

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

IN THE MATTER OF A PERMANENT)
RULEMAKING OF THE OKLAHOMA)
CORPORATION COMMISSION)
AMENDING OAC 165:59, OKLAHOMA)
UNIVERSAL SERVICE AND)
OKLAHOMA LIFELINE RULES)

CAUSE NO. RM 201700006

FILED
MAR 06 2017

Comments of
The Oklahoma Technology Association
Oklahoma Public School Technology Directors
Kellogg & Sovereign® Consulting, LLC

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

INTRODUCTION

Greg Kasbaum, Executive Director, Oklahoma Technology Association representing school districts across the State of Oklahoma and Colin Webb, Director of Technology, Noble Public Schools, representing a committee of Oklahoma public school district technology directors listed in Appendix A of this document, and Kellogg & Sovereign® Consulting, LLC, submits these comments. We appreciate the opportunity to provide input to support the goals of Special Universal Service.

COMMENTS

Based on discussions at the February workshops, it appears that the Oklahoma Corporation Commission ("OCC") plans to adopt a definition of "technology neutral" that is inconsistent with the Federal Communications Commission ("FCC") definition and that would inappropriately keep OUSF Beneficiaries from obtaining the best value services for their needs. We encourage the OCC to allow OUSF Beneficiaries to describe the services they wish to purchase, including using the term "fiber," as permitted by the FCC for its universal service programs.

TECHNOLOGY NEUTRAL

As Debi Sovereign with Kellogg & Sovereign Consulting presented during the technical conference dated February 22, 2017, we are concerned with the Public Utility Division of the Oklahoma Corporation Commission's ("PUD") interpretation of the term "technology neutral" as used in the statute as follows:

17 O.S. §139.102 – Definitions

6. "Competitively neutral" means not advantaging or favoring one person or technology over another; [emphasis added]

17 O.S. §139.109.1 A.

5. Oklahoma Universal Service Fund Beneficiaries shall conduct a fair and open competitive bidding process to select the services and carrier eligible for support. The competitive bidding process shall meet the following standards:

- a. the solicitation of bids shall clearly identify the bandwidth range requested by the Oklahoma Universal Service Fund Beneficiary or consortium,
- b. the Oklahoma Universal Service Fund Beneficiary shall not limit bidders based upon technology, [emphasis added]
- c. the bidding shall be open to all carriers authorized to receive OUSF funding in the telephone exchange where the Oklahoma Universal Service Fund Beneficiary is located or where the members of the consortium are located, and
- d. the bidding shall not be structured in a manner to exclude carriers eligible to receive OUSF funding in the telephone exchange where the Oklahoma Universal Services Fund Beneficiary is located.

Recent Corporation Commission Guidance

During the February 2017 workshops, Derrel Fincher presented competitive bidding suggestions that applicants:

- ▶ Do:
 - Be clear that you will accept any technologies bid.
 - Be clear that your intent is to conform to OUSF competitive bidding requirements.
- ▶ Avoid
 - “Fiber preferred”
 - Selecting “Lit Fiber Service” without other selections

FCC TECHNOLOGICAL NEUTRALITY – UNIVERSAL SERVICE AND E-RATE

In its 1997 *Universal Service First Report and Order*, the FCC defined “competitive neutrality” in the universal service context as follows: “competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”¹

The FCC explained in the First Report and Order: ²

¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, ¶ 47 (1997).

² *Id.* ¶ 45.

In the Recommended Decision, the Joint Board recommended that the Commission's universal service policy "be a fair and reasonable balance" of all of the principles identified in section 254(b) and the additional principle of "competitive neutrality." The Joint Board also recommended that the principle of competitive neutrality include the concept of technological neutrality "by allowing the marketplace to direct the development and growth of technology and avoiding endorsement of potentially obsolete services."

The FCC also stated that "technological neutrality," which is a component of competitive neutrality, "does not guarantee the success of any technology supported through universal service support mechanisms, but merely provides that universal service support should not be biased toward any particular technologies."³

In the same order, the FCC emphasized the importance of "permitting schools and libraries full flexibility to choose among telecommunications services."⁴ The FCC stated that "in an environment of rapidly changing and improving technologies, empowering schools and libraries . . . to choose the telecommunications services they will use as tools for educating their students will enable them to use and teach students to use state-of-the-art telecommunications technologies as those technologies become available."⁵

The FCC has never suggested, in the *Universal Service First Report and Order* or elsewhere, that the mere mention of a specific technology by a Beneficiary in a request for proposal violates the concept of technological neutrality. In fact, the FCC has specifically allowed E-rate applicants to identify "fiber" as a service they were seeking.

By detailing "Fiber or Dark Fiber" on the Eligible Services List, the FCC fully expected applicants to use the word "fiber" when specifying services requested on the FCC Form 470.

The FCC discussed fiber at length in the 2014 Modernization Order and never suggested that it would be inappropriate for a school or library to specifically request fiber. In fact, schools and libraries that wish to seek support for leased dark fiber must also seek comparison bids for leased-lit fiber.⁶

On the contrary, prohibiting the beneficiary from discussing in detail the technologies they need would seem to undermine and be inconsistent with the FCC's stated goal of empowering schools and libraries to make their own choices.

FCC ELIGIBLE SERVICES LIST

17 O.S. 139.109.1 provides support for both schools and libraries based on the "E-rate Eligibles Services List (ESL) for Category One services as determined by the Federal Communications Commission."

³ *Id.* ¶ 49.

⁴ *Id.* ¶ 443.

⁵ *Id.*

⁶ *Modernizing the E-rate Program for Schools and Libraries; Connect America Fund*, WC Docket Nos. 13-184, 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, ¶¶ 29-42 (2014).

The FCC Eligible services list includes “Fiber” as a service eligible for support in Category One. Therefore, OUSF Beneficiaries should be able to state on their Forms 470 and other competitive bidding documentation that they are seeking bids for “fiber.”

USAC INSTRUCTIONS ON REQUESTING FIBER

The USAC News Brief dated March 3, 2017⁷ provides the following guidance to applicants on how to properly complete the FCC Form 470 for Fiber requests. Please note that the USAC news brief is for “fiber” requests. Clearly, USAC supports the use of the word “fiber” when requesting support for E-rate discounts.

USAC guidance clearly **allows applicants seeking leased lit fiber to only select “lit Fiber service” from the drop down options.**

The only requirement for selecting “Transport Only – no ISP Service” is for applicants who are seeking support for self-provisioned networks. Only for this very narrow group of applicants who are seeking to build out and support their own networks does the FCC require a broad comparison to ensure that utilizing E-rate funds for self provisioned networks is the most cost effective solution compared to not only leased lit fiber options but also to third-party networks such as a city municipality.

Reminders for Submitting Fiber Requests on the FCC Form 470

Applicants submitting FCC Forms 470 for leased dark fiber and self-provisioned networks are required to seek bids for other services and do a cost comparison to choose the most cost effective option.

Below is a table which will help applicants include the appropriate service requests on their FCC Form 470 and in their Request for Proposal (RFP) and RFP documents:

<i>If you are seeking bids for...</i>	You must also seek bids for...	The minimum dropdown options that should be selected on the FCC Form 470 are...
Leased Lit Fiber (with or without special construction)	N/A	"Lit Fiber Service"
Leased Dark Fiber (with or without special construction)	Leased Lit Fiber	"Dark Fiber" "Lit Fiber Service"
Self-Provisioned Network	Services Provided Over Third-Party Networks (including, but not limited to, leased lit fiber)	"Self-Provisioning" "Transport Only – No ISP Service" *

* "Transport Only – No ISP Service" is a technology-neutral way of seeking support for bandwidth including, but not limited to, leased lit fiber. To select Leased Lit Fiber only would be insufficient.

⁷ <http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=753>

OKLAHOMA CORPORATION COMMISSION – HISTORICAL USE OF SPECIFIC TECHNOLOGY TERMS

The Oklahoma Corporation Commission’s universal service fund must be consistent with the federal program as stated in 47 U.S.C. §254 (f) State authority –

A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.

It is essential, therefore, that the state program interpret “Technological neutrality” in the same manner as the FCC.

Historically, the OUSF has allowed applicants to specifically list their technology needs on E-Rate and RHC forms. In fact, the OUSF previously used the term “T-1” to set the standard for which OUSF support was provided. The technical term “T-1” represents the tariff rate for a specific technology bandwidth (1.5444 Mbps) and mode of delivery (copper).

Over time, the “T-1” standard evolved to provide a limit of support for schools and libraries up to the equivalent of a T-1 for each building with classrooms for schools or for a T-1 to a library location.

There was never a concern that using the word “T-1” would limit bidders and the use of the word “T-1” would be inconsistent with the universal services principle of technological neutrality.

RECOMMENDATION

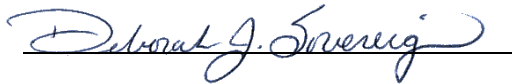
In order to clarify the meaning of “technological neutrality” we recommend the following definition to be added to the Chapter 59 Rules:

Technological Neutrality - provides that universal service support should not be biased toward any particular technologies by allowing the marketplace to direct the development and growth of technology and avoiding endorsement of potentially obsolete services. OUSF Beneficiaries are permitted full flexibility to choose among telecommunications services they need in order to use state-of-the-art telecommunications technologies as those technologies become available. The phrase “shall not limit bidders based upon technology” means OUSF beneficiaries may request bids for OUSF eligible services consistent with the FCC programs for schools, libraries or telemedicine. OUSF Beneficiaries may specify services requested and should provide sufficient detail for bidders to respond with proposals for equivalent or better service offerings.

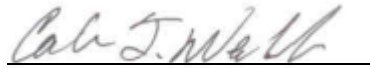
CONCLUSION

We understand the Commission wants to ensure that OUSF Beneficiaries are purchasing the lowest-cost solution (as long it meets other terms in the RFP), in order to make the most efficient use of funds. The FCC, however, has recognized that the lowest cost does not always equal the most cost-effective service. That is, an entity can purchase the cheapest service but that often does not equal the best value. We respectfully suggest that this Commission allow OUSF Beneficiaries to have some flexibility in seeking services by specifying the type of technology that works best for their organization, in order to receive the best value for themselves and the USF program. Further, permitting Beneficiaries to specifically seek bids for fiber, including lit and dark, is consistent with FCC rules for its universal service programs. The OCC should not adopt rules that will make it difficult for Beneficiaries to seek competitive bids under both the state and federal programs.

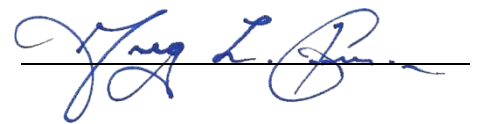
Respectfully Submitted,



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APPENDIX A:

OKLAHOMA CORPORATION COMMISSION, CAUSE NO. PUD 201700006

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CERTIFICATE OF MAILING

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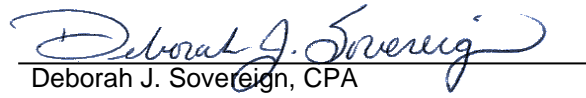
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