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**SENATE BILL 5483**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators McCoy, Chase, and Saldaña

AN ACT Relating to ensuring economic development through the provision of telecommunications services to underserved and unserved customers; amending RCW 54.16.005, 54.16.330, 53.08.005, 80.36.530, 80.36.510, 43.330.406, 43.330.418, and 43.330.421; adding a new section to chapter 54.16 RCW; and adding a new section to chapter 80.36 RCW.

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

**Sec.**  RCW 54.16.005 and 2000 c 81 s 2 are each amended to read as follows:

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

(1) "Commission" means the Washington utilities and transportation commission.

(2) "District commission" means the governing board of a public utility district.

(3) "Dominant internet service provider" means an internet service provider that provides retail internet access to at least fifty-one percent of the total end-use customers connected to telecommunications facilities owned or leased by a public utility district.

(4) "Retail telecommunications services" means the sale, lease, license, or indivisible right of use of telecommunications or telecommunications facilities directly to end users.

(5) "Telecommunications" has the same meaning as that contained in RCW 80.04.010.

((~~(3)~~)) (6) "Telecommunications facilities" means lines, conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property, and routes used, operated, owned, or controlled by any entity to facilitate the provision of telecommunications services.

((~~(4)~~)) (7) "Wholesale telecommunications services" means the provision of telecommunications or telecommunications facilities for resale by an entity authorized to provide telecommunications services to the general public and internet service providers.

**Sec.**  RCW 54.16.330 and 2004 c 158 s 1 are each amended to read as follows:

(1) A public utility district in existence on June 8, 2000, may construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate, and maintain any telecommunications facilities within or ((~~without~~)) outside of the district's limits for any or all of the following purposes:

(a) For the district's internal telecommunications needs; ((~~and~~))

(b) For the provision of wholesale telecommunications services within the district and by contract with another public utility district((~~.~~

~~Nothing in this subsection shall be construed to authorize public utility districts to provide telecommunications services to end users~~));

(c) For the provision of retail telecommunications services and telecommunications facilities within the district; or

(d) For the provision of retail telecommunications services or telecommunications facilities outside of the district by contract with another public utility district or any other political subdivision of the state authorized to provide retail telecommunications services in the state.

(2) A public utility district providing wholesale or retail telecommunications services shall ensure that rates, terms, and conditions for such services are not unduly or unreasonably discriminatory or preferential. Rates, terms, and conditions are discriminatory or preferential when a public utility district offering rates, terms, and conditions to an entity for wholesale or retail telecommunications services does not offer substantially similar rates, terms, and conditions to all other entities seeking substantially similar services.

(3) A public utility district providing wholesale or retail telecommunications services shall not be required to but may establish a separate utility system or function for such purpose. In either case, a public utility district providing wholesale or retail telecommunications services shall separately account for any revenues and expenditures for those services according to standards established by the state auditor pursuant to its authority in chapter 43.09 RCW and consistent with the provisions of this title. Any revenues received from the provision of wholesale or retail telecommunications services must be dedicated to costs incurred to build and maintain any telecommunications facilities constructed, installed, or acquired to provide such services, including payments on debt issued to finance such services, until such time as any bonds or other financing instruments executed after June 8, 2000, and used to finance such telecommunications facilities are discharged or retired.

(4) When a public utility district provides wholesale or retail telecommunications services, all telecommunications services rendered to the district for the district's internal telecommunications needs shall be allocated or charged at its true and full value. A public utility district may not charge its nontelecommunications operations rates that are preferential or discriminatory compared to those it charges entities purchasing wholesale or retail telecommunications services.

(5) If a person or entity receiving retail telecommunications services from a public utility district under this chapter has a complaint regarding the reasonableness of the rates, terms, conditions, or service provided, the person or entity may file a complaint with the district commission.

(6) A public utility district shall not exercise powers of eminent domain to acquire telecommunications facilities or contractual rights held by any other person or entity to telecommunications facilities.

((~~(6)~~)) (7) Except as otherwise specifically provided, a public utility district may exercise any of the powers granted to it under this title and other applicable laws in carrying out the powers authorized under this section. Nothing in chapter 81, Laws of 2000 limits any existing authority of a public utility district under this title.

(8) If a dominant internet service provider, using telecommunications facilities of a public utility district that provides wholesale telecommunications services but does not provide retail telecommunications services, ceases to provide access to the internet to its end-use customers, the public utility district may provide access to the internet to the end-use customers of the dominant internet service provider in order for end-use customers to maintain access to the internet until a replacement internet service provider is, or providers are, in operation. Within thirty days of a dominant internet service provider ceasing to provide access to the internet, the public utility district must initiate a process to find a replacement internet service provider or providers to resume providing access to the internet using telecommunication facilities of a public utility district. Until a replacement internet service provider is, or providers are, in operation, the district commission may establish a rate for providing access to the internet and charge customers to cover expenses necessary to provide access to the internet.

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

(1) A public utility district may provide any retail telecommunications service or services in either of the following ways:

(a) By a majority vote of the district commission on a resolution; or

(b) On petition to the district commission signed by registered voters equal to no less than ten percent of the qualified electors of the county based on the total vote cast in the last general county election held in an even-numbered year, the district commission must conduct a hearing to consider whether the district must undertake the provision of broadband services to end users and customers. If the district commission determines that the district will undertake the provision of broadband services to end users and customers, then the provision of broadband services must be approved by a majority vote of the district commission on a resolution.

(2) Prior to constructing, purchasing, acquiring, developing, financing, leasing, licensing, handling, providing, adding to, contracting for, interconnecting, altering, improving, repairing, operating, or maintaining telecommunications facilities for the provision of retail telecommunications services, a public utility district must develop a written implementation plan describing how the district intends to provide retail telecommunications services under RCW 54.16.330.

**Sec.**  RCW 53.08.005 and 2000 c 81 s 6 are each amended to read as follows:

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

(1) "Commission" means the Washington utilities and transportation commission.

(2) "Rural port district" means a port district formed under chapter 53.04 RCW and located in a county with ((~~an average~~)) a total population ((~~density of fewer than one hundred persons per square mile~~)) of less than six hundred thousand.

(3) "Telecommunications" has the same meaning as contained in RCW 80.04.010.

(4) "Telecommunications facilities" means lines, conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property, and routes used, operated, owned, or controlled by any entity to facilitate the provision of telecommunications services.

(5) "Wholesale telecommunications services" means the provision of telecommunications services or facilities for resale by an entity authorized to provide telecommunications services to the general public and internet service providers.

**Sec.**  RCW 80.36.530 and 1990 c 247 s 4 are each amended to read as follows:

In addition to the penalties provided in this title, a violation of RCW 80.36.510, 80.36.520, ((~~or~~)) 80.36.524, or section 7 of this act constitutes an unfair or deceptive act in trade or commerce in violation of chapter 19.86 RCW, the consumer protection act. Acts in violation of RCW 80.36.510, 80.36.520, ((~~or~~)) 80.36.524, or section 7 of this act are not reasonable in relation to the development and preservation of business, and constitute matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. It shall be presumed that damages to the consumer are equal to the cost of the service provided plus two hundred dollars. Additional damages must be proved.

**Sec.**  RCW 80.36.510 and 1988 c 91 s 1 are each amended to read as follows:

The legislature finds that a growing number of companies provide, in a nonresidential setting, telecommunications services necessary to long distance service without disclosing the services provided or the rate, charge, or fee. Additionally, the legislature finds that residential consumers of telecommunications services are not being provided information regarding telecommunications service speed limitations, availability, or limitations of service within the local area, data usage, and charges or fees above the customer's contracted service. The legislature further finds that provision of these services without disclosure to consumers is a deceptive trade practice.

NEW SECTION. **Sec.**  A new section is added to chapter 80.36 RCW to read as follows:

(1) The utilities and transportation commission must by rule require, at a minimum, any telecommunications services company providing access to the internet to clearly disclose in writing on the consumer billing statement:

(a) Average internet speeds available to the consumer;

(b) Availability of telecommunications services, including when the availability of telecommunications services within the local area is ten percent or less, near exhaustion, or no longer accessible or available within the local area; and

(c) Data usage, when the telecommunications company imposes an additional charge to the consumer for data usage. The data used by the consumer must be graphically represented on each billing statement.

(2) The utilities and transportation commission must provide a biennial report beginning December 1, 2018, to the appropriate committees of the legislature regarding services provided, speeds delivered, data usage, and charges or fees.

**Sec.**  RCW 43.330.406 and 2011 1st sp.s. c 43 s 605 are each amended to read as follows:

(1) The department is authorized((~~, through a competitive bidding process,~~)) to procure, as authorized under chapter 39.26 RCW, on behalf of the state a geographic information system map detailing high-speed internet infrastructure, service availability, and adoption. This geographic information system map may include adoption information, availability information, type of high-speed internet deployment technology, and available speed tiers for high-speed internet based on any publicly available or licensed data.

(2) The department may procure this map either by:

(a) Contracting for and purchasing a completed map or updates to a map from a third party; or

(b) Working directly with ((~~the federal communications commission~~)) public sector entities, including state agencies, or other states, federal, local, or tribal governments to accept publicly available or licensed data.

(3) The department shall establish an accountability and oversight structure to ensure that there is transparency in the bidding and contracting process and full financial and technical accountability for any information or actions taken by a third-party contractor creating this map.

(4) In contracting for purchase of the map or updates to a map in subsection (2)(a) of this section, the department ((~~may take no action, nor impose any condition on the third party, that causes any~~)) must take reasonable measure to ensure that no record submitted by a public or private broadband service provider to the third party ((~~to~~)) will meet the standard of a public record as defined in RCW 42.56.010. This prohibition does not apply to any records delivered to the department by the third party as a component of the map. For the purpose of RCW 42.56.010(3), the purchase by the department of a completed map or updates to a map may not be deemed use or ownership by the department of the underlying information used by the third party to complete the map.

(5) Data or information that is publicly available as of July 1, 2009, will not cease to be publicly available due to any provision of ((~~chapter 509, Laws of 2009~~)) this section.

**Sec.**  RCW 43.330.418 and 2011 1st sp.s. c 43 s 609 are each amended to read as follows:

(1) ((~~The governor may take all appropriate steps to seek federal funding in order to maximize investment in broadband deployment and adoption in the state of Washington. Such steps may include the designation of a broadband deployment and adoption coordinator; review and prioritization of grant applications by public and private entities as directed by the national telecommunications and information administration, the rural utility services, and the federal communications commission; disbursement of block grant funding; and direction to state agencies to provide staffing as necessary to carry out this section. The authority for overseeing broadband adoption and deployment efforts on behalf of the state is vested in the department~~)) (a) The broadband office is created within the department and is responsible for matters regarding the adoption and deployment of broadband throughout the state, including coordinating activities required under subsection (2) of this section.

(b) The director of the broadband office is a member of the broadband advisory group and must be approved by the broadband advisory group, as required under RCW 43.330.421.

(c) By December 1, 2020, the broadband office must submit a report to the appropriate committees of the legislature. The report must be coordinated with the requirements of RCW 43.105.369(7) and must also include, at a minimum: A progress report on the deployment of broadband in underserved and unserved areas of the state; and activities conducted under RCW 43.330.412 and 43.330.415.

(2) The department may apply for federal funds and other grants or donations, ((~~may~~)) must deposit such funds in the Washington community technology opportunity account created in RCW 43.330.415, may oversee implementation of federally funded or mandated broadband programs for the state, and may adopt rules as necessary to administer the programs. These programs may include but are not limited to the following:

(a) Engaging in periodic statewide surveys of residents, businesses, and nonprofit organizations concerning their use and adoption of high-speed internet, computer, and related information technology for the purpose of identifying barriers to adoption;

(b) Working with communities to identify barriers to the adoption of broadband service and related information technology services by individuals, nonprofit organizations, and businesses;

(c) Identifying broadband demand opportunities in communities by working cooperatively with local organizations, government agencies, and businesses;

(d) Creating, implementing, and administering programs to improve computer ownership, technology literacy, digital media literacy, and high-speed internet access for populations not currently served or underserved in the state. This may include programs to provide low-income families, community-based nonprofit organizations, nonprofit entities, and public entities that work in partnership with nonprofit entities to provide increased access to computers and broadband, with reduced cost internet access;

(e) Administering the community technology opportunity program under RCW 43.330.412 and 43.330.415;

(f) Creating additional programs to spur the development of high-speed internet resources in underserved and unserved areas of the state;

(g) Establishing technology literacy and digital inclusion programs and establishing low-cost hardware, software, and internet purchasing programs that may include allowing participation by community technology programs in state purchasing programs; and

(h) Developing technology loan programs targeting small businesses or businesses located in unserved and underserved areas.

**Sec.**  RCW 43.330.421 and 2011 1st sp.s. c 43 s 610 are each amended to read as follows:

((~~Subject to the availability of federal or state funding,~~)) (1) The department ((~~may~~)) must convene an advisory group on ((~~digital inclusion and technology planning~~)) broadband deployment and adoption to focus on underserved and unserved areas of the state. The advisory group ((~~may~~)) must include, but is not limited to, volunteer representatives from community technology organizations, telecommunications providers, higher education institutions, K-12 education institutions, public health institutions, public housing entities, and local government and other governmental entities that are engaged in community technology activities.

(2) The advisory group created in subsection (1) of this section must:

(a) Approve the director of the broadband office as required under RCW 43.330.418;

(b) Review the broadband office coordination of grant and loan applications; and

(c) Meet quarterly with appropriate stakeholders to review progress on deployment of broadband services.

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