

HOUSE BILL REPORT

ESSB 6622

As Reported By House Committee On:
Energy & Utilities

Title: An act relating to the implementation of the federal telecommunications act of 1996, P.L. 104-104 (110 Stat. 56).

Brief Description: Implementing the federal telecommunications act of 1996.

Sponsors: Senate Committee on Energy & Utilities (originally sponsored by Senator Finkbeiner; by request of Utilities & Transportation Commission).

Brief History:

Committee Activity:

Energy & Utilities: 2/25/98, 2/27/98 [DPA].

HOUSE COMMITTEE ON ENERGY & UTILITIES

Majority Report: Do pass as amended. Signed by 10 members: Representatives Crouse, Chairman; DeBolt, Vice Chairman; Mastin, Vice Chairman; Bush; Cooper; Delvin; Honeyford; Kessler; Mielke and B. Thomas.

Minority Report: Do not pass. Signed by 3 members: Representatives Poulsen, Ranking Minority Member; Morris, Assistant Ranking Minority Member; and Kastama.

Staff: Linda Brooks (786-7153).

Background: Universal service serves to provide all citizens with affordable telephone service. For reasons such as geography or population density, it may cost more to provide phone service for some customers than for others. Ensuring that everyone has access to affordable telephone service, including customers located in high cost locations, has been a long-standing policy in Washington and the rest of the nation.

Universal service has historically focused on affordable telephone service, but the new focus is on affordable telecommunications service. The federal Telecommunications Act of 1996 requires equivalent telecommunication services to be treated the same so that the focus is on the services provided rather than on the technologies used (i.e., a regular telephone as opposed to a wireless telephone.)

In regards to universal service, the federal act states several principles. One principle is that consumers in all regions of the nation, including consumers located in high-cost areas, should have access to telecommunications and information services that are reasonably comparable to services and prices offered in urban areas. The federal act also says that all providers of telecommunication services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.

Currently universal service is funded through a variety of federal and state mechanisms. Many of the mechanisms involve implicit, rather than explicit, sources of funding.

Implicit funding involves charging above-cost rates for some customers or services so that rates may be subsidized for other customers or services. A mix of implicit funding mechanisms is used for universal service, and the following are some examples: access charges, higher telephone rates for business customers than for residential customers, and rate averaging. Access charges refer to fees that telecommunications companies pay to local telephone companies for connecting to the local telephone company's network. By charging above-cost access charges, local telephone companies have been able to use access charge revenues to help subsidize basic telephone rates for their customers. Rate averaging refers to the practice of allowing some telephone companies to charge all of their customers the same rates, even though some customers are located in low service cost areas and others are located in high service cost areas.

Although implicit funding is an important source of universal service funding, there are also some explicit funding mechanisms. In Washington there is a \$0.00152 surcharge on each minute of long distance access. Revenues from this surcharge go into a special fund, and disbursements are made from this fund to local telephone companies who serve customers in high cost areas. Most of the local telephone companies receiving moneys from this fund are small companies serving rural or semi-rural areas.

The federal act of 1996 requires funding for universal service to be specific, sufficient, and predictable. The Federal Communications Commission is working on plans to make federal universal service support more explicit. In its recent universal service report, one of the Washington Utilities & Transportation Commission's (WUTC's) recommendations is to make state universal service funding more explicit by making assessments on all telecommunications carriers. These assessments would be paid into a new universal service fund, and disbursements from the fund would be made to any eligible carrier who agrees to provide certain basic services to customers located in high cost areas. In order to create the fund, however, the WUTC needs authorizing legislation.

Universal service is just one of many topics covered by the federal act of 1996. Other provisions of the act that are designed to promote competition among telecommunications providers have imposed new duties on the WUTC. For example, the WUTC has become involved in arbitrating disputes involving interconnection agreements.

Whether, and the extent to which, a company or service is regulated by the WUTC depends on how a company or service is classified. A telecommunications company or service is not subject to rate regulation by the WUTC, if the company or the service is subject to effective competition. Effective competition means that customers have reasonably available alternatives. A telecommunications company may petition the WUTC for classification as a competitive company, and the WUTC is also allowed to initiate classification proceedings on its own motion. The WUTC is required to enter a final order on any petition or motion for a classification change within 10 months.

Summary of Amended Bill: The commission is directed to plan and prepare to implement a new program for the preservation and advancement of universal telecommunication services. The purpose of the new program is to provide specific, sufficient, competitively neutral, and technologically neutral sources of support for the provision of basic telecommunications services located in high-cost locations. Under the program implicit sources of funding are to be minimized and explicit sources are to be maximized.

When the cost of serving a customer exceeds a benchmark established by the WUTC by rule, universal service funding support is to be provided for the following basic services:

- Single-party service;
- Voice grade access to the public switched network;
- Touch tone signaling;
- Access to 911 emergency services;
- Access to operator services;
- Access to interexchange services;
- Access to directory assistance; and
- Toll limitation service.

In preparing this new universal service program for legislative approval, the WUTC is to estimate costs and determine the assessments needed to be made on telecommunications carriers in order to support: (1) all lines located in high cost areas; and (2) only one line per residential or business customer located in high cost areas.

Additionally, the WUTC is to determine how the assessments will be collected and to adopt, or prepare to adopt, rules needed for the new universal service program. The commission must also prepare a schedule indicating the fees that it expects to charge to cover its costs in administering the new program. The WUTC is to report to the Legislature on these steps taken to prepare for a new universal service program by November 1, 1998. Certain provisions are also made for the future administration of the universal service program. For example, unless otherwise directed by the Legislature, the WUTC will be allowed to use an independent fund administrator for the new universal service program.

Once the new universal service program is approved by the Legislature and established, the commission must establish standards for testing or reviewing all telecommunications carriers' compliance with the program. Both carriers paying support as well as carriers receiving support will be subject to review.

The WUTC is authorized to take actions, conduct proceedings, and enter orders as permitted or contemplated for a state commission under the federal act of 1996, but the WUTC is restricted from establishing a new universal service program or adopting new universal service rules until the Legislature has approved the new program. Similarly, the WUTC may charge fees to pay for the commission's expenses in implementing provisions of the federal act of 1996, if those expenses are not already covered by existing fees. The WUTC cannot charge new fees or assessments for universal service, however, until the Legislature has approved the new universal program.

In regards to classifying telecommunications companies or services as competitive companies or services not subject to rate regulation by the WUTC, a company's petition or the WUTC's motion for a classification change must state an effective date not sooner than 30 days from the filing date. The classification change takes effect automatically, unless the WUTC takes action to suspend and sets the petition or motion for hearing or a formal investigation and fact-finding. The WUTC is required to enter a final order on any suspended classification within six months.

Amended Bill Compared to Engrossed Substitute Bill: Authorization is not given to establish a new universal service program subject to legislative approval before it takes effect. Instead of establishing a program, the WUTC is directed to plan and prepare for a new universal service program. The new program is to minimize implicit sources of support and to maximize explicit sources of support.

In preparing a new universal service program for legislative approval, the WUTC is to estimate two sets of costs. One, the WUTC is to estimate the cost of supporting universal service for all lines located in high cost areas. Two, the WUTC is to estimate the cost of supporting only one primary line for each residential or business customer located in a high cost area. In estimating costs, the substitute bill required the WUTC to use a "set-revenue" benchmark, but the amended bill does not specify the type of benchmark to be used.

After estimating costs the commission is determine the assessments needed to be made on telecommunications carriers in order to support basic services in high cost locations. The WUTC must also determine how the assessments will be collected and prepare a schedule indicating the fees that it expects to charge to cover its costs in administering the new program.

The WUTC is to report to the Legislature on all steps taken to plan and prepare for a new universal service program by November 1, 1998.

The requirement that the total amount of assessments made by the WUTC to support universal service not exceed the total amount of explicit and implicit funding provided in 1997 is deleted. The requirement that the receipt of universal service be conditioned upon the reduction of intrastate rates containing implicit subsidies by an amount equal to the support provided is also deleted.

Once the new universal service program is established, the substitute bill requires the WUTC to audit carriers receiving universal service support. The amended bill states that the commission must establish standards for testing or reviewing all telecommunications carriers' compliance with the program. Both carriers paying support as well as carriers receiving support will be subject to review.

Both the substitute and amended bills authorize the WUTC to take actions, conduct proceedings, and enter orders as permitted or contemplated for a state commission under the federal act of 1996, but the amended bill restricts the WUTC from establishing a new universal service program or adopting new universal service rules until the Legislature has approved the new program. Similarly, the substitute and amended bills allow the WUTC to charge fees to pay for the commission's expenses in implementing provisions of the federal act of 1996, but the amended bill stipulates that the WUTC may only charge fees for its expenses if those expenses are not already covered by existing fees. The amended bill also restricts the WUTC from charging *new* fees or assessments for universal service until the Legislature has approved the new program.

The substitute bill terminates the WUTC's rule-making authority to establish a program for the advancement of universal service on December 31, 1999. This sunset provision on the WUTC's rule-making authority is deleted in the amended bill.

A company's petition or the WUTC's motion to reclassify a company or service as competitive takes effect automatically on a date specified in the petition or motion unless the WUTC takes action to suspend the petition or motion. The amended bill adds that if the WUTC suspends a petition or motion, the WUTC must set the petition or motion for either a hearing or a formal investigation and fact-finding.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 27, 1998.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: Ninety-seven percent of Washington residents have telephone service, so universal service has been achieved. As the industry restructures from a monopoly model to a competitive one, we must change the method of funding universal service to promote competition without impacting universal service. A new universal service

program is critical to the development of competition, but it is important to also determine the true cost of providing universal service. The Legislature needs to know the costs and impacts of the universal service program being proposed so that the Legislature may make an informed decision. Several persons support the bill but also suggest amendments such as allowing the WUTC to modify the definition of "basic telecommunications service" by rule or requiring universal service support to be determined on the basis of forward-looking economic costs.

(With Concerns) Essentially the bill requires the WUTC to conduct another universal service study, and conducting another study may hinder current efforts to make telecommunications more competitive. The WUTC already has authority to make rate determinations and to take other steps necessary for implementing a new universal service program. The WUTC only needs additional authorization to create a new and independent funding mechanism for universal service. It is appropriate for the Legislature to provide policy direction for a universal service program, but universal service is a moving target. There is so much change in the telecommunications industry that the WUTC needs some flexibility.

Testimony Against: None

Testified: Scott Ellison, MCI Telecommunications (pro); Teresa Osinski, Washington Utilities and Transportation Commission (concerns); Mark Greenberg, Tracer (pro); Art Butler, Tracer (pro); Terry Vann, Washington Independent Telephone Association (pro/with amendments); Rick Finigan, Washington Independent Telephone Association (pro/with amendments); Lida Tong, GTE Northwest Inc. (pro/with amendments); Mike Woodin, AT&T (pro/with amendments); and Tom Walker, U. S. West (pro/with amendments).