

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

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

CAUSE NO. RM 201600005

FILED
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OF OKLAHOMA

Initial Comments of Kellogg & Sovereign Consulting, LLC

INTRODUCTION

Kellogg & Sovereign® Consulting, LLC ("KSLLC") has been assisting schools, libraries, and health care providers with the Federal Universal Services programs since the inception of the E-Rate Support Mechanism and Rural Healthcare Support Mechanism programs in 1997. With over 20 years' experience in the FCC programs, the professionals at KSLLC serve as subject matter experts for applicants in both programs in over 15 states.

Beginning in 2011, Kellogg & Sovereign Consulting became involved with the Corporation Commission's mission to update the program that had remained unchanged since 1996. Over the years, the OUSF had expanded eligibility for telemedicine providers to include a wide range of recipients and provided support to schools and libraries with limited oversight. In fact, the projection for demand on the program had grown from \$11.8 million in 2009 with a contribution factor of .006% to an estimated \$52.6 million for 2012 with a contribution factor of 3.140%. In response to concerns that the fund was rapidly increasing with the majority of the funding used by telemedicine, Kellogg & Sovereign Consulting became involved and joined with interested telemedicine providers to form a telemedicine working group whose purpose was to understand the demand on the fund as well as recommend changes that could be made to control demand on the fund for telemedicine. The telemedicine working group provided recommendations to the Corporation Commission which were subsequently implemented. These changes included annual recertification by the beneficiary entity and that telemedicine recipients should make every reasonable effort to seek alternate funding first. The recertification process began in February 2013 and resulted in immediate cost savings for the program by removing ineligible entities and ensuring that funding was provided only for eligible services. Beginning in July 2015, our firm was involved in working with OUSF beneficiaries and service providers across the state to modernize the state statutes related to the program. With the signing of HB2616 on May 9, 2016, we have accomplished another step in updating this valuable program for all Oklahomans.

We appreciate the open forums provided by the PUD staff during the emergency rulemaking process and are very pleased with the work that has been accomplished in setting forth rules necessary to implement the modernized OUSF as intended by HB2616.

The approved rules and statute changes will result in administrative cost savings for not only the program administrator but also for OUSF Beneficiaries and eligible providers. The modernized OUSF will continue to provide support for broadband connectivity where it is needed the most for Oklahoma's schools, libraries, and health care providers.

COMMENTS

INTENT OF THE ADMINISTRATIVE FILING PROCESS.

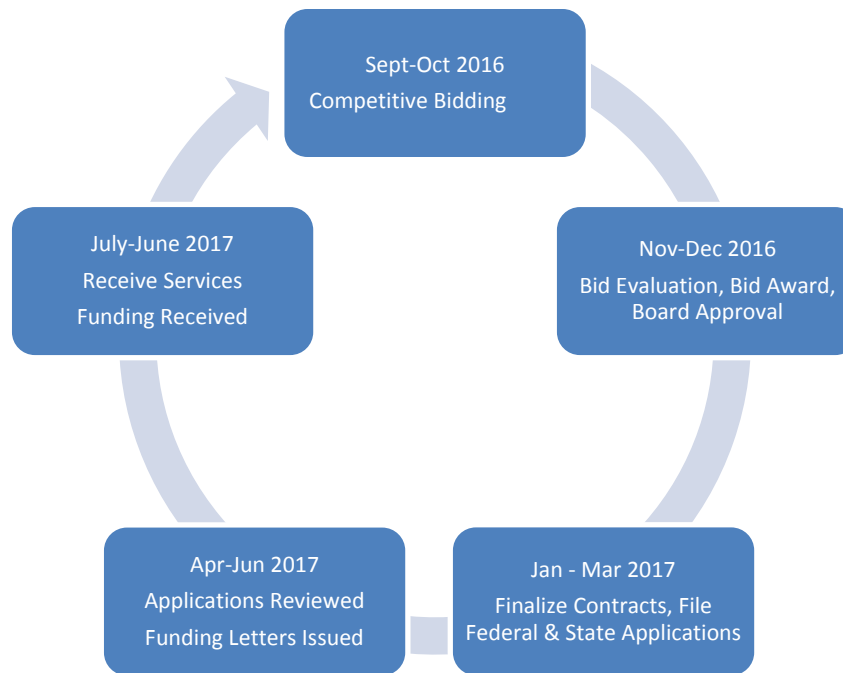
During the development of the statute language in HB2616, one of our primary concerns was to ease the administrative burden for not only the PUD staff but also for the OUSF Beneficiaries and eligible providers. Many of the problems we encountered when working with the OUSF's filing and funding processes was the lack of a program year and timeline for filing forms and receiving funding. The lack of predictability and regulatory certainty was problematic for all parties involved. As subject matter experts with the FCC's programs, we were able to provide language in HB2616 that addresses the administrative filing process that results in a reliable, predictable funding process.

One of the underlying concepts in the development of the updated statute language was that Oklahoma's funding dollars could be leveraged by requiring all applicants to file for federal funding first. This fundamental change will allow for additional funds from the FCC programs to offset support amounts previously paid by OUSF. The most significant cost savings will be in the telemedicine industry where health care providers will now be required to access funds from either the primary program which can pay up to 99% of the eligible costs previously paid by OUSF or the Health Care Connect Fund which provides support of 65% of eligible costs.

By aligning the OUSF process with the federal filing processes, HB2616 leverages the federal funding and alleviates the administrative burden on OUSF Beneficiaries who file for the FCC funding.

The FCC programs follow a funding year from July 1 to June 30. In general, funds from the FCC programs are requested prior to the beginning of the funding year. Services are provided July 1 – June 30, and final reimbursements are completed within 4 months of the close of the funding year. The FCC programs for health care providers have greater flexibility in allowing applicants to file throughout the funding year as well as receive up to three years of funding. In all FCC programs, however, all reporting and filing is based on a program year.

The diagram below shows a sample timeline of the federal and state funding for schools and libraries:



In the development of the statute language in HB2616, one of the key concepts was to modernize OUSF by implementing a program year July 1 – June 30. By implementing a program year for OUSF, the change modernizes the program and aligns the funding process with the FCC program years. An OUSF Beneficiary will be able to conduct a competitive bidding period, evaluate bids based on FCC rules, and then file for FCC funding. After the application for FCC funding is completed, the OUSF Beneficiary can then submit their request to OUSF. Both the state and federal program administrators would then review the applications as appropriate and provide funding letters to the OUSF Beneficiary. With funding information provided for the same program year, the service providers can in turn bill both the federal and state programs with certainty and the OUSF beneficiaries could provide payment for their non-discount share in a timely and orderly fashion meeting their own state and local procurement rules.

PRE-APPROVAL REQUEST – File after FCC application submitted

We also want to emphasize that there was never an intent for the OUSF Beneficiary application process or “pre-approval request” to take place prior to the bid award. The concept was always that the OUSF Beneficiary would first complete their competitive bidding period, award bids, sign contracts and complete their FCC filings and then submit the state OUSF application (Pre-Approval Request). The reason for the timing is that the OUSF Beneficiaries will now be required to seek federal funds first. The intent is to allow the OUSF beneficiaries to successfully complete the FCC processes first and then seek funding from OUSF.

SERVICE START DATE

Another concept that we want to clarify is the term “Start of Service.” The term “start of service” for the FCC programs means the later of July 1 of the program year or the date that the service provider commences service.

An OUSF Beneficiary may start service with an eligible provider as a result of a competitive bid that results in a multi-year contract or the Beneficiary may have service that is annually renewed.

Example: School A conducts a competitive bidding period in December 2015. They complete their bid evaluation and award the bid for Internet Access to Service Provider XYZ company for the program year July 1, 2016 – June 30, 2017. The contract signed is for 12 months with up to 2 annual renewals. Service provider XYZ had to make some configuration changes on their end so services did not actually start until August 8, 2016. The service start date for this situation for the FCC program year 2016-17 would be the date that services commenced, August 8, 2016.

Example: Same situation as above, but for the next funding year July 1, 2017 – June 30, 2018. School A decides to approve the first annual renewal so services are already in place July 1, 2017. Start of service for program year, July 1, 2017 – June 30, 2018 therefore would be July 1, 2017 (the later of July 1 of the program year or the date services commenced.)

This concept is important on the FCC filings in that funding is approved for a specific funding year only. If services are already in place, FCC funding support will begin July 1 of the program year and continue through June 30 of the program year. If services have not yet been installed, then funding will only be available from the date services are installed through June 30 of the program year.

OUSF BENEFICIARY PRE-APPROVAL REQUEST OPTIONAL

With the emergency rules, PUD clarified that the OUSF Beneficiary pre-approval request would be optional. Making the pre-approval process optional was a wise move as the changes are being implemented. Since the pre-approval process is optional, OUSF beneficiaries who are not familiar with the process or are not able to timely file the pre-approval request will not be penalized.

We agree with the staff’s recommendation to make the process optional; however, the greatest administrative benefit along with predictability for the OUSF beneficiaries and eligible providers will be realized with full implementation of the pre-approval process and alignment with the FCC program years.

If an OUSF Beneficiary chooses to participate in the pre-approval request process, the service provider’s submission for funding support should be significantly streamlined. We highly recommend that the program administrator design a simplified affidavit when an OUSF Beneficiary has already completed the pre-approval process. Requiring an OUSF Beneficiary to complete the same information twice is an unnecessary burden and reverses the administrative cost savings that will be achieved if the OUSF Beneficiary is only required to submit the information once, then supplemental information (i.e. any

changes in FCC funding, actual service commencement date, etc.) are provided when the service provider submits their request for funding.

We understand there will be adjustments made throughout this first year, and again we thank the PUD staff in advance for their efforts including patience and persistence in fully implementing the modernized OUSF.

OUSF BENEFICIARY COMPETITIVE BIDDING REQUIREMENTS – 165:59 7-19

In line with the underlying concepts of HB2616 to ease the administrative burden and align with FCC filing and program requirements, the statutory language for competitive bidding was carefully and thoughtfully written with input from a wide range of individuals and groups working together for clear guidelines that would not only allow OUSF Beneficiaries to comply with the FCC programs but also to ensure that all OUSF Beneficiaries competitively bid OUSF funded services. The prior statute did not require competitive bidding so this is a significant change for OUSF. The intent of the language is to require bidding, but not to be so restrictive that the OUSF program rules create an environment where the OUSF program administrator and staff become the decision makers for determining the needs of the OUSF Beneficiary and selection of the eligible provider. We believe the language in the statute is sufficient as written. We support the comments submitted that the proposed rules should remove any language from 165:59-7-19 that is not specifically written in the statute.

BANDWIDTH STANDARDS FOR TELEMEDICINE – 165:59-7-6(C)(1)

By the newly approved statute, bandwidth levels approved in a funding commitment letter issued by USAC for one of the FCC Rural Health Care programs meets the FCC bandwidth standards and therefore meets the standards for OUSF funding. We do not believe that the proposed rules for bandwidth levels are necessary for services that have been approved through the FCC funding process.

We support the bandwidth standards proposed by PUD staff and other contributing parties for healthcare providers who are not eligible for alternative funding. We agree that the proposed bandwidth standards properly considered the changes in bandwidth since the FCC's 2010 National Broadband Plan was released with recommendations for healthcare bandwidth.

Mental Health Facilities and FQHC's

We are concerned about the bandwidth standards for mental health facilities (without overnight beds) and FQHCs. The current standards do not take into account the central hub locations for FQHCs and mental health facilities. The burden of proof for bandwidth has been lifted off of other healthcare classifications in this new proposal; however, the mental health facilities (without overnight beds) and FQHCs will still need to build a case to receive OUSF support for the bandwidth that they need to support their networks.

In one example, a mental health provider has an urban host location for 15 other remote mental health facilities. The host site provides multiple servers, routers, video conference units, a video conference

bridge/portal/router, is the EMR host, has several backup applications for EMRS and has the most behavioral health practitioners of all facilities in their network. This site requires a larger telemedicine line than 100 Mbps. They have been running over 100 Mbps since prior to 2013 and are currently at 250 Mbps.

In an FQHC example, one of the largest FQHC's in Oklahoma has their largest urban healthcare facility that has 109 users on their EMR system daily, ultrasound, X-Ray, offsite radiology, 6 video conference units, 14 digital dental X-rays, and 4 dental panoramic X-rays. In addition, they use digital labs, e-scripts and EMRs that are hosted offsite. This site has been using a 1 Gbps connection for almost 5 years due to the high amount of telemedicine traffic that traverses across the line.

These are just two examples, but are indicative of the bandwidth needs for FQHCs and mental health facilities in Oklahoma. In both cases, the urban facilities have a need for higher bandwidth across the board while the rural facilities owned by the same healthcare provider would be able to have sufficient bandwidth at the recommended 100 Mbps. In addition, both of these organizations have additional urban facilities that run high numbers of patients through their locations and have higher bandwidth needs than their rural locations.

165:59-7-6(c)(1)(D)

We propose the following alternative language for this section with consideration for any healthcare providers who may provide services for an additional cost to other healthcare providers outside of their ownership, therefore creating a situation of double recovery. "Support for other telemedicine facilities that require broadband access with consideration for any payments received by the supporting facility; and"

CONCLUSION

We appreciate the significant amount of time that PUD Staff, service providers and OUSF Beneficiaries have dedicated to Modernizing the OUSF. We also want to publicly thank Representative Todd Thomsen for his work with HB2616 and his unwavering belief in the value of modernizing the OUSF program. Rep. Thomsen dedicated considerable time to not only understand the program for himself but also shared with others the positive impact that OUSF funding has for our Oklahoma students, library patrons and patients who rely on the services made possible by this valuable fund.

SIGNATURE PAGE FOLLOWS

Respectfully Submitted,

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CERTIFICATE OF MAILING

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