

## SB0130S01 compared with SB0130

~~text~~ shows text that was in SB0130 but was deleted in SB0130S01.

Inserted text shows text that was not in SB0130 but was inserted into SB0130S01.

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Senator David P. Hinkins proposes the following substitute bill:

### UNIVERSAL SERVICE FUND AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David P. Hinkins**

House Sponsor: \_\_\_\_\_

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#### 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~~ access lines, connections, 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;

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- ▶ 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;
- ▶ combines a surcharge and funding for administering the hearing and speech impaired program with the Universal Public Telecommunications Service Support Fund and surcharge:
- ▶ 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

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

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

**54-8b-10**, as last amended by Laws of Utah 2016, Chapter 271

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

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

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

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

As used in this chapter:

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

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

(i) is not a telecommunications corporation;

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

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

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

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

- (a) a single line with access to the public switched network;
- (b) touch-tone or the functional equivalent;
- (c) local flat-rate unlimited usage, exclusive of extended area service;
- (d) single-party service;
- (e) a free phone number listing in directories received for free;
- (f) access to operator services;
- (g) access to directory assistance;
- (h) access to lifeline and telephone relay assistance;
- (i) access to 911 and E911 emergency services;
- (j) access to long-distance carriers;
- (k) access to toll limitations services;
- (l) other services as may be determined by the commission; and
- (m) no feature.

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

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

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

- (a) that is necessary for a competitor to provide a public telecommunications service;
- (b) that cannot be reasonably duplicated; and
- (c) for which there is no adequate economic alternative to the competitor in terms of

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quality, quantity, and price.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) a fully regulated service;

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

(C) an essential facility or an essential service.

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

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

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

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

~~[(16)]~~ (18) "Public telecommunications service" means the two-way transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means offered to the public generally.

~~[(17)]~~ (19) "Substantial compliance" with reference to a rule or order of the commission means satisfaction of all material obligations in a manner consistent with the rule or order.

~~[(18)]~~ (20) "Telecommunications corporation" means any corporation or person, and their lessees, trustees, receivers, or trustees appointed by any court, owning, controlling, operating, managing, or reselling a public telecommunications service.

~~[(19)]~~ (21) (a) "Total service long-run incremental cost" means the forward-looking incremental cost to a telecommunications corporation caused by providing the entire quantity of a public telecommunications service, network function, or group of public telecommunications services or network functions, by using forward-looking technology, reasonably available, without assuming relocation of existing plant and equipment.

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

Section 2. Section 54-8b-10 is amended to read:

**54-8b-10. Imposing a surcharge to provide hearing and speech impaired persons with telecommunication devices -- Definitions -- Procedures for establishing program -- Surcharge -- Administration and disposition of surcharge money.**

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(1) As used in this section:

(a) "Certified deaf or severely hearing or speech impaired person" means any state resident who:

(i) is so certified by:

(A) a licensed physician;

(B) an otolaryngologist;

(C) a speech language pathologist;

(D) an audiologist; or

(E) a qualified state agency; and

(ii) qualifies for assistance under any low income public assistance program administered by a state agency.

(b) "Certified interpreter" means a person who is a certified interpreter under Title 35A, Chapter 13, Part 6, Interpreter Services for the Deaf and Hard of Hearing Act.

(c) (i) "Telecommunication device" means any mechanical adaptation device that enables a deaf or severely hearing or speech impaired person to use the telephone.

(ii) "Telecommunication device" includes:

(A) telecommunication devices for the deaf (TDD);

(B) telephone amplifiers;

(C) telephone signal devices;

(D) artificial larynxes; and

(E) adaptive equipment for TDD keyboard access.

(2) The commission shall ~~hold hearings to~~ establish a program whereby a certified deaf or severely hearing or speech impaired customer of a telecommunications corporation that provides service through a local exchange or of a wireless telecommunications provider may obtain a telecommunication device capable of serving the customer at no charge to the customer beyond the rate for basic service.

(3) (a) The program described in Subsection (2) shall provide a dual party relay system using third party intervention to connect a certified deaf or severely hearing or speech impaired person with a normal hearing person by way of telecommunication devices designed for that purpose.

(b) The commission may, by rule, establish the type of telecommunications device to

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be provided to ensure functional equivalence.

~~[(4) (a) The commission shall impose a surcharge on each residential and business access line of each customer of local-exchange telephone service in this state, and each residential and business telephone number of each customer of mobile telephone service in this state, not including a telephone number used exclusively to transfer data to and from a mobile device, which shall be collected by the telecommunications corporation providing public telecommunications service to the customer, to cover the costs of:]~~

~~[(i) the program described in Subsection (2); and]~~

~~[(ii) payments made under Subsection (5).]~~

~~[(b) The commission shall establish by rule the amount to be charged under this section, provided that:]~~

~~[(i) the surcharge does not exceed 20 cents per month for each residential and business access line for local-exchange telephone service, and for each residential and business telephone number for mobile telephone service, not including a telephone number used exclusively to transfer data to and from a mobile device; and]~~

~~[(ii) if the surcharge is related to a mobile telecommunications service, the surcharge may be imposed, billed, and collected only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.].~~

~~[(c) The telecommunications corporation shall collect the surcharge from its customers and transfer the money collected to the commission under rules adopted by the commission.]~~

~~[(d) The surcharge shall be separately identified on each bill to a customer.]~~

~~[(5) (a) Money collected from the surcharge imposed under Subsection (4) shall be deposited in the state treasury as dedicated credits to be administered as determined by the commission.]~~

~~[(b) These dedicated credits may be used only: {~~

~~(i);]~~

(4) The commission shall cover the costs of the program described in this section from the Universal Public Telecommunications Service Support Fund created in Section 54-8b-15.

(5) In administering the program described in this section, the commission may use funds from the Universal Public Telecommunications Support Fund:

[(i) (a) for the purchase, maintenance, repair, and distribution of telecommunication

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devices;

~~[(ii)]~~ ~~(b)~~ for the acquisition, operation, maintenance, and repair of a dual party relay system;

~~[(iii)]~~ to reimburse telephone corporations for the expenses incurred in collecting and transferring to the commission the surcharge imposed by the commission;

~~[(iv)]~~ ~~(c)~~ for the general administration of the program;

~~[(v)]~~ ~~(d)~~ to train ~~[persons]~~ individuals in the use of telecommunications devices; and

~~[(vi)]~~ ~~(e)~~ ~~[by the commission]~~ to contract, in compliance with Title 63G, Chapter 6a, Utah Procurement Code, with:

~~[(A)]~~ ~~(i)~~ an institution within the state system of higher education listed in Section 53B-1-102 for a program approved by the Board of Regents that trains persons to qualify as certified interpreters; or

~~[(B)]~~ ~~(ii)~~ the Utah State Office of Rehabilitation created in Section 35A-1-202 for a program that trains persons to qualify as certified interpreters.

~~[(c)]~~ ~~(i)~~ ~~(6)~~ The commission ~~[shall make rules]~~ may create disbursement criteria and procedures by rule made under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for ~~[the administration of money under Subsection (5)(b)(vi)]~~ administering funds under Subsection (5).

~~[(ii)]~~ ~~In the initial rulemaking to determine the administration of money under Subsection (5)(b)(vi), the commission shall give notice and hold a public hearing.~~

~~[(d)]~~ Money received by the commission under Subsection (4) is nonlapsing.

~~[(6)]~~ ~~(a)~~ The telephone surcharge need not be collected by a telecommunications corporation if the amount collected would be less than the actual administrative costs of the collection.

~~[(b)]~~ If Subsection (6)(a) applies, the telecommunications corporation shall submit to the commission, in lieu of the revenue from the surcharge collection, a breakdown of the anticipated costs and the expected revenue from the collection, showing that the costs exceed the revenue.

(7) The commission shall solicit ~~[the]~~ advice, counsel, and physical assistance ~~[of]~~ from severely hearing or speech impaired persons and ~~[the]~~ organizations serving ~~[them]~~ severely hearing or speech impaired persons in the design and implementation of the program.

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Section ~~{2}~~3. Section **54-8b-15** is amended to read:

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

(1) For purposes of this section:

~~{a}~~ {a} "Basic telephone service" means local exchange service ~~{f}~~ and may include such other functions and elements, if any, as the commission determines to be eligible for support by the fund. ~~{c}~~

~~{b}~~ {a} "Broadband Internet access service" means the same as that term is defined in 47 C.F.R. Sec. 8.2.

~~{c}~~ {b} "Carrier of last resort" means:

(i) an incumbent telephone corporation; or

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

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

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

~~{d}~~ {c} "Connection" means an authorized session that uses Internet protocol or a functionally equivalent technology standard to enable an end-user to initiate or receive a call from the public switched network.

~~{b}~~ ~~{e}~~ {d} "Fund" means the Universal Public Telecommunications Service Support Fund established in this section.

~~{f}~~ {e} "Intrastate emergency service access" means a point-to-point or point-to-multi-point circuit for land-to-mobile radio backhaul that:

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

(ii) does not cross state boundaries; and

(iii) is used only for public safety communications.

~~{g}~~ {f} "Non-rate-of-return regulated" means ~~{subject to}~~ having price ~~{regulation}~~ flexibility under Section 54-8b-2.3.

~~{h}~~ {g} "Rate-of-return regulated" means subject to regulation under Section 54-4-4.

~~{i}~~ {h} "Wholesale broadband Internet access service" means the last-mile transmission

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component of Internet access provided by a rate-of-return regulated carrier of last resort that is used to provide, at retail:

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

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

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

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

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

(i) ~~{basic telephone service}~~ access lines;

(ii) connections;

(~~iii~~ iii) wholesale broadband Internet access service; or

(~~iiii~~ iv) intrastate emergency service access.

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

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

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

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

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

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

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

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

~~[(b) preserve and promote universal service within the state by ensuring that customers~~

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~~have access to affordable basic telephone service.]~~

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

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

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

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

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

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

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

(b) fund a lifeline program; and

(c) fund a rate-of-return regulated or non-rate-of-return regulated carrier of last resort's deployment and management of networks capable of providing:

(i) ~~{basic telephone service}~~ access lines;

(ii) connections;

(~~iii~~) wholesale broadband Internet access service; or

(iv) intrastate emergency service access.

(d) fund one time distributions from the Universal Public Telecommunications Service Support Fund for a non-rate of return regulated carrier of last resort's deployment and management of networks capable of providing:

(i) access lines;

(ii) connections;

(iii) broadband Internet access service; or

(~~iiii~~) intrastate emergency service access.

(4) (a) A rate-of-return regulated carrier of last resort is eligible for payment from the

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Universal Public Telecommunications Service Support Fund if:

(i) the rate-of-return regulated carrier of last resort provides the services described in Subsections (3)(c)(i) through (~~fiit~~iv); and

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

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

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

(C) the rate-of-return regulated carrier of last resort's revenue derived from providing ~~finterstate~~intrastate emergency service access; and

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

(b) A non-rate-of-return regulated carrier of last resort is eligible for payment from the Universal Public Telecommunications Service Support Fund **for reimbursement of reasonable costs as determined by the commission** if the non-rate-of-return regulated carrier meets criteria that are:

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

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

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

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

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

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

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

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

(7) A carrier of last resort that receives funds from the Universal Public Telecommunications Service Support Fund may only use the funds in accordance with this section within the area for which the carrier of last resort has a carrier of last resort obligation.

~~[(10)] ~~(7)~~(8) (a) Subject to Subsection ~~[(10)] ~~(7)~~(8)(b):~~~~

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

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

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

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

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

~~[(11)] ~~(8)~~(9) Nothing in this section shall be construed to enlarge or reduce the commission's jurisdiction or authority, as provided in other provisions of this title.~~

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

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~~(9)~~(10) A carrier of last resort is not obligated to:

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

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

~~(10)~~(11) A corporation that fails to make a required contribution to the fund created by this section, or that fails to comply with [the directives of the] a commission directive concerning [its] the corporation's books, records, or other information required by the commission to administer this section [shall be], is subject to applicable penalties.

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

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### Legislative Review Note

~~Office of Legislative Research and General Counsel~~ (12) Nothing in this section gives the commission the authority to regulate broadband Internet access service.