H-0737.1

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**HOUSE BILL 1373**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Representatives Wylie, Smith, Doglio, Vick, Maycumber, Blake, Frame, Orcutt, Springer, Chandler, Pollet, MacEwen, DeBolt, Kloba, Griffey, Tarleton, Walsh, Dent, Fey, Slatter, Schmick, Morris, Dye, Fitzgibbon, Sullivan, Appleton, Paul, Chapman, and Valdez

AN ACT Relating to the universal communications services program; amending RCW 80.36.610, 80.36.630, 80.36.650, 80.36.660, 80.36.670, 80.36.680, 80.36.690, and 80.36.700; amending 2013 2nd sp.s. c 8 s 212 (uncodified); repealing RCW 80.36.620; providing an effective date; providing expiration dates; and declaring an emergency.

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

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

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

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

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

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

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

(3) This section expires July 1, 2030.

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

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

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

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

(i) Single-party service;

(ii) Voice grade access to the public switched network;

(iii) Support for local usage;

(iv) Dual tone multifrequency signaling (touch-tone);

(v) Access to emergency services (911);

(vi) Access to operator services;

(vii) Access to interexchange services;

(viii) Access to directory assistance; and

(ix) Toll limitation services.

(c) "Broadband service" means any service providing advanced telecommunications capability including internet access, and access to high quality voice, data, graphics, or video.

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

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

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

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

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

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

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

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

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

(2) This section expires July 1, ((~~2020~~)) 2030.

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

(1) A state universal communications services program is established. The program is established to protect public safety and welfare under the authority of the state to regulate telecommunications under Article XII, section 19 of the state Constitution. The purpose of the program is to support continued provision of basic telecommunications services under rates, terms, and conditions established by the commission ((~~during the time over which incumbent communications providers in the state are adapting to changes in federal universal service fund and intercarrier compensation support~~)) and the provision, enhancement, and maintenance of broadband services, recognizing that historically, the incumbent public network functions to provide all communications services including, but not limited to, voice and broadband services.

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

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

(a)(i) The communications provider is: ((~~(i)~~)) (A) An incumbent local exchange carrier serving fewer than forty thousand access lines in the state; or ((~~(ii)~~)) (B) a radio communications service company providing wireless two-way voice communications service and broadband services to less than the equivalent of forty thousand access lines in the state. For purposes of determining the access line threshold in this subsection, the access lines or equivalents of all wireline affiliates must be counted as a single threshold, if the lines or equivalents are located in Washington;

((~~(b)~~)) (ii) The ((~~customers of the~~)) communications provider ((~~are at risk of rate instability or service interruptions or cessations absent a distribution to the provider that will allow the provider to maintain rates reasonably close to the benchmark~~)) has adopted a plan to provide, enhance, or maintain broadband services in its service area; and

((~~(c)~~)) (iii) The communications provider meets any other requirements established by the commission pertaining to the provision of communications services, including basic telecommunications services; or

(b) The communications provider demonstrates to the commission that the communications provider is able to provide the same or comparable services at the same or similar service quality standards at a lower price and: (i) Will provide communications services to all customers in the exchange or exchanges in which it will provide service; and (ii) submits to the commission's regulation of its service as if it is the incumbent local exchange company serving the exchange or exchanges for which it seeks distribution from the account.

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

(b) If the program does not have sufficient funds to fully fund the distribution formula set out in (a) of this subsection, distributions must be reduced on a pro rata basis using the amounts calculated for that year's program support as the basis of the pro rata calculation.

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

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

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

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

(8) The program terminates on June 30, ((~~2019~~)) 2029, and no distributions may be made after that date.

(9) This section expires July 1, ((~~2020~~)) 2030.

**Sec.**  RCW 80.36.660 and 2013 2nd sp.s. c 8 s 204 are each amended to read as follows:

(1) To implement the program, the commission must adopt rules for the following purposes:

(a) Operation of the program, including criteria for: Eligibility for distributions; use of the funds; identification of any reports or data that must be filed with the commission, including, but not limited to, how a communication provider used the distributed funds; and the communications provider's infrastructure;

(b) Operation of the universal communications services account established in RCW 80.36.690;

(c) Establishment of the ((~~benchmark~~)) criteria used to calculate distributions; and

(d) Readoption, amendment, or repeal of any existing rules adopted pursuant to RCW 80.36.610 ((~~and 80.36.620~~)) as necessary to be consistent with RCW 80.36.630 through 80.36.690 and 80.36.610.

(2) This section expires July 1, ((~~2020~~)) 2030.

**Sec.**  RCW 80.36.670 and 2013 2nd sp.s. c 8 s 205 are each amended to read as follows:

(1) In addition to any other penalties prescribed by law, the commission may impose penalties for failure to make or delays in making or filing any reports required by the commission for administration of the program. In addition, the commission may recover amounts determined to have been improperly distributed under RCW 80.36.650. For the purposes of this section, the provisions of RCW 80.04.380 through 80.04.405, inclusive, apply to all companies that receive support from the universal communications services account created in RCW 80.36.690.

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

(3) Any amounts recovered under this section must be deposited in the universal communications services account created in RCW 80.36.690.

(4) This section expires July 1, ((~~2020~~)) 2030.

**Sec.**  RCW 80.36.680 and 2013 2nd sp.s. c 8 s 206 are each amended to read as follows:

(1) The commission may delegate to the commission secretary or other staff the authority to resolve disputes and make other administrative decisions necessary to the administration and supervision of the program consistent with the relevant statutes and commission rules.

(2) This section expires July 1, ((~~2020~~)) 2030.

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

(1) The universal communications services account is created in the custody of the state treasurer. Revenues to the account consist of moneys deposited in the account by the legislature and any penalties or other recoveries received pursuant to RCW 80.36.670. Expenditures from the account may be used only for the purposes of the universal communications services program established in RCW 80.36.650 and commission expenses related to implementation and administration of RCW 80.36.630 through 80.36.690 and section 212, chapter 8, Laws of 2013 2nd sp. sess. Only the secretary of the commission or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) This section expires July 1, ((~~2020~~)) 2030.

**Sec.**  RCW 80.36.700 and 2013 2nd sp.s. c 8 s 211 are each amended to read as follows:

(1) The universal communications services program established in RCW 80.36.630 through 80.36.690 terminates on June 30, ((~~2019~~)) 2029.

(2) This section expires July 1, ((~~2020~~)) 2030.

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

(1) By December 1, ((~~2017~~)) 2028, and in compliance with RCW 43.01.036, the Washington utilities and transportation commission ((~~must~~)) may report to the appropriate committees of the legislature, on the following: ((~~(1)~~)) (a) Whether funding levels for each small telecommunications company have been adequate to maintain reliable universal service; ((~~(2)~~)) (b) the future impacts on small telecommunications companies from the elimination of funding under this act; ((~~(3)~~)) (c) the impacts on customer rates from the current level of funding and the future impacts when the funding terminates under this act; and ((~~(4)~~)) (d) the impacts on line and service delivery investments when the funding is terminated under this act. The report may also include an analysis of the need for future program funding and recommendations on potential funding mechanisms to improve availability of communications services, including broadband service, in unserved and underserved areas. Commission expenses related to conducting all analysis in preparation of this report must be expended from the universal communication services account.

(2) The Washington utilities and transportation commission must initiate rule making to reform the state universal communications services program no later than ninety days following the effective date of this section. The rule making must address adding broadband as a supported service and, consistent with the size of the fund, establishing:

(a) Broadband provider eligibility;

(b) Service performance and buildout requirements for funding recipients;

(c) Support amounts for maintaining systems that meet federal or state
broadband speed guidelines; and

(d) Methods to effectively and efficiently distribute program support to eligible providers.

NEW SECTION. **Sec.**  RCW 80.36.620 (Universal service program—Rules) and 1998 c 337 s 3 are each repealed.

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

NEW SECTION. **Sec.**  Section 1 of this act takes effect July 1, 2020.

NEW SECTION. **Sec.**  Sections 2 through 10 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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