
SENATE BILL 5351

State of Washington

63rd Legislature

2013 Regular Session

By Senator Ericksen

Read first time 01/28/13. Referred to Committee on Energy, Environment & Telecommunications.

1 AN ACT Relating to creating a state universal communications
2 service program; amending RCW 80.36.610; reenacting and amending RCW
3 80.36.005; adding new sections to chapter 80.36 RCW; creating new
4 sections; prescribing penalties; providing effective dates; providing
5 an expiration date; and declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that: (a) The
8 benefit that all consumers and communications providers derive from
9 connection to the public network is enhanced by a universal service
10 program that enables as many consumers to be connected to the public
11 network as possible; and (b) consumers in all areas of the state should
12 have access to communications services at reasonable rates.

13 (2) Significant changes in the communications marketplace are
14 adversely affecting the ability of some communications companies to
15 continue to offer communications services in rural areas of the state
16 of Washington at rates that are comparable to those prevailing in urban
17 areas. These changes, absent explicit federal and state universal
18 service support for such communications companies, may lead to

1 unreasonable telephone service rate increases or cessation of service
2 for some Washington consumers.

3 (3) Pursuant to RCW 80.36.600, enacted in 1998, the legislature
4 directed the utilities and transportation commission to plan and
5 prepare to implement a universal service program that would benefit
6 telecommunications ratepayers in the state by minimizing implicit
7 sources of support and maximizing explicit sources of support that are
8 specific, sufficient, competitively neutral, and technologically
9 neutral to support basic telecommunications services for customers of
10 telecommunications companies in high-cost locations.

11 (4) As a result of the foregoing and to enable all consumers in
12 Washington to access and benefit from a ubiquitous public network, the
13 legislature intends to create a universal service program that: (a)
14 Enhances the public network; (b) is funded with a network connection
15 fee paid by communications providers based upon working telephone
16 numbers; (c) is administered by a neutral third party selected by the
17 utilities and transportation commission; (d) is operated pursuant to
18 rules adopted by the utilities and transportation commission; and (e)
19 advances universal service in a manner not inconsistent with the
20 requirements of the federal telecommunications act of 1996 (47 U.S.C.
21 Sec. 254).

22 **Sec. 2.** RCW 80.36.005 and 2009 c 565 s 53 are each reenacted and
23 amended to read as follows:

24 The definitions in this section apply throughout ((~~RCW 80.36.410~~
25 ~~through 80.36.475,~~) this chapter unless the context clearly requires
26 otherwise.

27 (1) "Basic residential service" means those services set out in 47
28 C.F.R. Sec. 54.101(a)(2011) and mandatory extended area service
29 approved by the commission.

30 (2) "Communications provider" means a provider that provides a
31 working telephone number to a final consumer for intrastate wireline or
32 wireless communications services or interconnected voice over
33 interconnected protocol service, and includes local exchange carriers.

34 (3) "Communications services" includes telecommunications services
35 and information services and any combination thereof.

36 (4) "Community action agency" means local community action agencies

1 or local community service agencies designated by the department of
2 commerce under chapter 43.63A RCW.

3 ~~((+2))~~ (5) "Community agency" means local community agencies that
4 administer community service voice mail programs.

5 ~~((+3))~~ (6) "Community service voice mail" means a computerized
6 voice mail system that provides low-income recipients with: (a) An
7 individually assigned telephone number; (b) the ability to record a
8 personal greeting; and (c) a private security code to retrieve
9 messages.

10 ~~((+4))~~ (7) "Department" means the department of social and health
11 services.

12 ~~((+5))~~ (8) "Incumbent local exchange carrier" has the same meaning
13 as set forth in 47 U.S.C. Sec. 251(h).

14 (9) "Incumbent public network" means the network established by
15 incumbent local exchange carriers for the delivery of communications
16 services to customers that is used by communications providers for
17 origination or termination of communications services by or to
18 customers.

19 (10) "Interconnected voice over interconnected protocol service"
20 means an interconnected voice over internet protocol service that: (a)
21 Enables real-time, two-way voice communications; (b) requires a
22 broadband connection from the user's location; (c) requires internet
23 protocol-compatible customer premises equipment; and (d) permits users
24 generally to receive calls that originate on the public network and to
25 terminate calls to the public network.

26 (11) "Program" means the state universal communications service
27 program created in sections 3 and 4 of this act.

28 (12) "Service year" means the period between July 1st and June
29 30th.

30 (13) "Telecommunications" has the same meaning as defined in 47
31 U.S.C. Sec. 153(43).

32 (14) "Telecommunications act of 1996" means the telecommunications
33 act of 1996 (P.L. 104-104, 110 Stat. 56).

34 (15) "Working telephone number" means a north American numbering
35 plan telephone number, or successor dialing protocol that is developed
36 for use in placing calls to or from the public network, that enables a
37 consumer to make or receive calls.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 80.36 RCW
2 to read as follows:

3 (1) A state universal communications service program is
4 established. The program may not exceed five million dollars in annual
5 distributions and must be funded on an equitable and nondiscriminatory
6 basis by every communications provider through the payment of a network
7 connection fee for connection to the incumbent public network.
8 Initially, the fee must be a surcharge on each working telephone number
9 rated within the state of Washington. The commission is authorized to
10 develop a new basis for the fee as it may determine to be in the public
11 interest. By order, the commission shall annually establish the
12 network connection fee. Each communications provider may, but is not
13 required to, pass-through to its customers the network connection fee
14 or any portion thereof.

15 (2) The program must be administered by a neutral third-party
16 administrator selected by the commission by contract through a
17 competitive process and subject to commission oversight. The
18 commission shall establish and approve the budget for the administrator
19 and the program expenses of the administrator must be paid out of the
20 fund established for the program after such expenses have been approved
21 by the commission. The administrator may establish an account or
22 accounts in one or more independent financial institutions within the
23 state.

24 (3) All receipts from the network connection fee created under
25 subsection (1) of this section, penalties imposed under section 5 of
26 this act, and other moneys authorized to be deposited in the fund by
27 law or order of a court of competent jurisdiction must be paid into the
28 fund, which shall be outside the state treasury and not be subject to
29 appropriation, as required under RCW 80.36.600(3)(a). Expenditures
30 from the fund may be used only as provided in this section. Pursuant
31 to rules adopted by the commission, only the administrator may
32 authorize expenditures from the fund.

33 (4) In addition to such other jurisdiction as the commission may
34 have, and notwithstanding RCW 80.66.010, the commission has
35 jurisdiction over all communications providers for the following
36 limited purposes: (a) Assessment, payment, and collection of fees
37 under subsection (1) of this section; (b) enforcement of fee payment

1 obligations; and (c) reports and information on the assessment,
2 payment, and collection of network connection fees and use of moneys
3 distributed.

4 (5) The commission shall establish eligibility criteria and
5 designate incumbent local exchange carriers that are eligible for
6 support from the fund.

7 (6) The commission shall use a benchmark equal to the local urban
8 rate floor established by the federal communications commission as the
9 affordable residential rate for purposes of administration of the fund.

10 (7) Communications providers that may receive support from the fund
11 must meet the eligibility criteria established by the commission and be
12 one of the following: (a) An incumbent local exchange carrier serving
13 fewer than forty thousand access lines in the state; or (b) a radio
14 communications service company providing wireless two-way voice
15 communications service to less than the equivalent of forty thousand
16 access lines in the state; provided that RCW 80.66.010 shall not apply
17 to any radio communications service company that receives support from
18 the fund, and that company and its intrastate telecommunications
19 services shall be subject to commission jurisdiction and regulation to
20 the extent determined by the commission. For purposes of determining
21 the access line threshold, the access lines or equivalents of all
22 affiliates must be counted as one carrier.

23 NEW SECTION. **Sec. 4.** A new section is added to chapter 80.36 RCW
24 to read as follows:

25 (1) The commission shall adopt rules for the program that include
26 the following:

27 (a) Provisions for operation of the program and fund;

28 (b) Criteria for the selection of an independent neutral third-
29 party administrator of the fund;

30 (c) Criteria for determining which incumbent local exchange
31 carriers are eligible for support from the fund;

32 (d) Contribution and remittance requirements for communications
33 providers related to the program, as authorized by section 3 of this
34 act;

35 (e) The method for establishing the annual benchmark used to
36 calculate the amount of support an eligible incumbent local exchange
37 carrier may receive from the fund. The benchmark is the rate the

1 commission determines to be a reasonable amount customers should pay
2 for basic residential service provided over the incumbent public
3 network supported by the program. However, if an incumbent local
4 exchange carrier is charging rates above the benchmark for the basic
5 residential service, that provider may not seek distributions from the
6 fund for the purpose of reducing those rates to the benchmark;

7 (f) Creation of an advisory board, consisting of a reasonable
8 balance of representatives from different types of communications
9 providers and consumers, to advise the commission on selecting and
10 overseeing the administrator of the fund;

11 (g) Readopt, amend, or repeal existing commission rules adopted
12 pursuant to RCW 80.36.610 and 80.36.620 as necessary to be consistent
13 with this chapter.

14 (2) The commission shall periodically review the accounts and
15 records of any communications provider that contribute to or receive
16 support under the program to ensure compliance with the program and
17 monitor the providers' use of the funds.

18 NEW SECTION. **Sec. 5.** A new section is added to chapter 80.36 RCW
19 to read as follows:

20 (1) In addition to any other penalties prescribed by law, the
21 commission may impose penalties for failure to make or delays in making
22 or filing the: (a) Required reports; or (b) payments of the network
23 connection fee under the program, or both. For the purposes of this
24 section, the provisions of RCW 80.04.380 through 80.04.405, inclusive,
25 apply to all companies that are required to contribute to, or that
26 receive support from, the fund created in section 3 of this act.

27 (2) Any penalties imposed by the commission under this section or
28 imposed for a violation of rules adopted under sections 3 through 6 of
29 this act or RCW 80.36.610 must be payable into the fund.

30 (3) In addition to any penalties imposed under this section, the
31 administrator, at the direction of the commission, may withhold
32 payments to any designated incumbent local exchange carrier that fails
33 to submit to the administrator information required to be submitted
34 under sections 3 through 5 of this act.

35 (4) Any action taken under this section must be taken only after
36 providing the affected communications provider with notice and an
37 opportunity for a hearing, unless otherwise provided by law.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 80.36 RCW
2 to read as follows:

3 The commission may delegate to the commission secretary or other
4 staff the authority to resolve disputes, approve expenses of the
5 administrator, and make other administrative decisions necessary to the
6 administration and supervision of the program consistent with the
7 relevant statutes and commission rules.

8 NEW SECTION. **Sec. 7.** A new section is added to chapter 80.36 RCW
9 to read as follows:

10 By July 1, 2018, the commission shall report to the legislature
11 regarding whether and how the fund disbursements have been used to
12 provide rate stability for rural telecommunications customers in the
13 state and whether this act has served its intended purpose and should
14 be allowed to expire. Upon expiration of this act, the administrator
15 shall disburse all remaining funds and end its operations as directed
16 by the commission.

17 NEW SECTION. **Sec. 8.** The utilities and transportation commission
18 shall adopt rules to implement this act prior to the effective date of
19 the other provisions of this act to ensure that this act is implemented
20 on its effective date.

21 **Sec. 9.** RCW 80.36.610 and 1998 c 337 s 2 are each amended to read
22 as follows:

23 (~~(+1)~~) The commission is authorized to take actions, conduct
24 proceedings, and enter orders as permitted or contemplated for a state
25 commission under the (~~federal~~) telecommunications act of 1996(~~(, P.L.~~
26 ~~104-104 (110 Stat. 56)~~), but the commission's authority to either
27 establish a new state program or to adopt new rules to preserve and
28 advance universal service under section 254(f) of the federal act is
29 limited to the actions expressly authorized by RCW 80.36.600)). The
30 commission may establish by rule fees to be paid by persons seeking
31 commission action under the (~~federal~~) telecommunications act of 1996,
32 and by parties to proceedings under that act, to offset in whole or
33 part the commission's expenses that are not otherwise recovered through
34 fees in implementing the act(~~(, but new fees or assessments charged~~
35 ~~telecommunications carriers to either establish a state program or to~~

1 ~~adopt rules to preserve and advance universal service under section~~
2 ~~254(f) of the federal act do not take effect until the legislature has~~
3 ~~approved a state universal service program.~~

4 ~~(2) The legislature intends that under the future universal service~~
5 ~~program established in this state:~~

6 ~~(a) Every telecommunications carrier that provides intrastate~~
7 ~~telecommunications services shall contribute, on an equitable and~~
8 ~~nondiscriminatory basis, to the preservation and advancement of~~
9 ~~universal service in the state;~~

10 ~~(b) The contributions shall be competitively and technologically~~
11 ~~neutral; and~~

12 ~~(c) The universal service program to be established in accordance~~
13 ~~with RCW 80.36.600 shall not be inconsistent with the requirements of~~
14 ~~47 U.S.C. Sec. 254)).~~

15 NEW SECTION. **Sec. 10.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

19 NEW SECTION. **Sec. 11.** Sections 1 through 7, 9, and 10 of this act
20 take effect July 1, 2014.

21 NEW SECTION. **Sec. 12.** Section 8 of this act is necessary for the
22 immediate preservation of the public peace, health, or safety, or
23 support of the state government and its existing public institutions,
24 and takes effect July 1, 2013.

25 NEW SECTION. **Sec. 13.** Sections 1 through 10 of this act expire
26 June 30, 2019.

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