

Enrolled Senate Bill 1603

Sponsored by Senator COURTNEY; Senator MONNES ANDERSON, Representatives KENY-GUYER, MARSH, MCLAIN, MITCHELL, NOSSE, SCHOUTEN, SOLLMAN, WILDE, WILLIAMS (at the request of Joint Committee on the First Special Session of 2020)

CHAPTER

AN ACT

Relating to the universal service fund; creating new provisions; amending ORS 285A.160, 759.400 and 759.425; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 759.400 is amended to read:

759.400. As used in ORS 759.400 to 759.455:

(1) "Basic telephone service" means local exchange telecommunications service defined as basic by rule of the Public Utility Commission.

(2) "**Commercial mobile radio service**" has the meaning given that term in 47 C.F.R. 20.3.

(3) "**Interconnected voice over internet protocol service**" has the meaning given the term "**interconnected VoIP service**" in 47 C.F.R. 9.3.

[(2)] (4) "Retail telecommunications service" means a telecommunications service provided for a fee to customers. "Retail telecommunications service" does not include a service provided by one telecommunications carrier to another telecommunications carrier, unless the carrier receiving the service is the end user of the service.

[(3)] (5) "Telecommunications carrier" means any provider of retail telecommunications services, except a call aggregator as defined in ORS 759.680.

SECTION 2. ORS 759.425 is amended to read:

759.425. [(1) For purposes of this section, "retail telecommunications service" does not include radio communications service, radio paging service, commercial mobile radio service, personal communications service or cellular communications service.]

[(2)(a)] (1)(a) The Public Utility Commission shall establish and implement a competitively neutral and nondiscriminatory universal service fund. [Except as provided in paragraph (b) of this subsection,] The [Public Utility] commission shall:

(A) Use the universal service fund to ensure basic telephone service is available at a reasonable and affordable rate; and

(B) **Transfer from the universal service fund to the Oregon Business Development Department for deposit in the Broadband Fund established under section 4 of this 2020 special session Act an amount per year that is equal to the lesser of:**

(i) \$5 million; or

(ii) **The remainder of moneys deposited in the universal service fund that are unobligated after making the designation required in paragraph (b) of this subsection.**

(b) The commission shall designate the amount of moneys deposited annually in the universal service fund to be used to ensure basic telephone service. The amount designated under this paragraph may not exceed \$28 million per year.

(c) The *[Public Utility]* commission may:

(A) Adopt rules to conform the universal service fund to section 254 of the federal Telecommunications Act of 1996 *[(Public Law 104-104)]* (P.L. 104-104), and to related regulations adopted by the Federal Communications Commission, to the extent that the Public Utility Commission determines conforming the rules is appropriate[.]; **and**

[(b)] (B) In addition to using the universal service fund to ensure basic telephone service, *[the Public Utility Commission may]* use the universal service fund to encourage broadband service availability and to provide support to telecommunications carriers that provide both basic telephone service and broadband service.

[(3)(a)] (2)(a) The *[Public Utility]* commission shall establish the price a telecommunications utility may charge its customers for basic telephone service. The commission shall periodically review and evaluate the status of telecommunications services in the state and designate the services included in basic telephone service. The commission shall periodically review and adjust as necessary the price a telecommunications utility may charge for basic telephone service.

(b) The provisions of this subsection do not apply to the basic telephone service provided by a telecommunications utility described in ORS 759.040.

[(4)(a)] (3)(a) The commission shall establish a benchmark for basic telephone service as necessary for the administration and distribution of the universal service fund. The universal service fund shall provide explicit support to an eligible telecommunications carrier that is equal to the difference between the cost of providing basic telephone service and the benchmark, less any explicit compensation received by the telecommunications carrier from federal sources specifically used to recover local loop costs and less any explicit support received by the telecommunications carrier from a federal universal service program.

(b) The commission shall periodically review the benchmark established under paragraph (a) of this subsection and adjust the benchmark as necessary to reflect:

(A) Changes in competition in the telecommunications industry;

(B) Changes in federal universal service support; and

(C) Other relevant factors as determined by the commission.

(c) Except for a telecommunications utility described in ORS 759.040, the commission shall seek to limit the difference between the price a telecommunications utility may charge for basic telephone service and the benchmark.

[(5) There is imposed on the sale of all retail telecommunications services sold in this state a universal service surcharge.]

(4)(a) There is imposed a universal service surcharge on the sale in this state of all:

(A) Retail telecommunications services;

(B) Retail commercial mobile radio services; and

(C) Retail interconnected voice over internet protocol services.

(b) A retail commercial mobile radio service provider shall identify the intrastate revenues subject to the universal service surcharge based on the inverse of the percentage of interstate revenues utilized for purposes of federal universal service contributions or based on any other method approved by the Public Utility Commission. A retail commercial mobile radio service provider may rely upon the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (P.L. 106-252) to identify revenues attributable to Oregon.

(c) A retail interconnected voice over internet protocol service provider may identify, in accordance with federal guidelines, the intrastate revenues subject to the universal service surcharge based on any one of the following:

(A) The inverse of the interstate safe harbor percentage established by the Federal Communications Commission for interconnected voice over internet protocol service for

federal universal service contribution purposes, as the interstate safe harbor percentage may be revised from time to time;

(B) A traffic study specific to the interconnected voice over internet protocol service provider that allocates revenues between federal and state jurisdictions; or

(C) Another methodology for accurately apportioning interconnected voice over internet protocol service revenues between federal and state jurisdictions.

(d) For any service provider subject to the universal service surcharge that provides, to multiple locations, shared simultaneous voice channel capacity configured to provide local dial in different states, the revenue subject to the surcharge shall be only the portion of the shared capacity in this state as identified:

(A) By information itemizing, on the billing statements provided to customers, the charges subject to the surcharge, as may be identified by individual end-user location, the total number of end users and the number of end users at each end-user location; or

(B) If information described in subparagraph (A) of this paragraph does not exist, by the service provider's billing system books and records.

(e) Unless otherwise provided by the Public Utility Commission by rule, the universal service surcharge must be a uniform percentage of the sale of [retail telecommunications] services **subject to the surcharge in an amount sufficient to support the purposes of the universal service fund established under subsection [(2)] (1) of this section, provided that the percentage does not exceed [8.5] **six** percent of the sale of [retail telecommunications] services **subject to the surcharge**.**

(f) The universal service surcharge may be listed by a telecommunications carrier as a separate line item in billing statements provided to customers [by all telecommunications carriers], as prescribed by the commission by rule or order. The commission may not prescribe whether, or the manner by which, a commercial mobile radio services provider or an interconnected voice over internet protocol services provider may list the surcharge in billing statements provided to customers.

(g) A [telecommunications carrier] service provider required to collect the universal service surcharge shall:

(A) Transmit amounts collected pursuant to this section to the commission in accordance with a schedule adopted by the commission; and

(B) Provide the commission with information requested by the commission as necessary for the commission to implement this section.

(5) The commission shall deposit moneys transmitted to the commission pursuant to [this subsection] subsection (4) of this section in the universal service fund established under subsection [(2)] (1) of this section.

(6) The universal service fund established under subsection [(2)] (1) of this section is separate and distinct from the General Fund. The universal service fund shall consist of all universal service surcharge moneys collected by [telecommunications carriers] service providers required to collect the surcharge and transmitted to the commission for deposit in the universal service fund. The universal service fund may be used only for the purposes described in this section and for payment of expenses incurred by the commission or a third party appointed by the commission to administer this section. All moneys in the universal service fund are continuously appropriated to the commission to carry out the provisions of this section. Interest on moneys deposited in the universal service fund shall accrue to the universal service fund.

[(7) A person that primarily provides radio communications service, radio paging service, commercial mobile radio service, personal communications service or cellular communications service may request designation as an eligible telecommunications carrier by the commission for purposes of this section if the person imposes the universal service surcharge described in subsection (5) of this section and transmits the moneys collected to the commission for deposit in the universal service fund established under subsection (2) of this section for at least one year immediately prior to requesting the designation.]

[8] (7) A pay telephone provider may apply to the commission, on a form developed by the commission, for a refund of the universal service surcharge imposed on the pay telephone provider under subsection [(5)] (4) of this section for the provision of pay telephone service.

(8) Nothing in this section is intended to grant the commission the authority to impose any requirement or condition, or to exercise any regulatory authority, with respect to commercial mobile radio services or interconnected voice over internet protocol services other than as expressly provided for in this section.

SECTION 3. ORS 759.425, as amended by section 2 of this 2020 special session Act, is amended to read:

759.425. (1)(a) The Public Utility Commission shall establish and implement a competitively neutral and nondiscriminatory universal service fund. The commission shall[:]

[(A)] use the universal service fund to ensure basic telephone service is available at a reasonable and affordable rate.[: and]

[(B) *Transfer from the universal service fund to the Oregon Business Development Department for deposit in the Broadband Fund established under section 4 of this 2020 special session Act an amount per year that is equal to the lesser of:*

[(i) \$5 million; or]

[(ii) The remainder of moneys deposited in the universal service fund that are unobligated after making the designation required in paragraph (b) of this subsection.]

(b) The commission shall designate the amount of moneys deposited annually in the universal service fund to be used to ensure basic telephone service. The amount designated under this paragraph may not exceed \$28 million per year.

(c) The commission may:

(A) Adopt rules to conform the universal service fund to section 254 of the federal Telecommunications Act of 1996 (P.L. 104-104), and to related regulations adopted by the Federal Communications Commission, to the extent that the Public Utility Commission determines conforming the rules is appropriate; and

(B) In addition to using the universal service fund to ensure basic telephone service, use the universal service fund to encourage broadband service availability and to provide support to telecommunications carriers that provide both basic telephone service and broadband service.

(2)(a) The commission shall establish the price a telecommunications utility may charge its customers for basic telephone service. The commission shall periodically review and evaluate the status of telecommunications services in the state and designate the services included in basic telephone service. The commission shall periodically review and adjust as necessary the price a telecommunications utility may charge for basic telephone service.

(b) The provisions of this subsection do not apply to the basic telephone service provided by a telecommunications utility described in ORS 759.040.

(3)(a) The commission shall establish a benchmark for basic telephone service as necessary for the administration and distribution of the universal service fund. The universal service fund shall provide explicit support to an eligible telecommunications carrier that is equal to the difference between the cost of providing basic telephone service and the benchmark, less any explicit compensation received by the telecommunications carrier from federal sources specifically used to recover local loop costs and less any explicit support received by the telecommunications carrier from a federal universal service program.

(b) The commission shall periodically review the benchmark established under paragraph (a) of this subsection and adjust the benchmark as necessary to reflect:

(A) Changes in competition in the telecommunications industry;

(B) Changes in federal universal service support; and

(C) Other relevant factors as determined by the commission.

(c) Except for a telecommunications utility described in ORS 759.040, the commission shall seek to limit the difference between the price a telecommunications utility may charge for basic telephone service and the benchmark.

(4)(a) There is imposed a universal service surcharge on the sale in this state of all:

- (A) Retail telecommunications services;
- (B) Retail commercial mobile radio services; and
- (C) Retail interconnected voice over internet protocol services.

(b) A retail commercial mobile radio service provider shall identify the intrastate revenues subject to the universal service surcharge based on the inverse of the percentage of interstate revenues utilized for purposes of federal universal service contributions or based on any other method approved by the Public Utility Commission. A retail commercial mobile radio service provider may rely upon the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (P.L. 106-252) to identify revenues attributable to Oregon.

(c) A retail interconnected voice over internet protocol service provider may identify, in accordance with federal guidelines, the intrastate revenues subject to the universal service surcharge based on any one of the following:

(A) The inverse of the interstate safe harbor percentage established by the Federal Communications Commission for interconnected voice over internet protocol service for federal universal service contribution purposes, as the interstate safe harbor percentage may be revised from time to time;

(B) A traffic study specific to the interconnected voice over internet protocol service provider that allocates revenues between federal and state jurisdictions; or

(C) Another methodology for accurately apportioning interconnected voice over internet protocol service revenues between federal and state jurisdictions.

(d) For any service provider subject to the universal service surcharge that provides, to multiple locations, shared simultaneous voice channel capacity configured to provide local dial in different states, the revenue subject to the surcharge shall be only the portion of the shared capacity in this state as identified:

(A) By information itemizing, on the billing statements provided to customers, the charges subject to the surcharge, as may be identified by individual end-user location, the total number of end users and the number of end users at each end-user location; or

(B) If information described in subparagraph (A) of this paragraph does not exist, by the service provider's billing system books and records.

(e) Unless otherwise provided by the Public Utility Commission by rule, the universal service surcharge must be a uniform percentage of the sale of services subject to the surcharge in an amount sufficient to support the purposes of the universal service fund established under subsection (1) of this section, provided that the percentage does not exceed six percent of the sale of services subject to the surcharge.

(f) The universal service surcharge may be listed by a telecommunications carrier as a separate line item in billing statements provided to customers, as prescribed by the commission by rule or order. The commission may not prescribe whether, or the manner by which, a commercial mobile radio services provider or an interconnected voice over internet protocol services provider may list the surcharge in billing statements provided to customers.

(g) A service provider required to collect the universal service surcharge shall:

(A) Transmit amounts collected pursuant to this section to the commission in accordance with a schedule adopted by the commission; and

(B) Provide the commission with information requested by the commission as necessary for the commission to implement this section.

(5) The commission shall deposit moneys transmitted to the commission pursuant to subsection (4) of this section in the universal service fund established under subsection (1) of this section.

(6) The universal service fund established under subsection (1) of this section is separate and distinct from the General Fund. The universal service fund shall consist of all universal service surcharge moneys collected by service providers required to collect the surcharge and transmitted to the commission for deposit in the universal service fund. The universal service fund may be used only for the purposes described in this section and for payment of expenses incurred by the com-

mission or a third party appointed by the commission to administer this section. All moneys in the universal service fund are continuously appropriated to the commission to carry out the provisions of this section. Interest on moneys deposited in the universal service fund shall accrue to the universal service fund.

(7) A pay telephone provider may apply to the commission, on a form developed by the commission, for a refund of the universal service surcharge imposed on the pay telephone provider under subsection (4) of this section for the provision of pay telephone service.

(8) Nothing in this section is intended to grant the commission the authority to impose any requirement or condition, or to exercise any regulatory authority, with respect to commercial mobile radio services or interconnected voice over internet protocol services other than as expressly provided for in this section.

SECTION 4. The Broadband Fund is established, separate and distinct from the General Fund. Interest earned by the Broadband Fund shall be credited to the fund. Moneys in the Broadband Fund are continuously appropriated to the Oregon Business Development Department to be used only for providing grants or loans through, or for administering, the Oregon Broadband Office and the program established by rule under section 5 of this 2020 special session Act. The fund shall consist of moneys deposited in the fund pursuant to ORS 759.425.

SECTION 5. (1) As used in this section:

(a) "Underserved area" means, based on the most recent broadband deployment data published by the Federal Communications Commission, other federal agencies or the State of Oregon, a geographic area within one or more census blocks, within which there is no service provider offering residential wireline or wireless broadband service at a speed of at least 25 megabits per second for downloads and three megabits per second for uploads.

(b) "Unserved area" means, based on the most recent broadband deployment data published by the Federal Communications Commission, other federal agencies or the State of Oregon, a geographic area within one or more census blocks, within which there is no service provider offering residential wireline or wireless broadband service at a speed of at least 10 megabits per second for downloads and one megabit per second for uploads.

(2)(a) The Oregon Business Development Department shall establish by rule a program for providing grants or loans to assist eligible applicants with projects for:

- (A) The planning and development of broadband service infrastructure;
- (B) Digital literacy including cybersecurity;
- (C) Digital inclusion; and
- (D) Digital adoption.

(b) In establishing the program required by this section, the department shall take into consideration all federal funding opportunities for the planning and development of broadband service infrastructure and shall endeavor to administer the program in a manner that serves to maximize the total available state and federal support for broadband development and related planning.

(3) Rules adopted under this section shall include but need not be limited to rules establishing:

(a) Criteria for applications and for establishing the eligibility of applicants and proposed projects for a grant or loan under the program;

(b) A process for:

(A) Identifying broadband service providers that provide service within or near the geographic area that would be benefited by a project proposed by an eligible applicant; and

(B) Notifying the identified broadband service providers of the pending application;

(c) Standards for the department to evaluate applications from eligible applicants;

(d) Criteria and procedures for broadband service providers to engage in a competitive bidding process for contracts to complete projects pursuant to a grant or loan awarded under the program;

(e) Reporting requirements by grant or loan award recipients on the broadband service infrastructure developed or planned for using grant or loan moneys and the locations served or that will be served by the broadband service infrastructure;

(f) A public process for interested persons to submit comments on pending applications;

(g) A process for appealing grant or loan decisions by the department; and

(h) Procedures to ensure that any records or data submitted to the department pursuant to administration of the program that relate to broadband, voice connections or subscriptions and that are confidential, privileged or otherwise protected from disclosure are not disclosed, except as permitted by state and federal law.

(4) In making broadband service infrastructure grant or loan award decisions under the program, the department shall apply the following preferences:

(a) Regarding the geographic area that a proposed project will serve, the department shall:

(A) Give first preference to proposed projects that will serve unserved areas; and

(B) Give second preference to proposed projects that will serve underserved areas.

(b) Regarding the customers that a proposed project will serve, the department shall:

(A) Give first preference to proposed projects that are eligible to receive funds from the Connecting Oregon Schools Fund established under ORS 276A.424;

(B) Give second preference to proposed projects that will provide broadband service access to public libraries; and

(C) Give third preference to proposed projects that will provide broadband service access to residential customers.

(5) The department shall, as part of the program, establish procedures for distributing grant or loan funds awarded for the purpose of providing broadband access to schools. Procedures established under this subsection shall include procedures for transferring not more than 20 percent of the moneys deposited in the Broadband Fund established under section 4 of this 2020 special session Act each biennium from the Broadband Fund to the Connecting Oregon Schools Fund established under ORS 276A.424.

(6) The department may not award a grant or loan under the program for a proposed project to:

(a) Develop broadband service infrastructure to serve residential locations that, at the time the application for the proposed project is received by the department, have access to terrestrial wireline or wireless broadband service at a speed of at least 25 megabits per second for downloads and three megabits per second for uploads; or

(b) Develop broadband service infrastructure that will serve two or fewer residential locations.

(7)(a) If the department awards a grant or loan for a proposed project to develop broadband service infrastructure that will serve nonresidential locations that, at the time the application for the proposed project was received by the department, were served by terrestrial wireline or wireless broadband service at a speed of at least 25 megabits per second for downloads and three megabits per second for uploads, the broadband service providers identified pursuant to rules adopted under subsection (3)(b) of this section shall be afforded a right of first refusal to contract for the development of broadband service infrastructure as part of the project. If a broadband service provider exercises the right of first refusal, the provider shall be awarded the contract to develop broadband service infrastructure as part of the project, subject to the requirement that the provider must offer access to the completed broadband service infrastructure:

(A) Beginning no later than one year after the date that the department awards the grant or loan to develop the proposed project;

(B) At demonstrated download and upload speeds equal to or faster than the speeds indicated in the application for the proposed project; and

(C) At a cost that is equal to or less than the cost indicated in the application for the proposed project.

(b) This subsection does not apply to a grant or loan award for a proposed project described in subsection (4)(b) of this section.

SECTION 6. (1) Not later than September 15 of each year, the Oregon Business Development Department shall report, in the manner provided in ORS 192.245, to an interim committee of the Legislative Assembly related to telecommunications on the status of the Broadband Fund established under section 4 of this 2020 special session Act. The report required by this section shall include a description of:

(a) All loans and grants provided through the program adopted under section 5 of this 2020 special session Act; and

(b) The status of the projects funded by the loans and grants.

(2) In addition to the information required in the report under subsection (1) of this section, the report submitted on or before September 15, 2024, by the department pursuant to this section shall include an evaluation of the continuing need for the Broadband Fund, including but not limited to recommendations regarding the repeal, by section 9 of this 2020 special session Act, of the Broadband Fund and the program adopted under section 5 of this 2020 special session Act.

SECTION 7. Notwithstanding the amount provided for in ORS 759.425 (1)(b) and the percentage provided for in ORS 759.425 (4)(e), until December 31, 2021, the amount of moneys deposited annually in the universal service fund to be used to ensure basic telephone service shall be as provided for in Appendix A to Public Utility Commission Order No. 16-093, as corrected by Public Utility Commission Order No. 16-102.

SECTION 8. ORS 285A.160 is amended to read:

285A.160. The Oregon Broadband Advisory Council, in consultation with the Oregon Broadband Office, shall submit a report by November 1 of each even-numbered year to the Joint Legislative Committee on Information Management and Technology on the following subjects:

(1) The affordability and accessibility of broadband technology in all areas of this state;

(2) The extent of broadband technology use in this state in business, health care, energy management, education and government; and

(3) The role of broadband technology in local, state and regional economies and economic development.

SECTION 9. (1) Sections 4, 5 and 6 of this 2020 special session Act are repealed on January 2, 2030.

(2) Any moneys in the Broadband Fund established under section 4 of this 2020 special session Act that are unexpended and unobligated on January 2, 2030, revert to the universal service fund established under ORS 759.425.

SECTION 10. The amendments to ORS 759.425 by section 3 of this 2020 special session Act become operative on January 2, 2030.

SECTION 11. (1) Sections 4 to 7 of this 2020 special session Act and the amendments to ORS 285A.160, 759.400 and 759.425 by sections 1, 2 and 8 of this 2020 special session Act become operative on January 1, 2021.

(2) The Public Utility Commission and the Oregon Business Development Department may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the commission and the department to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the commission and the department by sections 4 to 7 of this 2020 special session Act and the amendments to ORS 285A.160, 759.400 and 759.425 by sections 1, 2 and 8 of this 2020 special session Act.

SECTION 12. This 2020 special session Act takes effect on the 91st day after the date on which the 2020 special session of the Eightieth Legislative Assembly adjourns sine die.

Passed by Senate June 26, 2020

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House June 26, 2020

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2020

Approved:

.....M,....., 2020

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2020

.....
Bev Clarno, Secretary of State