

## DRAFT UNIVERSAL SERVICE LEGISLATION

AN ACT Relating to the implementation of the federal telecommunications act of 1996, P.L. 104-104 (110 Stat. 56); amending RCW 80.36.610; adding new sections to chapter 80.36 RCW; and repealing RCW 80.36.600.

### NEW SECTION. Sec. 1. REFERENCE TO CHAPTER 337, LAWS OF 1998.

The Legislature finds that pursuant to chapter 337, section 1, Laws of 1998, the utilities and transportation commission has prepared a plan to implement a program for preservation and advancement of universal telecommunications service and has submitted a report describing that plan to the Legislature as required.

### NEW SECTION. Sec. 2. GENERAL AUTHORITY AND PURPOSE.

(1) The commission shall implement a program for the preservation and advancement of universal telecommunications service which shall not be inconsistent with the requirements of 47 U.S.C. sec. 254.

(2) The purposes of the program are to:

(a) Benefit all telecommunications ratepayers in the state by ensuring that there exists a modern telecommunications network to which all citizens and businesses have reasonable access;

(b) Provide specific, sufficient, competitively neutral, and technologically neutral support for basic telecommunications services for all telecommunications lines for customers of telecommunications companies in high-cost locations,

(c) Replace the existing system of providing universal service, which relies on implicit subsidies for companies serving customers in high cost locations, with a program which relies on explicit contributions to a fund, transfers from which will preserve and enhance a ubiquitous telecommunications network by ensuring rates and service quality in high cost locations at levels

which are reasonably comparable to those in other areas; and

(d) Facilitate the development of competition in both urban and rural areas of the state.

(3) The program authorized by this act shall provide support for all telecommunications lines used to provide basic telecommunications services in high cost areas.

NEW SECTION. Sec. 3. DEFINITIONS.

The following definitions apply to sections 2 through 13 of this act.

(1) "Administrator" means the administrator of the universal service fund designated pursuant to section 5(13) of this act.

(2) "End user telecommunications revenue" means the telecommunications carrier's international, interstate, and intrastate revenue derived from Washington end users for telecommunications and telecommunications services.

(3) "Fund" means the universal service fund created by section 5 of this act.

(4) "High-cost location" means where the cost of providing telecommunications services is greater than a benchmark established by the commission.

(5) "Telecommunications" has the same meaning as that term is defined in 47 U.S.C. sec. 154(43).

(6) "Telecommunications carrier" has the same meaning as that term is defined in 47 U.S.C. sec. 154(44).

(7) "Telecommunications services" has the same meaning as that term is defined in 47 U.S.C. sec. 154(46)

NEW SECTION. Sec. 4. SERVICES TO BE SUPPORTED.

(1) The commission shall implement the program authorized by this act to support the

following basic telecommunications services:

- (a) Single-party service;
- (b) Voice grade access to the public switched network;
- (c) Support for local usage;
- (d) Dual tone multi frequency signaling (touch-tone);
- (e) Access to emergency services (E-911);
- (f) Access to operator services;
- (g) Access to interexchange services;
- (h) Access to directory assistance and white pages directory; and
- (i) Toll limitation services.

(2) The commission may designate by rule additional services as basic telecommunications services to be covered by the program. In determining whether additional services should be added to the list of basic services, the commission shall take into account advances in telecommunications and information technologies and services and shall consider the extent to which such telecommunications services:

- (a) are essential to education, public health, or public safety;
- (b) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;
- (c) are being deployed in public telecommunications networks by telecommunications carriers; and
- (d) are consistent with the public interest, convenience, and necessity.

NEW SECTION. Sec. 5. CONTRIBUTIONS TO THE UNIVERSAL SERVICE FUND.

(1) The Commission shall establish by rule a specific, predictable, and sufficient mechanism to provide support for a universal service fund to support basic telecommunications services in high cost areas. The fund shall include contributions by telecommunications carriers as provided in subsection (2), penalties imposed and paid pursuant to section 11, and other monies authorized to be deposited in the fund by law or by order of any court with jurisdiction.

(2) Every telecommunications carrier shall contribute to the fund on an equitable and nondiscriminatory basis. The commission shall establish each carrier's contribution each year by order based on each carrier's proportionate share of total end user telecommunications revenue.

(3) The fund shall be administered by a fund administrator designated by the commission and shall be subject to the guidance and direction of the commission. Should the commission determine, after a competitive bid process, that there is no reasonably available economical independent administrator qualified to administer the program, the commission may designate a commission employee to act as administrator. The commission shall establish and approve the budget for the administrator and the administrative expenses shall be paid out of the fund when such expense have been approved by the commission. The administrator may establish an account or accounts in one or more independent financial institutions.

(4) The fund shall be outside the state treasury and transfers from the fund shall not be subject to appropriation.

NEW SECTION. Sec. 6. STATE TELECOMMUNICATIONS CARRIERS ELIGIBLE TO RECEIVE FUND SUPPORT.

The commission shall designate telecommunications carriers who are eligible to receive

support for their provision of service in high-cost locations and establish criteria for making such designations. In making such designations, the commission may require such carriers to serve all persons requesting service within the geographic for which designation is made and may condition such designation on maintaining appropriate service quality.

NEW SECTION. Sec. 7. LEVELS OF SUPPORT.

(1) The commission shall provide support for eligible telecommunications carriers serving high cost locations.

(2) The commission shall establish by rule (a) the criteria and method for making distributions from the fund to eligible telecommunications carriers serving high cost locations and (b) the method for establishing a benchmark which shall serve as a proxy for the amount deemed by the commission to be a reasonable amount consumers in high cost locations should pay for basic telecommunications services.

(3) The commission periodically shall audit, or contract for an audit of, telecommunications carriers that receive support under the program to ensure that they are using that support only for the purposes of the program.

NEW SECTION. Sec. 8. MISCELLANEOUS RULEMAKING AUTHORITY .

(1) In establishing the program, the commission shall adopt rules which will include the following:

(a) Provisions for the operation of the universal service fund authorized by section 5 of this act;

(b) Criteria for the selection of an independent third party administrator of the fund; and

(c) Reporting requirements for telecommunications carriers.

(2) In adopting the rules under this act, the commission shall consider the report prepared under chapter 337, section 1, Laws of 1998.

NEW SECTION. Sec. 9. COORDINATION WITH FEDERAL PROGRAM.

The commission shall coordinate administration of the program with any federal universal service program and may administer the federal fund in conjunction with the state program if so authorized by federal law.

NEW SECTION. Sec. 10. INFORMATION.

(1) The administrator of the fund may request, and each telecommunications carrier shall provide, information the commission or the administrator deems necessary for the implementation and operation of the program, including, but not limited to, information on costs to the company to provide service.

(2) Any person may submit information pursuant to RCW 80.04.095 and the administrator shall treat such information pursuant to the terms of that statute.

NEW SECTION. Sec. 11. PENALTIES.

(1) In addition to any other penalties prescribed by law, the commission may impose penalties for delays in making the required reports or contributions under the program. Such penalties shall be calculated as a percentage of the carrier's required contribution for the previous calendar year. The penalties shall be as follows:

- (a) For delays more than seven days but less than fourteen days, two percent;
- (b) For delays of at least fourteen days, but less than twenty-one days, four percent;
- (c) For delays of at least twenty-one days, but less than twenty-eight days, six percent;
- (d) For delays of twenty-eight days or more, eight percent; and

(e) For delays of thirty-five days or more, in the commission's discretion, an additional two percent per week.

(2) Any penalties imposed by the commission pursuant to this section or imposed for violation of rules adopted pursuant to this act shall be payable to the universal service fund established under section 5.

(3) In addition to any penalties imposed under this section, the administrator may withhold payments to any eligible telecommunications carrier that fails to submit information required to be submitted pursuant to this act.

NEW SECTION. Sec. 12. DELEGATION.

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. If the fund administrator is an employee of the commission, the commission may delegate such final authority to administer the program as it deems necessary to such employee.

NEW SECTION. Sec. 13. PROGRAM EVALUATION.

The commission shall develop measures to evaluate and shall evaluate the program established by this act. In such evaluation, the commission shall attempt to assess whether rates for high cost areas remain comparable to those in low cost areas, how implementation of the program has impacted the development of competition in both high cost and low cost areas, and whether the overall rates for residential and small business customers are affordable.

Sec. 14. AMENDMENT TO EXISTING RCW 80.36.610.

RCW 80.36.610 and 1998 c337 s 2 are each amended to read as follows:

~~(1) 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 section 1 of this act. The commission may establish by rule fees to be paid by persons seeking commission action under the federal act, 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 section 1 of this act shall not be inconsistent with the requirements of 47 U.S.C. Sec. 254.~~



NEW SECTION. Sec. 15. SEVERABILITY CLAUSE.

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. 16. CODIFICATION.

Sections 2 through 13 of this act shall be codified in chapter 80.36 RCW, and section 14 may be recodified in chapter 80.36 RCW.

NEW SECTION. Sec. 17. REPEALER.

Chapter 337, section 1, Laws of 1998, and RCW 80.36.600, are repealed.



SUMMARY OF DRAFT LEGISLATION IMPLEMENTING  
PROPOSED PROGRAM FOR UNIVERSAL SERVICE  
November 30, 1998

## INTRODUCTION

RCW 80.36.600 requires that the Legislature approve any new comprehensive program for universal service proposed by the Commission. Therefore, some form of legislation is necessary. The Commission submits the accompanying draft legislation as one option for Legislative "approval." Essentially, it would authorize a program for universal service with reference to the proposal submitted pursuant to chapter 337, Laws of 1998, and gives direction to the Commission for its implementation. Because the Commission's proposed rules contain some provisions that are not authorized under current law, some additional authority would be necessary in any legislation.

## GENERAL APPROACH

In developing draft legislation, the Commission was faced with two general options. One approach would be to suggest a simple bill which would simply "approve" the draft rules submitted as part of the Commission's proposal pursuant to chapter 337. However, that approach would lead to considerable administrative problems and legal ambiguities. If the draft rules were simply "approved," it would be unclear how, if at all, the Commission could amend the rules as times and circumstances change. If after the legislative approval, but before final adoption of the draft rules, the Commission would make changes, technical or otherwise, would those revisions go beyond the scope of the Commission's authority? Further, it seems desirable from a policy perspective to authorize evolution of the details of the program without the necessity of subsequent formal Legislative action. For example, one of the issues is what services should be included within the definition of "basic telecommunications services" which would be supported by the universal service fund. The list of services in current RCW 80.36.600(7)(b) simply copies the federal list. However, the source of the federal list is a rule of the Federal Communications Commission (FCC). That list may be changed administratively by the FCC. As times and technology evolve (or the FCC rules change), it would be desirable to have the services supported by the state universal service program evolve as well. Of course, as with the current draft, the appropriate legislative committees would be kept informed and involved in any proposed rule revisions.

Therefore, in this recommended draft legislation, the Commission suggests a different approach. This draft would reenact many of the substantive provisions of chapter 337, but delete those provisions requiring legislative approval. The "approval" would come in this new legislation which, as described in the section-by-section summary below, acknowledges the Commission's report and directs implementation of a new program with reference to that report.

## SECTION-BY-SECTION SUMMARY

### Section 1-- Reference to Chapter 337, Laws of 1998

This legislative finding, which would not be codified, simply links this bill with chapter 337 and recognizes that the task of preparing the report, assigned to the Commission, has been completed. This report would become relevant to the Commission rulemaking process as set forth in the discussion of section 8.

### Section 2-- General Authority and Purpose

Subsection (1) is the general authorization to the Commission to implement a universal service program.

Subsection (2) describes the purposes of the program. It draws from and elaborates on existing language in RCW 80.36.600 (chapter 337, §1) and makes clear that competition in both urban and rural areas is a purpose of the program.

Subsection (3) would adopt as state policy a program supporting all telecommunications lines in high cost areas, not just one line. Chapter 337 required the Commission to estimate the cost of supporting one versus all lines, RCW 80.36.600(2), and, as described in the main body of the Report, the Commission recommends that all lines be supported.

### Section 3 -- Definitions

For the most part, this draft incorporates by reference definitions in the Federal Telecommunications Act of 1996 (Federal Act). "Telecommunications", "telecommunications carrier", and "telecommunications services" are so treated. This is part of the Commission proposal to implement a state program consistent with the federal program in order to ease the burdens of administration and compliance. By singling out these three terms for definition with reference to the Federal Act, the Commission is not suggesting that other terms should be interpreted to have meanings different from the federal act. To the contrary, the Commission would strive to interpret terms in any state legislation consistently with terms in the Federal Act.

Consistent with the intent to implement a state program consistent with the federal program, the term "end user telecommunications revenue" is derived from 47 C.F.R. §54.709 which defines the carrier revenues which would fund the program.

#### Section 4 -- Services to Be Supported

Subsection (1) defines the services which would be supported under the proposed program. This is identical to the services in existing RCW 80.36.600(7) (Chapter 337, §1(7)), except the proposed draft lists “E-911” instead of “911” and includes access to a white pages listing.

Subsection (2) would authorize the Commission to adopt rules adding additional services to be covered by the program. It lists criteria the Commission would consider in making those additions. These criteria are derived from the criteria Congress set for the FCC in the Federal Act. 47 U.S.C. §254(c)(1).

#### Section 5 -- Contributions to the Universal Service Fund

Subsection (1) establishes the universal service fund requiring the Commission to “establish by rule a specific, predictable, and sufficient mechanism to provide support . . . .” This language is taken from similar language in the Federal Act. 47 U.S.C. §254(b)(5). It also provides that in addition to carrier contributions, the fund will include revenues from penalties and any other funds authorized to be deposited in the fund by law or by order of a court.

Subsection (2) provides that every “telecommunications carrier” contribute to the fund and establishes the level of contribution as each carrier’s “proportionate share” of “total end user telecommunications revenue.” In other words, the Commission (or administrator of the fund) would calculate the total revenue (international, interstate, and intrastate) attributable to Washington end users and allocate it among all contributors to the fund.

Subsection (3) requires the Commission to designate an independent administrator for the fund, using a competitive bid process. Only if “there is no reasonably available economical independent qualified administrator” may the Commission designate a Commission employee to act as administrator.

Subsection (4) provides that the fund is outside the state treasury and not subject to legislative appropriation.

#### Section 6 -- State Telecommunications Carriers Eligible to Receive Fund Support

This section requires the Commission to designate telecommunications carriers who are eligible to receive support from the fund. This is consistent with existing RCW 80.36.600(2)(c) as well as with the process Congress has established and the Commission has implemented for designating “eligible telecommunications carriers” for purposes of the federal universal service program. 47 U.S.C. §214(e)(2).

## Section 7 -- Levels of Support

This section requires the Commission to establish criteria for making distributions from the fund to eligible telecommunications carriers serving high cost locations and to provide such support to such carriers. As with existing RCW 80.36.600(7)(c), it envisions a benchmark which would be “a proxy for the amount deemed by the Commission to be a reasonable amount consumers should pay for basic telecommunications services.” It would require the Commission to establish by rule the method for establishing the benchmark.

Subsection (3) requires the Commission to audit or contract for an audit of companies receiving support. This is consistent with existing RCW 80.36.600(5).

## Section 8 -- Miscellaneous Rulemaking Authority

Subsection (1) authorizes the Commission to adopt rules in areas not otherwise covered in other sections of the bill.

Subsection (2) requires the Commission to consider in its rulemaking implementing the program the report submitted pursuant to RCW 80.36.600. The effect of this provision would be to give some legislative endorsement of the program submitted by the Commission to the Legislature without the legal ambiguities, discussed above, which would result from simple “approval” of the rules prepared as part of the report.

## Section 9 -- Coordination with Federal Program

This section requires the Commission to implement the state universal program in conjunction with the federal program. It restates existing RCW 80.36.600.

## Section 10 -- Information

Subsection (1) allows the administrator to obtain from companies information necessary to implement the program. It is similar to existing RCW 80.36.600(8). Subsection (2) insures that information submitted to the administrator would receive the same confidentiality protection as information submitted to the Commission under existing law.

## Section 11 -- Penalties

This section gives specific authority for the penalty structure envisioned by the draft rules. Because the operation of the fund depends on timely submission of reports and contributions, penalties for delays are appropriate. Subsection (2) insures that any penalties would remain in the universal service fund. Subsection (3) authorizes the withholding of funds from those companies which fail to provide the necessary information to the administrator.

### Section 12 -- Delegation

Because the day-to-day implementation of the fund, including dispute resolution, may involve numerous discretionary decisions, this section provides for delegation of much of that decision-making authority. The language is slightly modified from that in existing RCW 80.36.600(4)(b).

### Section 13 -- Program Evaluation

This section requires the Commission to develop outcome measures. It is similar to the requirement in existing RCW 80.36.600(5).

### Section 14 -- Amendment to Existing RCW 80.36.610

In chapter 337, the Legislature intended to insure that the general authority of the Commission authorized in section 2 of that act to implement provisions of the Federal Act did not provide authority to implement a new universal service program without further legislative action. This section deletes that condition as it no longer would be necessary with the enactment of this universal service legislation.

### Section 15 -- Severability Clause

This section is a standard severability clause.

### Section 16 -- Codification

This section simply directs the Code Reviser to place these provisions in existing chapter 80.36, which contains most other state laws relating to telecommunications companies. It allows the Code Reviser to recodify existing RCW 80.36.610 if that makes sense in the structure of that RCW chapter.

### Section 17 -- Repealer

Because enactment of this new universal service legislation would displace existing RCW 80.36.600 (and because many of the provisions of that section would be reenacted in this legislation), RCW 80.36.600 should be repealed.