HOUSE BILL REPORT
HB 2679

As Reported by House Committee On:
Technology & Economic Development

Title: An act relating to the expenditure limit for the state universal communications services program.

Brief Description: Concerning the expenditure limit for the state universal communications services program.

Sponsors: Representatives DeBolt and Haler.

Brief History:
Committee Activity:
Technology & Economic Development: 2/4/14, 2/5/14 [DPS].

Brief Summary of Substitute Bill

- Requires the Utilities and Transportation Commission (UTC) to make expenditures for the state Universal Communications Program of $5 million per fiscal year, less administrative costs appropriated in the operating budget.
- Requires the UTC to make distributions from the state Universal Communications Program Account by October 1 of each fiscal year.
- Requires the UTC to disburse remaining funds to incumbent local exchange carriers serving fewer than 40,000 access lines in the state, pursuant to a recommendation by the advisory board.

HOUSE COMMITTEE ON TECHNOLOGY & ECONOMIC DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 18 members: Representatives Morris, Chair; Habib, Vice Chair; Smith, Ranking Minority Member; Short, Assistant Ranking Minority Member; Dahlquist, DeBolt, Fey, Freeman, Hudgins, Kochmar, Magendanz, Morrell, Stonier, Tarleton, Vick, Walsh, Wylie and Zeiger.

Staff: Jasmine Vasavada (786-7301).

Background:

Universal Services Fund.
Universal service has been the long-standing policy of the United States and the State of Washington to enable every individual, regardless of location, to have access to affordable high-quality telephone and, more recently, internet services. In 2011 the Federal Communications Commission (FCC) announced changes in access to the Federal Universal Service Fund's (FUSF) High Cost Program. The High Cost Program was created to keep telephone service affordable for customers in areas where, absent the subsidy, telephone service would be dramatically more expensive than the national average. A complex system of fees, surcharges, and subsidies supported telephone companies in rural and remote areas. The FCC approved a six-year transfer process that would transition money from the FUSF's High Cost Program to a new $4.5 billion a year Connect America Fund for broadband internet expansion, effectively putting an end to the FUSF's High Cost Program subsidies by 2018. Small rural phone companies, known as rural incumbent local exchange carriers (ILECs), are experiencing substantial reduction of their revenue streams, which will be accelerated due to these changes in federal regulation. The ILECs may have obligations as a carrier of last resort. These are telecommunications carriers that commit (or are required by law) to provide service to any customer in a service area that requests it, even if serving that customer would not be economically viable at prevailing rates.

Temporary State Universal Communications Service Program.
In 2013 the Legislature enacted a comprehensive communications services reform bill that affected a number of taxes on landline and wireless telephone service. Among other changes, the bill repealed taxes previously dedicated to the Washington Telephone Assistance Program and a sales and use tax exemption that had formerly applied to landline telephone services. Dedicated funds from telecommunications providers for universal service were repealed and in their place, the bill established a temporary state Universal Communications Services Program (Program), to begin on July 1, 2014, and expires on July 1, 2019, funded by legislative appropriations.

The Program is funded by legislative appropriations to a new Universal Communications Services Account (Account). The maximum amount appropriated each year cannot exceed $5 million. The Utilities and Transportation Commission (UTC) must operate the Account, establish benchmarks used to calculate distributions, and adopt rules that address a number of issues, including eligibility criteria for receiving a distribution. Distributions from the Account are available for a number of eligible communications providers, including certain ILECs. An ILEC serving fewer than 40,000 access lines in Washington is eligible to receive a distribution, if its customers are at risk of rate instability or service interruptions absent such distributions and the provider meets any other criteria established by the UTC. An ILEC may only receive such distributions if its rates do not exceed UTC benchmarks for reasonable basic residential service rates. The UTC must operate the Program within amounts appropriated for this purpose by the Legislature and deposited in the Account.

Summary of Substitute Bill:

The UTC expenditures for the Program from the Account must be $5 million per fiscal year, less administrative costs appropriated in the operating budget to the UTC to administer the Program. Previously, expenditures were capped at $5 million, but there was no requirement that $5 million in expenditures be authorized. Distributions to eligible communications providers must be made by October 1 of the fiscal year, and the remainder of the $5 million (less administrative costs) shall be disbursed to incumbent local exchange carriers serving fewer than 40,000 access lines in the state, consistent with the legislative intent and pursuant to a recommendation by the advisory board for the UTC's Program. In making these recommendations, the advisory board must prioritize expenditures that help carriers fulfill carrier of last resort obligations to serve and expand communications services to underserved populations.

The Legislature makes findings explaining the need that the Legislature is seeking to address in requiring expenditure of $5 million. These include but are not limited to the following findings: (1) that changes in the communications marketplace have resulted in a revenue shortfall of greater than $5 million for rural incumbent local exchange carriers in the state; (2) that the effective expenditure limit for the Program, as established by current law governing the authority of the UTC to make distributions to an eligible communications provider, is too low to effectuate the Legislature's intent of providing funding that is adequate to ensure that quality, affordable local communications services are not interrupted; and (3) that customers in many parts of the state are at grave risk of rate instability and service interruptions or cessations, without a limited and temporary influx of funds to support additional investments that rural ILECs would otherwise have little hope of recouping in the marketplace.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes relating to how the UTC must expend $5 million in funds per fiscal year for the Program:

- includes an intent section explaining the Legislature's purpose in requiring expenditure of $5 million to address declining revenues of rural local incumbent exchange carriers;
- provides that distributions to eligible communications providers must be made by October 1 of the fiscal year, and the remainder of the $5 million (less administrative costs) shall be disbursed to incumbent local exchange carriers serving fewer than 40,000 access lines in the state, consistent with the legislative intent and pursuant to a recommendation by the Advisory Board for the Universal Communications Services Program; and
- requires the advisory board, in making recommendations for the expenditure of the remaining funds, to prioritize expenditures that help carriers fulfill carrier of last resort obligations to serve and expand communications services to underserved populations.

Appropriation: None.

Fiscal Note: Requested February 5, 2014.

Effective Date of Substitute Bill: The bill takes effect on July 1, 2014.

Staff Summary of Public Testimony:

(In support) Last year, as a result of negotiations for the comprehensive reform of telecommunications taxes, we intended to replace tax revenue that was diverted away from the Washington Independent Telecommunications Association (WITA) with $5 million in appropriations. The purpose of the bill is to correct an error in how the expenditure limit was previously drafted. Last year House Bill 1857 first brought the concept of a state universal service fund, which was later rolled into a larger communications bill. Today's bill does not add any new dollars; it just clarifies that $5 million means $5 million. A chart for total operating revenues of WITA members from 2005 through 2012 shows that companies today are making $20 million less than in 2005. In 2005 members started experiencing loss of access revenues and intercarrier compensation. The bill does not give us a formula for how distributions should be made. Members' losses per year exceed $5 million and members are working to find a formula that helps allocate funding from a large loss down to $5 million.

As a telephone and internet access provider on Whidbey Island, we experience carrier of last resort obligations that are taken very seriously. We view the internet as an essential service to all customers and provide it service-area wide. We have seen a $1.5 million decrease in revenues over 5 years; over all, we have seen our federal High Cost support fund get zeroed out. Whidbey is under-earning by more than $5 million; the decreasing revenue sources are real for us. The intent of the Legislature last year was to fund the entire amount as approved.

We provide wireless service for 15 miles of the Interstate 5 corridor and family-wage jobs for 33 employees, and we serve 100 percent of our territory where others will not because of density and costs. In order to meet the needs of our customers and carrier of last resort obligations, we have made millions of dollars in plant-related investments. Due to changes in universal service funds and intercarrier compensation, we have experienced a 27 percent decrease in revenues. It is imperative that the Universal Service Fund be funded at the full $5 million per year. If you looked at rate of return for all WITA companies, it is a negative 2.2 percent. It is imperative to get a start to continue to keep local rates affordable, maintain quality of service, and meet carrier of last resort obligations.

(With concerns) Whatever understandings may have existed during the negotiations of the telecommunications tax reform bill, the UTC must follow the letter of the law and implement the law as it is written. The legislation created a finite, transitional support system with temporary relief in the transition from the loss of federal revenues. It might be useful to clarify the purpose of the Legislature last year, and change the duties of the UTC so it is not asked to do a complex rule-making or perform an analysis that has a predetermined outcome. It is important to make a legislative finding that companies need more than $5 million, and this finding must be a specific finding to address potential gift of public funds issue. The UTC is hoping to have rule-making required under last year's legislation completed by July 1. Up to $5 million was built into agency request legislation, and this value came from analysis done a couple of years ago in a report about Universal Service in the state and an assessment of need at the time. The FCC order effectively eliminating subsidies for rural carriers rocked the world as we knew it.

(Opposed) None.

Persons Testifying: (In support) Representative DeBolt, prime sponsor; Betty Buckley, Washington Independent Telecommunications Association; Bruce Russell, Whidbey Telecom; and Rick Vitzthum, Scatter Creek Limited.

(With concerns) Dave Danner and Brian Thomas, Washington Utilities and Transportation Commission.

Persons Signed In To Testify But Not Testifying: None.