

# HOUSE BILL ANALYSIS

## ESSB 6622

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**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).

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### HOUSE COMMITTEE ON ENERGY & UTILITIES

*Meeting Date:* February 25, 1998

*Bill Analysis Prepared by:* 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. According to a recent universal service report prepared by the Washington Utilities and Transportation Commission (WUTC), universal service has been a policy in the United States for most of this century.

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, including the following:

- Quality services should be available at just, reasonable, and affordable rates;
- Access to advanced telecommunications and information services should be provided in all regions of the nation;
- Consumers in all regions of the nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services

and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charges for similar services in urban areas;

- All providers of telecommunication services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service; and
- There should be specific, predictable and sufficient federal and state mechanisms to preserve and advance 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 are 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 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 is not subject to rate regulation by the WUTC, if a telecommunications company is providing service in an area where there is effective competition. Effective competition means that a company's customers have reasonably available alternatives and that the company does not have a significant captive customer base. 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 Striking Amendment:** The commission is directed to plan and prepare to implement a program for the preservation and advancement of universal telecommunication services. The new program will not take effect until the Legislature has approved it. The purpose of the new program is to provide specific, explicit, sufficient, competitively neutral, and technologically neutral sources of support for the provision of basic telecommunications services to customers located in high-cost locations. Under the program implicit sources of support and any present sources of explicit support are to be replaced with explicit funding.

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) One primary line for each 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 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.

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 universal service program or adopting 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 as competitive companies 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.

**Striking Amendment 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. In preparing a new program 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 basic services in high cost locations where the cost of providing basic telecommunication services is greater than a benchmark established by the WUTC by rule. The engrossed substitute bill specified that a "set-revenue" benchmark was to

be used, but this striking amendment does not specify the type of benchmark to be used.

This striking amendment also directs the WUTC 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.

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 WUTC is to report to the Legislature on these 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.

The engrossed substitute bill authorizes 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 striking amendment restricts the WUTC from establishing a universal service program or adopting universal service rules until the Legislature has approved the new program. Similarly, the engrossed substitute bill allows the WUTC to charge fees to pay for the commission's expenses in implementing provisions of the federal act of 1996. This striking amendment stipulates that the WUTC may only charge fees for its expenses if those expenses are not already covered by existing fees. The striking amendment also states that the WUTC cannot charge new fees or assessments for universal service until the Legislature has approved the new universal program.

The engrossed 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 striking amendment. Any rules issued, however, are to strictly comply with the stated purpose of a universal service program. The purpose of a new universal service program is to benefit all telecommunications ratepayers by replacing any implicit sources of support and any present explicit sources of support with specific, explicit, sufficient, competitively neutral, and technologically neutral sources of support for the provision of basic telecommunications services to customers located in high-cost locations.

A company's petition or the WUTC's motion to reclassify a company 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 striking amendment 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:*** Fiscal note available on original bill; requested on ESSB 6622 on February 23, 1998.

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