

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

COURT CLERK'S OFFICE - OKC
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

**INITIAL COMMENTS OF
RURAL LECS**

COMES NOW, Atlas Telephone Company and other rural incumbent local exchange telecommunications service providers,¹ FairPoint Communications, Totah Communications, Inc., Pine Telephone Company, Inc. and Grand Telephone Company, Inc. (collectively "Rural LECs"), by and through the undersigned attorneys, who submit the following initial comments to the Notice of Proposed Rulemaking (NOPR) issued by the Commission on January 25, 2017, the proposed rules distributed by the Commission on the same date, and the Rule Impact Statement issued February 6, 2017, in this matter.

Because the Rural LECs have not had ample opportunity to fully evaluate the proposed rules and the full effect such rules may have on the Rural LECs, these initial comments will focus more generally on those parts of the proposed rules that cause the Rural LECs immediate concern. Additional, more detailed comments in response to the proposed rules will be offered at a later date.

¹ Atlas Telephone Company, Beggs Telephone Company, Bixby Telephone Company, Inc., Canadian Valley Telephone Company, Carnegie Telephone Company, Central Oklahoma Telephone Company, Cherokee Telephone Company, Chickasaw Telephone Company, Craw-Kan Telephone Cooperative, Inc., Cross Telephone Company, Dobson Telephone Company, Hinton Telephone Company, KanOkla Telephone Association, McLoud Telephone Company, Medicine Park Telephone Company, Oklahoma Telephone and Telegraph, Inc., Oklahoma Western Telephone Company, Panhandle Telephone Cooperative, Inc., Pinnacle Communications, Pioneer Telephone Cooperative, Inc., Santa Rosa Telephone Cooperative, Inc., Shidler Telephone Company, South Central Telephone Association, Southwest Oklahoma Telephone Company, Terral Telephone Company, Valliant Telephone Company and Wyandotte Telephone Company ("Atlas Telephone Co. et al.").

At the outset, the Rule Impact Statement issued by the Commission on February 6, 2017, may not accurately depict the potential adverse effect on rural incumbent local exchange telecommunications service providers that are small businesses as that term is defined under the Oklahoma Small Business Regulatory Flexibility Act. In particular, as initially proposed, the rules would require small Rural LECs to create additional business records, to develop and conduct allocation processes separating costs between services and/or jurisdictions differently than currently required under federal law, to create records for transactions that are exempt under FCC rules, and to attach a very large quantity of information and supporting testimony when filing a OUSF request. If adopted, these proposed requirements would impose significant additional costs on the small Rural LECs. Consultants who routinely file state universal service funding requests in other jurisdictions estimate that the cost to develop and prosecute a revenue requirements case for small LECs can exceed \$100,000 per case and easily reach \$200,000 for more complicated cases. These same consultants opined that the documentation to be required under the proposed rules for similar cases exceeds that required in other jurisdictions. During the first technical conference, PUD Staff indicated a willingness to consider both (i) mitigating the need for creating records not maintained in the ordinary course of business and (ii) options to streamline the filing requirements so as to reduce the amount of information filed, so long as the necessary information could be made available for audit at company offices. However, as currently proposed, the cost to small Rural LECs of meeting the requirements of the proposed rules would likely meet or exceed the consultants' estimates and would represent a significant cost to small businesses subjected to the new regulations proposed by the Commission.

The Rural LECs also provide the following brief comments in response to those proposed rules which cause immediate concern. The Rural LECs intend to provide more detailed comments in later comments, including proposed changes to the proposed rules.

1. The proposed rules are contrary to the Oklahoma Telecommunications Act, as amended by HB 2616, in several respects.
 - A. OAC 165:59-3-60(c) – the payment priority under this rule is contrary to new statutory provisions adopted by HB 2616 creating mandatory obligations to pay OUSF claims to requesting carriers within a specific period of time; e.g., the OUSF funding as provided in a determination of the OUSF Administrator *shall* be paid to the eligible local exchange telecommunications service provider or eligible provider within 45 days after such determination becomes final (Section 139.106(D)(2)) and within 45 days after expiration of the statutory period provided for the Commission to issue a final order on a request for reconsideration (Section 139.106(D)(5)).
 - B. OAC 165:59-3-60(d) – the proposal to limit recovery of decreased revenues or increased costs resulting from government mandates under Section 139.106(K) of the Act to “net” annual revenue changes is contrary to the clear language of the Act. The Act provides a clear mandatory formula to be applied by the Commission in such cases that is based on a comparison of the total annual revenues “from the sources affected by the changes” in government laws or regulations for the previous 12 months to a calculation of total annual revenues or cost increases that will be experienced after the changes are implemented by the requesting carrier. The proposed change to the Commission’s rule changes the statutory formula contrary to law.
 - C. OAC 165:59-3-64(a)(1) – the proposed addition is contrary to the clear language of the Act. Under the clear language of the Act, the requesting carrier has the option to choose its method of demonstrating costs and/or revenues. One of the options available to a requesting carrier is to rely on methodologies adopted by FCC Parts 32, 36, and 64. The proposed rule change would insert a different allocation methodology in place of Parts 32, 36, and 64 as provided by the Act. Such a proposal contradicts the clear language of the Act, controverts the requesting carrier’s option provided under the Act, and would cause the Rural LECs to incur significant additional costs to modify its books and records from what is provided under federal rules.
 - D. OAC 165:59-3-70(b)(4) – the proposal to require an officer of a requesting carrier to certify regarding alternative funding – especially consideration of local rates – is contrary to the Act. Nowhere in the Act is there a requirement that a requesting entity seek any alternative source of funding prior to seeking reimbursement from

the OUSF. Rather, the Act created mandatory reimbursement of lost revenues and/or increased costs resulting from government action with no such requirement.

- E. OAC 165:59-3-70(g) – the proposed rule to require a requesting carrier to seek alternative funding is contrary to the clear language of the Act which requires Commission reimbursement in certain circumstances without any offset or other requirement.
2. The proposed rules establishing specific procedures for requesting reimbursement from the OUSF under Section 139.106(G) and Section 139.106(K) of the Act are overly burdensome and impose significant additional costs on requesting Rural LECs. In particular, the proposed rules, if implemented, would require requesting Rural LECs to incur thousands of dollars in additional costs to create records, documents, and procedures that such carriers do not have in place today and that are not required under FCC rules. The proposed rules, in many respects, would require requesting Rural LECs to depart from long-standing accounting, cost allocation and recordkeeping requirements adopted both by the FCC and this Commission and made available at the option of the Rural LEC under the clear provisions of the Act. These additional costs would create unnecessary expense for the OUSF and end users generally. Specific inconsistencies with FCC rules are described below:
- A. OAC 165:59-3-70(b)(6) – the proposal to require all requesting carriers to provide documentation of all affiliate transactions for 4 years and provide documentation of compliance with 47 CFR 32.27 is overly burdensome and contrary to the FCC rule. The FCC rule provides a threshold value of \$500,000 in affiliate services before a carrier is required to provide the documentation under the rule. The proposed rule would extend the recordkeeping, reporting and documentation to all affiliate services regardless of value, contrary to the FCC rules.
 - B. OAC 165:59-3-70(b)(8) – the proposed rule require all requesting carriers to develop and maintain a cost allocation manual (CAM) which is not required under FCC rules for carriers of this size and thus, would impose an additional burden on Rural LECs beyond the cost methodologies allowed under the OUSF statute and FCC rules.
 - C. OAC 165:59-3-17(b)(10) – the requirement to provide network facility maps, which include critical infrastructure, is contrary to other Commission rules requiring such information to be kept and secured at Rural LEC offices; e.g., OAC 165:55-25-1 et seq.

As discussed above, because of the short amount of time to review the proposed rules and consider the explanation from Staff at the first technical conference on February 3, the Rural LECs

LECs submit these initial comments with the intent to provide more detailed comments including proposed changes to the proposed rules at a later date.

Respectfully,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 17th day of February, 2017, a true and correct copy of the foregoing was provided, via federal express/overnight delivery, mail, or email to the following:

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