

2SSB 5935 - S AMD 523
By Senator Sheldon

ADOPTED AS AMENDED 02/14/2018

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 35.99
4 RCW to read as follows:

5 (1)(a) It is the policy of the state to promote the efficient
6 deployment of small cell facilities and small cell networks, as
7 defined in RCW 80.36.375, infrastructure by offering predictability
8 for wireless service providers so communities across the state have
9 access to wireless communications technologies and create a framework
10 for the deployment of wireless communications services. It is also
11 the policy of the state that cities and towns maintain sufficient
12 authority to manage the public rights-of-way for the health, safety,
13 and welfare of their citizens and the general public.

14 (b) It is the intent of the legislature that cities and towns may
15 require personal wireless service providers seeking to deploy small
16 cell facilities or small cell networks infrastructure to obtain a
17 master permit or equivalent authority under RCW 35.99.030.
18 Additionally, a city or town may require a wireless service provider
19 to obtain appropriate permits to enter and use the specified right-
20 of-way for the purpose of installing, maintaining, repairing, or
21 removing identified small cell network facilities.

22 (2) Except as provided for in subsection (7) of this section,
23 cities and towns with a population greater than five thousand shall
24 enact a small cell facility deployment ordinance, or develop a small
25 cell facility deployment policy establishing a process for siting
26 small cell facilities and small cell networks within the right-of-way
27 under this chapter, provided the city or town has received a complete
28 application and application fee for a master permit from a wireless
29 service provider for a small cell facility as defined in RCW
30 80.36.375.

1 (3) A city or town may not require an applicant proposing to site
2 a small cell facility on an existing pole or structure to apply for a
3 conditional use permit except where:

4 (a) Such a proposal would require original installation of a new
5 pole or structure;

6 (b) Such a proposal would require an existing pole or structure
7 to be extended or replaced at a height more than fifteen feet above
8 the existing height of a pole or structure, except where the
9 applicant can demonstrate that the requested pole height is the
10 minimum needed to achieve necessary safety clearances or the
11 requirement of the pole owner; or

12 (c) The proposed facility does not meet established design
13 standards for small cell facilities or small cell networks, as
14 defined in RCW 80.36.375.

15 (4)(a) A city or town that updates an existing small cell
16 facility deployment ordinance or policy, or adopts a small cell
17 facility deployment ordinance or policy must outline the process that
18 personal wireless service providers are required to follow in seeking
19 a master permit to deploy small cell facilities and small cell
20 networks, as defined in RCW 80.36.375.

21 (b) The small cell facility deployment ordinance or policy must
22 treat service providers in a competitively neutral and
23 nondiscriminatory manner.

24 (5) The small cell facility deployment ordinance or policy must
25 include initial fees or deposits required for filing the master
26 permit application. The use of a deposit for administrative costs in
27 lieu of a set fee is not prohibited if the final, total
28 administrative fee charged complies with the requirements of RCW
29 35.21.860. The fee schedule may allow a permit applicant to pay an
30 additional fee for expedited permit processing if the city has
31 deployed such a process. This provision is not intended to require
32 jurisdictions to create an expedited permitting process when one does
33 not already exist.

34 (6) A small cell facility deployment ordinance or policy may
35 include the following provisions, at the discretion of the city or
36 town: Standards for the installation of small cell facilities and
37 small cell networks, as defined in RCW 80.36.375, on city or town-
38 owned structures located outside of the right-of-way and other terms
39 and conditions for these installations.

1 (7) A city or town that, as of the effective date of this
2 section, has previously adopted an ordinance or policy, consistent
3 with this act, governing the siting of small cell network
4 infrastructure is not required to adopt or amend a small cell
5 facility deployment ordinance or policy as otherwise required under
6 subsection (2) of this section.

7 (8) A small cell facility deployment ordinance or policy enacted
8 as required by this section has no effect on previously adopted
9 franchises, permits, or agreements for small cell facilities or small
10 cell networks deployments made or entered into by any city or town.

11 (9) Nothing in this section limits a city or town from issuing
12 master permits or use permits in accordance with other provisions of
13 this chapter.

14 (10) Nothing in this section may be construed as creating a duty
15 on cities or towns with a population less than five thousand.
16 However, cities with a population of less than five thousand may
17 adopt a small cell facility deployment ordinance or policy and the
18 provisions under subsection (2) of this section.

19 **Sec. 2.** RCW 35.99.010 and 2000 c 83 s 1 are each amended to read
20 as follows:

21 The definitions in this section apply throughout this chapter
22 unless the context clearly requires otherwise.

23 (1) "Cable television service" means the one-way transmission to
24 subscribers of video programming and other programming service and
25 subscriber interaction, if any, that is required for the selection or
26 use of the video programming or other programming service.

27 (2) "Facilities" means all of the plant, equipment, fixtures,
28 appurtenances, antennas, and other facilities necessary to furnish
29 and deliver telecommunications services and cable television
30 services, including but not limited to poles with crossarms, poles
31 without crossarms, wires, lines, conduits, cables, communication and
32 signal lines and equipment, braces, guys, anchors, vaults, and all
33 attachments, appurtenances, and appliances necessary or incidental to
34 the distribution and use of telecommunications services and cable
35 television services.

36 (3) "Master permit" means the agreement in whatever form whereby
37 a city or town may grant general permission to a service provider to
38 enter, use, and occupy the right-of-way for the purpose of locating
39 facilities. This definition is not intended to limit, alter, or

1 change the extent of the existing authority of a city or town to
2 require a franchise nor does it change the status of a service
3 provider asserting an existing statewide grant based on a predecessor
4 telephone or telegraph company's existence at the time of the
5 adoption of the Washington state Constitution to occupy the
6 right-of-way. For the purposes of this subsection, a franchise,
7 except for a cable television franchise, is a master permit. A master
8 permit does not include cable television franchises.

9 (4) "Personal wireless services" means commercial mobile
10 services, unlicensed wireless services, and common carrier wireless
11 exchange access services, as defined by federal laws and regulations.

12 (5) "Right-of-way" means land acquired or dedicated for public
13 roads and streets, but does not include:

14 (a) State highways;

15 (b) Land dedicated for roads, streets, and highways not opened
16 and not improved for motor vehicle use by the public;

17 (c) Structures, including poles and conduits, located within the
18 right-of-way;

19 (d) Federally granted trust lands or forest board trust lands;

20 (e) Lands owned or managed by the state parks and recreation
21 commission; or

22 (f) Federally granted railroad rights-of-way acquired under 43
23 U.S.C. Sec. 912 and related provisions of federal law that are not
24 open for motor vehicle use.

25 (6) "Service provider" means every corporation, company,
26 association, joint stock association, firm, partnership, person,
27 city, or town owning, operating, or managing any facilities used to
28 provide and providing personal wireless services, telecommunications,
29 or cable television service for hire, sale, or resale to the general
30 public. Service provider includes the legal successor to any such
31 corporation, company, association, joint stock association, firm,
32 partnership, person, city, or town. A personal wireless service
33 provider includes entities providing infrastructure, including but
34 not limited to fiber, conduit, poles, or other structures to another
35 service provider, but does not include electrical utility entities.

36 (7) "Telecommunications service" means the transmission of
37 information by wire, radio, optical cable, electromagnetic, or other
38 similar means for hire, sale, or resale to the general public. For
39 the purpose of this subsection, "information" means knowledge or
40 intelligence represented by any form of writing, signs, signals,

1 pictures, sounds, or any other symbols. For the purpose of this
2 chapter, telecommunications service excludes the over-the-air
3 transmission of broadcast television or broadcast radio signals.

4 (8) "Use permit" means the authorization in whatever form whereby
5 a city or town may grant permission to a service provider to enter
6 and use the specified right-of-way for the purpose of installing,
7 maintaining, repairing, or removing identified facilities.

8 NEW SECTION. **Sec. 3.** The legislature finds that:

9 (1) The federal communications commission has adopted a national
10 broadband plan that includes recommendations directed to federal,
11 state, and local governments, including recommendations to:

12 (a) Design policies to ensure robust competition and maximizing
13 consumer welfare, innovation, and investment;

14 (b) Ensure efficient allocation and management of assets that
15 government controls or influences, such as poles and rights-of-way,
16 to encourage network upgrades and competitive entry;

17 (c) Reform current universal service mechanisms to support
18 deployment in high-cost areas; ensuring that low-income Americans can
19 afford broadband; and supporting efforts to boost adoption and
20 utilization; and

21 (d) Reform laws, policies, standards, and incentives to maximize
22 the benefits of broadband in sectors that government influences
23 significantly, such as public education, health care, and government
24 operations;

25 (2) The federal communications commission has also adopted a goal
26 that all of the country's households have affordable access to actual
27 download speeds of at least twenty-five megabits per second and
28 actual upload speeds of at least three megabits per second; that a
29 majority of households have access to speeds of one hundred fifty
30 megabits, respectively; and that every community should have
31 affordable access to at least one gigabit per second broadband
32 service to anchor institutions such as schools, hospitals, and
33 government buildings;

34 (3) These national goals are presently appropriate for Washington
35 state, and recognizes that as technology advances the goals will
36 require changes over time;

37 (4) Extensive investments have been made by the
38 telecommunications industry and the public sector, as well as
39 policies and programs adopted to provide affordable broadband

1 services throughout the state, that will provide a foundation to
2 build a comprehensive statewide framework for additional actions
3 needed to advance state's broadband goals.

4 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.330
5 RCW to read as follows:

6 The definitions in this section apply throughout sections 5
7 through 8 of this act unless the context clearly requires otherwise.

8 (1) "Broadband" means networks of deployed telecommunications
9 equipment and technologies necessary to provide high-speed internet
10 access and other advanced telecommunications services.

11 (2) "Local governments" includes cities, towns, counties,
12 municipal corporations, public port districts, quasi-municipal
13 corporations, and special purpose districts.

14 (3) "Office" means the governor's office on broadband access.

15 (4) "Underserved areas" means areas lacking adequate broadband
16 service.

17 (5) "Unserved areas" means areas without access to broadband.

18 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.330
19 RCW to read as follows:

20 (1) The governor's office on broadband access is created within
21 the department. The mission of the office is to improve economic
22 vitality, health care access, and education through greater access to
23 broadband services.

24 (2) The office, in collaboration with the utilities and
25 transportation commission, the office of the chief information
26 officer, and the community economic revitalization board, shall serve
27 as the coordinating body for public and private efforts to ensure
28 statewide broadband access and deployment. The office is responsible
29 for all matters regarding the adoption of statewide broadband access
30 and deployment.

31 (3) The duties of the office include:

32 (a) Coordinating with local governments, communities, public and
33 private entities, and consumer-owned and investor-owned utilities to
34 develop strategies and plans for deployment of broadband
35 infrastructure and access to broadband services;

36 (b) Reviewing existing broadband initiatives, policies, and
37 public and private investments;

1 (c) Taking comprehensive actions to advance the state's broadband
2 access goals;

3 (d) Updating the state's goals and standards for broadband
4 service as technological advances become available;

5 (e) Identifying, on an annual basis, unserved and underserved
6 areas of the state;

7 (f) Implementing actions necessary to develop and maintain a
8 detailed inventory of the deployment of broadband services, including
9 monitoring and tracking the availability of broadband services and
10 internet speeds across the state, with an emphasis upon identifying
11 and assessing progress made towards achieving the goals for internet
12 speeds in unserved and underserved areas;

13 (g) Developing standards for defining levels of service for
14 broadband access, including unserved and underserved areas, and
15 revising these standards as technological advances are made and
16 services are expanded;

17 (h) Fostering public sector and telecommunications industry
18 actions to bring sustainable broadband access to areas that are
19 unserved or underserved;

20 (i) Prioritizing and sequencing delivery of quality broadband
21 service to unserved and underserved areas of the state; and

22 (j) Coordinating public, private, state, and federal funds or
23 other funds, for deployment of broadband services in underserved and
24 unserved areas of the state.

25 (4) When developing plans or strategies for broadband deployment,
26 the office must consider:

27 (a) Partnerships between communities, tribes, nonprofit
28 organizations, consumer-owned and investor-owned utilities, and
29 public and private entities;

30 (b) Funding opportunities that provide for the coordination of
31 public, private, state, and federal funds for the purposes of making
32 broadband-capable infrastructure or broadband services available to
33 underserved or unserved areas of the state;

34 (c) Barriers to the adoption of broadband service;

35 (d) Unserved or underserved populations in the state; and

36 (e) Requiring minimum broadband access service of twenty-five
37 mbps download speed and three mbps upload speed and faster speeds as
38 technology advances.

39 (5) By November 1, 2018, the office must develop a list of
40 projects for grant support as authorized under section 7 of this act

1 that will advance high speed broadband access in unserved rural areas
2 of the state. Beginning November 1, 2018, through December 31, 2020,
3 the office must give first priority to projects deploying end-user
4 broadband services in unserved or underserved rural areas of the
5 state.

6 (6) The office may conduct research as provided under RCW
7 43.330.050(8) as it applies to the development and deployment of
8 broadband access throughout the state. Information provided to the
9 office in the course of research and analysis is not subject to
10 disclosure subject to RCW 42.56.270(12)(a)(i).

11 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.330
12 RCW to read as follows:

13 (1) The office may take all appropriate steps to seek federal
14 funding in order to maximize investment in broadband deployment and
15 adoption in the state.

16 (2) The office may apply for federal funds and other grants or
17 donations and must deposit the funds in the broadband access account
18 created in section 10 of this act.

19 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.330
20 RCW to read as follows:

21 (1)(a) The office must establish a competitive grant program to
22 assist qualified local governments and tribes to build infrastructure
23 for open access, high speed broadband services, with download speeds
24 of at least twenty-five megabits per second and upload speeds of at
25 least three megabits per second, in unserved and underserved areas of
26 the state.

27 (b) Eligible uses of grant funds must be prioritized as follows:

28 (i) Assistance to public and private partnerships deploying
29 broadband infrastructure between areas with broadband service to
30 unserved or underserved areas of the state;

31 (ii) Broadband deployment projects that are ready to permit and
32 have identified capital costs;

33 (iii) Countywide or subcounty strategic planning for deploying
34 broadband services in unserved and underserved areas of the state;

35 (iv) Technical analysis to address barriers and interoperability
36 between private and public infrastructure; and

1 (v) Assistance to public and private partnerships deploying
2 broadband to improve public safety communications for remote, high-
3 cost counties consisting entirely of islands.

4 (2) The office must assist applicants with seeking federal
5 funding or matching grants and other grant opportunities for
6 deploying broadband services.

7 (3) The office must develop rules for grant eligibility and as
8 necessary to implement and administer a grant program. The office may
9 adopt rules under RCW 34.05.350, as necessary, to ensure grants are
10 available as provided under section 5(5) of this act.

11 (4) The obligation of the department to make grant payments is
12 contingent upon the availability of the amount of funding available
13 for this purpose as required under section 5 of this act.

14 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.330
15 RCW to read as follows:

16 (1) The office may convene an advisory group to make
17 recommendations on developing a statewide rural broadband strategy to
18 ensure broadband access statewide by January 1, 2026. The advisory
19 committee must conduct a gap analysis on the deployment of broadband
20 services in underserved and unserved areas of the state. The analysis
21 must include a review of:

22 (a) Deployment of broadband services and deployment strategies by
23 public utility districts, port districts, public and private
24 partnerships, and private entities;

25 (b) Economic development opportunities that could be realized
26 with access to broadband services; and

27 (c) Broadband access availability in unserved and underserved
28 areas of the state.

29 (2) The members of the advisory committee must include experts
30 from the utilities and transportation commission, the office of the
31 chief information officer, and the department of commerce. The office
32 may invite, as necessary, subject matter experts to participate in
33 the advisory group.

34 NEW SECTION. **Sec. 9.** A new section is added to chapter 82.32
35 RCW to read as follows:

36 (1) Beginning January 1, 2019, the department must:

37 (a) Estimate the annual amount of taxes paid under chapter 82.04
38 RCW associated with federal funds received by telecommunications

1 service providers for making broadband-capable infrastructure
2 available to unserved or underserved areas of the state;

3 (b) Instruct the state treasurer to deposit the estimated amounts
4 in (a) of this subsection into the broadband access account created
5 in section 10 of this act.

6 (2) Beginning December 1, 2018, and by December 1st each
7 subsequent year, a person receiving federal funding for the purposes
8 of making broadband-capable infrastructure available to underserved
9 or unserved areas of the state must notify the department of the
10 amount of federal funding received for this purpose.

11 NEW SECTION. **Sec. 10.** A new section is added to chapter 43.330
12 RCW to read as follows:

13 (1) The broadband access account is created in the state
14 treasury. All receipts from sections 6 and 9 of this act must be
15 deposited into the account. Moneys in the account may be spent only
16 after appropriation.

17 (2) Expenditures from the account may be used only for the
18 expansion of broadband access, including funding grants under section
19 7 of this act.

20 **Sec. 11.** RCW 80.36.135 and 2008 c 181 s 414 are each amended to
21 read as follows:

22 (1) The legislature declares that:

23 (a) Changes in technology and the structure of the
24 telecommunications industry may produce conditions under which
25 traditional rate of return, rate base regulation of
26 telecommunications companies may not in all cases provide the most
27 efficient and effective means of achieving the public policy goals of
28 this state as declared in RCW 80.36.300, this section, and RCW
29 80.36.145. The commission should be authorized to employ an
30 alternative form of regulation if that alternative is better suited
31 to achieving those policy goals.

32 (b) Because of the great diversity in the scope and type of
33 services provided by telecommunications companies, alternative
34 regulatory arrangements that meet the varying circumstances of
35 different companies and their ratepayers may be desirable.

36 (c) Increasing competition from private and public
37 telecommunications providers may require the modification of
38 obligations arising under RCW 80.36.090 in certain markets.

1 (2) Subject to the conditions set forth in this chapter and RCW
2 80.04.130, the commission may regulate telecommunications companies
3 subject to traditional rate of return, rate base regulation by
4 authorizing an alternative form of regulation. The commission may
5 determine the manner and extent of any alternative forms of
6 regulation as may in the public interest be appropriate. In addition
7 to the public policy goals declared in RCW 80.36.300, the commission
8 shall consider, in determining the appropriateness of any proposed
9 alternative form of regulation, whether it will:

10 (a) Facilitate the broad deployment of technological improvements
11 and advanced telecommunications services to underserved areas or
12 underserved customer classes;

13 (b) Improve the efficiency of the regulatory process;

14 (c) Preserve or enhance the development of effective competition
15 and protect against the exercise of market power during its
16 development;

17 (d) Preserve or enhance service quality and protect against the
18 degradation of the quality or availability of efficient
19 telecommunications services;

20 (e) Provide for rates and charges that are fair, just,
21 reasonable, sufficient, and not unduly discriminatory or
22 preferential; and

23 (f) Not unduly or unreasonably prejudice or disadvantage any
24 particular customer class.

25 (3) A telecommunications company or companies subject to
26 traditional rate of return, rate base regulation may petition the
27 commission to establish an alternative form of regulation. The
28 company or companies shall submit with the petition a plan for an
29 alternative form of regulation. The plan shall contain a proposal for
30 transition to the alternative form of regulation and the proposed
31 duration of the plan. The plan must also contain a proposal for
32 ensuring adequate carrier-to-carrier service quality, including
33 service quality standards or performance measures for
34 interconnection, and appropriate enforcement or remedial provisions
35 in the event the company fails to meet service quality standards or
36 performance measures. The commission also may initiate consideration
37 of alternative forms of regulation for a company or companies on its
38 own motion. The commission, after notice and hearing, shall issue an
39 order accepting, modifying, or rejecting the plan within nine months
40 after the petition or motion is filed, unless extended by the

1 commission for good cause. The commission shall order implementation
2 of the alternative plan of regulation unless it finds that, on
3 balance, an alternative plan as proposed or modified fails to meet
4 the considerations stated in subsection (2) of this section.

5 (4) Not later than sixty days from the entry of the commission's
6 order, the company or companies affected by the order may file with
7 the commission an election not to proceed with the alternative form
8 of regulation as authorized by the commission.

9 (5) The commission may waive such regulatory requirements under
10 Title 80 RCW for a telecommunications company subject to an
11 alternative form of regulation as may be appropriate to facilitate
12 the implementation of this section. However, the commission may not
13 waive any grant of legal rights to any person contained in this
14 chapter and chapter 80.04 RCW. The commission may waive different
15 regulatory requirements for different companies or services if such
16 different treatment is in the public interest.

17 (6) Upon petition by the company, and after notice and hearing,
18 the commission may rescind or modify an alternative form of
19 regulation in the manner requested by the company.

20 (7) The commission or any person may file a complaint under RCW
21 80.04.110 alleging that a telecommunications company under an
22 alternative form of regulation has not complied with the terms and
23 conditions set forth in the alternative form of regulation. The
24 complainant shall bear the burden of proving the allegations in the
25 complaint.

26 (8) During a state of emergency declared under RCW 43.06.010(12),
27 the governor may waive or suspend the operation or enforcement of
28 this section or any portion of this section or under any
29 administrative rule, and issue any orders to facilitate the operation
30 of state or local government or to promote and secure the safety and
31 protection of the civilian population.

32 **Sec. 12.** RCW 80.36.630 and 2013 2nd sp.s. c 8 s 202 are each
33 amended to read as follows:

34 (1) The definitions in this section apply throughout this section
35 and RCW 80.36.650 through 80.36.690 and 80.36.610 unless the context
36 clearly requires otherwise.

37 (a) "Basic residential service" means those services set out in
38 47 C.F.R. Sec. 54.101(a) (2011), as it existed on the effective date

1 of this section, and mandatory extended area service approved by the
2 commission.

3 (b) "Basic telecommunications services" means the following
4 services:

- 5 (i) Single-party service;
- 6 (ii) Voice grade access to the public switched network;
- 7 (iii) Support for local usage;
- 8 (iv) Dual tone multifrequency signaling (touch-tone);
- 9 (v) Access to emergency services (911);
- 10 (vi) Access to operator services;
- 11 (vii) Access to interexchange services;
- 12 (viii) Access to directory assistance; and
- 13 (ix) Toll limitation services.

14 (c) "Broadband service" means communications that provide
15 consumers advanced access to high quality voice, data, graphics, and
16 video offerings.

17 (d) "Communications provider" means a provider of communications
18 services that assigns a working telephone number to a final consumer
19 for intrastate wireline or wireless communications services or
20 interconnected voice over internet protocol service, and includes
21 local exchange carriers.

22 ~~((d))~~ (e) "Communications services" includes telecommunications
23 services and information services and any combination thereof.

24 ~~((e))~~ (f) "Incumbent local exchange carrier" has the same
25 meaning as set forth in 47 U.S.C. Sec. 251(h).

26 ~~((f))~~ (g) "Incumbent public network" means the network
27 established by incumbent local exchange carriers for the delivery of
28 communications services to customers that is used by communications
29 providers for origination or termination of communications services
30 by or to customers.

31 ~~((g))~~ (h) "Interconnected voice over internet protocol service"
32 means an interconnected voice over internet protocol service that:

- 33 ~~((a) [(i)])~~ (i) Enables real-time, two-way voice communications;
- 34 ~~((b) [(ii)])~~ (ii) requires a broadband connection from the user's
35 location; ~~((c) [(iii)])~~ (iii) requires internet protocol-compatible
36 customer premises equipment; and ~~((d) [(iv)])~~ (iv) permits users
37 generally to receive calls that originate on the public network and
38 to terminate calls to the public network.

39 ~~((h))~~ (i) "Program" means the state universal communications
40 services program created in RCW 80.36.650.

1 ~~((i))~~ (j) "Telecommunications" has the same meaning as defined
2 in 47 U.S.C. Sec. 153(43).

3 ~~((j))~~ (k) "Telecommunications act of 1996" means the
4 telecommunications act of 1996 (P.L. 104-104, 110 Stat. 56).

5 ~~((k))~~ (l) "Working telephone number" means a north American
6 numbering plan telephone number, or successor dialing protocol, that
7 is developed for use in placing calls to or from the public network,
8 that enables a consumer to make or receive calls.

9 (2) This section expires July 1, 2020.

10 **Sec. 13.** RCW 80.36.650 and 2016 c 145 s 1 are each amended to
11 read as follows:

12 (1) A state universal communications services program is
13 established. The program is established to protect public safety and
14 welfare under the authority of the state to regulate
15 telecommunications under Article XII, section 19 of the state
16 Constitution. The purpose of the program is to support continued
17 provision of basic telecommunications services under rates, terms,
18 and conditions established by the commission during the time over
19 which incumbent communications providers in the state are adapting to
20 changes in federal universal service fund and intercarrier
21 compensation support.

22 (2) Under the program, eligible communications providers may
23 receive distributions from the universal communications services
24 account created in RCW 80.36.690 in exchange for the affirmative
25 agreement to provide continued services under the rates, terms, and
26 conditions established by the commission under this chapter for the
27 period covered by the distribution. The commission must implement and
28 administer the program under terms and conditions established in RCW
29 80.36.630 through 80.36.690. Expenditures for the program may not
30 exceed five million dollars per fiscal year; provided, however, that
31 if less than five million dollars is expended in any fiscal year, the
32 unexpended portion must be carried over to subsequent fiscal years
33 and, unless fully expended, must be available for program
34 expenditures in such subsequent fiscal years in addition to the five
35 million dollars allotted for each of those subsequent fiscal years.

36 (3) A communications provider is eligible to receive
37 distributions from the account if:

38 (a) The communications provider is: (i) An incumbent local
39 exchange carrier serving fewer than forty thousand access lines in

1 the state; or (ii) a radio communications service company providing
2 wireless two-way voice communications service to less than the
3 equivalent of forty thousand access lines in the state. For purposes
4 of determining the access line threshold in this subsection, the
5 access lines or equivalents of all affiliates must be counted as a
6 single threshold, if the lines or equivalents are located in
7 Washington;

8 (b) The customers of the communications provider are at risk of
9 rate instability or service interruptions or cessations absent a
10 distribution to the provider that will allow the provider to maintain
11 rates reasonably close to the benchmark; and

12 (c) The communications provider meets any other requirements
13 established by the commission pertaining to the provision of
14 communications services, including basic telecommunications services.

15 (4)(a) Distributions to eligible communications providers are
16 based on ~~((a benchmark))~~ criteria established by the commission.
17 ~~((The benchmark is the rate the commission determines to be a
18 reasonable amount customers should pay for basic residential service
19 provided over the incumbent public network. However, if an incumbent
20 local exchange carrier is charging rates above the benchmark for the
21 basic residential service, that provider may not seek distributions
22 from the fund for the purpose of reducing those rates to the
23 benchmark.))~~

24 (b) To receive a distribution under the program, an eligible
25 communications provider must affirmatively consent to continue
26 providing communications services to its customers under rates,
27 terms, and conditions established by the commission pursuant to this
28 chapter for the period covered by the distribution.

29 (5) The program is funded from amounts deposited by the
30 legislature in the universal communications services account
31 established in RCW 80.36.690. The commission must operate the program
32 within amounts appropriated for this purpose and deposited in the
33 account.

34 (6) The commission must periodically review the accounts and
35 records of any communications provider that receives distributions
36 under the program to ensure compliance with the program and monitor
37 the providers' use of the funds.

38 (7) The commission must establish an advisory board, consisting
39 of a reasonable balance of representatives from different types of
40 stakeholders, including but not limited to communications providers

1 and consumers, to advise the commission on any rules and policies
2 governing the operation of the program.

3 (8) The program terminates on June 30, (~~2019~~) 2020, and no
4 distributions may be made after that date.

5 (9) This section expires July 1, (~~2020~~) 2021.

6 **Sec. 14.** RCW 80.36.690 and 2013 2nd sp.s. c 8 s 208 are each
7 amended to read as follows:

8 (1) The universal communications services account is created in
9 the custody of the state treasurer. Revenues to the account consist
10 of moneys deposited in the account by the legislature and any
11 penalties or other recoveries received pursuant to RCW 80.36.670.
12 Expenditures from the account may be used only for the purposes of
13 the universal communications services program established in RCW
14 80.36.650 and commission expenses related to implementation and
15 administration of the provisions of RCW 80.36.620 through 80.36.690,
16 and section 212, chapter 8, Laws of 2013 2nd sp. sess. Only the
17 secretary of the commission or the secretary's designee may authorize
18 expenditures from the account. The account is subject to allotment
19 procedures under chapter 43.88 RCW, but an appropriation is not
20 required for expenditures.

21 (2) This section expires July 1, 2020.

22 **Sec. 15.** 2013 2nd sp.s. c 8 s 212 (uncodified) is amended to
23 read as follows:

24 By December 1, (~~2017~~) 2019, and in compliance with RCW
25 43.01.036, the Washington utilities and transportation commission
26 must report to the appropriate committees of the legislature, on the
27 following: (1) Whether funding levels for each small
28 telecommunications company have been adequate to maintain reliable
29 universal service; (2) the future impacts on small telecommunications
30 companies from the elimination of funding under this act; (3) the
31 impacts on customer rates from the current level of funding and the
32 future impacts when the funding terminates under this act; and (4)
33 the impacts on line and service delivery investments when the funding
34 is terminated under this act. The report must also include an
35 analysis of the need for future program funding and recommendations
36 on potential funding mechanisms to improve availability of
37 communications services, including broadband service, in unserved and
38 underserved areas. Commission expenses related to conducting all

1 analysis in preparation of this report must be expended from the
2 universal communications services account.

3 NEW SECTION. **Sec. 16.** A new section is added to chapter 54.16
4 RCW to read as follows:

5 (1) The definitions in this subsection apply throughout this
6 section unless the context clearly requires otherwise.

7 (a) "Broadband" means networks of deployed telecommunications
8 equipment and technologies necessary to provide high-speed internet
9 access and other advanced telecommunications services.

10 (b) "Inadequate" means internet retail service that does not meet
11 one hundred percent of the standards detailed in the service level
12 agreement.

13 (c) "Partnership payment structure" means a group of or
14 individual property owners who agree to pay a term payment structure
15 for infrastructure improvements to their property.

16 (d) "Petition" means a formal written request for retail internet
17 service by property owners on the public utility district broadband
18 network.

19 (e) "Service level agreement" means a standard agreement, adopted
20 during an open public meeting, between the retail internet service
21 provider and the public utility that describes the required
22 percentage of broadband download and upload speed and system
23 availability, customer service, and transmission time.

24 (2) Any public utility district that, as of the effective date of
25 this section, provides only water, sewer, and wholesale
26 telecommunications services in a county with an area less than five
27 hundred square miles and is located west of the Puget Sound may
28 provide end-user internet services to end users on the public utility
29 district's broadband network located within the public utility
30 district boundaries only when the existing providers of end-user
31 internet service on the public utility district's broadband network
32 cease to provide end-user service or provide inadequate end-user
33 service as determined in the manner prescribed by this section.

34 (3) Upon receiving a petition meeting the requirements of
35 subsection (4) of this section, a public utility district board of
36 commissioners may hold up to three meetings to:

37 (a) Verify the signature or signatures of the property owners on
38 the petition and certify the petition;

1 (b) Determine and submit findings that the retail internet
2 service available to the petitioners served by the public utility
3 district's broadband network is either nonexistent or inadequate as
4 defined in the service level agreement adopted by the commissioners
5 for all existing internet service providers on the public utility
6 district's broadband network; and

7 (c) By resolution, authorize the public utility district to
8 provide retail internet service to end users on the public utility
9 district's broadband network.

10 (4) A petition meets the requirements of subsection (3) of this
11 section if it is delivered to a public utility district board of
12 commissioners, declares that the signatories on the public utility
13 district's broadband network have no or inadequate retail internet
14 service providers, requests the public utility district to provide
15 the retail internet service, and is signed by one of the following:

16 (a) A majority of a group, including homeowners' associations, of
17 any geographical area within the public utility district, who have
18 developed a partnership payment structure to finance broadband
19 deployment with the public utility district; or

20 (b) Any individual who has developed a partnership payment
21 structure to finance broadband deployment with the public utility
22 district.

23 (5) For the purposes of this section, the adequacy of retail
24 internet service is determined by measuring retail internet service
25 to end users on the public utility district's broadband network and
26 comparing it with service standards in the public utility district
27 service level agreement used for all public utility district network
28 providers. Measurement of the existing retail internet service
29 provider's service must be quantified by measuring the service with
30 speed and capacity devices and software. Additionally, a retail
31 internet service provider may submit its own assessment of its
32 service level for consideration by the commission within thirty days
33 of the first meeting conducted under subsection (3) of this section.

34 (6) The commissioners of a public utility district may by
35 resolution authorize the public utility district to provide or
36 contract for provision of internet services to end users on the
37 public utility district's broadband network when it is determined
38 that no service or inadequate service exists for the individual or
39 petitioners identified in subsection (4) of this section.

1 (7)(a) Except as provided in subsection (8) of this section, in
2 case of failure to reach an agreement on the adequacy of retail
3 internet service, the commissioners must request an appointment of an
4 administrative law judge under Title 34 RCW to hear the dispute.

5 (b) The commissioners must provide a written notice, together
6 with a copy of the dispute, and may require the disputing parties to
7 attend a hearing before the administrative law judge, at a time and
8 place to be specified in the written notice.

9 (c) The place of any such hearing may be the office of the
10 commissioners or another place designated by the commissioners. The
11 disputed information must be presented at the hearing.

12 (d) Upon review and consideration of all of the evidence, the
13 administrative law judge must determine if the retail internet
14 service is inadequate or nonexistent as defined in this section. Upon
15 making a determination, the administrative law judge must state
16 findings of fact and must issue and file a determination with the
17 commissioners.

18 (8) If a provider of end-user service is a company regulated by
19 the utilities and transportation commission, the company may choose
20 to have the commission resolve disputes concerning the service level
21 agreement under the process established in RCW 54.16.340. For the
22 purposes of this subsection, "company" includes subsidiaries or
23 affiliates.

24 (9) Any public utility district providing cable television
25 service under this section must secure a cable television franchise,
26 pay franchise fees, and any applicable taxes to the local cable
27 franchise authority as required by federal law.

28 (10) Except as provided in subsection (8) of this section,
29 nothing in this section may be construed or is intended to confer
30 upon the utilities and transportation commission any authority to
31 exercise jurisdiction over locally regulated utilities.

32 (11) All rates for retail internet services offered by a public
33 utility district under this section must be fair and
34 nondiscriminatory, except the public utility district may set tiers
35 of service charges based on service demands of the end user,
36 including commercial and residential rates.

37 NEW SECTION. **Sec. 17.** A new section is added to chapter 34.12
38 RCW to read as follows:

1 When requested by the public utility district commissioners, the
2 chief administrative law judge shall assign an administrative law
3 judge to conduct proceedings under section 16 of this act.

4 **Sec. 18.** RCW 53.08.370 and 2000 c 81 s 7 are each amended to
5 read as follows:

6 (1) A rural port district in existence on June 8, 2000, a port
7 district located in a county that borders a foreign nation, and a
8 port district located in a county that borders the Columbia river
9 that has completed feasibility studies for a wholesale
10 telecommunications network, may construct, purchase, acquire,
11 develop, finance, lease, license, handle, provide, add to, contract
12 for, interconnect, alter, improve, repair, operate, and maintain any
13 telecommunications facilities within or without the district's limits
14 for the following purposes:

15 (a) For the district's own use; and

16 (b) For the provision of wholesale telecommunications services
17 within the district's limits. Nothing in this subsection shall be
18 construed to authorize rural port districts to provide
19 telecommunications services to end users.

20 (2) Except as provided in subsection (7) of this section, a rural
21 port district providing wholesale telecommunications services under
22 this section shall ensure that rates, terms, and conditions for such
23 services are not unduly or unreasonably discriminatory or
24 preferential. Rates, terms, and conditions are discriminatory or
25 preferential when a rural port district offering such rates, terms,
26 and conditions to an entity for wholesale telecommunications services
27 does not offer substantially similar rates, terms, and conditions to
28 all other entities seeking substantially similar services.

29 (3) When a rural port district establishes a separate utility
30 function for the provision of wholesale telecommunications services,
31 it shall account for any and all revenues and expenditures related to
32 its wholesale telecommunications facilities and services separately
33 from revenues and expenditures related to its internal
34 telecommunications operations. Any revenues received from the
35 provision of wholesale telecommunications services must be dedicated
36 to the utility function that includes the provision of wholesale
37 telecommunications services for costs incurred to build and maintain
38 the telecommunications facilities until such time as any bonds or

1 other financing instruments executed after June 8, 2000, and used to
2 finance the telecommunications facilities are discharged or retired.

3 (4) When a rural port district establishes a separate utility
4 function for the provision of wholesale telecommunications services,
5 all telecommunications services rendered by the separate function to
6 the district for the district's internal telecommunications needs
7 shall be charged at its true and full value. A rural port district
8 may not charge its nontelecommunications operations rates that are
9 preferential or discriminatory compared to those it charges entities
10 purchasing wholesale telecommunications services.

11 (5) A rural port district shall not exercise powers of eminent
12 domain to acquire telecommunications facilities or contractual rights
13 held by any other person or entity to telecommunications facilities.

14 (6) Except as otherwise specifically provided, a rural port
15 district may exercise any of the powers granted to it under this
16 title and other applicable laws in carrying out the powers authorized
17 under this section. Nothing in chapter 81, Laws of 2000 limits any
18 existing authority of a rural port district under this title.

19 (7) A port district under this section may select a
20 telecommunications company to operate the port district's
21 telecommunications facilities. The company may be the exclusive
22 provider of telecommunications services to end users under terms
23 specified in the contract with the port district. For purposes of
24 this section, "telecommunications company" means any for-profit
25 entity owned by investors that sells telecommunications services to
26 end users. Nothing in this subsection (7) is intended to limit or
27 otherwise restrict any other authority provided by law.

28 **Sec. 19.** 2018 c 2 s 1021 (uncodified) is amended to read as
29 follows:

30 **FOR THE DEPARTMENT OF COMMERCE**

31 CERB Administered Broadband Infrastructure (91000943)

32 The appropriation in this section is subject to the following
33 conditions and limitations: During the 2017-2019 fiscal biennium, the
34 community economic revitalization board may make grants and loans to
35 local governments and federally recognized tribes to build
36 infrastructure to provide high-speed, open-access broadband service,
37 with a minimum of 25 megabits per second download speed, to rural and
38 underserved communities, for the purpose of economic development.

1 (1) "Local governments" means cities, towns, counties, municipal
2 corporations, public port districts, quasi-municipal corporations,
3 and special purpose districts.

4 (2) "Broadband" means networks of deployed telecommunications
5 equipment and technologies necessary to provide high-speed Internet
6 access and other advanced telecommunications services.

7 (3) The board is authorized to make rural broadband loans to
8 local governments and to federally recognized Indian tribes for the
9 purposes of financing the cost to build infrastructure to provide
10 high-speed, open-access broadband service, to rural and underserved
11 communities, for the purpose of economic development. Grants may also
12 be authorized for purposes designated in this chapter, but only when,
13 and to the extent that, a loan is not reasonably possible, given the
14 limited resources of the local government or the federally recognized
15 Indian tribe, and subject to a finding by the board that financial
16 circumstances require grant assistance to enable the project to move
17 forward. However, no more than 25 percent of all financial assistance
18 approved by the board in any biennium may consist of grants to local
19 governments and federally recognized Indian tribes.

20 (4) Application for funding must be made in the form and manner
21 as the board may prescribe. In making grants or loans the board must
22 conform to the following requirements:

23 (a) The board may not provide financial assistance:

24 (i) For a project the primary purpose of which is to facilitate
25 or promote a retail shopping development or expansion.

26 (ii) For any project that evidence exists would result in a
27 development or expansion that would displace existing jobs in any
28 other community in the state.

29 (iii) For a project the primary purpose of which is to facilitate
30 or promote gambling.

31 (iv) For a project located outside the jurisdiction of the
32 applicant local government or federally recognized Indian tribe.

33 (v) For equipment or facilities which would enable a public
34 entity to provide retail telecommunications services or services that
35 the entity is not authorized by statute to provide.

36 (vi) For the deployment of publicly-owned telecommunication
37 network infrastructure ("backbone") solely for the sake of creating
38 competitive, publicly-owned telecommunication network infrastructure.

39 (b) The board may provide financial assistance only(÷

1 ~~(i) For projects demonstrating convincing evidence that a~~
2 ~~specific private development or expansion is ready to occur and will~~
3 ~~occur only if the public facility improvement is made that:~~

4 ~~(A) Results in the creation of significant private sector jobs or~~
5 ~~significant private sector capital investment as determined by the~~
6 ~~board;~~

7 ~~(B) Will improve the opportunities for the successful~~
8 ~~maintenance, establishment, or expansion of industrial or commercial~~
9 ~~plants or will otherwise assist in the creation or retention of long-~~
10 ~~term economic opportunities; and~~

11 ~~(C) Is located in a rural community as defined by the board, or a~~
12 ~~rural county; or~~

13 ~~(ii) For a project that does not meet the requirements of (b)(i)~~
14 ~~of this subsection but is a project that:~~

15 ~~(A) Results in the creation of significant private sector jobs or~~
16 ~~significant private sector capital investment as determined by the~~
17 ~~board;~~

18 ~~(B) Is part of a local economic development plan consistent with~~
19 ~~applicable state planning requirements;~~

20 ~~(C) Can demonstrate project feasibility using standard economic~~
21 ~~principles; and~~

22 ~~(D) Is located in a rural community as defined by the board, or a~~
23 ~~rural county;~~

24 ~~(e) The board must develop guidelines for local participation and~~
25 ~~allowable match and activities.~~

26 ~~(d) An application must demonstrate local match and local~~
27 ~~participation, in accordance with guidelines developed by the board.~~

28 ~~(e)) for projects located in a rural community as defined by the~~
29 ~~board, or located in a rural county, that encourage, foster, develop,~~
30 ~~and improve broadband within the state in order to:~~

31 ~~(i) Drive job creation, promote innovation, and expand markets~~
32 ~~for local businesses; or~~

33 ~~(ii) Serve the ongoing and growing needs of local education~~
34 ~~systems, health care system, public safety system, industries and~~
35 ~~businesses, governmental operations, and citizens; and~~

36 ~~(iii) Improve accessibility for underserved communities and~~
37 ~~populations.~~

38 ~~(c) An application must be approved by the local government and~~
39 ~~supported by the local associate development organization or local~~

1 workforce development council or approved by the governing body of
2 the federally recognized Indian tribe.

3 ~~((f))~~ (d) The board may allow de minimis general system
4 improvements to be funded if they are critically linked to the
5 viability of the project.

6 ~~((g) An application must demonstrate convincing evidence that
7 the median hourly wage of the private sector jobs created after the
8 project is completed will exceed the countywide median hourly wage.~~

9 ~~(h) The board must prioritize each proposed project according to:~~

10 ~~(i) The relative benefits provided to the community by the jobs
11 the project would create, not just the total number of jobs it would
12 create after the project is completed, but also giving consideration
13 to the unemployment rate in the area in which the jobs would be
14 located;~~

15 ~~(ii) The rate of return of the state's investment, including, but
16 not limited to, the leveraging of private sector investment,
17 anticipated job creation and retention, and expected increases in
18 state and local tax revenues associated with the project;~~

19 ~~(iii) Whether the proposed project offers a health insurance plan
20 for employees that includes an option for dependents of employees;~~

21 ~~(iv) Whether the public facility investment will increase
22 existing capacity necessary to accommodate projected population and
23 employment growth in a manner that supports infill and redevelopment
24 of existing urban or industrial areas that are served by adequate
25 public facilities. Projects should maximize the use of existing
26 infrastructure and provide for adequate funding of necessary
27 transportation improvements;~~

28 ~~(v) Whether the applicant's permitting process has been certified
29 as streamlined by the office of regulatory assistance; and~~

30 ~~(vi) Whether the applicant has developed and adhered to
31 guidelines regarding its permitting process for those applying for
32 development permits consistent with section 1(2), chapter 231, Laws
33 of 2007.~~

34 ~~(i))~~ (e) When evaluating and prioritizing projects, the board
35 must give consideration, at a minimum, to the following factors:

36 (i) The project's value to the community, including evidence of
37 support from affected local businesses and government;

38 (ii) The project's feasibility, using standard economic
39 principles;

1 (iii) Commitment of local matching resources and local
2 participation;

3 (iv) The project's inclusion in a capital facilities plan,
4 comprehensive plan, or local economic development plan consistent
5 with applicable state planning requirements; and

6 (v) The project's readiness to proceed.

7 (5) A responsible official of the local government or the
8 federally recognized Indian tribe must be present during board
9 deliberations and provide information that the board requests.

10 ~~((+5))~~ (6) Before any financial assistance application is
11 approved, the local government or the federally recognized Indian
12 tribe seeking the assistance must demonstrate to the community
13 economic revitalization board that no other timely source of funding
14 is available to it at costs reasonably similar to financing available
15 from the community economic revitalization board.

16 Appropriation:

17 State Building Construction Account—

18 State. \$5,000,000

19 Prior Biennia (Expenditures). \$0

20 Future Biennia (Projected Costs). \$0

21 TOTAL. \$5,000,000

22 NEW SECTION. Sec. 20. By July 1, 2019, the governor's office on
23 broadband access created in section 5 of this act must study taxes
24 imposed on the capital costs associated with providing retail
25 broadband service, including taxes paid under chapters 82.08 and
26 82.12 RCW. The study must include an examination of the impact to
27 broadband deployment if a credit is provided against taxes paid under
28 chapters 82.08 and 82.12 RCW on the capital costs associated with
29 providing retail broadband service telecommunications network
30 transmission equipment located in an underserved area in the state.

31 NEW SECTION. Sec. 21. The governor's office on broadband access
32 created in section 5 of this act must develop a small cell facility
33 deployment permitting model ordinance for cities and towns. The
34 governor's office on broadband access must consult with cities,
35 counties, and service providers when developing the model ordinance.
36 The model ordinance must be available for cities and towns by
37 September 1, 2018.

1 NEW SECTION. **Sec. 22.** The following acts or parts of acts are
2 each repealed:

3 (1) RCW 43.330.400 (Broadband mapping account—Federal broadband
4 data improvement act funding—Coordination of broadband mapping
5 activities) and 2011 1st sp.s. c 43 s 603 & 2009 c 509 s 2;

6 (2) RCW 43.330.403 (Reporting availability of high-speed internet
7 —Survey of high-speed internet infrastructure owned or leased by
8 state agencies—Geographic information system map—Rules) and 2011 1st
9 sp.s. c 43 s 604 & 2009 c 509 s 3;

10 (3) RCW 43.330.406 (Procurement of geographic information system
11 map—Accountability and oversight structure—Application of public
12 records act) and 2011 1st sp.s. c 43 s 605 & 2009 c 509 s 4;

13 (4) RCW 43.330.409 (Broadband mapping, deployment, and adoption—
14 Reports) and 2011 1st sp.s. c 43 s 606 & 2009 c 509 s 5;

15 (5) RCW 43.330.412 (Community technology opportunity program—
16 Administration—Grant program) and 2011 1st sp.s. c 43 s 607, 2009 c
17 509 s 6, & 2008 c 262 s 6;

18 (6) RCW 43.330.415 (Washington community technology opportunity
19 account) and 2011 1st sp.s. c 43 s 608, 2009 c 509 s 8, & 2008 c 262
20 s 8;

21 (7) RCW 43.330.418 (Broadband deployment and adoption—Governor's
22 actions—Oversight and implementation by the department) and 2011 1st
23 sp.s. c 43 s 609 & 2009 c 509 s 9; and

24 (8) RCW 43.330.421 (Advisory group on digital inclusion and
25 technology planning) and 2011 1st sp.s. c 43 s 610 & 2009 c 509 s
26 10."

2SSB 5935 - S AMD **523**
By Senator Sheldon

ADOPTED AS AMENDED 02/14/2018

27 On page 1, line 2 of the title, after "services;" strike the
28 remainder of the title and insert "amending RCW 35.99.010, 80.36.135,
29 80.36.630, 80.36.650, 80.36.690, and 53.08.370; amending 2013 2nd
30 sp.s. c 8 s 212 (uncodified); amending 2018 c 2 s 1021 (uncodified);
31 adding a new section to chapter 35.99 RCW; adding new sections to
32 chapter 43.330 RCW; adding a new section to chapter 82.32 RCW; adding
33 a new section to chapter 54.16 RCW; adding a new section to chapter
34 34.12 RCW; creating new sections; repealing RCW 43.330.400,

1 43.330.403, 43.330.406, 43.330.409, 43.330.412, 43.330.415,
2 43.330.418, and 43.330.421; and providing an expiration date."

EFFECT: Authorizes CERB to provide financial assistance to local governments and tribes for deployment of broadband in rural communities. Provides that UTC regulated telecommunications providers may use the UTC process for resolving disputes of internet service where authorized for certain PUDs.

--- END ---