

HOUSE BILL REPORT

E2SSB 5935

As Reported by House Committee On:
Technology & Economic Development
Appropriations

Title: An act relating to enhancing consumer access, affordability, and quality of broadband and advanced telecommunications services.

Brief Description: Enhancing consumer access, affordability, and quality of broadband and advanced telecommunications services.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Sheldon and Carlyle).

Brief History:

Committee Activity:

Technology & Economic Development: 2/22/18, 3/1/18 [DPA];
Appropriations: 3/3/18 [DPA(TED)].

**Brief Summary of Engrossed Second Substitute Bill
(As Amended by Committee)**

- Creates the Governor's Office on Broadband Access.
- Modifies and extends the Universal Communications Services program.

HOUSE COMMITTEE ON TECHNOLOGY & ECONOMIC DEVELOPMENT

Majority Report: Do pass as amended. Signed by 15 members: Representatives Morris, Chair; Kloba, Vice Chair; Tarleton, Vice Chair; Smith, Ranking Minority Member; Doglio, Fey, Harmsworth, Hudgins, Manweller, McDonald, Nealey, Santos, Slatter, Steele and Wylie.

Staff: Lily Smith (786-7175).

Background:

Broadband Office.

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

Until 2014 a Broadband Office within the Department of Commerce provided oversight and administration of a wide range of programs pertaining to high-speed Internet access, including mapping functions, coordination, and oversight of federally funded broadband programs for the state.

Universal Communications Services Program.

The Universal Communications Services (UCS) program and associated account was established in 2014 for the purpose of supporting the continued provision of basic telecommunications services during a period when incumbent communications providers would be adapting to changes in federal funding. The UCS program expires in 2019.

A communications provider is eligible to receive distributions under the UCS program if: (1) the provider has less than 40,000 lines in the state; (2) the customers of the provider are at risk of rate instability or service interruptions absent distributions to the provider; and (3) the provider meets any other criteria established by the Utilities and Transportation Commission (UTC). Distributions under the UCS program are based on a benchmark that the UTC determines is a reasonable amount customers should pay for basic service.

Summary of Amended Bill:

Office on Broadband Access.

The Governor's Office on Broadband Access (OBA) is created within the Consolidated Technology Services agency (CTS). The OBA is responsible for all matters regarding the adoption of statewide broadband access and deployment. It is the coordinating entity for public and private efforts to ensure statewide broadband access and deployment.

The duties of the OBA include:

- coordinating with communities, public and private entities, and consumer and investor-owned utilities to develop strategies for deployment of broadband infrastructure and access to broadband services;
- reviewing existing initiatives, policies, and public and private investments and making recommendations to advance the state's broadband goals;
- updating the state's goals and standards for broadband service as technological advances become available;
- taking comprehensive actions to advance the state's broadband access goals;
- developing standards for defining levels of service for broadband access; and
- identifying unserved and underserved areas of the state on an annual basis.

As the OBA develops plans or strategies for broadband deployment, it must consider a number of elements, including coordinated funding opportunities and barriers to adoption.

By December 1, 2019, the OBA must submit a report to the Legislature detailing:

- a broadband strategy to bring the state to 25 megabits per second (MBPS) upload and 3 MBPS download speeds by 2025, including recommendations for policies and a framework for spending future funding to advance the strategy;
- progress on the strategy;
- funding options for the strategy that would achieve the service goals and the least cost, including a reverse auction approach and expansion of the Community Economic Revitalization Board broadband program; and
- a study of taxes on capital costs associated with providing retail broadband service.

Broadband Advisory Group.

The OBA may convene an advisory group to make recommendations on developing a state-wide rural broadband strategy. The advisory group must conduct a gap analysis on the deployment of broadband services in unserved and underserved areas of the state. The analysis must include a review of:

- deployment projects and strategies by local governments, private partnerships, and private entities;
- economic development opportunities that could be realized with access to broadband services; and
- availability of broadband services in unserved and underserved areas of the state.

Broadband Access Account.

The broadband access account is created in the State Treasury, to be funded by: (1) the business and occupation (B&O) taxes paid by telecommunications service providers receiving federal funds for making broadband-capable infrastructure available to underserved and unserved areas of the state; (2) federal grants or other funding secured by the OBA; and a \$75 million transfer from the budget stabilization account in the 2017-2019 biennium.

An appropriation of \$500,000 is made in the 2017-2019 biennium from the broadband access account to the CTS for the development of the broadband strategy and report.

Beginning December 1, 2018, telecommunications service providers receiving federal funds for making broadband-capable infrastructure available to underserved and unserved areas of the state must notify the Department of Revenue (DOR) of the federal funding received for this purpose. Beginning January 1, 2019, the DOR must estimate the amount of B&O taxes paid on these funds, and instruct the state treasurer to deposit the amounts in the broadband access account.

Alternative Form of Regulation.

Regulated telecommunications companies may use the alternative form of regulation process to modify its service obligations in certain markets.

Universal Communications Services Program.

The purpose of the UCS program is expanded to include the provision, enhancement, and maintenance of broadband services, and is no longer limited to the time period in which

incumbent communications providers would be adapting to certain changes in federal funding. Broadband services are included as a communications service that the incumbent public network functions to provide, and as a service that must continue to be provided during the period covered by a distribution under the UCS program.

Fund Distributions.

Distribution eligibility requirements change beginning July 1, 2022.

Before July 1, 2022, distributions under the UCS program no longer require there to be a risk of rate instability or service disruptions to customers unless a distribution is made. Instead, distributions require the communications provider to have adopted a plan for broadband service in the area.

After July 1, 2022, the UTC must determine eligibility using a competitive, market-based assessment of a communications provider's ability to provide services to the greatest number of consumers within a defined service area.

Distributions are no longer based on a benchmark established by the UTC. Instead, benchmarks are based on criteria established by the UTC. Distributions must be reduced on a proportional basis if the program is unable to fully fund the distribution formula.

Advisory Board.

The UTC is no longer required to establish an advisory board for rules and policies governing the operation of the program.

Report.

By December 1, 2021, the UTC must report to the Legislature on the adequacy of funding levels, funding impacts, an analysis of the need for future program funding, and recommendations on funding mechanisms for unserved and underserved areas.

Expiration.

The expiration dates of the UCS program and the statutory sections establishing the program are extended 6 years.

Amended Bill Compared to Engrossed Second Substitute Bill:

Office on Broadband Access.

The striking amendment to the bill moves the OBA from the Department of Commerce to the CTS. "Unserved areas" are defined as lacking actual 25 MBPS upload and 3 MBPS download speeds. The requirements that the OBA establish a competitive grant program and develop a model small cell ordinance are removed. The State Librarian is added to: (1) the entities the OBA must coordinate with to ensure statewide broadband access and deployment; and (2) the members of the advisory committee on a statewide rural broadband strategy. The

OBA is required to report to the Legislature on the broadband strategy, progress and funding options for the strategy, and a study on taxes on capital costs of retail broadband services.

A \$75 million transfer is made from the budget stabilization account to the broadband access account, and a \$500,000 appropriation is made from the broadband access account to the CTS for the broadband strategy and report.

Universal Communications Services Program.

The purpose of the UCS program to include support for broadband services without reference to a time period where incumbent providers are adapting to federal funding changes. Broadband services are included as a service that must continue to be provided during the distribution period.

Distribution eligibility before July 1, 2022, is changed to require a communications provider to have adopted a plan for broadband service in the area. Distribution eligibility beginning July 1, 2022, is changed to a market-based assessment of a communications provider's ability to provide services. Pro rata reductions of distributions are provided if the program is unable to fully fund the distribution formula.

The requirement to establish an advisory board is removed. The reporting date to the Legislature is changed to December 1, 2021.

The program is extended to June 30, 2025. A termination date is corrected to align with the extension.

Eliminated Provisions.

The following sections are removed:

- small cell siting ordinance requirements;
- authorization for certain public utility districts to provide retail Internet service;
- authorization for certain port districts to provide wholesale telecommunications and to select an exclusive provider of end user services; and
- amended criteria and evaluation considerations for the Community Economic Revitalization Board to make grants and loans for broadband infrastructure projects in rural areas.

Appropriation: The sum of \$500,000.

Fiscal Note: Available. New fiscal note requested on March 1, 2018.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Access to high-quality, affordable broadband is essential, and this bill will bring telecommunications to rural communities that have not shared in the job market success of other areas. Many in the state remain unserved. Finding ways for communities to succeed starts with rural broadband. The telecommunications industry creates high-tech, family wage jobs. The state has not had a strategy, even though there is money from the federal government and we have a robust private sector. Much can be learned from getting money and projects on the ground. Companies do not have capital to provide throughout an entire service territory. As networks grow, companies could negotiate with the UTC on their obligations. City needs are accommodated in the bill and there is a good balance between expansion of service and consideration of taxpayer concerns. State legislation is unnecessary for small cell citing. It is important to streamline the process. The state library should be included as one of the collaborating entities. State financial support should be provider and technology neutral.

(Opposed) The bill still provides for an expiration of the UCS program, and without subsidies, these areas would not have broadband. The UCS program uses a merit-based, transparent system, and not everyone meets the eligibility requirements for distributions. A technical problem with the bill actually results in no program extension. The bill could also allow any company to petition the UTC for funds and then serve only a limited urban area, leaving rural areas to rural providers. This would break the one part of rural broadband that actually works.

(Other) It has been awhile since the state assessed who does what with broadband, and the new office can make significant progress on that. Looking at private and public sector investment should provide a good assessment of how to serve the rest of the state. There is an issue with simply allowing ports to provide beyond district limits and select a sole provider, as you could have a port creating a statewide network. It is prudent to provide direction on the request for proposal process.

Persons Testifying: (In support) Senator Sheldon, prime sponsor; Senator Carlyle; Amy Walen, City of Kirkland; Carolyn Logue, Washington Library Association; Milt Doumit, Verizon; Will Saunders, Office of Privacy and Data Protection; Mara Machulsky, Hoh Indian Tribe; Cindy Aden, Washington State Librarian; Victoria Lincoln, Association of Washington Cities; Mike Ennis, Association of Washington Business; Scott Richards, Washington Public Utility Districts Association; and William Bridges, CenturyLink.

(Opposed) Betty Buckley, Washington Independent Telecommunications Association.

(Other) Ron Main, Broadband Communications Association of Washington.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Technology & Economic Development. Signed by 19 members: Representatives Ormsby, Chair; Robinson, Vice Chair; MacEwen, Assistant Ranking Minority Member; Bergquist, Cody, Fitzgibbon,

Hansen, Hudgins, Jinkins, Kagi, Lytton, Pettigrew, Pollet, Sawyer, Senn, Springer, Stanford, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 12 members: Representatives Chandler, Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Buys, Caldier, Condotta, Graves, Haler, Schmick, Taylor, Vick, Volz and Wilcox.

Minority Report: Without recommendation. Signed by 2 members: Representatives Harris and Manweller.

Staff: Jordan Clarke (786-7123).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Technology & Economic Development:

No new changes were recommended.

Appropriation: The sum of \$500,000.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) It is essential to have basic infrastructure in rural areas, and it is essential that the Legislature looks for a funding source that is stable and predictable. In the early 2000's, counties were allowed to take 0.09 percent of the retail sales tax to pay for large local projects like water lines and sewage treatment. If the Legislature looks at funding through the state sales tax collected by the telecommunications companies and passed to the state, there would be a predictable and stable funding source. It will be difficult to use the Budget Stabilization Account because of the 60 percent vote needed to transfer funds.

The bill creates a vertically integrated solution to the issue of rural broadband access. The need is well-documented and it is essential to have the infrastructure in rural areas. Rural areas in Washington are struggling to keep pace with the rest of the state in many key economic indicators. Lack of high-speed Internet connection creates barriers to starting a business and for job seekers looking for employment. Telecommunication partners are leading the way to bring reliable Internet to Washington. In the past five years, these companies have invested nearly \$9.5 billion in Washington on telecommunications infrastructure and employ 22,000 Washingtonians. There are 200,000 to 400,000 people in the state who do not have connection to fast, reliable Internet access. The bill would help connect these people to reliable Internet.

There are 27 public utility districts operating in the state, and 14 of them offer wholesale telecommunications services. The creation of the Office on Broadband Access (Office) will help coordinate and develop a strategy for developing the rural broadband access gaps. The

Office will bring multiple stakeholders together. There is a cost to build this infrastructure, and the Senate version has competitive grants. State dollars need to be devoted towards this problem. This bill includes \$75 million that could be used to improve the infrastructure.

Having the State Librarian as part of the advisory committee is important for outreach to rural areas of the state. This will help determine how many people in communities have access or do not have access to reliable Internet. The State Librarian also has experience in overseeing grant and federal dollars to help increase broadband access, and receives \$3.27 million in federal library funding annually. These dollars have been used by libraries and schools to improve their internal infrastructure and match the enhanced broadband that is brought to them.

The Hoh Indian Tribe currently has unreliable Internet and needs high-speed Internet for emergency preparedness, first responder communication, and public safety. The statewide need is significant, and the funding in the bill is a good start to decrease the Internet speed and reliability gap across rural areas.

(Opposed) None.

(Other) The Department of Commerce (Commerce) is committed to improving broadband access across Washington. It is critical to the community and economy. Commerce has been supportive of the version of the bill as passed by the Senate, but the bill as amended would place the Office in WaTech instead of Commerce. Commerce recommends replacing the Office in Commerce due to Commerce's previous experience housing the Office in order to best connect all of Washington.

Persons Testifying: (In support) Senator Sheldon, prime sponsor; Mike Ennis, Association of Washington Business; Scott Richards, Washington Public Utility Districts Association; Carolyn Logue, Washington Library Association; Betty Buckley, Washington Independent Telecommunications Association; and Mara Machulsky, Hoh Tribe.

(Other) Joseph Williams, Department of Commerce.

Persons Signed In To Testify But Not Testifying: None.