

SENATE BILL REPORT

SB 5935

As of November 13, 2017

Title: An act relating to enhancing consumer access, affordability, and quality of broadband and advanced telecommunications services.

Brief Description: Enhancing consumer access, affordability, and quality of broadband and advanced telecommunications services.

Sponsors: Senators Sheldon and Carlyle.

Brief History:

Committee Activity: Energy, Environment & Telecommunications:

Brief Summary of Bill

- Requires cities and towns to enact an ordinance for issuing master permits for siting and installing small cell facilities.
- Creates the Governor's Office on Broadband Access.
- Establishes a Broadband Taskforce to review existing initiatives, policies, and public/private investments.
- Creates a broadband deployment partnership initiative for underserved or unserved areas.
- Authorizes rural port districts to acquire and operate telecommunications facilities for their own internal telecommunications needs within and outside of its district, and to provide wholesale telecommunications services within its district limits.
- Extends the state Universal Service Fund until 2021.

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

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Background: Site-Specific Charges for Using Municipal Rights-of-Way. The authority of cities and towns to require personal wireless services providers to pay franchise fees or other

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fees or charges for the use of the right-of-way is limited. A municipality may not generally impose fees for the use of a right-of-way by a personal wireless service company. However, the following site-specific charges are allowed if specified in an agreement between the municipality and company for:

- the placement of new structures;
- the placement of replacement structures when the replacement is necessary for the installation or attachment of wireless facilities, or
- the placement of personal wireless facilities on structures owned by the municipality.

A municipality may charge a fee to cover actual administrative costs for approving a permit, inspecting plans, or preparation of a state environmental review plan.

A personal wireless service company may seek binding arbitration if a municipality and the company cannot agree on site-specific charges. Personal wireless services are commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

Municipal Permitting Authority. Cities and towns may require service providers to obtain master permits and use permits for installing, maintaining, repairing, or removing facilities for telecommunications services. However, a city or town may not require a master permit from a service provider with a franchise for use of a right-of-way. Cities and towns must have written procedures for issuing master permits. Denials of master permits must be supported by substantial evidence contained in a written record.

Local governments may allow a provider of a small cell network to file a consolidated application and receive a single permit for the interrelated facilities that comprise the network within a jurisdiction, instead of filing separate applications for each individual small cell facility.

A small cell network is a collection of interrelated small cell facilities designed to deliver personal wireless services. A small cell facility is a wireless service facility that meets both of the following elements:

- each antenna is located inside an antenna enclosure of no more than three cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and
- primary equipment enclosures are no larger than 17 cubic feet in volume.

Cities and towns may use their zoning authority to regulate the placement of facilities, so long as they do not violate the federal Telecommunications Act or prohibit the placement of all facilities within their jurisdictions.

Service Provider Duties Regarding Rights-of-Way. Service providers must: obtain necessary permits; follow local, state, and federal laws; cooperate with cities and towns to maintain safe conditions in the right-of-way; provide necessary information to cities and towns; obtain written permission before using another's structures; and construct and maintain their facilities at their own expense.

Relocation of Facilities. Service providers must relocate facilities by established deadlines unless they cannot meet the deadlines using best efforts. When reasonably necessary for construction or during an emergency, cities and towns may require service providers to relocate facilities at their own expense. But a service provider may seek reimbursement from a municipality if:

- the municipality required the service provider to move the same facilities within the past five years; or
- the relocation was required for aesthetic reasons.

Private parties must reimburse a service provider if the relocation was required for private purposes.

Broadband Office. In 2009, the Legislature authorized the Department of Information Services to oversee implementation of federally funded or mandated broadband programs for Washington State. The Legislature later transferred these functions to the Department of Commerce (Commerce). The programs were subject to federal or state funding. At that time, the American Reinvestment and Recovery Act provided funding for infrastructure, competitive grants to encourage adoption of broadband service, a grant program, and development of a national broadband inventory map. The office provided oversight and administration of a wide range of functions pertaining to high-speed Internet activities. Until 2014, the office was responsible for:

- coordination, programming, and outreach on broadband issues;
- procurement of a state broadband map;
- duties relating to the creation of a geographic information system map of all high-speed Internet infrastructure owned or leased by the state;
- the Community Technology Opportunity Program; and
- oversight of implementation of federally funded or mandated broadband programs for the state.

Rural Port Districts. A rural port district in existence on June 8, 2000, may acquire and operate telecommunications facilities for their own internal telecommunications needs within and outside of its district, and to provide wholesale telecommunications services within its district limits.

Rural port districts providing wholesale services must:

- ensure that their rates, terms, and conditions are not unduly or unreasonably discriminatory or preferential;
- keep accountings of revenues and expenditures of their wholesale telecommunications activities separate from their internal telecommunications operations;
- dedicate the revenues from the wholesale activities to paying off the costs incurred in building and maintaining the telecommunications facilities; and
- charge themselves the true and full value of telecommunications services provided by their separate telecommunications functions to the district.

Rural port districts may not exercise powers of eminent domain to acquire telecommunications facilities or contractual rights to such facilities.

A rural port district is defined as one located in a county with an average population density of less than 100 persons per square mile.

State Universal Service Program. In 2011, the Federal Communications Commission (FCC) approved a process to end the complex system of fees, surcharges, and subsidies that support rural telephone companies, and transitioned federal monies toward expanding broadband Internet capability in underserved areas. To assist rural companies in this transition period, the Legislature established a temporary universal service program operated by the Utilities and Transportation Commission (UTC). The program expires in July 2019.

The Universal Service Program is funded by legislative appropriations to the Universal Communications Services Account (Universal Services Account). The maximum amount appropriated each year cannot exceed \$5 million. A telephone company is eligible to receive distributions from the Universal Services Account if:

- the company has fewer than 40,000 access lines in the state;
- the company's customers are at risk of rate instability or service interruptions absent distributions to the company; and
- the company meets any other criteria established by the UTC.

Distributions from the Universal Services Account are made according to a formula developed by the UTC. The first round of distributions occurred in fiscal year 2015 and totaled \$3.3 million. Future distributions will increase annually. By the fourth year, the amount projected to be distributed will exceed the \$5 million annual cap. If less than \$5 million is spent from the Universal Services Account in any fiscal year, the unspent portion must be carried over to subsequent fiscal years. Any money carried over is in addition to the \$5 million allotted for any subsequent year.

Sales and Use Tax. Sales tax is imposed on retail sales of most items of tangible personal property and some services, including construction and repair services. The use tax is imposed on items used in the state, the acquisition of which was not subject to the sales tax. Sales and use taxes are imposed by the state, counties, and cities. There are a number of sales and use tax exemptions, including machinery and equipment directly used in manufacturing.

FCC Goals For Broadband. The FCC has adopted national goals for broadband. These goals include:

- all households have affordable access to download speeds of at least 25 megabits per second and actual upload speeds of at least three megabits per second;
- a majority of households have access to speeds of 150 megabits; and
- every community should have affordable access to at least one gigabit per second broadband service to anchor institutions such as schools, hospitals and government buildings.

The FCC requires companies receiving Connect America funding for fixed broadband to offer speeds of at least 10 megabits per second (Mbps) for downloads and 1 Mbps for uploads.

Connect America Fund (CAF). In 2011, the FCC created the CAF to support the expansion of broadband Internet capability to underserved areas of the nation. Underserved areas are identified at the census-block level. The FCC initially disbursed approximately \$1.8 billion annually to a class of large telecommunications carriers known as price cap carriers. There are two price cap carriers in Washington: CenturyLink and Frontier.

In September 2015, the FCC announced that 10 telecommunications companies nationwide would receive approximately \$9 billion over the next six years as part of CAF-II to expand broadband networks throughout rural areas of the U.S. Under CAF-II, the FCC funding will target census blocks that meet two criteria:

- where the cost of providing service according to the cost model exceeds \$52.50 a month; and
- those that are not served by unsubsidized competitors offering service at speeds of at least 4 Mbps downstream and 1 Mbps upstream.

Service providers accepting CAF-II funds will be required to build out broadband services to 40 percent of funded locations by the end of 2017, 60 percent by end of 2018, and 100 percent by the end of 2020.

CenturyLink and Frontier have made commitments and will receive funding over the next six years under CAF II. For Washington State, CenturyLink has committed to provide service to 58,961 homes or businesses and will receive \$24.4 million. Frontier has committed to provide service to 19,713 homes or businesses and will receive \$8.7 million.

Summary of Bill: Small cell network infrastructure siting ordinance. Cities and towns with populations over 20,000 must enact an ordinance to establish a master permit process for siting and installing small cell facilities within nine months of the effective date of the legislation. Cities and towns with populations between 5000 and 20,000 must adopt such ordinances within 12 months. A city or town with an established ordinance governing the siting of small cell network infrastructure is not required to adopt a new ordinance as otherwise required under this legislation.

A small cell facility deployment ordinance must:

- outline the standards the personal wireless service providers must follow for a master permit;
- treat service providers in a competitively neutral and nondiscriminatory manner; and
- include a fee schedule for master and use permit fees.

The city or town is allowed to recover at least actual costs of processing the permits.

A small cell facility deployment ordinance may:

- allow the city or town to recover at least the actual costs associated with the development of the small cell facility ordinance amortized over the first five years following adoption of the ordinance;
- allow the permit applicant to pay an additional fee for expedited permit processing, if available by the city or town; and
- require the permit applicant to pay fair market rent or compensation for small cell facility deployment on city or town-owned poles.

Office on Broadband Access. The Governor's Office on Broadband Access (OBA) is created. The OBA is responsible for all matters regarding the adoption of statewide broadband access and deployment. It is the coordinating entity for public and private efforts to ensure statewide broadband access and deployment.

The OBA must:

- coordinate with communities, public and private entities, and consumer and investor owned utilities to develop strategies for deployment of broadband infrastructure and access to broadband services;
- review existing initiatives, policies and public and private investments and make recommendations to advance the state's broadband goals;
- update the state's goals and standards for broadband service as technological advances become available; and
- coordinate Broadband Task Force reports and work plans, and make recommendations to the legislature.

As the OBA develops plans or strategies for broadband deployment, it must consider:

- partnerships between communities, nonprofit organizations, and consumer and investor owned utilities.
- funding opportunities that provide coordination of public, private, and state and federal funds for broadband capable infrastructure or broadband services available to underserved or unserved areas of the state;
- barriers to adoption of broadband service;
- unserved or underserved populations in the state; and
- recommendations from selected broadband deployment partnership initiative projects.

The OBA must establish a competitive grant program to assist qualified local governments, including public utility districts, port districts and local jurisdictions, to deploy broadband services in unserved and underserved areas of the state.

Broadband Access Taskforce. A taskforce is established to assist the OBA with reviewing existing broadband initiatives, policies, and public and private investments. The taskforce must provide recommendations to advance the state's broadband deployment, services, and access goals. The taskforce members are specified and appointed by the Governor.

The taskforce duties include reviewing:

- programs and policies such as current state initiatives and programs, other states, local, and industry programs that illustrate best practices for broadband access;
- financial, tax policy, regulatory and other challenges to meet broadband goals that the state should address;
- actions necessary to develop and maintain a detailed inventory of deployment of broadband services;
- standards for defining levels of service; and
- pole attachment charges.

In addition, the task force must review and assess:

- the public governmental sector as a consumer of telecommunications services as well as a host for telecommunications infrastructure on public property and make recommendations regarding the public benefit for allowing the use of public property for service and hosting infrastructure; and
- the effectiveness of existing federal, state, and local funding programs for deployment of broadband.

The Task Force is required to develop a work plan and provide progress reports.

Broadband deployment partnership initiative. The purpose of the Broadband Deployment Partnership Initiative is to initiate and foster partnerships between providers of telecommunications services that deploy broadband services and to enhance and expand those services in unserved and underserved areas of the state. OBA, in consultation with Commerce and UTC, must present a prioritized list of applications to the Governor. The applications must be prioritized based on projects that will:

- deploy broadband services by December 1, 2018;
- coordinate public, private, state, and federal funds or other funds for broadband deployment;
- demonstrate an opportunity for economic development growth;
- collaborate with public and private partner to address unmet needs, specific purposes, and service needs of the community; and
- establish a sustainable initiative in a large rural geographic area.

Project recipients of funding under the initiative must provide recommendations for effective and efficient use of public funds; model business plan with approaches and strategies to meet community needs and network management; and state policies for continuing deployment of broadband services.

Broadband services deployment grant program. Commerce must implement and administer a competitive grant program to assist local governments, public utilities districts, port district and other local and public jurisdictions to deploy broadband services in unserved and underserved areas of the state. The obligation of Commerce to make grant payments is contingent upon funding provided for the grant program.

Broadband access account. The account is funded by the business and occupation taxes paid by telecommunications service providers receiving federal funds for making broadband-capable infrastructure available to underserved and unserved areas of the state. In addition, \$1 million from the universal communications account is deposited into the account. The funds may be used only for expenditures that expand broadband access, including:

- OBA activities;
- the Broadband Task Force; and
- projects selected under the Broadband Deployment Partnership Initiative.

State Universal Service Program. The program is extended until 2021. By December 1, 2019, the UTC must include in its report an analysis of the need for future program funding and recommendations on potential funding mechanisms to improve availability of communication services, including broadband service in unserved and underserved areas of the state.

Rural Port Districts. Rural port districts in existence on June 8, 2000, may acquire and operate telecommunications facilities for other public bodies' telecommunications needs and to provide wholesale telecommunications services outside their district limits.

Port districts within a county with at least one border along the southern, eastern, or northern border of the state may acquire and operate telecommunications facilities for their own internal use and for other public bodies' telecommunications needs, and to provide wholesale telecommunications services within and outside their district limits.

Port districts authorized to provide wholesale telecommunications must follow the same requirements as rural ports.

A rural port or port district authorized to provide wholesale telecommunications may select a telecommunications company to operate its telecommunications facilities. Under contract terms specified with the port district, the telecommunications company may be the exclusive provider of services to end users.

A telecommunications company is defined as any for-profit entity owned by investors that sells telecommunications services to end users.

Findings. The Legislature finds that the national goals adopted by the FCC are appropriate for Washington State.

The requirements under Commerce for the Broadband Office and related provisions are repealed.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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