

1 **PREPAID WIRELESS TELECOMMUNICATIONS SERVICE**
2 **AMENDMENTS**

3 2020 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Curtis S. Bramble**

6 House Sponsor: _____

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions related to prepaid wireless telecommunications service.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ modifies the charge imposed by the Public Service Commission related to a prepaid

15 wireless telecommunications service for support of the Universal Public
16 Telecommunications Service Support Fund by:

- 17 • establishing a formula for calculating the prepaid wireless telecommunications
18 service charge;
- 19 • granting the State Tax Commission authority to collect, enforce, and administer
20 the charge; and
- 21 • requiring the seller of a transaction involving a prepaid wireless
22 telecommunications service to collect and remit the charge to the State Tax
23 Commission; and
- 24 ▶ makes technical and conforming changes.

25 **Money Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**



28 This bill provides a special effective date.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **54-8b-15**, as last amended by Laws of Utah 2017, Chapter 423

32 ENACTS:

33 **54-8b-15.1**, Utah Code Annotated 1953



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

36 Section 1. Section **54-8b-15** is amended to read:

37 **54-8b-15. Universal Public Telecommunications Service Support Fund --**
38 **Commission duties -- Charges -- Lifeline program.**

39 (1) For purposes of this section:

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

42 (b) "Carrier of last resort" means:

43 (i) an incumbent telephone corporation; or

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

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

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

49 (c) "Connection" means an authorized session that uses Internet protocol or a
50 functionally equivalent technology standard to enable an end-user to initiate or receive a call
51 from the public switched network.

52 (d) "Fund" means the Universal Public Telecommunications Service Support Fund
53 established in this section.

54 (e) "Non-rate-of-return regulated" means having price flexibility under Section
55 **54-8b-2.3**.

56 (f) "Rate-of-return regulated" means subject to regulation under Section **54-4-4**.

57 (g) "Wholesale broadband Internet access service" means the end-user loop component
58 of Internet access provided by a rate-of-return regulated carrier of last resort that is used to

59 provide, at retail:

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

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

62 (2) (a) There is established an expendable special revenue fund known as the

63 "Universal Public Telecommunications Service Support Fund."

64 (b) The fund shall provide a mechanism for a qualifying carrier of last resort to obtain
65 specific, predictable, and sufficient funds to deploy and manage, for the purpose of providing
66 service to end-users, networks capable of providing:

67 (i) access lines;

68 (ii) connections; or

69 (iii) wholesale broadband Internet access service.

70 (c) The commission shall develop, by rule made in accordance with Title 63G, Chapter
71 3, Utah Administrative Rulemaking Act, and consistent with this section, policies and
72 procedures to govern the administration of the fund.

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

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

76 (b) fund a lifeline program that covers the reasonable cost to an eligible
77 telecommunications carrier, as determined by the commission, to offer lifeline service
78 consistent with the Federal Communications Commission's lifeline program for low-income
79 consumers;

80 (c) fund, for the purpose of providing service to end-users, a rate-of-return regulated or
81 non-rate-of-return regulated carrier of last resort's deployment and management of networks
82 capable of providing:

83 (i) access lines;

84 (ii) connections; or

85 (iii) wholesale broadband Internet access service that is consistent with Federal
86 Communications Commission rules; and

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

90 (i) access lines;

91 (ii) connections; or

92 (iii) broadband Internet access service.

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

94 Universal Public Telecommunications Service Support Fund if:

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

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

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

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

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

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

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

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

113 (ii) developed by the commission by rule made in accordance with Title 63G, Chapter
114 3, Utah Administrative Rulemaking Act.

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

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

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

121 Commission.

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

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

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

132 ~~[(8) Each access line provider and each connection provider shall contribute to the
133 Universal Public Telecommunications Service Support Fund through an explicit charge
134 assessed by the commission on the access line provider or connection provider.]~~

135 (8) In accordance with Subsection (9), the commission shall:

136 (a) establish and assess an explicit charge on the following, to be deposited into the
137 Universal Public Telecommunications Service Support Fund:

138 (i) each access line provider; and

139 (ii) each connection provider; and

140 (b) establish an explicit charge on each prepaid wireless telecommunications service,

141 to be:

142 (i) imposed and collected by the State Tax Commission in accordance with Section
143 [54-8b-15.1](#); and

144 (ii) deposited into the Universal Public Telecommunications Service Support Fund.

145 (9) (a) The commission shall calculate the amount of each explicit charge described in
146 Subsection (8) on an access line provider or a connection provider using a method developed
147 by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
148 Rulemaking Act, that:

149 ~~[(a)]~~ (i) does not discriminate against:

150 ~~[(i)]~~ (A) any access line provider or connection provider; or

151 ~~[(ii)]~~ (B) the technology used by any access line provider or connection provider;

152 ~~[(b)]~~ (ii) is competitively neutral; and
153 ~~[(c)]~~ (iii) is a function of an access line provider or connection provider's:
154 ~~[(i)]~~ (A) annual intrastate revenue;
155 ~~[(ii)]~~ (B) number of access lines or connections in the state; or
156 ~~[(iii)]~~ (C) a combination of an access line provider's or connection provider's annual
157 intrastate revenue and number of access lines or connections in the state.

158 (b) The amount of each explicit charge described in Subsection (8) on a prepaid
159 wireless telecommunications provider is an amount equal to the amount calculated under
160 Subsection (9)(a) divided by 50.

161 ~~[(10) The commission shall develop the method described in Subsection (9) before~~
162 ~~January 1, 2018.]~~

163 ~~[(11) An access line or connection provider that provides mobile telecommunications~~
164 ~~service shall contribute to the Universal Public Telecommunications Service Support Fund~~
165 ~~only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec.~~
166 ~~116 et seq.]~~

167 ~~[(12)]~~ (10) Nothing in this section shall be construed to enlarge or reduce the
168 commission's jurisdiction or authority, as provided in other provisions of this title.

169 ~~[(13)]~~ (11) A person that fails to make a required contribution to the fund created by
170 this section, or that fails to comply with a commission directive concerning the person's books,
171 records, or other information required by the commission to administer this section, is subject
172 to applicable penalties.

173 ~~[(14)]~~ (12) Nothing in this section gives the commission the authority:

- 174 (a) to regulate broadband Internet access service;
- 175 (b) to require a carrier of last resort to provide broadband Internet access service; or
- 176 (c) assess a contribution in violation of the Internet Tax Freedom Act, 47 U.S.C. Sec.
177 151 note.

178 ~~[(15)]~~ (13) (a) A facilities-based or nonfacilities-based wireless telecommunication
179 provider is eligible for distributions from the Universal Telecommunications Service Support
180 Fund under the lifeline program described in Subsection (3)(b) for providing lifeline service
181 that is consistent with the Federal Communications Commission's lifeline program for
182 low-income consumers.

183 (b) Except as provided in Subsection [~~(15)~~] (13)(c), the commission may impose
184 reasonable conditions for providing a distribution to a wireless telecommunication provider
185 under the lifeline program described in Subsection (3)(b).

186 (c) The commission may not require a wireless telecommunication provider to offer
187 unlimited local calling to a lifeline customer as a condition of receiving a distribution under the
188 lifeline program described in Subsection (3)(b).

189 [~~(16)~~] (14) The commission shall report to the Public Utilities, Energy, and Technology
190 Interim Committee each year before November 1 regarding:

191 (a) the contribution method described in Subsection (9);

192 (b) the amount of distributions from and contributions to the Universal Public
193 Telecommunications Service Support Fund during the last fiscal year;

194 (c) the availability of services for which Subsection (3) permits Universal Public
195 Telecommunications Service Support Fund funds to be used; and

196 (d) the effectiveness and efficiency of the Universal Public Telecommunications
197 Service Support Fund.

198 Section 2. Section **54-8b-15.1** is enacted to read:

199 **54-8b-15.1. Prepaid wireless telecommunications service charge -- State Tax**
200 **Commission duties.**

201 (1) As used in this section:

202 (a) "Consumer" means a person who purchases prepaid wireless telecommunications
203 service in a transaction.

204 (b) (i) "Prepaid wireless telecommunications service" means wireless
205 telecommunications service that:

206 (A) is paid for in advance; and

207 (B) is sold in predetermined units of time or dollars that decline with use in a known
208 amount or provides unlimited use of the service for a fixed amount or time.

209 (ii) "Prepaid wireless telecommunications service" does not include a wireless
210 telecommunications service that is billed:

211 (A) to a customer on a recurring basis; and

212 (B) in a manner that includes the charges levied under Sections [69-2-402](#), [69-2-403](#),
213 and [69-2-404](#), for each radio communication access line assigned to the customer.

214 (c) "Prepaid wireless telecommunications service charge" means the charge that is
215 established under Subsection 54-8b-15(9)(b) and imposed under this section.

216 (d) "Seller" means a person that sells prepaid wireless telecommunications service to a
217 consumer.

218 (e) "Transaction" means each purchase of prepaid wireless telecommunications service
219 from a seller.

220 (f) "Wireless telecommunications service" means commercial mobile radio service as
221 defined by 47 C.F.R. Sec. 20.3, as amended.

222 (2) There is imposed a prepaid wireless telecommunications service charge equal to the
223 amount established by the commission under Subsection 54-8b-15(9)(b).

224 (3) (a) The prepaid wireless telecommunications service charge shall be collected by
225 the seller from the consumer for each transaction occurring in this state.

226 (b) (i) Except as provided in Subsections (3)(b)(ii) and (iii), if a user of a service
227 subject to a prepaid wireless telecommunications service charge is not the consumer, the seller
228 shall collect the charge from the consumer for the service.

229 (ii) The prepaid wireless telecommunications service charge is not imposed on a seller
230 or a consumer of federal wireless lifeline service if the consumer does not pay the seller for the
231 service.

232 (iii) A consumer of federal wireless lifeline service shall pay, and the seller of the
233 service shall collect and remit, the prepaid wireless telecommunications service charge when
234 the consumer purchases from the seller optional services in addition to the federally funded
235 lifeline benefit.

236 (4) The prepaid wireless telecommunications service charge shall be separately stated
237 on an invoice, receipt, or similar document that is provided by the seller to the consumer.

238 (5) For purposes of Subsection (3), the location of a transaction is determined in
239 accordance with Sections 59-12-211 through 59-12-215.

240 (6) A seller may retain 3% of prepaid wireless telecommunications service charges that
241 the seller collects from consumers as reimbursement for the cost of billing, collecting, and
242 remitting the charge.

243 (7) A person that collects a prepaid wireless telecommunications service charge, except
244 as retained under Subsection (6), shall remit the prepaid wireless telecommunications service

245 charge to the State Tax Commission at the same time that the seller remits to the State Tax
246 Commission money collected by the person under Title 59, Chapter 12, Sales and Use Tax Act.

247 (8) The Division of Finance shall deposit revenue collected under this section into the
248 Universal Public Telecommunications Service Support Fund.

249 (9) The State Tax Commission shall collect, enforce, and administer the prepaid
250 wireless telecommunications service charge using the same procedures used in the
251 administration, collection, and enforcement of state sales and use taxes under:

252 (a) Title 59, Chapter 1, General Taxation Policies; and

253 (b) Title 59, Chapter 12, Part 1, Tax Collection, except for:

254 (i) Section [59-12-104](#);

255 (ii) Section [59-12-104.1](#);

256 (iii) Section [59-12-104.2](#);

257 (iv) Section [59-12-104.6](#);

258 (v) Section [59-12-107.1](#); and

259 (vi) Section [59-12-123](#).

260 (10) The State Tax Commission shall act on a provider that is delinquent in remitting a
261 charge imposed under this section in accordance with Title 59, Chapter 1, Part 14, Assessment,
262 Collections, and Refunds Act.

263 (11) The State Tax Commission may determine by rule made in accordance with Title
264 63G, Chapter 3, Utah Administrative Rulemaking Act, requirements and procedures for
265 administering, collecting, and enforcing the prepaid wireless telecommunications service
266 charge.

267 (12) The State Tax Commission shall retain and deposit an administrative charge in
268 accordance with Section [59-1-306](#) from the funds that the commission collects from the
269 prepaid wireless telecommunications service charge.

270 **Section 3. Effective date.**

271 This bill takes effect on January 1, 2021.