
HOUSE BILL 1971

State of Washington

63rd Legislature

2013 Regular Session

By Representatives Carlyle and Nealey

Read first time 02/27/13. Referred to Committee on Finance.

1 AN ACT Relating to communications services reform; amending RCW
2 82.14B.040, 82.14B.042, 82.14B.030, 82.14B.200, 80.36.430, 43.20A.725,
3 and 80.36.610; reenacting and amending RCW 82.14B.020 and 82.08.0289;
4 adding new sections to chapter 80.36 RCW; creating new sections;
5 repealing RCW 80.36.300; prescribing penalties; providing an effective
6 date; and providing an expiration date.

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

8 **PART I**

9 **Providing Communications Services Tax Reform**

10 NEW SECTION. **Sec. 101.** (1) The legislature finds that:

11 (a) The communications industry is undergoing rapid change due to
12 technological advances and deregulation. The legislature further finds
13 that an industry that began with the telephone now includes cable,
14 wireless, and satellite communications, as well as the internet;

15 (b) Washington's tax system has not kept pace with this industry;

16 (c) There are a vast array of state taxes and other charges on
17 communications services in Washington that were established for a far

1 different technological, legal, and structural landscape than what
2 exists today;

3 (d) Many taxes and fees remain targeted to a specific technology
4 (e.g., telephone taxes or cable franchise fees), despite the blurring
5 of distinctions between technologies that provide similar services
6 (e.g., the telephone and internet telephony); and

7 (e) The convergence of formerly distinct communications
8 technologies renders the existing tax structure difficult to justify in
9 terms of economic efficiency or equity.

10 (2) It is the legislature's intent to address the vast disparity in
11 tax policy for communications services in an effort to minimize the
12 existing inequity, inefficiency, and administrative complexity while
13 preserving revenue sufficiency.

14 (3) With respect to section 107 of this act, the legislature
15 further finds that:

16 (a) The department of revenue has consistently interpreted the
17 phrase "a residential class of telephone service" as it would have been
18 understood when the residential telephone service exemption was enacted
19 in 1983;

20 (b) In 1983, all telephone service was divided into separate
21 "local" and "toll" services for "residential" and "business"
22 classifications, as defined by regulatory tariffs filed with the
23 utilities and transportation commission. As a result, the department
24 of revenue has consistently restricted the residential telephone
25 service exemption in RCW 82.08.0289 to nontoll telephone service
26 provided under a residential customer regulatory tariff. This includes
27 traditional landline telephone service but excludes cellular telephone
28 service and voice over internet protocol telephone services, which are
29 not subject to regulatory tariffs;

30 (c) The department of revenue's interpretation of the residential
31 telephone service exemption has been upheld by the board of tax appeals
32 but was rejected by the Thurston county superior court in a 2011
33 decision; and

34 (d) Further litigation would be costly and could result in the
35 unintended expansion of the exemption to all telephone services that a
36 carrier treats as residential, such as cellular and voice over internet
37 protocol telephone services provided to nonbusiness customers, and to

1 long-distance service provided to residential customers for a flat
2 rate. This could result in extremely large and devastating revenue
3 impacts for the state and local governments.

4 (4) The legislature intends section 107 of this act to clarify
5 retroactively that, prior to this act, the residential telephone
6 service exemption in RCW 82.08.0289 has always applied only to
7 residential nontoll telephone service offered under a tariff filed with
8 the utilities and transportation commission, consistent with the
9 department of revenue's long-standing interpretation of the exemption.

10 **Sec. 102.** RCW 82.14B.020 and 2010 1st sp.s. c 19 s 2 are each
11 reenacted and amended to read as follows:

12 As used in this chapter:

13 (1) "Consumer" means a person who purchases a prepaid wireless
14 telecommunications service in a retail transaction.

15 (2) "Emergency services communication system" means a multicounty
16 or countywide communications network, including an enhanced 911
17 emergency communications system, which provides rapid public access for
18 coordinated dispatching of services, personnel, equipment, and
19 facilities for police, fire, medical, or other emergency services.

20 ((+2)) (3) "Enhanced 911 emergency communications system" means a
21 public communications system consisting of a network, database, and on-
22 premises equipment that is accessed by dialing or accessing 911 and
23 that enables reporting police, fire, medical, or other emergency
24 situations to a public safety answering point. The system includes the
25 capability to selectively route incoming 911 voice or data to the
26 appropriate public safety answering point that operates in a defined
27 911 service area and the capability to automatically display the name,
28 address, and telephone number of incoming 911 voice or data at the
29 appropriate public safety answering point. "Enhanced 911 emergency
30 communications system" includes the modernization to next generation
31 911 systems.

32 ((+3)) (4) "Interconnected voice over internet protocol service"
33 has the same meaning as provided by the federal communications
34 commission in 47 C.F.R. Sec. 9.3 on January 1, 2009, or a subsequent
35 date determined by the department.

36 ((+4)) (5) "Interconnected voice over internet protocol service
37 line" means an interconnected voice over internet protocol service that

1 offers an active telephone number or successor dialing protocol
2 assigned by a voice over internet protocol provider to a voice over
3 internet protocol service customer that has inbound and outbound
4 calling capability, which can directly access a public safety answering
5 point when such a voice over internet protocol service customer has a
6 place of primary use in the state.

7 ~~((+5))~~ (6) "Local exchange company" has the meaning ascribed to it
8 in RCW 80.04.010.

9 ~~((+6))~~ (7) "Place of primary use" means the street address
10 representative of where the subscriber's use of the radio access line
11 or interconnected voice over internet protocol service line occurs,
12 which must be:

13 (a) The residential street address or primary business street
14 address of the subscriber; and

15 (b) In the case of radio access lines, within the licensed service
16 area of the home service provider.

17 ~~((+7))~~ (8) "Prepaid wireless telecommunications service" means a
18 telecommunications service that provides the right to use mobile
19 wireless service as well as other nontelecommunications services
20 including the download of digital products delivered electronically,
21 content, and ancillary services, which must be paid for in full in
22 advance and sold in predetermined units or dollars.

23 (9) "Private telecommunications system" has the meaning ascribed to
24 it in RCW 80.04.010.

25 ~~((+8))~~ (10) "Radio access line" means the telephone number
26 assigned to or used by a subscriber for two-way local wireless voice
27 service available to the public for hire from a radio communications
28 service company. Radio access lines include, but are not limited to,
29 radio-telephone communications lines used in cellular telephone
30 service, personal communications services, and network radio access
31 lines, or their functional and competitive equivalent. Radio access
32 lines do not include lines that provide access to one-way signaling
33 service, such as paging service, or to communications channels suitable
34 only for data transmission, or to nonlocal radio access line service,
35 such as wireless roaming service, or to a private telecommunications
36 system.

37 ~~((+9))~~ (11) "Radio communications service company" has the meaning
38 ascribed to it in RCW 80.04.010, except that it does not include radio

1 paging providers. It does include those persons or entities that
2 provide commercial mobile radio services, as defined by 47 U.S.C. Sec.
3 332(d)(1), and both facilities-based and nonfacilities-based resellers.

4 ~~((+10+))~~ (12) "Retail transaction" means the purchase of prepaid
5 wireless telecommunications service from a seller for any purpose other
6 than resale.

7 (13) "Seller" means a person who sells prepaid wireless
8 telecommunications service to another person.

9 (14)(a) "Subscriber" means, except as provided otherwise in (b) of
10 this subsection, the retail purchaser of telecommunications service, a
11 competitive telephone service, or interconnected voice over internet
12 protocol service. "Subscriber" does not include a consumer, as defined
13 in this section.

14 ~~((+11+))~~ (b) The term "subscriber" does not include a consumer, as
15 defined in this section.

16 (15) "Switched access line" means the telephone service line which
17 connects a subscriber's main telephone(s) or equivalent main
18 telephone(s) to the local exchange company's switching office.

19 **Sec. 103.** RCW 82.14B.040 and 2010 1st sp.s. c 19 s 6 are each
20 amended to read as follows:

21 Subject to the enactment into law of the 2013 amendments to RCW
22 82.08.0289 in section 107 of this act, the 2013 amendments to RCW
23 80.36.430 in section 108 of this act, and the 2013 amendments to RCW
24 43.20A.725 in section 109 of this act:

25 (1) Except as provided otherwise in subsection (2) of this section:

26 (a) The state enhanced 911 excise tax and the county enhanced 911
27 excise tax on switched access lines must be collected from the
28 subscriber by the local exchange company providing the switched access
29 line.

30 ~~((+2+))~~ (b) The state enhanced 911 excise tax and the county
31 enhanced 911 excise tax on radio access lines must be collected from
32 the subscriber by the radio communications service company, including
33 those companies that resell radio access lines, providing the radio
34 access line to the subscriber, and the seller of prepaid wireless
35 telecommunications service.

36 ~~((+3+))~~ (c) The state and county enhanced 911 excise taxes on
37 interconnected voice over internet protocol service lines must be

1 collected from the subscriber by the interconnected voice over internet
2 protocol service company providing the interconnected voice over
3 internet protocol service line to the subscriber.

4 ~~((+4))~~ (d) The amount of the tax must be stated separately on the
5 billing statement which is sent to the subscriber.

6 (2)(a) The state enhanced 911 excise tax and the county enhanced
7 911 excise tax must be collected by the seller of a prepaid wireless
8 telecommunications service for each retail transaction occurring in
9 this state at the point of sale. Such tax must be collected from those
10 persons who are taxable by the state under chapter 82.08 RCW. For
11 purposes of this subsection (2), the retail transaction occurs in this
12 state if it is sourced to this state under the provisions of RCW
13 82.32.520(3)(c).

14 (b) All administrative provisions in chapters 82.08 and 82.32 RCW
15 applicable to sales taxes are also applicable to the administration,
16 levy, collection, and remittance of the tax imposed under this
17 subsection (2).

18 (c) The department must transfer all tax proceeds remitted by a
19 seller under this subsection (2) as provided in RCW 82.14B.030.

20 (d) When practicable, the amount of the tax imposed under this
21 subsection (2) must be separately stated on an invoice, receipt, or
22 other similar document that is provided to the consumer by the seller.
23 When a separate disclosure to the consumer is not practicable, the
24 seller may prominently display a sign notifying consumers of the tax.

25 **Sec. 104.** RCW 82.14B.042 and 2010 1st sp.s. c 19 s 7 are each
26 amended to read as follows:

27 Subject to the enactment into law of the 2013 amendments to RCW
28 82.08.0289 in section 107 of this act, the 2013 amendments to RCW
29 80.36.430 in section 108 of this act, and the 2013 amendments to RCW
30 43.20A.725 in section 109 of this act:

31 (1) Except as provided otherwise in subsection (2) of this section:

32 (a) The state and county enhanced 911 excise taxes imposed by this
33 chapter must be paid by the subscriber or consumer to the local
34 exchange company providing the switched access line, the radio
35 communications service company providing the radio access line, the
36 seller of prepaid wireless telecommunications service, or the
37 interconnected voice over internet protocol service company providing

1 the interconnected voice over internet protocol service line. Each
2 local exchange company, each radio communications service company, each
3 seller of prepaid wireless telecommunications service, and each
4 interconnected voice over internet protocol service company must
5 collect from the subscriber the full amount of the taxes payable. The
6 state and county enhanced 911 excise taxes required by this chapter to
7 be collected by a company are deemed to be held in trust by the company
8 until paid to the department. Any local exchange company, radio
9 communications service company, seller of prepaid wireless
10 telecommunications service, or interconnected voice over internet
11 protocol service company that appropriates or converts the tax
12 collected to its own use or to any use other than the payment of the
13 tax to the extent that the money collected is not available for payment
14 on the due date as prescribed in this chapter is guilty of a gross
15 misdemeanor((-));

16 ((+2)) (b) If any local exchange company, radio communications
17 service company, seller of prepaid wireless telecommunications service,
18 or interconnected voice over internet protocol service company fails to
19 collect the state or county enhanced 911 excise tax or, after
20 collecting the tax, fails to pay it to the department in the manner
21 prescribed by this chapter, whether such failure is the result of its
22 own act or the result of acts or conditions beyond its control, the
23 company is personally liable to the state for the amount of the tax,
24 unless the company has taken from the buyer in good faith
25 documentation, in a form and manner prescribed by the department,
26 stating that the buyer is not a subscriber or consumer or is otherwise
27 not liable for the state or county enhanced 911 excise tax((-));

28 ((+3)) (c) The amount of tax, until paid by the subscriber to the
29 local exchange company, the radio communications service company, the
30 interconnected voice over internet protocol service company, or to the
31 department, constitutes a debt from the subscriber to the company. Any
32 company that fails or refuses to collect the tax as required with
33 intent to violate the provisions of this chapter or to gain some
34 advantage or benefit, either direct or indirect, and any subscriber who
35 refuses to pay any tax due under this chapter is guilty of a
36 misdemeanor. The state and county enhanced 911 excise taxes required
37 by this chapter to be collected by the local exchange company, radio

1 communications service company, or interconnected voice over internet
2 protocol service company must be stated separately on the billing
3 statement that is sent to the subscriber((-)); and

4 ((+4)) (d) If a subscriber or consumer has failed to pay to the
5 local exchange company, radio communications service company, seller of
6 prepaid wireless telecommunications service, or interconnected voice
7 over internet protocol service company the state or county enhanced 911
8 excise taxes imposed by this chapter and the company has not paid the
9 amount of the tax to the department, the department may, in its
10 discretion, proceed directly against the subscriber or consumer for
11 collection of the tax, in which case a penalty of ten percent may be
12 added to the amount of the tax for failure of the subscriber or
13 consumer to pay the tax to the company, regardless of when the tax is
14 collected by the department. Tax under this chapter is due as provided
15 under RCW 82.14B.061.

16 (2) The state and county enhanced 911 excise taxes collected on the
17 retail transaction of a prepaid wireless telecommunications service
18 under RCW 82.14B.040(2), must be paid and collected as provided in RCW
19 82.14B.040(2).

20 **Sec. 105.** RCW 82.14B.030 and 2010 1st sp.s. c 19 s 3 are each
21 amended to read as follows:

22 Subject to the enactment into law of the 2013 amendments to RCW
23 82.08.0289 in section 107 of this act, the 2013 amendments to RCW
24 80.36.430 in section 108 of this act, and the 2013 amendments to RCW
25 43.20A.725 in section 109 of this act:

26 (1) The legislative authority of a county may impose a county
27 enhanced 911 excise tax on the use of switched access lines in an
28 amount not exceeding seventy cents per month for each switched access
29 line. The amount of tax must be uniform for each switched access line.
30 Each county must provide notice of the tax to all local exchange
31 companies serving in the county at least sixty days in advance of the
32 date on which the first payment is due. The tax imposed under this
33 subsection must be remitted to the department by local exchange
34 companies on a tax return provided by the department. The tax must be
35 deposited in the county enhanced 911 excise tax account as provided in
36 RCW 82.14B.063.

1 (2) The legislative authority of a county may also impose a county
2 enhanced 911 excise tax on the use of radio access lines: (a) By
3 subscribers whose place of primary use is located within the county in
4 an amount not exceeding seventy cents per month for each radio access
5 line; and (b) by consumers whose retail transaction occurs within the
6 county in an amount not exceeding seventy cents per retail transaction.

7 The amount of tax must be uniform for each radio access line. The
8 county must provide notice of the tax to all radio communications
9 service companies serving in the county at least sixty days in advance
10 of the date on which the first payment is due. The tax imposed under
11 this section must be remitted to the department by radio communications
12 service companies, including those companies that resell radio access
13 lines and sellers of prepaid wireless telecommunications services, on
14 a tax return provided by the department. The tax must be deposited in
15 the county enhanced 911 excise tax account as provided in RCW
16 82.14B.063.

17 (3)(a) The legislative authority of a county may impose a county
18 enhanced 911 excise tax on the use of interconnected voice over
19 internet protocol service lines in an amount not exceeding seventy
20 cents per month for each interconnected voice over internet protocol
21 service line. The amount of tax must be uniform for each line and must
22 be levied on no more than the number of voice over internet protocol
23 service lines on an account that are capable of simultaneous
24 unrestricted outward calling to the public switched telephone network.

25 (b) The interconnected voice over internet protocol service company
26 must use the place of primary use of the subscriber to determine which
27 county's enhanced 911 excise tax applies to the service provided to the
28 subscriber.

29 (c) The tax imposed under this section must be remitted to the
30 department by interconnected voice over internet protocol service
31 companies on a tax return provided by the department.

32 (d) The tax must be deposited in the county enhanced 911 excise tax
33 account as provided in RCW 82.14B.063.

34 (e) To the extent that a local exchange carrier and an
35 interconnected voice over internet protocol service company
36 contractually jointly provide a single service line, only one service
37 company is responsible for remitting the enhanced 911 excise taxes, and

1 nothing in this section precludes service companies who jointly provide
2 service from agreeing by contract which of them (~~shall~~) must remit
3 the taxes collected.

4 (4) Counties imposing a county enhanced 911 excise tax must provide
5 an annual update to the enhanced 911 coordinator detailing the
6 proportion of their county enhanced 911 excise tax that is being spent
7 on:

8 (a) Efforts to modernize their existing enhanced 911 communications
9 system; and

10 (b) Enhanced 911 operational costs.

11 (5) A state enhanced 911 excise tax is imposed on all switched
12 access lines in the state. The amount of tax may not exceed twenty-
13 five cents per month for each switched access line. The tax must be
14 uniform for each switched access line. The tax imposed under this
15 subsection must be remitted to the department by local exchange
16 companies on a tax return provided by the department. Tax proceeds
17 must be deposited by the treasurer in the enhanced 911 account created
18 in RCW 38.52.540.

19 (6) A state enhanced 911 excise tax is imposed on all radio access
20 lines used: (a) By subscribers whose place of primary use is located
21 within the state in an amount of twenty-five cents per month for each
22 radio access line; and (b) by consumers whose retail transaction occurs
23 within the state in an amount not exceeding twenty-five cents per
24 retail transaction. The tax must be uniform for each radio access
25 line. The tax imposed under this section must be remitted to the
26 department by radio communications service companies, including those
27 companies that resell radio access lines, on a tax return provided by
28 the department. Tax proceeds must be deposited by the treasurer in the
29 enhanced 911 account created in RCW 38.52.540. The tax imposed under
30 this section is not subject to the state sales and use tax or any local
31 tax.

32 (7) A state enhanced 911 excise tax is imposed on all
33 interconnected voice over internet protocol service lines in the state.
34 The amount of tax may not exceed twenty-five cents per month for each
35 interconnected voice over internet protocol service line whose place of
36 primary use is located in the state. The amount of tax must be uniform
37 for each line and must be levied on no more than the number of voice
38 over internet protocol service lines on an account that are capable of

1 simultaneous unrestricted outward calling to the public switched
2 telephone network. The tax imposed under this subsection must be
3 remitted to the department by interconnected voice over internet
4 protocol service companies on a tax return provided by the department.
5 Tax proceeds must be deposited by the treasurer in the enhanced 911
6 account created in RCW 38.52.540.

7 (8) For calendar year 2011, the taxes imposed by subsections (5)
8 and (7) of this section must be set at their maximum rate. By August
9 31, 2011, and by August 31st of each year thereafter, the state
10 enhanced 911 coordinator must recommend the level for the next year of
11 the state enhanced 911 excise tax imposed by subsections (5) and (7) of
12 this section, based on a systematic cost and revenue analysis, to the
13 utilities and transportation commission. The commission must by the
14 following October 31st determine the level of the state enhanced 911
15 excise taxes imposed by subsections (5) and (7) of this section for the
16 following year.

17 **Sec. 106.** RCW 82.14B.200 and 2010 1st sp.s. c 19 s 12 are each
18 amended to read as follows:

19 Subject to the enactment into law of the 2013 amendments to RCW
20 82.08.0289 in section 107 of this act, the 2013 amendments to RCW
21 80.36.430 in section 108 of this act, and the 2013 amendments to RCW
22 43.20A.725 in section 109 of this act:

23 (1) Unless a seller, local exchange company, radio communications
24 service company, or interconnected voice over internet protocol service
25 company has taken from the buyer documentation, in a form and manner
26 prescribed by the department, stating that the buyer is not a
27 subscriber, consumer, or is otherwise not liable for the tax, the
28 burden of proving that a sale of the use of a switched access line,
29 radio access line, or interconnected voice over internet protocol
30 service line was not a sale to a subscriber, consumer, or was not
31 otherwise subject to the tax is upon the person who made the sale.

32 (2) If a seller, local exchange company, radio communications
33 service company, or interconnected voice over internet protocol service
34 company does not receive documentation, in a form and manner prescribed
35 by the department, stating that the buyer is not a subscriber,
36 consumer, or is otherwise not liable for the tax at the time of the
37 sale, have such documentation on file at the time of the sale, or

1 obtain such documentation from the buyer within a reasonable time after
2 the sale, the seller, local exchange company, radio communications
3 service company, or interconnected voice over internet protocol service
4 company remains liable for the tax as provided in RCW 82.14B.042,
5 unless the seller, local exchange company, radio communications service
6 company, or interconnected voice over internet protocol service company
7 can demonstrate facts and circumstances according to rules adopted by
8 the department that show the sale was properly made without payment of
9 the state or county enhanced 911 excise tax.

10 (3) The penalty imposed by RCW 82.32.291 may not be assessed on
11 state or county enhanced 911 excise taxes due but not paid as a result
12 of the improper use of documentation stating that the buyer is not a
13 subscriber or consumer or is otherwise not liable for the state or
14 county enhanced 911 excise tax. This subsection does not prohibit or
15 restrict the application of other penalties authorized by law.

16 **Sec. 107.** RCW 82.08.0289 and 2007 c 6 s 1006 and 2007 c 6 s 1005
17 are each reenacted and amended to read as follows:

18 Subject to the enactment into law of the 2013 amendments to RCW
19 82.14B.040 in section 103 of this act, the 2013 amendments to RCW
20 82.14B.042 in section 104 of this act, the 2013 amendments to RCW
21 82.14B.030 in section 105 of this act, the 2013 amendments to RCW
22 82.14B.200 in section 106 of this act, the 2013 amendments to RCW
23 80.36.430 in section 108 of this act, and the 2013 amendments to RCW
24 43.20A.725 in section 109 of this act:

25 (1) Until the effective date of this section, the tax levied by RCW
26 82.08.020 ((shall)) does not apply to sales of:

27 (a) Local service;

28 (b) Coin-operated telephone service; and

29 (c) Mobile telecommunications services, including any toll service,
30 provided to a customer whose place of primary use is outside this
31 state.

32 (2) The definitions in RCW 82.04.065, as well as the definitions in
33 this subsection, apply to this section.

34 (a) "Local service" means: (i) Ancillary services and
35 telecommunications service, as those terms are defined in RCW
36 82.04.065, other than toll service, provided to an individual
37 subscribing to a residential class of telephone service offered under

1 a tariff required to be filed with the Washington utilities and
2 transportation commission under Title 80 RCW; and (ii) fixed
3 interconnected voice over internet protocol service, other than the
4 nonlocal service allocation attributable to that service, sold by a
5 provider to an individual classified as residential by that provider.

6 (b) "Toll service" means long distance service regardless of the
7 method of billing for such service, but does not include customer
8 access line charges for access to a toll calling network.

9 (c) "Coin-operated telephone service" means a telecommunications
10 service paid for by inserting money into a telephone accepting direct
11 deposits of money to operate.

12 (d) "Fixed interconnected voice over internet protocol service"
13 means a service that meets the definition of interconnected voice over
14 internet protocol service in 47 C.F.R. Sec. 9.3 on January 1, 2009, and
15 that offers an active telephone number or successor dialing protocol
16 assigned by a provider; provides inbound and outbound calling
17 capability, and can be used for transmission of telephone calls only
18 from a fixed location.

19 (e) "Nonlocal service allocation" means the portion of the
20 provider's fixed interconnected voice over internet protocol service
21 attributable to the provider's nationwide nonlocal service activity as
22 determined using a method sanctioned by the federal communications
23 commission in FCC 06-94 and reported to the federal communications
24 commission for the same calendar quarter. If the provider does not
25 report any nonlocal service activity to the federal communications
26 commission, the full revenue derived from the fixed interconnected
27 voice over internet protocol service is deemed part of the nonlocal
28 service allocation.

29 (f) "Provider" means providers of a fixed interconnected voice over
30 internet protocol service that is subject to a franchise fee in this
31 state under the authority of 47 U.S.C. Sec. 542(a).

32 **Sec. 108.** RCW 80.36.430 and 2011 1st sp.s. c 50 s 968 are each
33 amended to read as follows:

34 Subject to the enactment into law of the 2013 amendments to RCW
35 82.14B.040 in section 103 of this act, the 2013 amendments to RCW
36 82.14B.042 in section 104 of this act, the 2013 amendments to RCW

1 82.14B.030 in section 105 of this act, the 2013 amendments to RCW
2 82.14B.200 in section 106 of this act, and the 2013 amendments to RCW
3 82.08.0289 in section 107 of this act:

4 (1) The Washington telephone assistance program shall be funded by
5 ~~((a telephone assistance excise tax on all switched access lines))~~ the
6 legislature by means of a biennial general fund appropriation to the
7 department and by funds from any federal government or other programs
8 for this purpose. ~~((Switched access lines are defined in RCW~~
9 ~~82.14B.020. The telephone assistance excise tax shall be applied~~
10 ~~equally to all residential and business access lines not to exceed~~
11 ~~fourteen cents per month. The department shall submit an approved~~
12 ~~annual budget for the Washington telephone assistance program to the~~
13 ~~department of revenue no later than March 1st prior to the beginning of~~
14 ~~each fiscal year. The department of revenue shall then determine the~~
15 ~~amount of telephone assistance excise tax to be placed on each switched~~
16 ~~access line and shall inform local exchange companies and the utilities~~
17 ~~and transportation commission of this amount no later than May 1st.~~
18 ~~The department of revenue shall determine the amount of telephone~~
19 ~~assistance excise tax by dividing the total of the program budget~~
20 ~~funded by the telephone assistance excise tax, as submitted by the~~
21 ~~department, by the total number of switched access lines in the prior~~
22 ~~calendar year. The telephone assistance excise tax shall be separately~~
23 ~~identified on each ratepayer's bill as the "Washington telephone~~
24 ~~assistance program." All money collected from the telephone assistance~~
25 ~~excise tax shall be transferred to a telephone assistance fund~~
26 ~~administered by the department.))~~

27 (2) Local exchange companies shall bill the fund for their expenses
28 incurred in offering the telephone assistance program, including
29 administrative and program expenses. The department shall disburse the
30 money to the local exchange companies. The department is exempted from
31 having to conclude a contract with local exchange companies in order to
32 effect this reimbursement. The department shall recover its
33 administrative costs from the fund. The department may specify by rule
34 the range and extent of administrative and program expenses that will
35 be reimbursed to local exchange companies.

36 (3) The department shall enter into an agreement with the
37 department of commerce for an amount not to exceed eight percent of the
38 prior fiscal year's total revenue for the administrative and program

1 expenses of providing community service voice mail services. The
2 community service voice mail service may include toll-free lines in
3 community action agencies through which recipients can access their
4 community service voice mailboxes at no charge.

5 ~~((4) During the 2009-2011 and 2011-2013 biennia, the department
6 shall enter into an agreement with the WIN 211 organization for
7 operational support. During the 2011-2013 biennium, the department
8 shall provide five hundred thousand dollars per fiscal year for this
9 purpose.~~

10 ~~(5) During the 2009-2011 biennium, the telephone assistance fund
11 shall also be used in support of the economic services administration
12 call centers and related operations.))~~

13 **Sec. 109.** RCW 43.20A.725 and 2011 1st sp.s. c 50 s 944 are each
14 amended to read as follows:

15 Subject to the enactment into law of the 2013 amendments to RCW
16 82.14B.040 in section 103 of this act, the 2013 amendments to RCW
17 82.14B.042 in section 104 of this act, the 2013 amendments to RCW
18 82.14B.030 in section 105 of this act, the 2013 amendments to RCW
19 82.14B.200 in section 106 of this act, and the 2013 amendments to RCW
20 82.08.0289 in section 107 of this act:

21 (1) The department, through the sole authority of the office or its
22 successor organization, ~~((shall))~~ must maintain a program whereby an
23 individual of school age or older who possesses a hearing or speech
24 impairment is provided with telecommunications equipment, software,
25 and/or peripheral devices, digital or otherwise, that is determined by
26 the office to be necessary for such a person to access and use
27 telecommunications transmission services effectively.

28 (2) The department, through the sole authority of the office or its
29 successor organization, ~~((shall))~~ must maintain a program where
30 telecommunications relay services of a human or electronic nature will
31 be provided to connect hearing impaired, deaf-blind, or speech impaired
32 persons with persons who do not have a hearing or speech impairment.
33 Such telecommunications relay services ~~((shall))~~ must provide the
34 ability for an individual who has a hearing or speech impairment to
35 engage in voice, tactile, or visual communication by wire or radio with
36 a hearing individual in a manner that is functionally equivalent to the

1 ability of an individual who does not have a hearing or speech
2 impairment to communicate using voice or visual communication services
3 by wire or radio subject to subsection (4)(b) of this section.

4 (3) The telecommunications relay service and equipment distribution
5 program may operate in such a manner as to provide communications
6 transmission opportunities that are capable of incorporating new
7 technologies that have demonstrated benefits consistent with the intent
8 of this chapter and are in the best interests of the citizens of this
9 state.

10 (4) The office (~~shall~~) must administer and control the award of
11 money to all parties incurring costs in implementing and maintaining
12 telecommunications services, programs, equipment, and technical support
13 services according to this section. The relay service contract
14 (~~shall~~) must be awarded to an individual company registered as a
15 telecommunications company by the utilities and transportation
16 commission, to a group of registered telecommunications companies, or
17 to any other company or organization determined by the office as
18 qualified to provide relay services, contingent upon that company or
19 organization being approved as a registered telecommunications company
20 prior to final contract approval. The relay system providers and
21 telecommunications equipment vendors (~~shall~~) must be selected on the
22 basis of cost-effectiveness and utility to the greatest extent possible
23 under the program and technical specifications established by the
24 office.

25 (a) To the extent funds are available under the then-current rate
26 and not otherwise held in reserve or required for other purposes
27 authorized by this chapter, the office may award contracts for
28 communications and related services and equipment for hearing impaired
29 or speech impaired individuals accessing or receiving services provided
30 by, or contracted for, the department to meet access obligations under
31 Title 2 of the federal Americans with disabilities act or related
32 federal regulations.

33 (b) The office (~~shall~~) must perform its duties under this section
34 with the goal of achieving functional equivalency of access to and use
35 of telecommunications services similar to the enjoyment of access to
36 and use of such services experienced by an individual who does not have
37 a hearing or speech impairment only to the extent that funds are

1 available under the then-current rate and not otherwise held in reserve
2 or required for other purposes authorized by this chapter.

3 (5) The program (~~(shall)~~) must be funded by (~~a telecommunications~~
4 ~~relay service (TRS) excise tax applied to each switched access line~~
5 ~~provided by the local exchange companies. The office shall determine,~~
6 ~~in consultation with the office's program advisory committee, the~~
7 ~~budget needed to fund the program on an annual basis, including both~~
8 ~~operational costs and a reasonable amount for capital improvements such~~
9 ~~as equipment upgrade and replacement. The budget proposed by the~~
10 ~~office, together with documentation and supporting materials, shall be~~
11 ~~submitted to the office of financial management for review and~~
12 ~~approval. The approved budget shall be given by the department in an~~
13 ~~annual budget to the department of revenue no later than March 1st~~
14 ~~prior to the beginning of the fiscal year. The department of revenue~~
15 ~~shall then determine the amount of telecommunications relay service~~
16 ~~excise tax to be placed on each switched access line and shall inform~~
17 ~~local exchange companies and the utilities and transportation~~
18 ~~commission of this amount no later than May 1st. The department of~~
19 ~~revenue shall determine the amount of telecommunications relay service~~
20 ~~excise tax to be collected in the following fiscal year by dividing the~~
21 ~~total of the program budget, as submitted by the office, by the total~~
22 ~~number of switched access lines in the prior calendar year, as reported~~
23 ~~to the department of revenue under chapter 82.14B RCW, and shall not~~
24 ~~exercise any further oversight of the program under this subsection~~
25 ~~other than administering the collection of the telecommunications relay~~
26 ~~service excise tax as provided in RCW 82.72.010 through 82.72.090. The~~
27 ~~telecommunications relay service excise tax shall not exceed nineteen~~
28 ~~cents per month per access line. The telecommunications relay service~~
29 ~~excise tax shall be separately identified on each ratepayer's bill with~~
30 ~~the following statement: "Funds federal ADA requirement." All~~
31 ~~proceeds from the telecommunications relay service excise tax shall be~~
32 ~~put into a fund to be administered by the office through the~~
33 ~~department. During the 2009-2011 and 2011-2013 fiscal biennia, the~~
34 ~~funds may also be used to provide individualized employment services~~
35 ~~and employment-related counseling to people with disabilities, and~~
36 ~~technical assistance to employers about the employment of people with~~
37 ~~disabilities. "Switched access line" has the meaning provided in RCW~~

1 82.14B.020)) the legislature by means of a biennial general fund
2 appropriation to the department for the purposes of the program.

3 (6) The telecommunications relay service program and equipment
4 vendors (~~shall~~) must provide services and equipment consistent with
5 the requirements of federal law for the operation of both interstate
6 and intrastate telecommunications services for the hearing impaired or
7 speech impaired. The department and the utilities and transportation
8 commission (~~shall be~~) are responsible for ensuring compliance with
9 federal requirements and (~~shall~~) must provide timely notice to the
10 legislature of any legislation that may be required to accomplish
11 compliance.

12 (7) The department (~~shall~~) must adopt rules establishing
13 eligibility criteria, ownership obligations, financial contributions,
14 and a program for distribution to individuals requesting and receiving
15 such telecommunications devices distributed by the office, and other
16 rules necessary to administer programs and services consistent with
17 this chapter.

18 NEW SECTION. Sec. 110. For services affected by the expiration of
19 the exemption for local service under RCW 82.08.0289(1) that cover a
20 billing period starting before and ending after the effective date of
21 section 107 of this act, RCW 82.08.064(3)(a) is deemed to apply, and
22 retail sales tax will apply to the first billing period starting on or
23 after the effective date of section 107 of this act.

24 NEW SECTION. Sec. 111. Section 107 of this act applies
25 prospectively as well as retroactively to tax periods open for
26 assessment or refund of taxes under RCW 82.32.050 or 82.32.060,
27 including any refund claims or disputed assessments pending before the
28 department of revenue, board of tax appeals, or any court of law.

29 NEW SECTION. Sec. 112. In accordance with Article VIII, section
30 5 of the state Constitution, section 107 of this act does not authorize
31 refunds of sales tax validly collected before the effective date of
32 this section on fixed interconnected voice over internet protocol
33 service as defined in section 107 of this act.

PART II

Establishing a Temporary Universal Communications Services Program

NEW SECTION. **Sec. 201.** (1) The legislature finds that the department of revenue has consistently interpreted the phrase "a residential class of telephone service" as it would have been understood when the residential telephone service exemption was enacted in 1983. The legislature further finds that, in 1983, all telephone service was divided into separate "local" and "toll" services for "residential" and "business" classifications, as defined by regulatory tariffs filed with the utilities and transportation commission. As a result, the department of revenue has consistently restricted the residential telephone service exemption in RCW 82.08.0289 to nontoll telephone service provided under a residential customer regulatory tariff. This includes traditional landline telephone service but excludes cellular telephone service and voice over internet protocol telephone services, which are not subject to regulatory tariffs.

(2) The legislature further finds that:

(a) The department of revenue's interpretation of the residential telephone service exemption has been upheld by the board of tax appeals but was rejected by the Thurston county superior court in a 2011 decision. In *Sprint Spectrum LP v. State of Washington Department of Revenue*, Cause No. 10-2-02276-4, the Thurston county superior court ruled that the taxpayer's sales of cellular telephone services to nonbusiness customers qualified for the residential telephone service exemption in RCW 82.08.0289. That decision was subsequently vacated by agreement of the parties.

(b) Although this litigation did not result in any binding court decision, and the department of revenue continues to interpret the exemption as applying only to nontoll telephone service provided under a regulatory tariff filed with the utilities and transportation commission, the residential telephone service exemption will continue to be the subject of litigation as other taxpayers claim entitlement to the exemption for other services.

(c) Further litigation would be costly and could result in the unintended expansion of the exemption to all telephone services that a carrier treats as residential, such as cellular and voice over internet protocol telephone services provided to nonbusiness customers, and to

1 long distance service provided to residential customers for a flat
2 rate. This could result in extremely large and devastating revenue
3 impacts for the state and local governments.

4 (d) The mobile telecommunications sourcing provisions in RCW
5 82.32.520 render the sales tax exemption in RCW 82.08.0289 for mobile
6 telecommunications services provided to a customer whose place of
7 primary use is outside this state redundant.

8 (3) The legislature intends by this act to (a) reduce litigation
9 risk and associated costs, (b) prevent unexpected adverse fiscal
10 impacts that would result if a court were to broadly construe the
11 residential telephone service exemption, and (c) improve equity in the
12 sales taxation of telecommunications services.

13 (4) Therefore, this act is intended to:

14 (a) Clarify retroactively that, prior to this act, the residential
15 telephone service exemption in RCW 82.08.0289 has always applied only
16 to residential nontoll telephone service offered under a tariff filed
17 with the utilities and transportation commission, consistent with the
18 department of revenue's long-standing interpretation of the exemption;

19 (b) Allow fixed interconnected voice over internet protocol
20 telecommunications service as identified in this act to qualify for the
21 residential telephone service exemption for periods prior to the
22 effective date of this section; and

23 (c) Prospectively eliminate the exemptions in RCW 82.08.0289 for
24 residential telephone service, coin-operated telephone service, and
25 mobile telecommunications services provided to a customer whose place
26 of primary use is outside this state.

27 NEW SECTION. **Sec. 202.** A new section is added to chapter 80.36
28 RCW to read as follows:

29 The definitions in this section apply throughout this section and
30 sections 203 through 209 of this act unless the context clearly
31 requires otherwise.

32 (1) "Basic residential service" means those services set out in 47
33 C.F.R. Sec. 54.101(a)(2011) and mandatory extended area service
34 approved by the commission.

35 (2) "Basic telecommunications services" means the following
36 services:

37 (a) Single-party service;

- 1 (b) Voice grade access to the public switched network;
- 2 (c) Support for local usage;
- 3 (d) Dual tone multifrequency signaling (touch-tone);
- 4 (e) Access to emergency services (911);
- 5 (f) Access to operator services;
- 6 (g) Access to interexchange services;
- 7 (h) Access to directory assistance; and
- 8 (i) Toll limitation services.

9 (3) "Communications provider" means a provider that provides a
10 working telephone number to a final consumer for intrastate wireline or
11 wireless communications services or interconnected voice over internet
12 protocol service, and includes local exchange carriers.

13 (4) "Communications services" includes telecommunications services
14 and information services and any combination thereof.

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

17 (6) "Incumbent public network" means the network established by
18 incumbent local exchange carriers for the delivery of communications
19 services to customers that is used by communications providers for
20 origination or termination of communications services by or to
21 customers.

22 (7) "Interconnected voice over internet protocol service" means an
23 interconnected voice over internet protocol service that: (a) Enables
24 real-time, two-way voice communications; (b) requires a broadband
25 connection from the user's location; (c) requires internet protocol-
26 compatible customer premises equipment; and (d) permits users generally
27 to receive calls that originate on the public network and to terminate
28 calls to the public network.

29 (8) "Program" means the state universal communications services
30 program created in section 203 of this act.

31 (9) "Telecommunications" has the same meaning as defined in 47
32 U.S.C. Sec. 153(43).

33 (10) "Telecommunications act of 1996" means the telecommunications
34 act of 1996 (P.L. 104-104, 110 Stat. 56).

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

1 NEW SECTION. **Sec. 203.** A new section is added to chapter 80.36
2 RCW to read as follows:

3 (1) A state universal communications services program is
4 established. The program is established to protect public safety and
5 welfare under the authority of the state to regulate telecommunications
6 under Article XII, section 19 of the state Constitution. The purpose
7 of the program is to support continued provision of basic
8 telecommunications services under rates established by the commission
9 during the time in which communications providers in the state are
10 adapting to changes in federal universal service fund and intercarrier
11 compensation support.

12 (2) Under the program, eligible communications providers may
13 receive distributions from the universal communications services
14 account created in section 208 of this act in exchange for the
15 affirmative agreement to provide continued services under the rates,
16 terms, and conditions established by the commission under this chapter
17 for the period covered by the distribution. The commission must
18 implement and administer the program under terms and conditions
19 established in sections 202 through 208 of this act. Expenditures for
20 the program may not exceed five million dollars per fiscal year.

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

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

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

34 (c) The communications provider meets any other criteria
35 established by the commission.

36 (4)(a) Distributions to eligible communications providers are based
37 on a benchmark established by the commission. The benchmark is the
38 rate the commission determines to be a reasonable amount customers

1 should pay for basic residential service provided over the incumbent
2 public network. However, if an incumbent local exchange carrier is
3 charging rates above the benchmark for the basic residential service,
4 that provider may not seek distributions from the fund for the purpose
5 of reducing those rates to the benchmark.

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

11 (5) The program is funded from amounts deposited by the legislature
12 in the universal communications services account established in section
13 208 of this act. The commission must operate the program within
14 amounts appropriated for this purpose and deposited in the account.

15 (6) The commission must implement the program through a contract
16 with a neutral third-party administrator. The administrator must be
17 selected through a competitive process and its activities are subject
18 to oversight by the commission. The commission establishes and
19 approves the budget and program expenses. The commission may authorize
20 disbursements to the administrator from the universal communications
21 services account established in section 208 of this act.

22 (7) The commission, directly or through the administrator, must
23 periodically review the accounts and records of any communications
24 provider that receives distributions under the program to ensure
25 compliance with the program and monitor the providers' use of the
26 funds.

27 (8) The commission may establish an advisory board, consisting of
28 a reasonable balance of representatives from different types of
29 communications providers and consumers, to advise the commission on
30 selecting and overseeing the administrator of the program.

31 (9) The program terminates on June 30, 2019, and no distributions
32 may be made after that date.

33 NEW SECTION. **Sec. 204.** A new section is added to chapter 80.36
34 RCW to read as follows:

35 To implement the program, the commission shall adopt rules for the
36 following purposes:

1 (1) Operation of the program, including criteria for eligibility
2 for distributions and identification of any reports or data that must
3 be filed with the commission;

4 (2) Operation of the universal communications services account
5 established in section 208 of this act;

6 (3) Criteria for election of the independent third-party
7 administrator;

8 (4) Establishment of the benchmark used to calculate distributions;

9 (5) Readoption, amendment, or repeal of any existing rules adopted
10 pursuant to RCW 80.36.610 and 80.36.620 as necessary to be consistent
11 with sections 202 through 209 of this act.

12 NEW SECTION. **Sec. 205.** A new section is added to chapter 80.36
13 RCW to read as follows:

14 (1) In addition to any other penalties prescribed by law, the
15 commission may impose penalties for failure to make or delays in making
16 or filing any reports required by the commission for administration of
17 the program. In addition, the commission may recover amounts
18 determined to have been improperly distributed under section 203 of
19 this act. For the purposes of this section, the provisions of RCW
20 80.04.380 through 80.04.405, inclusive, apply to all companies that
21 receive support from the universal communications services account
22 created in section 208 of this act.

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

26 (3) Any amounts recovered under this section must be deposited in
27 the universal communications services account created in section 208 of
28 this act.

29 NEW SECTION. **Sec. 206.** A new section is added to chapter 80.36
30 RCW to read as follows:

31 The commission may delegate to the commission secretary or other
32 staff the authority to resolve disputes, approve expenses of the
33 administrator, and make other administrative decisions necessary to the
34 administration and supervision of the program consistent with the
35 relevant statutes and commission rules.

1 NEW SECTION. **Sec. 207.** A new section is added to chapter 80.36
2 RCW to read as follows:

3 The commission must adopt rules to implement this act prior to July
4 1, 2014, to ensure that this act is implemented in a timely manner.

5 NEW SECTION. **Sec. 208.** A new section is added to chapter 80.36
6 RCW to read as follows:

7 The universal communications services account is created in the
8 custody of the state treasurer. Revenues to the account consist of
9 moneys deposited in the account by the legislature and any penalties or
10 other recoveries received pursuant to section 205 of this act.
11 Expenditures from the account may be used only for the purposes of the
12 universal communications services program established in section 203 of
13 this act. Only the secretary of the commission or the secretary's
14 designee may authorize expenditures from the account. The account is
15 subject to allotment procedures under chapter 43.88 RCW, but an
16 appropriation is not required for expenditures.

17 **Sec. 209.** RCW 80.36.610 and 1998 c 337 s 2 are each amended to
18 read as follows:

19 ~~((1))~~ The commission is authorized to take actions, conduct
20 proceedings, and enter orders as permitted or contemplated for a state
21 commission under the ~~((federal))~~ telecommunications act of 1996~~((, P.L.~~
22 ~~104-104 (110 Stat. 56), but the commission's authority to either~~
23 ~~establish a new state program or to adopt new rules to preserve and~~
24 ~~advance universal service under section 254(f) of the federal act is~~
25 ~~limited to the actions expressly authorized by RCW 80.36.600)).~~ The
26 commission may establish by rule fees to be paid by persons seeking
27 commission action under the ~~((federal))~~ telecommunications act of 1996,
28 and by parties to proceedings under that act, to offset in whole or
29 part the commission's expenses that are not otherwise recovered through
30 fees in implementing the act~~((, but new fees or assessments charged~~
31 ~~telecommunications carriers to either establish a state program or to~~
32 ~~adopt rules to preserve and advance universal service under section~~
33 ~~254(f) of the federal act do not take effect until the legislature has~~
34 ~~approved a state universal service program.~~

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

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

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

7 ~~(c) The universal service program to be established in accordance~~
8 ~~with RCW 80.36.600 shall not be inconsistent with the requirements of~~
9 ~~47 U.S.C. Sec. 254)) .~~

10 NEW SECTION. **Sec. 210.** If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected.

14 NEW SECTION. **Sec. 211.** RCW 80.36.600 (Universal service program--
15 Planning and preparation--Commission's duties--Approval of legislature
16 required--Definitions) and 1999 c 372 s 16 & 1998 c 337 s 1 are each
17 repealed.

18 NEW SECTION. **Sec. 212.** A new section is added to chapter 80.36
19 RCW to read as follows:

20 The universal communications services program established in
21 sections 202 through 208 of this act terminates on June 30, 2019.

22 **PART III**

23 **Miscellaneous Provisions**

24 NEW SECTION. **Sec. 301.** Part I of this act takes effect August 1,
25 2013.

26 NEW SECTION. **Sec. 302.** Sections 201 through 206, 208, 209, and
27 212 of this act take effect July 1, 2014.

28 NEW SECTION. **Sec. 303.** Sections 201 through 209 and 212 of this
29 act expire July 1, 2020.

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