 6/30/2015, and the variables were the same as projected regarding the contribution base, the carryover balance for 6/30/2016 would have been \$63,410,356 instead of \$13,782,727.

PRO FORMA - OUSF FACTOR CALCULATION IF FACTOR REMAINED 3.14% FOR 2014-2015

	6/30/2012	6/30/2013	6/30/2014	6/30/2015	6/30/2016
PUD Cause no.	201100002	201200005	201300002	201400001	201400341
Contribution Base	1,676,538,393	1,543,809,009	1,484,410,006	1,277,283,598	1,156,202,137
Revenue Required	41,706,453	45,451,251	63,662,904	49,809,803	68,905,676
Carryover Balance	(10,939,763)	(2,600,806)	54,168,832	59,310,477	63,410,356
Net Rev Require	52,646,216	48,052,057	9,494,072	(9,500,674)	5,495,320
Calculated Factor	3.1402%	3.1126%	0.6396%	-0.7438%	0.4753%
Established Factor	3.14%	3.14%	3.14%	3.14%	3.14%

6/30/2014:	
Contribution Base	1,484,410,006
3.14%	46,610,474.19
0.64%	9,500,224.04
Increase:	37,110,250.15

6/30/2015:	
Contribution Base	1,277,283,598
3.14%	40,106,704.98
2.16%	27,589,325.72
Increase:	12,517,379.26

Total Increase:	49,627,629.41
Actual Carryover Balance	13,782,727.00
Pro-Forma Balance	63,410,356.41

NOT ACTUAL CONTRIBUTION FACTOR - INCLUDED TO DEMONSTRATE SIGNIFICANT EFFECT ON FUND BALANCE BY CHANGES TO CONTRIBUTION FACTOR

BALANCE COULD HAVE BEEN \$63,410,357 IF CONTRIBUTION FACTOR WAS SET TO SAME LEVEL AS 6/30/2012 AND 6/30/2013

There have been recent concerns raised regarding the sustainability of the program. The recent increases in the contribution factor from 0.64% to 2.16% and most recently to 4.77% create an alarming picture of the demand on the fund. However, as can be seen in the pro-forma analysis above, if the contribution factor for 6/30/2014 and 6/30/2015 had remained at the same level of 3.14% as established for 6/30/2012 and 6/30/2013, the balance in the fund would be approximately \$63 million instead of \$13 million and a contribution factor of 0.48% would have been calculated for the year ended 6/30/2016 instead of 4.77%.

To make matters worse, as stated by Chris Herbison in her Pre-filed Testimony dated February 12, 2015 (Cause No. PUD 201400341, page 9 of 12), "the Commission did not initially adopt the recommended 2.16% OUSF factor in Cause No. PUD 201400001, but instead continued the 0.64% factor from the previous funding year and then raised it to 2.16% on October 30, 2014. **Therefore, the OUSF will not collect all of the \$27,609,576 that was budgeted to meet the funding requirement for FY2015.**" [Emphasis added]

The loss of funds from the adjustment in the factor from 3.14% to 0.64% and continuation of the 0.64% factor through October 30, 2014, can only be recovered by increasing the factor significantly to 4.77%.

If, however, the factor had remained constant for the four year period, the carry over balance would have been closer to \$63 million instead of \$13 million.

RECOMMENDATION

The current process of determining the contribution factor each year is reasonable. However, the Commission should consider implementing a minimum contribution factor to allow a more consistent fund balance which in turn would provide greater stability in the program.

With the declining contribution base (31% reduction since 6/30/2012) the Commission needs to maintain a sufficient carryover balance in anticipation of a reduced contribution base in future years.

The Commission should review the contribution base along with rule and statutory changes regarding services subject to the contribution factor.

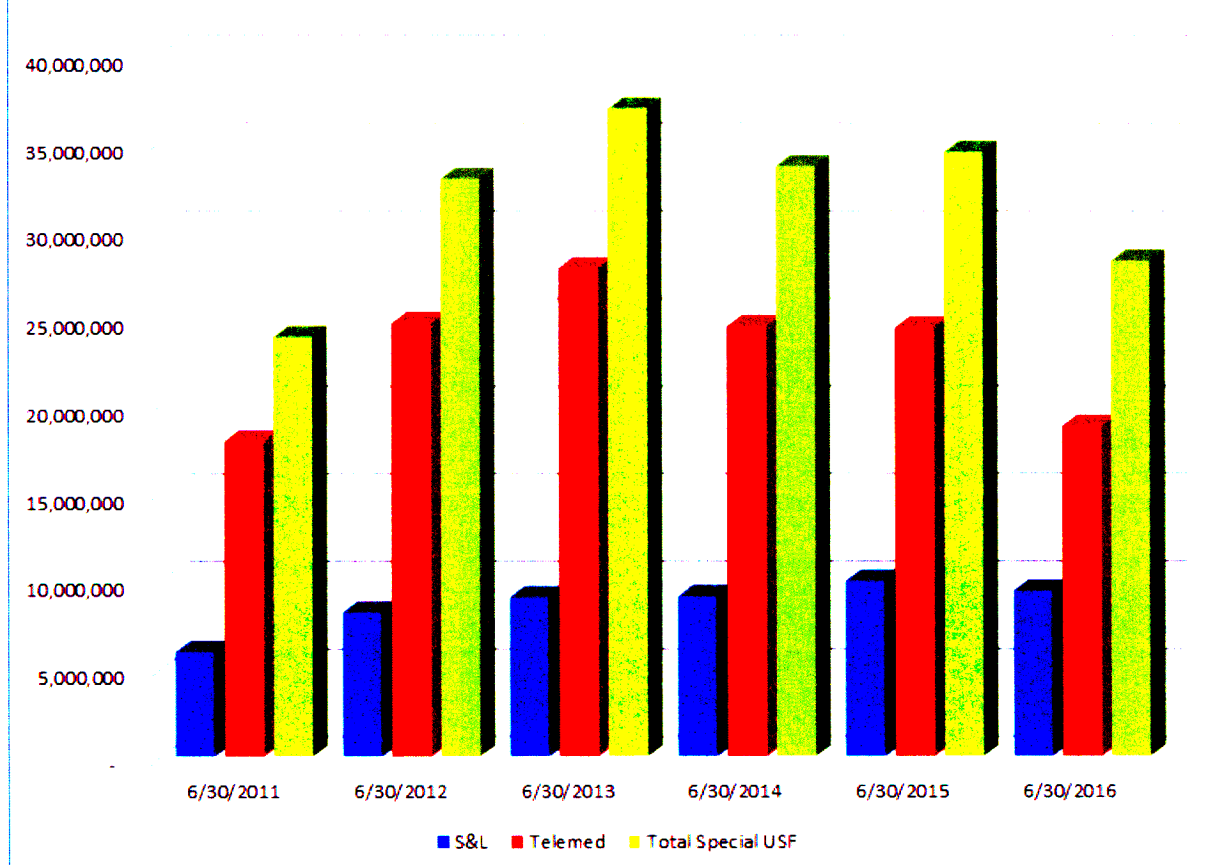
B. STABILIZATION IN DEMAND FOR SUPPORT FOR SCHOOLS, LIBRARIES AND TELEMEDICINE IS PROVIDING RELIEF ON THE FUND

Based on the historical data as listed in the Corporation Commission's annual proceedings for establishment of the contribution factor, requests for support for both schools and libraries ("S&L") and telemedicine ("Telemed") has remained fairly stable over the past 5 years.

Beginning in 2012, the Corporation Commission implemented procedures to ensure that schools were reporting accurate building counts with eligible use. Additionally, telemedicine recipients were required to complete an annual recertification process beginning in February 2013. The Commission also updated their internal data reporting and collection capabilities in order to provide better oversight and administration of the fund.

As shown in the table below, the various changes have resulted in stabilization of the funding support provided to schools, libraries, and telemedicine.

Special Universal Service - Annual Budget



PUD #	2011-00002		2012-00005		2013-00002		2014-00001		2014-00001		2014-00341	
	6/30/2011		6/30/2012		6/30/2013		6/30/2014		6/30/2015		6/30/2016	
	budget	*	budget	*	budget		budget		projection		projection	
S&L	5,995,771	25%	8,245,073	25%	9,112,347	25%	9,152,911	27%	10,034,894	29%	9,451,341	33%
Telemed	17,987,313	75%	24,735,218	75%	27,880,972	75%	24,562,078	73%	24,476,475	71%	18,855,814	67%
Total Special USF	23,983,084		32,980,290		36,993,319		33,714,989		34,511,369		28,307,155	
	% Increase	13%	% Increase	38%	% Increase	12%	% Increase	-9%	% Increase	2%	% Increase	-18%

*Break out between S&L and Telemedicine is not available for 6/30/2011 and 6/30/2012. Amounts shown are an estimate of 25% for S&L and 75% for Telemed.

The estimate for funds needed by telemedicine for 6/30/2016 is shown in PUD 201400341 as \$51,401,205. However the explanation provided by Chris Herbison in her Pre-filed testimony dated February 12, 2015 (Cause No. PUD 201400341, Page 5 of 12) is as follows:

This amount [\$51,401,205] represents major funding requests that are pending payments from the OUSF fund. This amount includes causes that do not yet have a final order and requests that will require true-up for approval. The service periods covered date back to May 2011 and PUD has estimated monthly recurring charges through June 30, 2016. **Eight requests alone account for \$32,545,391.** Major funding requests were included as encumbered funding in previous years. The amounts are being reflected here to identify the funding category impacted. [Emphasis added]

Therefore for purposes of this analysis in trends on demand for the program, we removed the \$32 million from the projection for 6/30/2016 to show a total of \$18,855,814 for telemedicine funding.

The 2011 "prior year charges" were also discussed March 19, 2013, in the pre-filed testimony of Chris Herbison (Cause No. PUD 201300002, page 7 of 10) when Ms. Herbison discussed why the fund balance had reached its current level of \$54,168,132 as follows:

The OUSF factor was increased significantly in the last couple of years due to a ballooning of recovery requests. Numerous carriers had held on to funding requests that were well beyond the 18 month timeframe as set forth in the Commission's Chapter 59 rules. In calendar year 2011, numerous large OUSF requests were filed and could not be completed within the required 90 days. These causes have received multiple extensions of time to allow a complete review of each cause. Some of the extensions were made at the carriers' request to permit additional time for submission of pertinent information. Some companies filed applications that were incomplete and some that had numerous entities, i.e., schools, libraries and healthcare providers, in order to meet the filing deadline established by PUD to clean up pending requests. This resulted in estimated payments not being made in the same year collections occurred.

The funding support for telemedicine has been reduced as a result of the implementation of the recertification process for telemedicine beginning in 2013.

In her pre-filed testimony dated March 28, 2014 (Cause No. PUD 201400001, Page 7 of 10), Chris Herbison stated the following:

PUD developed and implemented a recertification process for telemedicine recipients in FY 2013 which continued in FY 2014. As a result of this recertification process 83 telemedicine lines were identified as no longer eligible for OUSF funding, either because the entity has become a "for-profit" healthcare provider, the entity had more than one telemedicine line at the facility, the entity did not have a hospital license issued by the Department of Health, or the entity is not a not-for-profit mental health and substance abuse facility as certified by the Oklahoma Department of Mental Health and Substance Abuse Services. Additionally, 135 recipients of telemedicine funding were advised that the amount of bandwidth funded by the OUSF would be decreased, effective December 31, 2013. Beginning January 1, 2014, this resulted in a savings of about \$4.5 million when contrasted to the amount of telemedicine that was being funding in December 2013.

With the stabilization of funding demand since 2012 and the new procedures in place regarding telemedicine recertification, audits of school buildings and verification of services received, the data shows that the negative perception of sustainability of the program is not related to exponential increases in demand for funding from schools, libraries and telemedicine.

Instead, the negative perception of sustainability of the program is related to the reduction of the contribution factor to 0.64% plus ongoing processing of prior year requests dating back to 2011 which are included annually in the budget totals.

RECOMMENDATION

Amounts budgeted for Special Universal Services need to be separated between monthly recurring charges and prior year outstanding causes. It is difficult to determine trends in funding demand with the prior years' budgets already included in prior years combined in the current year budget amounts.

VI. Additional Recommendations

1. TERMINOLOGY REGARDING ALTERNATIVE DISCOUNTS – NEEDS TO INCLUDE SUPPORT ISSUED BY USAC FOR BOTH SCHOOLS & LIBRARIES (E-RATE) AND TELEMEDICINE (FCC'S RURAL HEALTH CARE PROGRAMS: TELECOMMUNICATIONS PROGRAM OR HEALTH CARE CONNECT FUND)

165:59-3-62. Procedures for requesting funding from OUSF. Proposed item (p) on page 17 of the January 23, 2015 proposed rules states:

An eligible telecommunications carrier or provider shall submit changes to the monthly recurring support based on ~~e-rate~~ E-Rate discount adjustments and/or changes to the OUSF assessment factor to the Fund Administrator or contracted agent via the monthly ~~or quarterly~~ true-up reports, for processing. Any ongoing monthly recurring charges will be adjusted as necessary based on the appropriate ~~e-rate~~ E-Rate discount approved by the Universal Service Administrative Company ~~and/or any change in the OUSF assessment factor~~.

Since telemedicine providers receive support from the FCC's rural health care telecommunications program or the FCC's Health Care Connect Fund, the language should take into account discounts received not only by schools and libraries under the E-Rate program but also by telemedicine providers under the FCC's rural health care programs.

Also, to be consistent with 165:49-3-62(b) which references "discounts received from alternative funding sources designated to support universal service" we recommend the following wording:

An eligible telecommunications carrier or provider shall submit changes to the monthly recurring support based on e-rate discount adjustments received from alternative funding sources designated to support universal service such as E-rate and the FCC's rural health care programs, and/or changes to the OUSF assessment factor to the Fund Administrator or contracted agent via the monthly ~~or quarterly~~ true-up reports, for processing. Any ongoing monthly recurring charges will be adjusted as necessary based on the appropriate e-rate discount approved by the Universal Service Administrative Company. ~~and/or any change in the OUSF assessment factor~~.

2. PROCEDURES USED BY THE OUSF ADMINISTRATOR

We recommend striking the following paragraph:

165:59-7-1 (G):

The procedures used by the OUSF Administrator for evaluating requests for OUSF funding may be changed upon ninety (90) days notice, by posting revisions to the Commission's website at least 90 days prior to their effective date. The procedures will be posted as "Memorandum OUSF Operational Guidelines." Interested persons will be notified of the posting via e-mail, based upon addresses supplied to the OUSF Administrator by the interested person. Any affected person who objects to the proposed revisions to the Memorandum OUSF Operational Guidelines may file an Application with the Commission prior to the expiration of the 90 day notification period, requesting relief from the applicability of revisions to the Memorandum OUSF Operational Guidelines. The filing of an Application will suspend the applicability of the proposed revisions until either this Section of Chapter 59 is modified by rulemaking or the Commission issues an Order granting the requested relief from the proposed revisions to the Memorandum OUSF Operational Guidelines.

The 90 days' notice is not sufficient to meet the annual budget requirements of schools, libraries or telemedicine. All of the entities eligible for OUSF discounts are governed by boards that are either funded by taxpayers or not-for-profit organizations that must be able to plan on an annual basis.

In most cases a minimum of 18 months is needed to provide sufficient notice for these organizations to make contractual and budget changes when administrative procedures are changed.

We agree with the comments submitted by Cox Oklahoma Telecom in their Second Supplemental Comments filed February 13, 2015 that state, "Allowing the OUSF administrators to change the rules of the game without the due process automatically afforded through a rulemaking likely violates the Administrative Procedures Act as well as potentially removes some of the regulatory certainty that other recent changes have brought to the OUSF application process."

3. PROCEDURES TO ENSURE COMPLIANCE WITH REQUIREMENTS TO SEEK ALTERNATE FUNDING FIRST.

We agree with the recommended changes in the proposed procedures to ensure compliance with the requirements to seek alternate funding first. As we stated in our October 2014 comments, during TMAG's 2012 analysis, we determined that the fund would save approximately 25% of the costs associated with telemedicine support by requiring telemedicine providers to seek alternate funding. With the advent of the Health Care Connect Fund, our original estimate may be even greater since the HCF provides support at 65% of the cost of eligible services.

4. DEFINITION OF INELIGIBLE QUALITY OF SERVICE PRODUCT

In both the schools and libraries proposed procedures and the telemedicine procedures the proposed rules list as ineligible "quality of service product."

165:59-7-1(e)(19) states:

Any additional service above and beyond the internet access line on contracts and invoices will be denied, unless good cause is shown for reasonable pricing and public interest. Invoices provided to request recovery from the OUSF must contain a breakdown of non-eligible expenses, such as **Quality of Service product**, firewall, email packages, domain registration, etc. [Emphasis added]

165:59-7-1(f)(10) states:

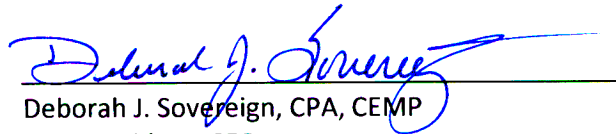
Any additional service above and beyond the telemedicine line on contracts and invoices will be denied, unless good cause is shown for reasonable pricing and public interest. Invoices provided to request recovery from the OUSF must contain a breakdown of non-eligible expenses, such as **Quality of Service product**, firewall, email packages, domain registration, etc. [Emphasis added]

“Quality of Service” has a wide range of meanings from the requirements in a service level agreement regarding reliability, packet loss and jitter to a separate service billed separately for virus and intrusion detection protection. To avoid frustration and confusion, the words used by the Commission in this section to represent the ineligible “Quality of Service Product” needs to be defined in 165:59-1.4. Definitions.

VII. Conclusion

We appreciate the hard work, dedication and attention the Oklahoma Corporation Commission has given to the success of the Oklahoma Universal Services Fund, and we appreciate the consideration of our comments which are offered with a mutual intent to meet the goals of the program while protecting the fund against waste, fraud and abuse.

Respectfully Submitted,

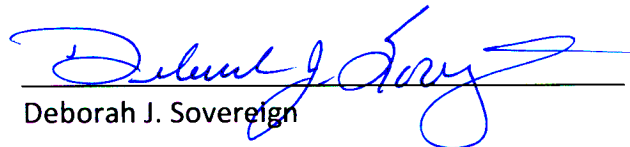


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February 16, 2015

CERTIFICATE OF SERVICE

The undersigned certifies that on this 16th day of February, 2015, a true and correct copy of the above and foregoing comments of Kellogg & Sovereign® Consulting, LLC were sent via electronically to each party of record in these causes.


Deborah J. Sovereign