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SECOND SUBSTITUTE SENATE BILL 5935

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State of Washington

65th Legislature

2018 Regular Session

By Senate Ways & Means (originally sponsored by Senators Sheldon and Carlyle)

READ FIRST TIME 02/06/18.

1 AN ACT Relating to enhancing consumer access, affordability, and  
2 quality of broadband and advanced telecommunications services;  
3 amending RCW 35.99.010, 80.36.135, 80.36.630, 80.36.650, 80.36.690,  
4 and 53.08.370; amending 2013 2nd sp.s. c 8 s 212 (uncodified); adding  
5 a new section to chapter 35.99 RCW; adding new sections to chapter  
6 43.330 RCW; adding a new section to chapter 82.32 RCW; adding a new  
7 section to chapter 54.16 RCW; adding a new section to chapter 34.12  
8 RCW; creating new sections; repealing RCW 43.330.400, 43.330.403,  
9 43.330.406, 43.330.409, 43.330.412, 43.330.415, 43.330.418, and  
10 43.330.421; and providing an expiration date.

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

12 NEW SECTION. **Sec. 1.** A new section is added to chapter 35.99  
13 RCW to read as follows:

14 (1)(a) It is the policy of the state to promote the efficient  
15 deployment of small cell facilities and small cell networks, as  
16 defined in RCW 80.36.375, infrastructure by offering predictability  
17 for wireless service providers so communities across the state have  
18 access to wireless communications technologies and create a framework  
19 for the deployment of wireless communications services. It is also  
20 the policy of the state that cities and towns maintain sufficient

1 authority to manage the public rights-of-way for the health, safety,  
2 and welfare of their citizens and the general public.

3 (b) It is the intent of the legislature that cities and towns may  
4 require personal wireless service providers seeking to deploy small  
5 cell facilities or small cell networks infrastructure to obtain a  
6 master permit or equivalent authority under RCW 35.99.030.  
7 Additionally, a city or town may require a wireless service provider  
8 to obtain appropriate permits to enter and use the specified right-  
9 of-way for the purpose of installing, maintaining, repairing, or  
10 removing identified small cell network facilities.

11 (2) Except as provided for in subsection (7) of this section,  
12 cities and towns with a population greater than five thousand shall  
13 enact a small cell facility deployment ordinance, or develop a small  
14 cell facility deployment policy establishing a process for siting  
15 small cell facilities and small cell networks within the right-of-way  
16 under this chapter, provided the city or town has received a complete  
17 application and application fee for a master permit from a wireless  
18 service provider for a small cell facility as defined in RCW  
19 80.36.375.

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

23 (a) Such a proposal would require original installation of a new  
24 pole or structure;

25 (b) Such a proposal would require an existing pole or structure  
26 to be extended or replaced at a height more than fifteen feet above  
27 the existing height of a pole or structure, except where the  
28 applicant can demonstrate that the requested pole height is the  
29 minimum needed to achieve necessary safety clearances or the  
30 requirement of the pole owner; or

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

34 (4)(a) A city or town that updates an existing small cell  
35 facility deployment ordinance or policy, or adopts a small cell  
36 facility deployment ordinance or policy must outline the process that  
37 personal wireless service providers are required to follow in seeking  
38 a master permit to deploy small cell facilities and small cell  
39 networks, as defined in RCW 80.36.375.

1 (b) The small cell facility deployment ordinance or policy must  
2 treat service providers in a competitively neutral and  
3 nondiscriminatory manner.

4 (5) The small cell facility deployment ordinance or policy must  
5 include initial fees or deposits required for filing the master  
6 permit application. The use of a deposit for administrative costs in  
7 lieu of a set fee is not prohibited if the final, total  
8 administrative fee charged complies with the requirements of RCW  
9 35.21.860. The fee schedule may allow a permit applicant to pay an  
10 additional fee for expedited permit processing if the city has  
11 deployed such a process. This provision is not intended to require  
12 jurisdictions to create an expedited permitting process when one does  
13 not already exist.

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

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

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

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

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

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

1 The definitions in this section apply throughout this chapter  
2 unless the context clearly requires otherwise.

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

7 (2) "Facilities" means all of the plant, equipment, fixtures,  
8 appurtenances, antennas, and other facilities necessary to furnish  
9 and deliver telecommunications services and cable television  
10 services, including but not limited to poles with crossarms, poles  
11 without crossarms, wires, lines, conduits, cables, communication and  
12 signal lines and equipment, braces, guys, anchors, vaults, and all  
13 attachments, appurtenances, and appliances necessary or incidental to  
14 the distribution and use of telecommunications services and cable  
15 television services.

16 (3) "Master permit" means the agreement in whatever form whereby  
17 a city or town may grant general permission to a service provider to  
18 enter, use, and occupy the right-of-way for the purpose of locating  
19 facilities. This definition is not intended to limit, alter, or  
20 change the extent of the existing authority of a city or town to  
21 require a franchise nor does it change the status of a service  
22 provider asserting an existing statewide grant based on a predecessor  
23 telephone or telegraph company's existence at the time of the  
24 adoption of the Washington state Constitution to occupy the  
25 right-of-way. For the purposes of this subsection, a franchise,  
26 except for a cable television franchise, is a master permit. A master  
27 permit does not include cable television franchises.

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

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

33 (a) State highways;

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

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

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

39 (e) Lands owned or managed by the state parks and recreation  
40 commission; or

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

4 (6) "Service provider" means every corporation, company,  
5 association, joint stock association, firm, partnership, person,  
6 city, or town owning, operating, or managing any facilities used to  
7 provide and providing personal wireless services, telecommunications,  
8 or cable television service for hire, sale, or resale to the general  
9 public. Service provider includes the legal successor to any such  
10 corporation, company, association, joint stock association, firm,  
11 partnership, person, city, or town. A personal wireless service  
12 provider includes entities providing infrastructure, including but  
13 not limited to fiber, conduit, poles, or other structures to another  
14 service provider, but does not include electrical utility entities.

15 (7) "Telecommunications service" means the transmission of  
16 information by wire, radio, optical cable, electromagnetic, or other  
17 similar means for hire, sale, or resale to the general public. For  
18 the purpose of this subsection, "information" means knowledge or  
19 intelligence represented by any form of writing, signs, signals,  
20 pictures, sounds, or any other symbols. For the purpose of this  
21 chapter, telecommunications service excludes the over-the-air  
22 transmission of broadcast television or broadcast radio signals.

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

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

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

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

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

36 (c) Reform current universal service mechanisms to support  
37 deployment in high-cost areas; ensuring that low-income Americans can  
38 afford broadband; and supporting efforts to boost adoption and  
39 utilization; and

1 (d) Reform laws, policies, standards, and incentives to maximize  
2 the benefits of broadband in sectors that government influences  
3 significantly, such as public education, health care, and government  
4 operations;

5 (2) The federal communications commission has also adopted a goal  
6 that all of the country's households have affordable access to actual  
7 download speeds of at least twenty-five megabits per second and  
8 actual upload speeds of at least three megabits per second; that a  
9 majority of households have access to speeds of one hundred fifty  
10 megabits, respectively; and that every community should have  
11 affordable access to at least one gigabit per second broadband  
12 service to anchor institutions such as schools, hospitals, and  
13 government buildings;

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

17 (4) Extensive investments have been made by the  
18 telecommunications industry and the public sector, as well as  
19 policies and programs adopted to provide affordable broadband  
20 services throughout the state, that will provide a foundation to  
21 build a comprehensive statewide framework for additional actions  
22 needed to advance state's broadband goals.

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

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

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

30 (2) "Local governments" includes cities, towns, counties,  
31 municipal corporations, public port districts, quasi-municipal  
32 corporations, and special purpose districts.

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

34 (4) "Underserved areas" means areas lacking adequate broadband  
35 service.

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

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

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

5 (2) The office, in collaboration with the utilities and  
6 transportation commission, the office of the chief information  
7 officer, and the community economic revitalization board, shall serve  
8 as the coordinating body for public and private efforts to ensure  
9 statewide broadband access and deployment. The office is responsible  
10 for all matters regarding the adoption of statewide broadband access  
11 and deployment.

12 (3) The duties of the office include:

13 (a) Coordinating with local governments, communities, public and  
14 private entities, and consumer-owned and investor-owned utilities to  
15 develop strategies and plans for deployment of broadband  
16 infrastructure and access to broadband services;

17 (b) Reviewing existing broadband initiatives, policies, and  
18 public and private investments;

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

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

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

25 (f) Implementing actions necessary to develop and maintain a  
26 detailed inventory of the deployment of broadband services, including  
27 monitoring and tracking the availability of broadband services and  
28 internet speeds across the state, with an emphasis upon identifying  
29 and assessing progress made towards achieving the goals for internet  
30 speeds in unserved and underserved areas;

31 (g) Developing standards for defining levels of service for  
32 broadband access, including unserved and underserved areas, and  
33 revising these standards as technological advances are made and  
34 services are expanded;

35 (h) Fostering public sector and telecommunications industry  
36 actions to bring sustainable broadband access to areas that are  
37 unserved or underserved;

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

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

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

6 (a) Partnerships between communities, tribes, nonprofit  
7 organizations, consumer-owned and investor-owned utilities, and  
8 public and private entities;

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

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

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

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

18 (5) By November 1, 2018, the office must develop a list of  
19 projects for grant support as authorized under section 7 of this act  
20 that will advance high speed broadband access in unserved rural areas  
21 of the state. Beginning November 1, 2018, through December 31, 2020,  
22 the office must give first priority to projects deploying end-user  
23 broadband services in unserved or underserved rural areas of the  
24 state.

25 (6) The office may conduct research as provided under RCW  
26 43.330.050(8) as it applies to the development and deployment of  
27 broadband access throughout the state. Information provided to the  
28 office in the course of research and analysis is not subject to  
29 disclosure subject to RCW 42.56.270(12)(a)(i).

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

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

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



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

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

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

10       (i) Assistance to public and private partnerships deploying  
11    broadband infrastructure between areas with broadband service to  
12    unserved or underserved areas of the state;

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

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

17       (iv) Technical analysis to address barriers and interoperability  
18    between private and public infrastructure; and

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

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

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

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

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

34       (1) The office may convene an advisory group to make  
35    recommendations on developing a statewide rural broadband strategy to  
36    ensure broadband access statewide by January 1, 2026. The advisory  
37    committee must conduct a gap analysis on the deployment of broadband  
38    services in underserved and unserved areas of the state. The analysis  
39    must include a review of:

1 (a) Deployment of broadband services and deployment strategies by  
2 public utility districts, port districts, public and private  
3 partnerships, and private entities;

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

6 (c) Broadband access availability in unserved and underserved  
7 areas of the state.

8 (2) The members of the advisory committee must include experts  
9 from the utilities and transportation commission, the office of the  
10 chief information officer, and the department of commerce. The office  
11 may invite, as necessary, subject matter experts to participate in  
12 the advisory group.

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

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

16 (a) Estimate the annual amount of taxes paid under chapter 82.04  
17 RCW associated with federal funds received by telecommunications  
18 service providers for making broadband-capable infrastructure  
19 available to unserved or underserved areas of the state;

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

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

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

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

34 (2) Expenditures from the account may be used only for the  
35 expansion of broadband access, including funding grants under section  
36 7 of this act.

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

3       (1) The legislature declares that:

4       (a) Changes in technology and the structure of the  
5 telecommunications industry may produce conditions under which  
6 traditional rate of return, rate base regulation of  
7 telecommunications companies may not in all cases provide the most  
8 efficient and effective means of achieving the public policy goals of  
9 this state as declared in RCW 80.36.300, this section, and RCW  
10 80.36.145. The commission should be authorized to employ an  
11 alternative form of regulation if that alternative is better suited  
12 to achieving those policy goals.

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

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

20       (2) Subject to the conditions set forth in this chapter and RCW  
21 80.04.130, the commission may regulate telecommunications companies  
22 subject to traditional rate of return, rate base regulation by  
23 authorizing an alternative form of regulation. The commission may  
24 determine the manner and extent of any alternative forms of  
25 regulation as may in the public interest be appropriate. In addition  
26 to the public policy goals declared in RCW 80.36.300, the commission  
27 shall consider, in determining the appropriateness of any proposed  
28 alternative form of regulation, whether it will:

29       (a) Facilitate the broad deployment of technological improvements  
30 and advanced telecommunications services to underserved areas or  
31 underserved customer classes;

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

33       (c) Preserve or enhance the development of effective competition  
34 and protect against the exercise of market power during its  
35 development;

36       (d) Preserve or enhance service quality and protect against the  
37 degradation of the quality or availability of efficient  
38 telecommunications services;

1 (e) Provide for rates and charges that are fair, just,  
2 reasonable, sufficient, and not unduly discriminatory or  
3 preferential; and

4 (f) Not unduly or unreasonably prejudice or disadvantage any  
5 particular customer class.

6 (3) A telecommunications company or companies subject to  
7 traditional rate of return, rate base regulation may petition the  
8 commission to establish an alternative form of regulation. The  
9 company or companies shall submit with the petition a plan for an  
10 alternative form of regulation. The plan shall contain a proposal for  
11 transition to the alternative form of regulation and the proposed  
12 duration of the plan. The plan must also contain a proposal for  
13 ensuring adequate carrier-to-carrier service quality, including  
14 service quality standards or performance measures for  
15 interconnection, and appropriate enforcement or remedial provisions  
16 in the event the company fails to meet service quality standards or  
17 performance measures. The commission also may initiate consideration  
18 of alternative forms of regulation for a company or companies on its  
19 own motion. The commission, after notice and hearing, shall issue an  
20 order accepting, modifying, or rejecting the plan within nine months  
21 after the petition or motion is filed, unless extended by the  
22 commission for good cause. The commission shall order implementation  
23 of the alternative plan of regulation unless it finds that, on  
24 balance, an alternative plan as proposed or modified fails to meet  
25 the considerations stated in subsection (2) of this section.

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

30 (5) The commission may waive such regulatory requirements under  
31 Title 80 RCW for a telecommunications company subject to an  
32 alternative form of regulation as may be appropriate to facilitate  
33 the implementation of this section. However, the commission may not  
34 waive any grant of legal rights to any person contained in this  
35 chapter and chapter 80.04 RCW. The commission may waive different  
36 regulatory requirements for different companies or services if such  
37 different treatment is in the public interest.

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

1 (7) The commission or any person may file a complaint under RCW  
2 80.04.110 alleging that a telecommunications company under an  
3 alternative form of regulation has not complied with the terms and  
4 conditions set forth in the alternative form of regulation. The  
5 complainant shall bear the burden of proving the allegations in the  
6 complaint.

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

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

15 (1) The definitions in this section apply throughout this section  
16 and RCW 80.36.650 through 80.36.690 and 80.36.610 unless the context  
17 clearly requires otherwise.

18 (a) "Basic residential service" means those services set out in  
19 47 C.F.R. Sec. 54.101(a) (2011), as it existed on the effective date  
20 of this section, and mandatory extended area service approved by the  
21 commission.

22 (b) "Basic telecommunications services" means the following  
23 services:

- 24 (i) Single-party service;
- 25 (ii) Voice grade access to the public switched network;
- 26 (iii) Support for local usage;
- 27 (iv) Dual tone multifrequency signaling (touch-tone);
- 28 (v) Access to emergency services (911);
- 29 (vi) Access to operator services;
- 30 (vii) Access to interexchange services;
- 31 (viii) Access to directory assistance; and
- 32 (ix) Toll limitation services.

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

36 (d) "Communications provider" means a provider of communications  
37 services that assigns a working telephone number to a final consumer  
38 for intrastate wireline or wireless communications services or

1 interconnected voice over internet protocol service, and includes  
2 local exchange carriers.

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

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

7 ~~((f))~~ (g) "Incumbent public network" means the network  
8 established by incumbent local exchange carriers for the delivery of  
9 communications services to customers that is used by communications  
10 providers for origination or termination of communications services  
11 by or to customers.

12 ~~((g))~~ (h) "Interconnected voice over internet protocol service"  
13 means an interconnected voice over internet protocol service that:  
14 ~~((a)–[(i)])~~ (i) Enables real-time, two-way voice communications;  
15 ~~((b)–[(ii)])~~ (ii) requires a broadband connection from the user's  
16 location; ~~((c)–[(iii)])~~ (iii) requires internet protocol-compatible  
17 customer premises equipment; and ~~((d)–[(iv)])~~ (iv) permits users  
18 generally to receive calls that originate on the public network and  
19 to terminate calls to the public network.

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

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

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

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

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

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

33 (1) A state universal communications services program is  
34 established. The program is established to protect public safety and  
35 welfare under the authority of the state to regulate  
36 telecommunications under Article XII, section 19 of the state  
37 Constitution. The purpose of the program is to support continued  
38 provision of basic telecommunications services under rates, terms,  
39 and conditions established by the commission during the time over

1 which incumbent communications providers in the state are adapting to  
2 changes in federal universal service fund and intercarrier  
3 compensation support.

4 (2) Under the program, eligible communications providers may  
5 receive distributions from the universal communications services  
6 account created in RCW 80.36.690 in exchange for the affirmative  
7 agreement to provide continued services under the rates, terms, and  
8 conditions established by the commission under this chapter for the  
9 period covered by the distribution. The commission must implement and  
10 administer the program under terms and conditions established in RCW  
11 80.36.630 through 80.36.690. Expenditures for the program may not  
12 exceed five million dollars per fiscal year; provided, however, that  
13 if less than five million dollars is expended in any fiscal year, the  
14 unexpended portion must be carried over to subsequent fiscal years  
15 and, unless fully expended, must be available for program  
16 expenditures in such subsequent fiscal years in addition to the five  
17 million dollars allotted for each of those subsequent fiscal years.

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

20 (a) The communications provider is: (i) An incumbent local  
21 exchange carrier serving fewer than forty thousand access lines in  
22 the state; or (ii) a radio communications service company providing  
23 wireless two-way voice communications service to less than the  
24 equivalent of forty thousand access lines in the state. For purposes  
25 of determining the access line threshold in this subsection, the  
26 access lines or equivalents of all affiliates must be counted as a  
27 single threshold, if the lines or equivalents are located in  
28 Washington;

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

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

36 (4)(a) Distributions to eligible communications providers are  
37 based on a benchmark established by the commission. The benchmark is  
38 the rate the commission determines to be a reasonable amount  
39 customers should pay for basic residential service provided over the  
40 incumbent public network. However, if an incumbent local exchange

1 carrier is charging rates above the benchmark for the basic  
2 residential service, that provider may not seek distributions from  
3 the fund for the purpose of reducing those rates to the benchmark.

4 (b) To receive a distribution under the program, an eligible  
5 communications provider must affirmatively consent to continue  
6 providing communications services to its customers under rates,  
7 terms, and conditions established by the commission pursuant to this  
8 chapter for the period covered by the distribution.

9 (5) The program is funded from amounts deposited by the  
10 legislature in the universal communications services account  
11 established in RCW 80.36.690. The commission must operate the program  
12 within amounts appropriated for this purpose and deposited in the  
13 account.

14 (6) The commission must periodically review the accounts and  
15 records of any communications provider that receives distributions  
16 under the program to ensure compliance with the program and monitor  
17 the providers' use of the funds.

18 (7) The commission must establish an advisory board, consisting  
19 of a reasonable balance of representatives from different types of  
20 stakeholders, including but not limited to communications providers  
21 and consumers, to advise the commission on any rules and policies  
22 governing the operation of the program.

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

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

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

28 (1) The universal communications services account is created in  
29 the custody of the state treasurer. Revenues to the account consist  
30 of moneys deposited in the account by the legislature and any  
31 penalties or other recoveries received pursuant to RCW 80.36.670.  
32 Expenditures from the account may be used only for the purposes of  
33 the universal communications services program established in RCW  
34 80.36.650 and commission expenses related to implementation and  
35 administration of the provisions of RCW 80.36.620 through 80.36.690,  
36 and section 212, chapter 8, Laws of 2013 2nd sp. sess. Only the  
37 secretary of the commission or the secretary's designee may authorize  
38 expenditures from the account. The account is subject to allotment



1 procedures under chapter 43.88 RCW, but an appropriation is not  
2 required for expenditures.

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

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

6 By December 1, (~~2017~~) 2019, and in compliance with RCW  
7 43.01.036, the Washington utilities and transportation commission  
8 must report to the appropriate committees of the legislature, on the  
9 following: (1) Whether funding levels for each small  
10 telecommunications company have been adequate to maintain reliable  
11 universal service; (2) the future impacts on small telecommunications  
12 companies from the elimination of funding under this act; (3) the  
13 impacts on customer rates from the current level of funding and the  
14 future impacts when the funding terminates under this act; and (4)  
15 the impacts on line and service delivery investments when the funding  
16 is terminated under this act. The report must also include an  
17 analysis of the need for future program funding and recommendations  
18 on potential funding mechanisms to improve availability of  
19 communications services, including broadband service, in unserved and  
20 underserved areas. Commission expenses related to conducting all  
21 analysis in preparation of this report must be expended from the  
22 universal communications services account.

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

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

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

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

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

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

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

6 (2) Any public utility district that, as of the effective date of  
7 this section, provides only water, sewer, and wholesale  
8 telecommunications services in a county with an area less than five  
9 hundred square miles and is located west of the Puget Sound may  
10 provide end-user internet services to end users on the public utility  
11 district's broadband network located within the public utility  
12 district boundaries only when the existing providers of end-user  
13 internet service on the public utility district's broadband network  
14 cease to provide end-user service or provide inadequate end-user  
15 service as determined in the manner prescribed by this section.

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

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

21 (b) Determine and submit findings that the retail internet  
22 service available to the petitioners served by the public utility  
23 district's broadband network is either nonexistent or inadequate as  
24 defined in the service level agreement adopted by the commissioners  
25 for all existing internet service providers on the public utility  
26 district's broadband network; and

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

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

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

1 (b) Any individual who has developed a partnership payment  
2 structure to finance broadband deployment with the public utility  
3 district.

4 (5) For the purposes of this section, the adequacy of retail  
5 internet service is determined by measuring retail internet service  
6 to end users on the public utility district's broadband network and  
7 comparing it with service standards in the public utility district  
8 service level agreement used for all public utility district network  
9 providers. Measurement of the existing retail internet service  
10 provider's service must be quantified by measuring the service with  
11 speed and capacity devices and software. Additionally, a retail  
12 internet service provider may submit its own assessment of its  
13 service level for consideration by the commission within thirty days  
14 of the first meeting conducted under subsection (3) of this section.

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

21 (7)(a) In case of failure to reach an agreement on the adequacy  
22 of retail internet service, the commissioners must request an  
23 appointment of an administrative law judge under Title 34 RCW to hear  
24 the dispute.

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

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

32 (d) Upon review and consideration of all of the evidence, the  
33 administrative law judge must determine if the retail internet  
34 service is inadequate or nonexistent as defined in this section. Upon  
35 making a determination, the administrative law judge must state  
36 findings of fact and must issue and file a determination with the  
37 commissioners.

38 (8) Any public utility district providing cable television  
39 service under this section must secure a cable television franchise,

1 pay franchise fees, and any applicable taxes to the local cable  
2 franchise authority as required by federal law.

3 (9) Nothing in this section may be construed or is intended to  
4 confer upon the utilities and transportation commission any authority  
5 to exercise jurisdiction over locally regulated utilities.

6 (10) All rates for retail internet services offered by a public  
7 utility district under this section must be fair and  
8 nondiscriminatory, except the public utility district may set tiers  
9 of service charges based on service demands of the end user,  
10 including commercial and residential rates.

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

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

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

18 (1) A rural port district in existence on June 8, 2000, a port  
19 district located in a county that borders a foreign nation, and a  
20 port district located in a county that borders the Columbia river  
21 that has completed feasibility studies for a wholesale  
22 telecommunications network, may construct, purchase, acquire,  
23 develop, finance, lease, license, handle, provide, add to, contract  
24 for, interconnect, alter, improve, repair, operate, and maintain any  
25 telecommunications facilities within or without the district's limits  
26 for the following purposes:

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

28 (b) For the provision of wholesale telecommunications services  
29 within the district's limits. Nothing in this subsection shall be  
30 construed to authorize rural port districts to provide  
31 telecommunications services to end users.

32 (2) Except as provided in subsection (7) of this section, a rural  
33 port district providing wholesale telecommunications services under  
34 this section shall ensure that rates, terms, and conditions for such  
35 services are not unduly or unreasonably discriminatory or  
36 preferential. Rates, terms, and conditions are discriminatory or  
37 preferential when a rural port district offering such rates, terms,  
38 and conditions to an entity for wholesale telecommunications services

1 does not offer substantially similar rates, terms, and conditions to  
2 all other entities seeking substantially similar services.

3 (3) When a rural port district establishes a separate utility  
4 function for the provision of wholesale telecommunications services,  
5 it shall account for any and all revenues and expenditures related to  
6 its wholesale telecommunications facilities and services separately  
7 from revenues and expenditures related to its internal  
8 telecommunications operations. Any revenues received from the  
9 provision of wholesale telecommunications services must be dedicated  
10 to the utility function that includes the provision of wholesale  
11 telecommunications services for costs incurred to build and maintain  
12 the telecommunications facilities until such time as any bonds or  
13 other financing instruments executed after June 8, 2000, and used to  
14 finance the telecommunications facilities are discharged or retired.

15 (4) When a rural port district establishes a separate utility  
16 function for the provision of wholesale telecommunications services,  
17 all telecommunications services rendered by the separate function to  
18 the district for the district's internal telecommunications needs  
19 shall be charged at its true and full value. A rural port district  
20 may not charge its nontelecommunications operations rates that are  
21 preferential or discriminatory compared to those it charges entities  
22 purchasing wholesale telecommunications services.

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

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

31 (7) A port district under this section may select a  
32 telecommunications company to operate the port district's  
33 telecommunications facilities. The company may be the exclusive  
34 provider of telecommunications services to end users under terms  
35 specified in the contract with the port district. For purposes of  
36 this section, "telecommunications company" means any for-profit  
37 entity owned by investors that sells telecommunications services to  
38 end users. Nothing in this subsection (7) is intended to limit or  
39 otherwise restrict any other authority provided by law.

1        NEW SECTION.    **Sec. 19.** By July 1, 2019, the governor's office on  
2 broadband access created in section 5 of this act must study taxes  
3 imposed on the capital costs associated with providing retail  
4 broadband service, including taxes paid under chapters 82.08 and  
5 82.12 RCW. The study must include an examination of the impact to  
6 broadband deployment if a credit is provided against taxes paid under  
7 chapters 82.08 and 82.12 RCW on the capital costs associated with  
8 providing retail broadband service telecommunications network  
9 transmission equipment located in an underserved area in the state.

10       NEW SECTION.    **Sec. 20.** The governor's office on broadband access  
11 created in section 5 of this act must develop a small cell facility  
12 deployment permitting model ordinance for cities and towns. The  
13 governor's office on broadband access must consult with cities,  
14 counties, and service providers when developing the model ordinance.  
15 The model ordinance must be available for cities and towns by  
16 September 1, 2018.

17       NEW SECTION.    **Sec. 21.** The following acts or parts of acts are  
18 each repealed:

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

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

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

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

31       (5) RCW 43.330.412 (Community technology opportunity program—  
32 Administration—Grant program) and 2011 1st sp.s. c 43 s 607, 2009 c  
33 509 s 6, & 2008 c 262 s 6;

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

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

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

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