

House Bill 2200

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows Public Utility Commission to modify method of collecting universal service charge to reflect potential future changes in federal policy and changing technology. Allows additional telecommunications carriers to receive support from fund if carriers meet certain conditions. Requires communications carriers receiving support from fund to provide broadband service after 2015.

Directs Public Utility Commission to prepare plan to phase out universal service fund and replace it with broadband access program and submit plan to Legislative Assembly.

A BILL FOR AN ACT

1
2 Relating to universal service fund; creating new provisions; and amending ORS 759.400 and 759.425.

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

4 **SECTION 1.** ORS 759.400 is amended to read:

5 759.400. As used in ORS 759.400 to 759.455:

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

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

12 (3) "Telecommunications carrier" means any provider of retail telecommunications services, ex-
13 cept a call aggregator as defined in ORS 759.690. **"Telecommunications carrier" includes carriers
14 providing telecommunications services or the equivalent by any form of technology as
15 the Public Utility Commission may determine.**

16 **SECTION 2.** ORS 759.425 is amended to read:

17 759.425. (1) The Public Utility Commission shall establish and implement a competitively neutral
18 and nondiscriminatory universal service fund. Subject to subsection (6) of this section, the commis-
19 sion shall use the universal service fund to ensure basic telephone service is available at a reason-
20 able and affordable rate. The Public Utility Commission may adopt rules to conform the universal
21 service fund to section 254 of the federal Telecommunications Act of 1996 (Public Law 104-104), and
22 to related rules adopted by the Federal Communications Commission, to the extent that the Public
23 Utility Commission determines is appropriate. [*The commission may delay implementation for rural
24 telecommunications carriers, as defined in the federal Act, for up to six months after the date the
25 Federal Communications Commission adopts a cost methodology for rural carriers.*]

26 (2)(a) The Public Utility Commission shall establish the price a telecommunications utility may
27 charge its customers for basic telephone service. The commission in its discretion shall periodically
28 review and evaluate the status of telecommunications services in the state and designate the ser-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 vices included in basic telephone service. The commission in its discretion shall periodically review
2 and adjust as necessary the price a telecommunications utility may charge for basic telephone ser-
3 vice.

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

6 (3)(a) The Public Utility Commission shall establish a benchmark for basic telephone service as
7 necessary for the administration and distribution of the universal service fund. The universal service
8 fund shall provide explicit support to an eligible telecommunications carrier that is equal to the
9 difference between the cost of providing basic telephone service and the benchmark, less any ex-
10 plicit compensation received by the carrier from federal sources specifically targeted to recovery
11 of local loop costs and less any explicit support received by the carrier from a federal universal
12 service program.

13 (b) The commission in its discretion shall periodically review the benchmark and adjust it as
14 necessary to reflect:

15 (A) Changes in competition in the telecommunications industry;

16 (B) Changes in federal universal service support; and

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

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

21 (4)(a) *[Except as provided in subsections (7) and (8) of this section,]* There is imposed on the sale
22 of all retail telecommunications services sold in this state a universal service surcharge. Unless
23 otherwise provided by the Public Utility Commission by rule, the surcharge shall be a uniform per-
24 centage of the sale of retail telecommunications services in an amount sufficient to support the
25 purpose of the universal service fund. The surcharge may be shown as a separate line item by all
26 telecommunications carriers using language prescribed by the commission. A telecommunications
27 carrier shall deposit amounts collected into the universal service fund according to a schedule
28 adopted by the commission.

29 **(b) The Public Utility Commission may modify the provisions of paragraph (a) of this**
30 **subsection to be consistent with a methodology for collecting a universal service surcharge**
31 **or its equivalent adopted by the Federal Communications Commission to the extent the**
32 **Public Utility Commission determines is appropriate.**

33 (5) The Public Utility Commission is authorized to establish a universal service fund, separate
34 and distinct from the General Fund. The fund *[shall consist]* **consists** of all universal service sur-
35 charge moneys collected by telecommunications carriers and paid into the fund. The fund *[shall]*
36 **may** be used only for the purpose described in this section, and for payment of expenses incurred
37 by the commission or a third party appointed by the commission to administer this section. All
38 moneys in the fund are continuously appropriated to the commission to carry out the provisions of
39 this section. Interest on moneys deposited in the fund shall accrue to the fund.

40 (6) In addition to the purpose specified in subsection (1) of this section, moneys in the universal
41 service fund may be used by the Public Utility Commission to facilitate the availability of broadband
42 at fair and reasonable rates throughout this state. The amount of moneys in the universal service
43 fund used for this purpose may not exceed the amount the state is required to expend to receive the
44 maximum amount of funds available from federal sources for broadband services. If in-kind services
45 are allowed for a state's share of a mapping project, the state shall use in-kind services before ex-

1 pending universal service funds. The commission may use an independent contractor to perform
2 mapping services.

3 [(7) For purposes of this section, "retail telecommunications service" does not include radio com-
4 munications service, radio paging service, commercial mobile radio service, personal communications
5 service or cellular communications service.]

6 [(8)(a) Notwithstanding subsection (7) of this section, a person who primarily provides radio com-
7 munications service, radio paging service, commercial mobile radio service, personal communications
8 service or cellular communications service may request designation as an eligible telecommunications
9 carrier by the Public Utility Commission for purposes of participation in the universal service fund.]

10 [(b) In the event a person who primarily provides radio communications service, radio paging ser-
11 vice, commercial mobile radio service, personal communications service or cellular communications
12 service seeks designation as an eligible telecommunications carrier for purposes of participation in the
13 universal service fund, the person shall provide written notice to the Public Utility Commission re-
14 questing designation as an eligible telecommunications carrier within 60 days of the date the commis-
15 sion establishes the fund. Upon receiving notice, the commission may designate the person as an eligible
16 telecommunications carrier for purposes of participation in the fund.]

17 [(c) A person who primarily provides radio communications service, radio paging service, com-
18 mercial mobile radio service, personal communications service or cellular communications service who
19 fails to request designation as an eligible telecommunications carrier within 60 days of the date the
20 universal service fund is established by the Public Utility Commission may not be designated as an
21 eligible telecommunications carrier unless the person has contributed to the fund for at least one year
22 immediately prior to requesting designation.]

23 [(9) A pay telephone provider may apply to the Public Utility Commission, on a form developed by
24 the commission, for a refund of the universal service surcharge imposed on the provider under sub-
25 section (4) of this section for the provision of pay telephone service.]

26 **(7) In addition to other jurisdiction the Public Utility Commission may have, the com-
27 mission has jurisdiction over all telecommunications carriers for the following purposes:**

28 **(a) Assessment, payment and collection of fees under subsection (4) of this section.**

29 **(b) Reports related to the fees imposed under subsection (4) of this section, and review
30 of the accuracy of the required reports. The commission may prescribe the form and content
31 of the reports by rule.**

32 **(c) Enforcement of fee payment obligations.**

33 **(d) Reports on the use of funds distributed to eligible telecommunications carriers.**

34 **(8)(a) Incumbent local exchange carriers shall file a plan to reduce the composite level
35 of their tariffed intrastate switched minute of use access rates to the composite level of their
36 tariffed interstate switched minute of use access rates over not more than four years. Incumbent local exchange carriers are eligible for support from the universal service fund to reduce the composite level of their tariffed intrastate switched minute of use access rates under standards established by the Public Utility Commission. As part of the standards, the commission shall establish a benchmark for local service, including extended area service. The plan filed by the incumbent local exchange carrier is due 90 days following the adoption of the standards by the commission and may include provisions to move local service rates up to the benchmark established by the commission or to impute such revenues for universal support purposes without increasing rates. The commission must review the plan and approve or reject the plan within 90 days after the plan is filed. A decision by the commission**

1 to reject the plan may occur only after the commission has held a public hearing pursuant
 2 to ORS 756.500 to 756.610.

3 (b) Support from the universal service fund provided under this subsection is in addition
 4 to support provided under subsection (3) of this section.

5 (9) To continue receiving funds from the universal service fund after December 31, 2015,
 6 a telecommunications carrier must offer, or submit a plan approved by the Public Utility
 7 Commission to offer, broadband service through its own facilities or in conjunction with an-
 8 other provider to at least 90 percent of the households in the area for which it is designated
 9 as an eligible telecommunications carrier.

10 (10)(a) Except as allowed in subsection (8) of this section, the Public Utility Commission
 11 may not designate more than one facility-based telecommunications carrier and one radio
 12 common carrier for an area as eligible for support from the universal service fund, and may
 13 choose not to designate any facility-based telecommunications carrier or radio common
 14 carrier for an area as eligible for support from the universal service fund.

15 (b) In making eligibility designations, the commission shall require each designated tele-
 16 communications carrier, consistent with the commission's adopted line extension require-
 17 ments, to serve all persons requesting basic telephone service within the geographical area
 18 assigned to the designated telecommunications carrier. If a telecommunications carrier that
 19 is not an incumbent local exchange carrier is designated, then that carrier:

20 (A) Must be designated for the same geographical area as served by the incumbent local
 21 exchange carrier, which may not be less than an entire exchange served by the local
 22 incumbent exchange carrier;

23 (B) Must have its support from the universal service fund calculated based upon its own
 24 cost of service determined under a cost methodology established by the commission;

25 (C) May not receive support from the universal service fund for any area for which the
 26 incumbent local exchange carrier would not receive support from the fund because of the
 27 incumbent local exchange carrier's cost to service the area; and

28 (D) Must be legally able to agree and must agree to be subject to the commission's ju-
 29 risdiction for the rates, charges and conditions for basic telephone service provided by the
 30 carrier to its customers in the area designated for support.

31 (11) The Public Utility Commission shall periodically review telecommunications carriers
 32 that receive support from the universal service fund to ensure that the carriers are using
 33 that support to provide communications services consistent with the purposes of the pro-
 34 gram. The costs of the review must be commensurate with the intended scope and benefit
 35 of the review.

36 **SECTION 3.** (1) Prior to October 1, 2013, the Public Utility Commission shall adopt a plan
 37 to phase out current support for the universal service fund as provided by ORS 759.425 and
 38 replace the universal service fund with a new fund that supports the construction, operation
 39 and maintenance of networks that provide access to broadband service and establishes car-
 40 rier of last resort obligations for the new fund.

41 (2) The Public Utility Commission must submit the plan to the Legislative Assembly,
 42 along with any recommendations for legislative changes to the universal service fund pro-
 43 gram, in the manner provided by ORS 192.245 on or before October 1, 2013.

44 **SECTION 4.** Section 3 of this 2011 Act is repealed on January 2, 2015.