

UNIVERSAL SERVICE FUND AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David P. Hinkins

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to the Universal Public Telecommunications Service Support Fund.

Highlighted Provisions:

This bill:

- ▶ provides that a telecommunications provider that establishes and maintains a network capable of providing basic telephone service, wholesale broadband Internet access service, or intrastate emergency service access may qualify for payments from the Universal Public Telecommunications Service Support Fund;
- ▶ requires each access line or connection provider in the state to contribute to the Universal Public Telecommunications Service Support Fund;
- ▶ requires an access line or connection provider that contributes to the Universal Public Telecommunications Service Support Fund to do so on a per line, per connection basis;
- ▶ provides for a depreciation method and rate-of-return for a carrier of last resort that receives support from the Universal Public Telecommunications Service Support Fund; and
- ▶ defines terms.

Money Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **54-8b-2**, as last amended by Laws of Utah 2005, Chapter 5

33 **54-8b-15**, as last amended by Laws of Utah 2013, Chapter 400



35 *Be it enacted by the Legislature of the state of Utah:*

36 Section 1. Section **54-8b-2** is amended to read:

37 **54-8b-2. Definitions.**

38 As used in this chapter:

39 (1) "Access line" means a circuit-switched connection, or the functional equivalent of a
40 circuit-switched connection, from an end-user to the public switched network.

41 ~~(1)~~ (2) (a) "Aggregator" means any person or entity that:

42 (i) is not a telecommunications corporation;

43 (ii) in the ordinary course of its business makes operator assisted services available to
44 the public or to customers and transient users of its business or property through an operator
45 service provider; and

46 (iii) receives from an operator service provider by contract, tariff, or otherwise,
47 commissions or compensation for calls delivered from the aggregator's location to the operator
48 service provider.

49 (b) "Aggregator" may include any hotel, motel, hospital, educational institution,
50 government agency, or coin or coinless telephone service provider so long as that entity
51 qualifies under Subsection ~~(1)~~ (2)(a).

52 ~~(2)~~ (3) "Basic residential service" means a local exchange service for a residential
53 customer consisting of:

54 (a) a single line with access to the public switched network;

55 (b) touch-tone or the functional equivalent;

56 (c) local flat-rate unlimited usage, exclusive of extended area service;

57 (d) single-party service;

58 (e) a free phone number listing in directories received for free;

- 59 (f) access to operator services;
60 (g) access to directory assistance;
61 (h) access to lifeline and telephone relay assistance;
62 (i) access to 911 and E911 emergency services;
63 (j) access to long-distance carriers;
64 (k) access to toll limitations services;
65 (l) other services as may be determined by the commission; and
66 (m) no feature.

67 ~~[(3)]~~ (4) "Certificate" means a certificate of public convenience and necessity issued by
68 the commission authorizing a telecommunications corporation to provide specified public
69 telecommunications services within a defined geographic service territory in the state.

70 ~~[(4)]~~ (5) "Division" means the Division of Public Utilities established in Section
71 [54-4a-1](#).

72 ~~[(5)]~~ (6) "Essential facility or service" means any portion, component, or function of
73 the network or service offered by a provider of local exchange services:

- 74 (a) that is necessary for a competitor to provide a public telecommunications service;
75 (b) that cannot be reasonably duplicated; and
76 (c) for which there is no adequate economic alternative to the competitor in terms of
77 quality, quantity, and price.

78 ~~[(6)]~~ (7) (a) "Feature" means a custom calling service available from the central office
79 switch, including call waiting, call forwarding, three-way calling, and similar services.

80 (b) "Feature" does not include long distance calling.

81 ~~[(7)]~~ (8) "Federal Telecommunications Act" means the Communications Act of 1934,
82 as amended, and the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat.
83 56.

84 ~~[(8)]~~ (9) "Incumbent telephone corporation" means a telephone corporation, its
85 successors or assigns, which, as of May 1, 1995, held a certificate to provide local exchange
86 services in a defined geographic service territory in the state.

87 ~~[(9)]~~ (10) "Intrastate telecommunications service" means any public
88 telecommunications service in which the information transmitted originates and terminates
89 within the boundaries of this state.

90 ~~[(10)]~~ (11) "Local exchange service" means the provision of telephone lines to
91 customers with the associated transmission of two-way interactive, switched voice
92 communication within the geographic area encompassing one or more local communities as
93 described in maps, tariffs, or rate schedules filed with and approved by the commission.

94 ~~[(11)]~~ (12) "Mobile telecommunications service" means a mobile telecommunications
95 service:

96 (a) that is defined as a mobile telecommunications service in the Mobile
97 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124; and

98 (b) in which the information transmitted originates and terminates in one state.

99 ~~[(12)]~~ (13) (a) "New public telecommunications service" means a service offered by a
100 telecommunications corporation which that corporation has never offered before.

101 (b) "New public telecommunications service" does not include:

102 (i) a tariff, price list, or competitive contract that involves a new method of pricing any
103 existing public telecommunications service;

104 (ii) a package of public telecommunications services that includes an existing public
105 telecommunications service; or

106 (iii) a public telecommunications service that is a direct replacement for:

107 (A) a fully regulated service;

108 (B) an existing service offered pursuant to a tariff, price list, or competitive contract; or

109 (C) an essential facility or an essential service.

110 ~~[(13)]~~ (14) "Operator assisted services" means services which assist callers in the
111 placement or charging of a telephone call, either through live intervention or automated
112 intervention.

113 ~~[(14)]~~ (15) "Operator service provider" means any person or entity that provides, for a
114 fee to a caller, operator assisted services.

115 ~~[(15)]~~ (16) "Price-regulated service" means any public telecommunications service
116 governed by Section [54-8b-2.3](#).

117 (17) "Public switched network" means the same as that term is defined in 47 C.F.R.
118 Sec. 20.3.

119 ~~[(16)]~~ (18) "Public telecommunications service" means the two-way transmission of
120 signs, signals, writing, images, sounds, messages, data, or other information of any nature by

121 wire, radio, lightwaves, or other electromagnetic means offered to the public generally.

122 [(+7)] (19) "Substantial compliance" with reference to a rule or order of the
123 commission means satisfaction of all material obligations in a manner consistent with the rule
124 or order.

125 [(+8)] (20) "Telecommunications corporation" means any corporation or person, and
126 their lessees, trustees, receivers, or trustees appointed by any court, owning, controlling,
127 operating, managing, or reselling a public telecommunications service.

128 [(+9)] (21) (a) "Total service long-run incremental cost" means the forward-looking
129 incremental cost to a telecommunications corporation caused by providing the entire quantity
130 of a public telecommunications service, network function, or group of public
131 telecommunications services or network functions, by using forward-looking technology,
132 reasonably available, without assuming relocation of existing plant and equipment.

133 (b) The "long-run" means a period of time long enough so that cost estimates are based
134 on the assumption that all inputs are variable.

135 Section 2. Section **54-8b-15** is amended to read:

136 **54-8b-15. Universal Public Telecommunications Service Support Fund --**

137 **Established.**

138 (1) For purposes of this section:

139 (a) "Basic telephone service" means local exchange service [~~and may include such~~
140 ~~other functions and elements, if any, as the commission determines to be eligible for support by~~
141 ~~the fund.~~].

142 (b) "Broadband Internet access service" means the same as that term is defined in 47
143 C.F.R. Sec. 8.2.

144 (c) "Carrier of last resort" means:

145 (i) an incumbent telephone corporation; or

146 (ii) a telecommunications corporation that, under Section [54-8b-2.1](#):

147 (A) has a certificate of public convenience and necessity to provide local exchange
148 service; and

149 (B) has an obligation to provide public telecommunications service to any customer or
150 class of customers that requests service within the local exchange.

151 (d) "Connection" means an authorized session that uses Internet protocol or a

152 functionally equivalent technology standard to enable an end-user to initiate or receive a call
153 from the public switched network.

154 ~~[(b)]~~ (e) "Fund" means the Universal Public Telecommunications Service Support
155 Fund established in this section.

156 (f) "Intrastate emergency service access" means a point-to-point or point-to-multi-point
157 circuit for land-to-mobile radio backhaul that:

158 (i) a provider makes available for purchase by the Utah Communications Authority
159 created in Section [63H-7a-201](#);

160 (ii) does not cross state boundaries; and

161 (iii) is used only for public safety communications.

162 (g) "Non-rate-of-return regulated" means subject to price regulation under Section
163 [54-8b-2.3](#).

164 (h) "Rate-of-return regulated" means subject to regulation under Section [54-4-4](#).

165 (i) "Wholesale broadband Internet access service" means the last-mile transmission
166 component of Internet access provided by a rate-of-return regulated carrier of last resort that is
167 used to provide, at retail:

168 (i) combined consumer voice and broadband Internet access; or

169 (ii) stand-alone, consumer, broadband-only Internet access.

170 ~~[(2) The commission shall establish]~~

171 (2) (a) There is established an expendable special revenue fund known as the
172 "Universal Public Telecommunications Service Support Fund[;]." ~~[which is to be implemented~~
173 ~~by January 1, 1998.]~~

174 (b) The fund shall provide a mechanism for a qualifying carrier of last resort to obtain
175 specific, predictable, and sufficient funds to deploy and manage networks capable of providing:

176 (i) basic telephone service;

177 (ii) wholesale broadband Internet access service; or

178 (iii) intrastate emergency service access.

179 (c) The commission shall develop, by rule made in accordance with Title 63G, Chapter
180 3, Utah Administrative Rulemaking Act, and consistent with this section, policies and
181 procedures to govern the administration of the fund.

182 ~~[(3) The commission shall:]~~

183 ~~[(a) institute a proceeding within 30 days of the effective date of this section to~~
184 ~~establish rules governing the administration of the fund; and]~~

185 ~~[(b) issue those rules by October 1, 1997.]~~

186 ~~[(4) The rules in Subsection (3) shall be consistent with the Federal~~
187 ~~Telecommunications Act.]~~

188 ~~[(5) Operation of the fund shall be nondiscriminatory and competitively and~~
189 ~~technologically neutral in the collection and distribution of funds, neither providing a~~
190 ~~competitive advantage for, nor imposing a competitive disadvantage upon, any~~
191 ~~telecommunications provider operating in the state.]~~

192 ~~[(6) The fund shall be designed to:]~~

193 ~~[(a) promote equitable cost recovery of basic telephone service through the imposition~~
194 ~~of just and reasonable rates for telecommunications access and usage; and]~~

195 ~~[(b) preserve and promote universal service within the state by ensuring that customers~~
196 ~~have access to affordable basic telephone service.]~~

197 ~~[(7) To the extent not funded by a federal universal service fund or other federal~~
198 ~~jurisdictional revenues, the fund shall be used to defray the costs, as determined by the~~
199 ~~commission, of any qualifying telecommunications corporation in providing public~~
200 ~~telecommunications services to:]~~

201 ~~[(a) customers that qualify for a commission-approved lifeline program; and]~~

202 ~~[(b) customers, where]~~

203 ~~[the basic telephone service rate considered affordable by the commission in a~~
204 ~~particular geographic area is less than the costs, as determined by the commission for that~~
205 ~~geographic area, of basic telephone service.]~~

206 ~~[(8) The fund shall be portable among qualifying telecommunications corporations.~~
207 ~~Requirements to qualify for funds under this section shall be defined by rules established by the~~
208 ~~commission.]~~

209 (3) Subject to this section, the commission shall use funds in the Universal Public
210 Telecommunications Service Support Fund to:

211 (a) fund the hearing and speech impaired program described in Section [54-8b-10](#);

212 (b) fund a lifeline program; and

213 (c) fund a rate-of-return regulated or non-rate-of-return regulated carrier of last resort's

214 deployment and management of networks capable of providing:

215 (i) basic telephone service;

216 (ii) wholesale broadband Internet access service; or

217 (iii) intrastate emergency service access.

218 (4) (a) A rate-of-return regulated carrier of last resort is eligible for payment from the
219 Universal Public Telecommunications Service Support Fund if:

220 (i) the rate-of-return regulated carrier of last resort provides the services described in
221 Subsections (3)(c)(i) through (iii); and

222 (ii) the rate-of-return regulated carrier of last resort's costs, as determined by the
223 commission, to provide public telecommunications service, wholesale broadband access
224 service, and intrastate emergency service access are greater than the sum of:

225 (A) the rate-of-return regulated carrier of last resort's regulated revenue derived from
226 providing public telecommunications service;

227 (B) the rate-of-return regulated carrier of last resort's revenue from rates approved by
228 the Federal Communications Commission for wholesale broadband Internet access service;

229 (C) the rate-of-return regulated carrier of last resort's revenue derived from providing
230 interstate emergency service access; and

231 (D) the amount the rate-of-return regulated carrier of last resort receives from federal
232 universal service funds.

233 (b) A non-rate-of-return regulated carrier of last resort is eligible for payment from the
234 Universal Public Telecommunications Service Support Fund if the non-rate-of-return regulated
235 carrier meets criteria that are:

236 (i) consistent with Subsections (2) and (3); and

237 (ii) developed by the commission by rule made in accordance with Title 63G, Chapter
238 3, Utah Administrative Rulemaking Act.

239 (5) A rate-of-return regulated carrier of last resort that qualifies for funds under this
240 section:

241 (a) is entitled to a rate of return equal to the weighted average cost of capital rate of
242 return prescribed by the Federal Communications Commission for rate-of-return regulated
243 carriers; and

244 (b) may use any depreciation method allowed by the Federal Communications

245 Commission.

246 (6) (a) The commission shall establish a procedure for determining if a rate-of-return
247 regulated carrier of last resort is correctly applying a depreciation method described in
248 Subsection (5)(b).

249 (b) If the commission determines under Subsection (6)(a) that a rate-of-return regulated
250 carrier of last resort is incorrectly applying a depreciation method or that the rate-of-return
251 regulated carrier of last resort is not using a depreciation method allowed by the Federal
252 Communications Commission, the commission shall issue an order that provides corrections to
253 the rate-of-return regulated carrier of last resort's method of depreciation.

254 ~~[(9) As necessary to accomplish the purposes of this section, the fund shall provide a~~
255 ~~mechanism for specific, predictable, and sufficient funds in addition to those provided under~~
256 ~~the federal universal service fund.]~~

257 ~~[(10)]~~ (7) (a) Subject to Subsection ~~[(10)]~~ (7)(b):

258 (i) each ~~[telecommunications corporation that provides intrastate public~~
259 ~~telecommunication service]~~ access line or connection provider shall contribute to the fund on
260 an equitable and nondiscriminatory basis; and

261 (ii) for purposes of funding the fund, the commission shall have the authority to
262 require all ~~[corporations that provide intrastate telecommunication services in this]~~ access line
263 or connection providers in the state to contribute money to the fund through explicit charges,
264 calculated on a per line and per connection basis, in an amount determined by the
265 commission[;].

266 ~~[(iii) any charge described in Subsection (10)(a)(ii) may not apply to wholesale~~
267 ~~services, including access and interconnection; and]~~

268 ~~[(iv) charges associated with being a provider of public telecommunications service~~
269 ~~shall be in the form of end-user surcharges applied to intrastate retail rates.]~~

270 (b) ~~[A telecommunications corporation]~~ An access line or connection provider that
271 provides mobile telecommunications service shall contribute to the fund only to the extent
272 permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

273 ~~[(11)]~~ (8) Nothing in this section shall be construed to enlarge or reduce the
274 commission's jurisdiction or authority, as provided in other provisions of this title.

275 ~~[(12) Any telecommunications corporation failing to make contributions to this fund or~~

276 failing]

277 (9) A carrier of last resort is not obligated to:

278 (a) provide service in an area where the carrier of last resort does not receive support
279 from the fund created by this section; or

280 (b) continue to provide service in a geographic area for which the carrier of last resort
281 does not receive support from the fund created by this section.

282 (10) A corporation that fails to make a required contribution to the fund created by this
283 section, or that fails to comply with [the directives of the] a commission directive concerning
284 [its] the corporation's books, records, or other information required by the commission to
285 administer this section [shall be], is subject to applicable penalties.

286 [(13) ~~The commission shall have a bill prepared for the 1998 General Session of the~~
287 ~~Legislature to place in statute as much of the regulation implemented by rule pursuant to the act~~
288 ~~the commission believes is practicable.]~~

Legislative Review Note
Office of Legislative Research and General Counsel