

UNIVERSAL SERVICE PROGRAM

An act to preserve and advance universal communications service and connectivity in the state of Washington

NEW SECTION. Sec. 1.

(1) The legislature finds that: (a) the benefit that all consumers and communications providers derive from connection to the public network is enhanced by a universal service program that enables as many consumers to be connected to the public network as possible; and (b) consumers in all areas of the state should have access to communications services at reasonable rates.

(2) Significant changes in the communications marketplace are adversely affecting the ability of some communications companies to continue to offer communications services in rural areas of the state of Washington at rates that are comparable to those prevailing in urban areas. These changes, absent explicit federal and state universal service support for such communications companies, may lead to unreasonable telephone service rate increases or cessation of service for some Washington consumers.

(3) As a result of the foregoing and to enable all consumers in Washington to access and benefit from a ubiquitous public network, the legislature hereby creates a universal service program that: (a) enhances the public network; (b) is funded with a network connection fee paid by communications providers based upon working telephone numbers; (c) is administered by a neutral third party selected by the utilities and transportation commission; (d) is operated pursuant to rules adopted by the commission; and (e) advances universal service in a manner not inconsistent with the requirements of the federal telecommunications act of 1996 (47 U.S.C. Sec. 254).

NEW SECTION. Sec. 2. The definitions in this section apply throughout sections 2 through 9 of this act unless the context clearly requires otherwise.

(1) "Basic residential service" means those services set out in 47 C.F.R. Sec. 54.101(a) and mandatory extended area service approved by the commission.

(2) "Communications provider" means a provider that provides a working telephone number to a final consumer for intrastate wireline or wireless communications services or interconnected VoIP service.

(3) "Communications services" includes telecommunications services and information services and any combination thereof.

(4) "Incumbent local exchange carrier" shall have the meaning set forth in 47 U.S.C. Sec. 251(h).

(5) "Interconnected VoIP service" means an interconnected Voice over Internet protocol (VoIP) service that: (a) enables real-time, two-way voice

communications; (b) requires a broadband connection from the user's location; (c) requires Internet protocol-compatible customer premises equipment (CPE); and (d) permits users generally to receive calls that originate on the public network and to terminate calls to the public network.

(6) "Program" means the universal service program created by sections 3 and 4 of this act.

(7) "Incumbent public network" means the network established by incumbent local exchange carriers for the delivery of communications services to customers that is used by communication providers for origination or termination of communications services by or to customers.

(8) "Telecommunications" has the same meaning as that term is defined in 47 U.S.C. Sec. 153(43).

(9) "Telecommunications act of 1996" means the telecommunications act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

(10) "Working telephone number" means a North American Numbering Plan telephone number, or successor dialing protocol which is developed for use in placing calls to or from the public network, that enables a consumer to make or receive calls.

NEW SECTION. **Sec. 3**

(1) A universal service program is hereby established which shall not exceed XX million dollars in annual distributions and shall be funded on an equitable and non-discriminatory basis by every communications provider through the payment of a network connection fee for connection to the incumbent public network. Initially, the fee shall be a surcharge on each working telephone number rated within the state of Washington. The commission is authorized to develop a new basis for the fee as it may determine to be in the public interest. By order, the commission shall annually establish the network connection fee. Each communications provider may, but is not required to, pass-through to its customers the network connection fee or any portion thereof.

(2) The program shall be administered by a neutral third party administrator designated by the commission through a competitive process and subject to commission oversight. The commission shall establish and approve the budget for the administrator and the program expenses of the administrator shall be paid out of the fund established for the program after such expenses have been approved by the commission. The administrator may establish an account or accounts in one or more independent financial institutions within the state.

(3) The network connection fee as ordered by the commission under subsection (1) of this section, along with any penalties imposed under section 6 of this act, and any other monies authorized to be deposited into the fund by law or order of any court with

jurisdiction, shall be paid into the fund. The fund shall be administered by the administrator pursuant to rules promulgated by the commission. Monies deposited in the fund may be used only for the purposes set out in this act. The fund shall be outside of the state treasury. An appropriation is not required for expenditures from the fund.

(4) In addition to such other jurisdiction as the commission may have, and notwithstanding RCW 80.66.010, the commission shall have jurisdiction over all communications providers for the following limited purposes: (a) assessment, payment and collection of fees under subsection (1) of this section; (b) enforcement of fee payment obligations; and (c) reports on the assessment, payment and collection of network connection fees and use of funds distributed.

(5) The commission shall establish eligibility criteria, designate incumbent local exchange carriers that are eligible for support from the fund, and establish annual benchmarks of a reasonable amount customers should pay for basic residential service provided over the incumbent public network supported by the fund. Only incumbent local exchange carriers serving fewer than two percent of the access lines in the State of Washington and that meet the eligibility criteria established by the commission are eligible to receive support from the fund for the provision of telecommunications services over the incumbent public network. For purposes of determining this threshold, the access lines of all affiliates shall be counted as one local exchange carrier.

NEW SECTION. Sec. 4. (1) The commission shall adopt rules for the program that include the following:

- (a) Provisions for operation of the program and fund created by this act;
- (b) Criteria for the selection of an independent neutral third-party administrator of the fund;
- (c) Criteria for determining which incumbent local exchange carriers are eligible for support from the fund;
- (d) Contribution and remittance requirements for communications providers related to the program, as authorized by section 3 of this act;
- (e) The method for establishing the annual benchmark used to calculate the amount of support an eligible incumbent local exchange carrier may receive from the fund. The benchmark is the rate the commission determines to be a reasonable amount customers should pay for basic residential service provided over the incumbent public network supported by the program; provided, that, if an incumbent local exchange carrier is charging rates above the benchmark for the basic residential service, that provider may not seek distributions from the fund for the purpose of reducing those rates to the benchmark;

(f) Creation of an Advisory Board, consisting of a reasonable balance of representatives from different types of communications providers and consumers, to advise the commission on selecting and overseeing the administrator of the fund;

(g) Readopt, amend, or repeal existing commission rules promulgated pursuant to RCW 80.36.610 or RCW 80.36.620 as necessary to be consistent with this act.

(2) The commission shall periodically review communications providers that receive support under the program to ensure compliance with the program.

NEW SECTION. Sec. 5. (1) In addition to any other penalties prescribed by law, the commission may impose penalties for failure to make, or delays in making, the (a) required reports or (b) payments of the network connection fee under the program or both. The amount of any such penalties shall not exceed the penalty amounts authorized under RCW 80.04.380.

(2) Any penalties imposed by the commission under this section or imposed for violation of rules adopted under sections 3 through 6 of this act or RCW 80.36.610 shall be payable to the fund created by section 3 of this act.

(3) In addition to any penalties imposed under this section, the administrator, at the direction of the commission may withhold payments to any designated incumbent local exchange carrier that fails to submit to the administrator information required to be so submitted under sections 3 through 5 of this act.

(4) Any action taken under this section shall be taken only after providing the affected communications provider with notice and an opportunity for a hearing.

NEW SECTION. Sec. 6. The commission may delegate to the commission secretary or other staff the authority to resolve disputes, approve expenses of the administrator, and make other administrative decisions necessary to the administration and supervision of the program consistent with the relevant statutes and commission rules.

NEW SECTION. Sec. 7. The provisions of this act other than section 8 are effective one year after enactment by the legislature and expire five years after the effective date. Section 8 shall become effective three months after the act's enactment. One year prior to the expiration date, the commission shall report to the legislature on whether the act has served its intended purpose and should be allowed to expire, or whether there is a need to continue and extend the act. Upon expiration of the act, the administrator shall disburse all remaining funds and end its operations as directed by the commission.

NEW SECTION. Sec. 8. The commission shall adopt rules to implement the act prior to the effective date of the other provisions of the act to ensure that the act is implemented on its effective date.

Sec. 9. RCW 80.36.610 and 1998 c 337 s 2 are each amended to read as follows:

~~((4))~~ The commission is authorized to take actions, conduct proceedings, and enter orders as permitted or contemplated for a state commission under the ~~((federal))~~ telecommunications act of 1996~~((, P.L. 104-104 (110 Stat. 56), but the commission's authority to either establish a new state program or to adopt new rules to preserve and advance universal service under section 254(f) of the federal act is limited to the actions expressly authorized by RCW 80.36.600))~~. The commission may establish by rule fees to be paid by persons seeking commission action under the ~~((federal))~~ Telecommunications Act of 1996, and by parties to proceedings under that act, to offset in whole or part the commission's expenses that are not otherwise recovered through fees in implementing the act ~~((, but new fees or assessments charged telecommunications carriers to either establish a state program or to adopt rules to preserve and advance universal service under section 254(f) of the federal act do not take effect until the legislature has approved a state universal service program.~~

~~(2) The legislature intends that under the future universal service program established in this state.~~

~~(a) Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the preservation and advancement of universal service in the state;~~

~~(b) The contributions shall be competitively and technologically neutral; and~~

~~(c) The universal service program to be established in accordance with RCW 80.36.600 shall not be inconsistent with the requirements of 47 U.S.C. Sec. 254).~~

NEW SECTION. Sec. 10. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 11. Sections 2 through 8 of this act are each added to chapter 80.36 RCW.

NEW SECTION. Sec. 12. RCW 80.36.600 (Universal service program--Planning and preparation--Commission's duties--Approval of legislature required--Definitions) and 1998 c 337 s 1 are each repealed. RCW 80.36.620 (Universal Service Program-Rules) and 1998 c 337 s 3 are each repealed.