

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
FEB 10 2017

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
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%. 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 permanent 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

165:59-1-4. Definitions – “Bed”

Licensed hospitals in Oklahoma with a neonatal program are licensed for the number of bassinets in addition to the number of licensed beds. Many of our hospitals in Oklahoma have strong neonatal programs and utilize telemedicine for fetal monitoring. It is important to include the number of licensed bassinets in the “bed” count for each hospital with licensed bassinets.

We propose the definition of “Bed” state, “A patient care bed or bassinet that is regularly maintained, staffed on a 24-hour basis, and immediately available for the care of patients.”

165:59-3-66 (2). Procedures for OUSF administrative preapproval request

17 O.S. § 139.102. 2 defines the administrative process as an, “administrative application process which allows eligible local exchange telecommunications providers and eligible providers to request funding and an administrative submission process that allows Oklahoma Universal Service Fund Beneficiaries to submit a preapproval request directly with the Administrator.” The proposed language, “by filing the Request with the Commission’s Court Clerk,” is not in alignment with the definition of an administrative process in the Statute. An administrative preapproval request, by law, should be submitted directly to the Administrator, not filed in the Court Clerk office. Furthermore, a “filing” would require OUSF Beneficiaries to follow additional procedures to properly file with the Court Clerk office which creates an unnecessary burden for OUSF Beneficiaries wishing to participate in the preapproval process.

Therefore, we propose this language be changed to “by ~~filing~~ submitting the Request with the Administrator.”

165:59-3-66(3)(11). Procedures for OUSF administrative preapproval request

The preapproval process is intended to allow the OUSF Beneficiary the opportunity to provide information in advance of the service provider’s request for funds. The preapproval process should ease the burden on the eligible provider as well as allow the OUSF Beneficiary to be involved in the approval process. Therefore, the statement on item (11), “Any variance from the terms approved in the OUSF preapproval funding letter shall make the previously issued OUSF preapproval funding letter null-and-void” can result in significant time redoing affidavits that might not be necessary for the specific circumstances of the preapproval funding. The additional time and effort dedicated by the OUSF Beneficiary to provide the information in advance would have to be deleted if even a minor variance occurs. We therefore recommend the wording be changed to “Any variance from the terms approved in the OUSF preapproval funding letter ~~shall~~ may make the previously issued OUSF preapproval funding letter null-and-void.” By changing this to “may” instead of “shall” the administrator will be able to review the variance and

determine what action should be taken regarding the effect on the variance as it relates to the preapproval funding letter.

165:59-3-68(j). Procedures for requesting funding from the OUSF – Special Universal Services

Part of this section states, “Simultaneously with the OUSF Administrator or contracted agent providing a copy of the Determination to the eligible provider and parties to the cause.” We would like to respectfully request that the wording be changed to “Simultaneously with the OUSF Administrator or contracted agent providing a copy of the Determination to the eligible provider, parties to the cause, and the OUSF Beneficiary’s authorized consultant.” Consultants serve as the Beneficiary’s contracted agent and may be expected to assist the OUSF Beneficiary in not only preparing federal and state applications for funding, but also in notifying the Beneficiary of areas of concern including requests for information and due dates for responses to program administrator or Commission decisions including requests for reconsideration. There have been many instances where the OUSF Beneficiary’s authorized consultant is not copied on the request for information with the unintended consequence that funding decisions are finalized without the OUSF Beneficiary having the opportunity to provide additional information due to lack of notice. In the same manner as an attorney would be included on all correspondences and funding decisions for an eligible provider’s Request for Funding, consultants with the proper letter of agency authorized by the OUSF Beneficiary should be included as well.

165:59-7-1 (b). Reimbursement from the OUSF for Special Universal Service

165:59-7-6 (h)(i). Telemedicine access for eligible healthcare entities

165:59-7-10 (b). Other sources of funds

The proposed language states, “Failure to accurately, completely, or timely request alternative funding shall result in denial of all OUSF funding.”

17 O.S. § 139.109.1(B)(2) requires an OUSF Beneficiary to “make every reasonable effort to obtain funding from another state and/or federal fund designed to support Special Universal Services.” There are instances where the Beneficiary could have made every reasonable effort by following federal guidelines to obtain funding and they still are not funded. For example, on January 13, 2017, USAC’s RHC program notified all applicants that no more funding requests would be accepted for FY2016. This is the first time funding request would not be accepted by the USAC’s RHC program through June 30th.

Due to an extraordinarily high demand for Rural Health Care (RHC) Program funds in Funding Year 2016 (FY2016), there will not be a third filing window period and no more funding requests (FCC Forms 462 or 466) will be accepted for FY2016. Current projections show that the total dollar value of all qualifying funding requests received will either meet or slightly exceed the program’s \$400 million annual cap.¹

While we agree that funding request should be submitted timely and in accordance with the program’s guidelines, the proposed language does not leave room for the Administrator to consider circumstances such as stated above. We propose the language in all three instances listed above be changed to align

¹ <http://www.usac.org/rhc/tools/news/default.aspx#1807>

with the statute as follows: “Failure to accurately, completely, or timely request alternative funding shall result in denial of all OUSF funding. The OUSF Beneficiary shall make every reasonable effort to obtain funding from another state and/or federal fund designed to support Universal Services.”

165:59-7-1(c)(6). Reimbursement from the OUSF for Special Universal Service

The proposed rule states, “The OUSF Beneficiary’s request for bids shall include their bandwidth limits, as defined by statute or Commission rules.”

This rule can be misconstrued to mean the Beneficiary must be able to clearly list the upper bandwidth level allowed by statute or Commission rules. If schools follow this proposed rule, their request for bids should request at least the minimum bandwidth that is recommended by the State Educational Technology Directors Association (SETDA). There are many cases where the minimum recommended SETDA bandwidth may be significantly higher than the bandwidth needed in the current year for the OUSF Beneficiary. The bandwidth standards recommendations were put in place to provide a guideline of what the OUSF would fund **but was never intended to be a required bandwidth level**. The fund should not have to support excessive bandwidth levels under any circumstances. OUSF Beneficiaries should be able to request support for the bandwidth **that is needed** to support the services provided by schools, libraries and health care providers.

Even if the argument is that it is important to list the highest allowable bandwidth level as a reference only, it will still be problematic and encourage OUSF Beneficiaries to seek the highest bandwidth levels whether they need it or not. Additionally, the SETDA standards are minimum bandwidth levels and upper limits in bandwidth are not clearly defined.

Therefore, we recommend replacing the proposed rule with the language per statute, 17 O.S. § 139.109.1(B)(5)(a): “The OUSF beneficiary’s request for bids shall include their bandwidth limits, as defined by statute or Commission rules. The solicitation of bids shall clearly identify the bandwidth range requested by the Oklahoma Universal Service Fund Beneficiary or consortium.”

165:59-7-19(a)(2)(C). Competitive bidding

The proposed rule states, “The bid request shall clearly identify the bandwidth range requested by the OUSF Beneficiary, and shall include the statutory or Commission’s rule defined eligible bandwidth level.”

See explanation above as to why it is inappropriate and confusing to require the OUSF Beneficiary list the eligible bandwidth levels on the RFP or bid document.

We recommend changing the proposed rule to align with statute 17 O.S. § 139.109.1(B)(5)(a): “The bid request shall clearly identify the bandwidth range requested by the Oklahoma Universal Service Fund Beneficiary or consortium.”

165:59-7-6 (c)(1)(B)(i). Telemedicine access for eligible healthcare entities

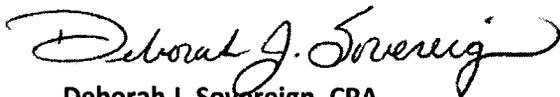
We propose to change the bandwidth standards for Federally Qualified Health Centers (FQHC) in urban locations to 1 Gbps, rather than 500 Mbps as currently adopted in the Chapter 59 Emergency Rules. Kellogg & Sovereign represents approximately 52 FQHC's in the State of Oklahoma. Approximately 23 of those sites are located in urban locations. Per our direct observation as well as in discussions with the Primary Care Association, it is clear that the primary urban centers hosting data services for their healthcare provider group or consortium are experiencing that the 500 Mbps bandwidth level is not sufficient to operate as a host. As a result, we propose that 1 Gbps would be a more reasonable bandwidth level for urban FQHC participating in the OUSF program.

CONCLUSION

The OUSF program is critical to providing connectivity for our Oklahoma students, library patrons and patients who rely on the services made possible by this valuable fund. We appreciate the significant amount of time and talent that PUD Staff, service providers and OUSF Beneficiaries have dedicated to Modernizing the OUSF.

Respectfully Submitted,

KELLOGG & SOVEREIGN® CONSULTING, LLC



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CERTIFICATE OF MAILING

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