

**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 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;
- ▶ 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



26 receives support from the Universal Public Telecommunications Service Support Fund; and  
27       ▶ defines terms.

28 **Money Appropriated in this Bill:**

29       None

30 **Other Special Clauses:**

31       None

32 **Utah Code Sections Affected:**

33 AMENDS:

34       **54-8b-2**, as last amended by Laws of Utah 2005, Chapter 5

35       **54-8b-10**, as last amended by Laws of Utah 2016, Chapter 271

36       **54-8b-15**, as last amended by Laws of Utah 2013, Chapter 400



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

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

40       **54-8b-2. Definitions.**

41       As used in this chapter:

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

44       ~~(1)~~ (2) (a) "Aggregator" means any person or entity that:

45           (i) is not a telecommunications corporation;

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

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

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

55       ~~(2)~~ (3) "Basic residential service" means a local exchange service for a residential  
56 customer consisting of:

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

70 ~~[(3)]~~ (4) "Certificate" means a certificate of public convenience and necessity issued by  
71 the commission authorizing a telecommunications corporation to provide specified public  
72 telecommunications services within a defined geographic service territory in the state.

73 ~~[(4)]~~ (5) "Division" means the Division of Public Utilities established in Section  
74 54-4a-1.

75 ~~[(5)]~~ (6) "Essential facility or service" means any portion, component, or function of  
76 the network or service offered by a provider of local exchange services:

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

81 ~~[(6)]~~ (7) (a) "Feature" means a custom calling service available from the central office  
82 switch, including call waiting, call forwarding, three-way calling, and similar services.

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

84 ~~[(7)]~~ (8) "Federal Telecommunications Act" means the Communications Act of 1934,  
85 as amended, and the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat.  
86 56.

87 ~~[(8)]~~ (9) "Incumbent telephone corporation" means a telephone corporation, its

88 successors or assigns, which, as of May 1, 1995, held a certificate to provide local exchange  
89 services in a defined geographic service territory in the state.

90 ~~[(9)]~~ (10) "Intrastate telecommunications service" means any public  
91 telecommunications service in which the information transmitted originates and terminates  
92 within the boundaries of this state.

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

97 ~~[(11)]~~ (12) "Mobile telecommunications service" means a mobile telecommunications  
98 service:

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

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

102 ~~[(12)]~~ (13) (a) "New public telecommunications service" means a service offered by a  
103 telecommunications corporation which that corporation has never offered before.

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

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

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

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

110 (A) a fully regulated service;

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

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

113 ~~[(13)]~~ (14) "Operator assisted services" means services which assist callers in the  
114 placement or charging of a telephone call, either through live intervention or automated  
115 intervention.

116 ~~[(14)]~~ (15) "Operator service provider" means any person or entity that provides, for a  
117 fee to a caller, operator assisted services.

118 ~~[(15)]~~ (16) "Price-regulated service" means any public telecommunications service

119 governed by Section ~~54-8b-2.3~~.

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

122 [~~(16)~~] (18) "Public telecommunications service" means the two-way transmission of  
123 signs, signals, writing, images, sounds, messages, data, or other information of any nature by  
124 wire, radio, lightwaves, or other electromagnetic means offered to the public generally.

125 [~~(17)~~] (19) "Substantial compliance" with reference to a rule or order of the  
126 commission means satisfaction of all material obligations in a manner consistent with the rule  
127 or order.

128 [~~(18)~~] (20) "Telecommunications corporation" means any corporation or person, and  
129 their lessees, trustees, receivers, or trustees appointed by any court, owning, controlling,  
130 operating, managing, or reselling a public telecommunications service.

131 [~~(19)~~] (21) (a) "Total service long-run incremental cost" means the forward-looking  
132 incremental cost to a telecommunications corporation caused by providing the entire quantity  
133 of a public telecommunications service, network function, or group of public  
134 telecommunications services or network functions, by using forward-looking technology,  
135 reasonably available, without assuming relocation of existing plant and equipment.

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

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

139 **54-8b-10. Imposing a surcharge to provide hearing and speech impaired persons**  
140 **with telecommunication devices -- Definitions -- Procedures for establishing program --**  
141 **Surcharge -- Administration and disposition of surcharge money.**

142 (1) As used in this section:

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

145 (i) is so certified by:

146 (A) a licensed physician;

147 (B) an otolaryngologist;

148 (C) a speech language pathologist;

149 (D) an audiologist; or

150 (E) a qualified state agency; and

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

153 (b) "Certified interpreter" means a person who is a certified interpreter under Title  
154 35A, Chapter 13, Part 6, Interpreter Services for the Deaf and Hard of Hearing Act.

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

157 (ii) "Telecommunication device" includes:

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

159 (B) telephone amplifiers;

160 (C) telephone signal devices;

161 (D) artificial larynxes; and

162 (E) adaptive equipment for TDD keyboard access.

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

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

172 (b) The commission may, by rule, establish the type of telecommunications device to  
173 be provided to ensure functional equivalence.

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

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

181 ~~[(ii) payments made under Subsection (5).]~~  
182 ~~[(b) The commission shall establish by rule the amount to be charged under this~~  
183 ~~section, provided that:]~~  
184 ~~[(i) the surcharge does not exceed 20 cents per month for each residential and business~~  
185 ~~access line for local-exchange telephone service, and for each residential and business~~  
186 ~~telephone number for mobile telephone service, not including a telephone number used~~  
187 ~~exclusively to transfer data to and from a mobile device; and]~~  
188 ~~[(ii) if the surcharge is related to a mobile telecommunications service, the surcharge~~  
189 ~~may be imposed, billed, and collected only to the extent permitted by the Mobile~~  
190 ~~Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.]~~  
191 ~~[(c) The telecommunications corporation shall collect the surcharge from its customers~~  
192 ~~and transfer the money collected to the commission under rules adopted by the commission:]~~  
193 ~~[(d) The surcharge shall be separately identified on each bill to a customer:]~~  
194 ~~[(5) (a) Money collected from the surcharge imposed under Subsection (4) shall be~~  
195 ~~deposited in the state treasury as dedicated credits to be administered as determined by the~~  
196 ~~commission:]~~  
197 ~~[(b) These dedicated credits may be used only:]~~  
198 (4) The commission shall cover the costs of the program described in this section from  
199 the Universal Public Telecommunications Service Support Fund created in Section [54-8b-15](#).  
200 (5) In administering the program described in this section, the commission may use  
201 funds from the Universal Public Telecommunications Support Fund:  
202 ~~[(i)]~~ (a) for the purchase, maintenance, repair, and distribution of telecommunication  
203 devices;  
204 ~~[(ii)]~~ (b) for the acquisition, operation, maintenance, and repair of a dual party relay  
205 system;  
206 ~~[(iii) to reimburse telephone corporations for the expenses incurred in collecting and~~  
207 ~~transferring to the commission the surcharge imposed by the commission;]~~  
208 ~~[(iv)]~~ (c) for the general administration of the program;  
209 ~~[(v)]~~ (d) to train ~~[persons]~~ individuals in the use of telecommunications devices; and  
210 ~~[(vi)]~~ (e) ~~[by the commission]~~ to contract, in compliance with Title 63G, Chapter 6a,  
211 Utah Procurement Code, with:

212 [(A)] (i) an institution within the state system of higher education listed in Section  
213 53B-1-102 for a program approved by the Board of Regents that trains persons to qualify as  
214 certified interpreters; or

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

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

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

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

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

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

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

234 Section 3. Section 54-8b-15 is amended to read:

235 **54-8b-15. Universal Public Telecommunications Service Support Fund --**  
236 **Established.**

237 (1) For purposes of this section:

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

241 (a) "Broadband Internet access service" means the same as that term is defined in 47  
242 C.F.R. Sec. 8.2.



- 243 (b) "Carrier of last resort" means:  
244 (i) an incumbent telephone corporation; or  
245 (ii) a telecommunications corporation that, under Section [54-8b-2.1](#):  
246 (A) has a certificate of public convenience and necessity to provide local exchange  
247 service; and  
248 (B) has an obligation to provide public telecommunications service to any customer or  
249 class of customers that requests service within the local exchange.  
250 (c) "Connection" means an authorized session that uses Internet protocol or a  
251 functionally equivalent technology standard to enable an end-user to initiate or receive a call  
252 from the public switched network.  
253 ~~[(b)]~~ (d) "Fund" means the Universal Public Telecommunications Service Support  
254 Fund established in this section.  
255 (e) "Intrastate emergency service access" means a point-to-point or point-to-multi-point  
256 circuit for land-to-mobile radio backhaul that:  
257 (i) a provider makes available for purchase by the Utah Communications Authority  
258 created in Section [63H-7a-201](#);  
259 (ii) does not cross state boundaries; and  
260 (iii) is used only for public safety communications.  
261 (f) "Non-rate-of-return regulated" means having price flexibility under Section  
262 [54-8b-2.3](#).  
263 (g) "Rate-of-return regulated" means subject to regulation under Section [54-4-4](#).  
264 (h) "Wholesale broadband Internet access service" means the end-user loop component  
265 of Internet access provided by a rate-of-return regulated carrier of last resort that is used to  
266 provide, at retail:  
267 (i) combined consumer voice and broadband Internet access; or  
268 (ii) stand-alone, consumer, broadband-only Internet access.  
269 ~~[(2) The commission shall establish]~~  
270 (2) (a) There is established an expendable special revenue fund known as the  
271 "Universal Public Telecommunications Service Support Fund[;]." ~~[which is to be implemented~~  
272 ~~by January 1, 1998.]~~  
273 (b) The fund shall provide a mechanism for a qualifying carrier of last resort to obtain

274 specific, predictable, and sufficient funds to deploy and manage networks capable of providing:

275 (i) access lines;

276 (ii) connections;

277 (iii) wholesale broadband Internet access service; or

278 (iv) intrastate emergency service access.

279 (c) The commission shall develop, by rule made in accordance with Title 63G, Chapter  
280 3, Utah Administrative Rulemaking Act, and consistent with this section, policies and  
281 procedures to govern the administration of the fund.

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

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

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

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

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

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

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

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

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

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

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

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

305 ~~geographic area, of basic telephone service.]~~

306 ~~[(8) The fund shall be portable among qualifying telecommunications corporations.~~

307 ~~Requirements to qualify for funds under this section shall be defined by rules established by the~~  
308 ~~commission.]~~

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

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

312 (b) fund a lifeline program; and

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

315 (i) access lines;

316 (ii) connections;

317 (iii) wholesale broadband Internet access service;

318 (iv) intrastate emergency service access; or

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

321 management of networks capable of providing:

322 (i) access lines;

323 (ii) connections;

324 (iii) broadband Internet access service; or

325 (iv) intrastate emergency service access.

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

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

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

333 (A) the rate-of-return regulated carrier of last resort's revenue from basic residential  
334 service considered affordable by the commission;

335 (B) the rate-of-return regulated carrier of last resort's regulated revenue derived from

336 providing other public telecommunications service;

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

339 (D) the rate-of-return regulated carrier of last resort's revenue derived from providing  
340 intrastate emergency service access at a service rate as determined by the commission; and

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

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

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

348 (ii) developed by the commission by rule made in accordance with Title 63G, Chapter  
349 3, Utah Administrative Rulemaking Act.

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

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

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

357 (6) (a) The commission shall determine if a rate-of-return regulated carrier of last resort  
358 is correctly applying a depreciation method described in Subsection (5)(b).

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

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

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

370 ~~[(10)]~~ (8) (a) Subject to Subsection [(10)] (8)(b):

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

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

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

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

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

386 ~~[(11)]~~ (9) Nothing in this section shall be construed to enlarge or reduce the  
387 commission's jurisdiction or authority, as provided in other provisions of this title.

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

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

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

397 (11) Nothing in this section gives the commission the authority to regulate broadband

398 Internet access service.