

SENATE BILL REPORT

2E2SHB 1971

As of Second Reading

Title: An act relating to communications services reform.

Brief Description: Concerning communications services reform.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Carlyle and Nealey).

Brief History: Passed House: 4/16/13, 74-22; 6/06/13, 74-18; 6/27/13, 77-15.

Committee Activity:

Staff: Dean Carlson (786-7305)

Background: Enhanced 911 Excise Tax on Prepaid Wireless. Counties are currently authorized to impose a 70 cent per line tax on landline, cellular, and voice over internet protocol (VoIP) telephone services. The state is authorized to impose a 25 cent per line tax on these same services. The tax is referred to as the enhanced 911 (E911) excise tax, which is used to fund emergency communications systems. While prepaid wireless is not explicitly addressed in statute, in 2010 the State Supreme Court ruled that prepaid wireless is subject to the E911 excise tax. See *Tracfone Wireless, Inc., v. Washington Department of Revenue*, 170 Wn.2d 273 (2010).

Landline Telephone Sales and Use Tax Exemption. In 1983 state and local retail sales tax was extended to telephone services. However, an exemption was provided for individuals "subscribing to a residential class of telephone service." The Department of Revenue (DOR) has interpreted this exemption to apply only to residential telephone service that is regulated by the Washington Utilities and Transportation Commission (UTC). The UTC regulates the rates and services of telephone companies providing landline telephone services in Washington. However, the UTC does not regulate cable services, cellular phone services, VoIP services, or internet service provider services.

In 2007 the DOR assessed Sprint Spectrum LP (Sprint) with retail sales tax on wireless telephone services sold to non-business customers for the audit period July 1, 1999, through December 31, 2002. (Several other taxes were also in dispute.) The Board of Tax Appeals (BTA) upheld the assessment. However, on April 8, 2011, a Washington superior

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court reversed the decision by the BTA by ruling that Sprint's sales of cellular telephone services to non-business customers qualifies for the residential telephone service exemption.

Washington Telephone Assistance Program and Telecommunications Relay Service. Created in 1987, the Washington Telephone Assistance Program (WTAP), provides discounted wireline telephone services to low-income residents of the state. The program is operated by the Department of Social and Health Services (DSHS) and provides a reduced monthly charge for basic telephone service, discounts on connection fees, waivers of deposits for local service, and community voicemail. The program is currently funded by a monthly 14 cent excise tax on each switched telephone line in the state. The tax does not apply to companies providing wireless and VoIP telecommunications services. The DOR determines the tax rate necessary to fund the program, but the rate cannot exceed 14 cents per month for each switched telephone line. The fiscal year (FY) 2013 tax rate is 14 cents per switched line. Up to 8 percent of the receipts go to the Department of Commerce for costs of providing community service voice mail services.

The Telecommunications Relay Service (TRS) tax is used by the DSHS Office of Deaf and Hard of Hearing to provide telecommunications equipment and services to persons with a hearing or speech impairment. The TRS tax rate may be up to 19 cents per month for each switched line. The actual rate is computed annually by the DOR, based on budgetary information submitted by the DSHS Office of Deaf and Hard of Hearing. The FY 2013 tax rate is 17 cents per switched telephone line.

Universal Services Fund and Intercarrier Compensation. Universal service is the long-standing policy of the United States and the State of Washington to enable every American, regardless of location, to have access to affordable high-quality telephone and, more recently, internet services. The federal government operates a universal service fund (FUSF) that supports the construction and maintenance of national telecommunications infrastructure. The FUSF was substantially expanded with the passage of the federal Telecommunications Act of 1996.

The FUSF program consists of four separate programs: (1) the High Cost Program; (2) the Low Income Program; (3) the School and Libraries Program; and (4) the Rural Health Care Program. The High Cost Program is by far the largest and most complex of the four programs. The net goal of this program is to keep telephone service affordable for customers in areas where, absent the subsidy, telephone service would be dramatically more expensive than the national average. The complex system of fees, surcharges, and subsidies supports telephone companies in rural and remote areas.

On October 27, 2011, the Federal Communication Commission (FCC) approved a six-year transfer process that would transition money from the FUSF 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 High Cost Program by 2018.

Intercarrier compensation refers to the charges that one carrier pays to another carrier to originate, transport, and/or terminate telecommunications traffic. Intercarrier compensation payments are governed by a complex system of federal and state rules. There are two major forms of intercarrier compensation: access charges and reciprocal compensation.

Access charges generally apply to calls that begin and end in different local calling areas. Interstate access charges apply to calls that originate and terminate in different states, and intrastate access charges apply to calls that originate and terminate in different local calling areas within the same state. The FCC oversees interstate access charge rates, and the states oversee intrastate access charge rates. Reciprocal compensation generally applies to calls that begin and end within the same local calling area.

The FCC is substantially modifying intercarrier compensation by moving to a system in which almost no money will be exchanged between carriers that exchange traffic. At the end of the transition, carriers will be required to recover all of their costs from their own customers and will not be permitted to impose charges on originating carriers.

Summary of Bill: Enhanced 911 Excise Tax on Prepaid Wireless. The state and county E911 excise taxes must be collected by the seller of a prepaid wireless telecommunications service for each retail transaction occurring in this state at the point of sale. The amount of the tax must be disclosed on an invoice or instrument of sale. Sellers of prepaid wireless telecommunications service are subject to the same administrative sales-tax provisions as companies providing wireline, wireless, and VoIP telecommunications services. Until July 1, 2018, a seller of prepaid wireless telecommunications service may charge an additional 5 cents per retail transaction as compensation for the cost of collecting and remitting the tax.

Landline Telephone Sales and Use Tax Exemption. The state and local retail sales and use tax exemption for residential telephone services is eliminated. The state and local sales tax exemption for coin-operated telephone service is also repealed. The act also provides an exemption for VoIP telephone services provided by a cable company prior to the effective date of the act.

Washington Telephone Assistance Program and Telecommunications Relay Service. The WTAP and TRS excise taxes are eliminated, and the programs are to be funded by biennial general fund appropriations.

The DSHS must enter into an agreement to provide operational support to the Washington Information Network 211 organization subject to legislative appropriation.

Universal Services Fund. A state universal communications services program (Program) is established on July 1, 2014, and is set to expire on July 1, 2019.

The Program is funded by legislative appropriations to a new universal communications services account. The maximum amount appropriated each year cannot exceed \$5 million. A communications provider is eligible to receive distributions from the account if (1) the communications provider has fewer than 40,000 lines in Washington; (2) the customers of the provider are at risk of rate instability or service interruptions absent distributions to the provider; and (3) the provider meets any other criteria established by the UTC.

The UTC must report back to the Legislature by December 1, 2017, as to the adequacy of funding under the Program and the potential impacts on carriers and customers when the Program terminates.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: This bill takes effect 90 days after the adjournment of the session in which the bill is passed, except for sections 101 and 107 through 118 relating to telecommunication taxes, which contain an emergency clause and take effect August 1, 2013. Sections 102 through 106 relating to prepaid wireless, take effect January 1, 2014, and sections 201 through 206, 208, 209, and 211 relating to a state universal services program, take effect July 1, 2014.