
Finance Committee

HB 1971

Brief Description: Concerning communications services reform.

Sponsors: Representatives Carlyle and Nealey.

Brief Summary of Bill

- Requires retailers of prepaid wireless telephone service to collect and remit the E911 tax.
- Repeals the taxes funding the Washington Telephone Assistance and Telecommunications Relay Service programs and requires the programs to be funded by state general fund appropriations.
- Repeals the state and local sales and use tax exemption for local residential landline service.
- Establishes a temporary state universal communications services program.

Hearing Date: 3/15/13

Staff: Jeff Mitchell (786-7139).

Background:

E911 Excise Tax on Prepaid Wireless.

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

Landline Telephone Sales and Use Tax Exemption.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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

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

WTAP and TRS.

Created in 1987, the Washington Telephone Assistance Program (WTAP), provides discounted wireline telephone services to low-income residents of the state. The program is operated by the Department of Social and Health Services (DSHS) and provides a reduced monthly charge for basic telephone service, discounts on connection fees, waivers of deposits for local service, and community voicemail. The program is currently funded by a monthly \$0.14 excise tax on each switched telephone line in the state. The tax does not apply to companies providing wireless and VoIP telecommunications services. The DOR determines the tax rate necessary to fund the program, but the rate cannot exceed 14 cents per month for each switched telephone line. The fiscal year (FY) 2013 tax rate is 14 cents per switched line. Up to 8 percent of the receipts go to the Department of Commerce for costs of providing community service voice mail services.

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

Universal Services Fund.

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

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

The complex system of fees, surcharges and subsidies supports telephone companies in rural and remote areas.

On October 27, 2011, the FCC approved a six-year transfer process that would transition money from the Universal Service Fund High-Cost Program to a new \$4.5 billion a year Connect America Fund for broadband internet expansion, effectively putting an end to the USF High-Cost Program by 2018.

Summary of Bill:

E911 Excise Tax on Prepaid Wireless.

The state and county E911 excise taxes must be collected by the seller of a prepaid wireless telecommunications service for each retail transaction occurring in this state at the point of sale. When practicable, the amount of the tax must be disclosed on an invoice, receipt, or other similar document. When a separate disclosure is not practicable, the seller may prominently display a sign notifying consumers of the tax. Sellers of prepaid wireless telecommunications service are subject to the same administrative sales-tax provisions as companies providing wireline, wireless, and VoIP telecommunications services.

Landline Telephone Sales and Use Tax Exemption.

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

WTAP and TRS.

The WTAP and TRS excise taxes are eliminated, and the programs are to be funded by biennial general fund appropriations.

Universal Services Fund.

A state universal communications services program is established on July 1, 2014, and is set to expire on July 1, 2019. The program must be administered by a neutral third party, selected by the UTC through a competitive process, and subject to UTC oversight.

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

Appropriation: None.

Fiscal Note: Requested on March 4, 2013.

Effective Date: Part I of the bill takes effect August 1, 2013. Sections 201 through 206, 208, and 209 take effect July 1, 2014. The remainder of the bill takes effect 90 days after adjournment of the session in which the bill passed.