

A-Engrossed
House Bill 2184

Ordered by the House March 13
Including House Amendments dated March 13

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Economic Development and Trade)

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.

[Expands definition of "retail telecommunications service"] **Modifies definitions applicable** for purposes of universal service surcharge. *[Authorizes Public Utility Commission to subject sale of communications and broadband services other than retail telecommunication services]* **Subjects sale of retail commercial mobile radio services and retail interconnected voice over internet protocol services** to universal service surcharge. **Reduces rate cap to seven percent of sale of services subject to surcharge.**

Directs **Public Utility** Commission to transfer **up to \$10 million per year of** moneys deposited in universal service fund *[that are to be used for encouraging broadband service availability]* to Broadband Fund. Establishes Broadband Fund. Continuously appropriates moneys in Broadband Fund to Oregon Business Development Department to provide grants and loans under program for assisting qualified entities with projects for development of *[open access]* broadband service **infrastructure**. Directs department to adopt program for providing grants and loans by rule. **Directs department to report annually to interim committee of Legislative Assembly related to telecommunications on status of Broadband Fund.**

Sunset Broadband Fund, transfer of moneys from universal service fund to Broadband Fund and grant program January 2, 2030.

Becomes operative January 1, 2020.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the universal service fund; creating new provisions; amending ORS 759.400 and 759.425;
3 and declaring an emergency.

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

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

6 759.400. As used in ORS 759.400 to 759.455:

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

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

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

12 [(2)] (4) "Retail telecommunications service" means a telecommunications service provided for
13 a fee to customers. "Retail telecommunications service" does not include a service provided by one
14 telecommunications carrier to another telecommunications carrier, unless the carrier receiving the
15 service is the end user of the service.

16 [(3)] (5) "Telecommunications carrier" means any provider of retail telecommunications services,
17 except a call aggregator as defined in ORS 759.680.

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

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.

1 759.425. [(1) For purposes of this section, “retail telecommunications service” does not include radio
2 communications service, radio paging service, commercial mobile radio service, personal communi-
3 cations service or cellular communications service.]

4 [(2)(a)] (1)(a) The Public Utility Commission shall establish and implement a competitively neu-
5 tral and nondiscriminatory universal service fund. [Except as provided in paragraph (b) of this sub-
6 section,] The [Public Utility] commission shall:

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

9 (B) **Transfer from the universal service fund to the Oregon Business Development De-**
10 **partment for deposit in the Broadband Fund established under section 4 of this 2019 Act an**
11 **amount per year that is equal to the lesser of:**

12 (i) \$10 million; or

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

15 (b) **The commission shall designate the amount of moneys deposited annually in the uni-**
16 **versal service fund to be used to ensure basic telephone service. The amount designated**
17 **under this paragraph may not exceed \$30 million per year.**

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

19 (A) Adopt rules to conform the universal service fund to section 254 of the federal Telecommu-
20 nications Act of 1996 [(Public Law 104-104)] (P.L. 104-104), and to related regulations adopted by
21 the Federal Communications Commission, to the extent that the Public Utility Commission deter-
22 mines conforming the rules is appropriate[.]; and

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

27 [(3)(a)] (2)(a) The [Public Utility] commission shall establish the price a telecommunications
28 utility may charge its customers for basic telephone service. The commission shall periodically re-
29 view and evaluate the status of telecommunications services in the state and designate the services
30 included in basic telephone service. The commission shall periodically review and adjust as neces-
31 sary the price a telecommunications utility may charge for basic telephone service.

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

34 [(4)(a)] (3)(a) The commission shall establish a benchmark for basic telephone service as neces-
35 sary for the administration and distribution of the universal service fund. The universal service fund
36 shall provide explicit support to an eligible telecommunications carrier that is equal to the differ-
37 ence between the cost of providing basic telephone service and the benchmark, less any explicit
38 compensation received by the telecommunications carrier from federal sources specifically used to
39 recover local loop costs and less any explicit support received by the telecommunications carrier
40 from a federal universal service program.

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

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

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

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

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

4 [(5)] (4)(a) [There is imposed on the sale of all retail telecommunications services sold in this state
5 a universal service surcharge.] **There is imposed a universal service surcharge on the sale in
6 this state of all:**

7 (A) **Retail telecommunications services;**

8 (B) **Retail commercial mobile radio services; and**

9 (C) **Retail interconnected voice over internet protocol services.**

10 (b) **A retail commercial mobile radio service provider may rely upon the sourcing rules
11 set forth in the Mobile Telecommunications Sourcing Act (P.L. 106-252) to identify the
12 intrastate revenues subject to the universal service surcharge.**

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

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

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

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

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

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

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

33 (e) **Unless otherwise provided by the Public Utility Commission by rule, the universal service
34 surcharge must be a uniform percentage of the sale of [retail telecommunications] services subject
35 to the surcharge in an amount sufficient to support the purposes of the universal service fund es-
36 tablished under subsection [(2)] (1) of this section, provided that the percentage does not exceed
37 [8.5] seven percent of the sale of [retail telecommunications] services subject to the surcharge.**

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

44 (g) **A [telecommunications carrier] service provider required to collect the universal service
45 surcharge shall transmit amounts collected pursuant to this section to the commission in accord-**

1 ance with a schedule adopted by the commission. The commission shall deposit moneys transmitted
 2 to the commission pursuant to this subsection in the universal service fund established under sub-
 3 section [(2)] (1) of this section.

4 [(6)] (5) The universal service fund established under subsection [(2)] (1) of this section is sepa-
 5 rate and distinct from the General Fund. The universal service fund shall consist of all universal
 6 service surcharge moneys collected by [*telecommunications carriers*] **service providers required to**
 7 **collect the surcharge** and transmitted to the commission for deposit in the universal service fund.
 8 The universal service fund may be used only for the purposes described in this section and for
 9 payment of expenses incurred by the commission or a third party appointed by the commission to
 10 administer this section. All moneys in the universal service fund are continuously appropriated to
 11 the commission to carry out the provisions of this section. Interest on moneys deposited in the
 12 universal service fund shall accrue to the universal service fund.

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

20 [(8)] (6) A pay telephone provider may apply to the commission, on a form developed by the
 21 commission, for a refund of the universal service surcharge imposed on the pay telephone provider
 22 under subsection [(5)] (4) of this section for the provision of pay telephone service.

23 (7) **Nothing in the section is intended to grant the commission the authority to impose**
 24 **any requirement or condition, or to exercise any regulatory authority, with respect to com-**
 25 **mercial mobile radio services or interconnected voice over internet protocol services other**
 26 **than as expressly provided for in this section.**

27 **SECTION 3.** ORS 759.425, as amended by section 2 of this 2019 Act, is amended to read:

28 759.425. (1)(a) The Public Utility Commission shall establish and implement a competitively
 29 neutral and nondiscriminatory universal service fund. The commission shall[:]

30 [(A)] use the universal service fund to ensure basic telephone service is available at a reason-
 31 able and affordable rate; *and*].

32 [(B) *Transfer from the universal service fund to the Oregon Business Development Department for*
 33 *deposit in the Broadband Fund established under section 4 of this 2019 Act an amount per year that*
 34 *is equal to the lesser of:*]

35 [(i) *\$10 million; or*]

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

38 (b) The commission shall designate the amount of moneys deposited annually in the universal
 39 service fund to be used to ensure basic telephone service. The amount designated under this para-
 40 graph may not exceed \$30 million per year.

41 (c) The commission may:

42 (A) Adopt rules to conform the universal service fund to section 254 of the federal Telecommu-
 43 nications Act of 1996 (P.L. 104-104), and to related regulations adopted by the Federal Communi-
 44 cations Commission, to the extent that the Public Utility Commission determines conforming the
 45 rules is appropriate; and

1 (B) In addition to using the universal service fund to ensure basic telephone service, use the
2 universal service fund to encourage broadband service availability and to provide support to tele-
3 communications carriers that provide both basic telephone service and broadband service.

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

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

11 (3)(a) The commission shall establish a benchmark for basic telephone service as necessary for
12 the administration and distribution of the universal service fund. The universal service fund shall
13 provide explicit support to an eligible telecommunications carrier that is equal to the difference
14 between the cost of providing basic telephone service and the benchmark, less any explicit com-
15 pensation received by the telecommunications carrier from federal sources specifically used to re-
16 cover local loop costs and less any explicit support received by the telecommunications carrier from
17 a federal universal service program.

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

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

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

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

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

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

27 (A) Retail telecommunications services;

28 (B) Retail commercial mobile radio services; and

29 (C) Retail interconnected voice over internet protocol services.

30 (b) A retail commercial mobile radio service provider may rely upon the sourcing rules set forth
31 in the Mobile Telecommunications Sourcing Act (P.L. 106-252) to identify the intrastate revenues
32 subject to the universal service surcharge.

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

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

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

42 (C) Another methodology for accurately apportioning interconnected voice over internet proto-
43 col service revenues between federal and state jurisdictions.

44 (d) For any service provider subject to the universal service surcharge that provides, to multiple
45 locations, shared simultaneous voice channel capacity configured to provide local dial in different

1 states, the revenue subject to the surcharge shall be only the portion of the shared capacity in this
2 state as identified:

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

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

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

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

18 (g) A service provider required to collect the universal service surcharge shall transmit amounts
19 collected pursuant to this section to the commission in accordance with a schedule adopted by the
20 commission. The commission shall deposit moneys transmitted to the commission pursuant to this
21 subsection in the universal service fund established under subsection (1) of this section.

22 (5) The universal service fund established under subsection (1) of this section is separate and
23 distinct from the General Fund. The universal service fund shall consist of all universal service
24 surcharge moneys collected by service providers required to collect the surcharge and transmitted
25 to the commission for deposit in the universal service fund. The universal service fund may be used
26 only for the purposes described in this section and for payment of expenses incurred by the com-
27 mission or a third party appointed by the commission to administer this section. All moneys in the
28 universal service fund are continuously appropriated to the commission to carry out the provisions
29 of this section. Interest on moneys deposited in the universal service fund shall accrue to the uni-
30 versal service fund.

31 (6) A pay telephone provider may apply to the commission, on a form developed by the com-
32 mission, for a refund of the universal service surcharge imposed on the pay telephone provider under
33 subsection (4) of this section for the provision of pay telephone service.

34 (7) Nothing in the section is intended to grant the commission the authority to impose any re-
35 quirement or condition, or to exercise any regulatory authority, with respect to commercial mobile
36 radio services or interconnected voice over internet protocol services other than as expressly pro-
37 vided for in this section.

38 **SECTION 4. The Broadband Fund is established, separate and distinct from the General**
39 **Fund. Interest earned by the Broadband Fund shall be credited to the fund. Moneys in the**
40 **Broadband Fund are continuously appropriated to the Oregon Business Development De-**
41 **partment to be used only for providing grants or loans through the program adopted by rule**
42 **under section 5 of this 2019 Act. The fund shall consist of moneys deposited in the fund**
43 **pursuant to ORS 759.425.**

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

45 (a) "Underserved area" means, based on the most recent broadband deployment data

1 published by the Federal Communications Commission, other federal agencies or the State
2 of Oregon, a geographic area encompassing one or more census blocks, within which there
3 is no service provider offering residential wireline or wireless broadband service at a speed
4 of at least 25 megabits per second for downloads and three megabits per second for uploads.

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

10 (2) The Oregon Business Development Department shall establish by rule a program for
11 providing grants or loans to assist eligible applicants with projects for the development of
12 broadband service infrastructure. In establishing the program required by this section, the
13 department shall take into consideration all federal funding opportunities for the develop-
14 ment of broadband service infrastructure and shall endeavor to administer the program in
15 a manner that serves to maximize the total available state and federal support for broadband
16 development.

17 (3) Rules adopted under this section shall include but need not be limited to rules estab-
18 lishing:

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

21 (b) A process for:

22 (A) Identifying broadband service providers that provide service within or near the ge-
23 ographic area that would be benefitted by a project proposed by an eligible applicant; and

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

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

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

29 (e) Reporting requirements by grant or loan award recipients on the broadband service
30 infrastructure developed using grant or loan moneys and the locations served by the
31 broadband service infrastructure;

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

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

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

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

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

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

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

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

45 (A) Give first preference to proposed projects that will provide broadband service access

1 to schools; and

2 (B) Give second preference to proposed projects that will provide broadband service ac-
3 cess to residential customers.

4 (5) The department shall, as part of the program, establish procedures for distributing
5 grant or loan funds awarded for the purpose of providing broadband access to schools. Pro-
6 cedures established under this subsection may include procedures for transferring moneys
7 from the Broadband Fund to the Connecting Oregon Schools Fund established under section
8 3, chapter 51, Oregon Laws 2018.

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

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

15 (b) Develop broadband service infrastructure that will serve two or fewer residential lo-
16 cations.

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

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

30 (b) At demonstrated download and upload speeds equal to or faster than the speeds in-
31 dicated in the application for the proposed project; and

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

34 **SECTION 6.** (1) Not later than September 15 of each year, the Oregon Business Devel-
35 opment Department shall report, in the manner provided in ORS 192.245, to an interim
36 committee of the Legislative Assembly related to telecommunications on the status of the
37 Broadband Fund. The report required by this section shall include a description of all loans
38 and grants provided through the program adopted under section 5 of this 2019 Act, and the
39 status of broadband deployment in this state.

40 (2) In addition to the information required in the report under subsection (1) of this
41 section, the report submitted on or before September 15, 2024, by the department pursuant
42 to this section shall include an evaluation of the continuing need for the Broadband Fund,
43 including but not limited to recommendations regarding the repeal, under section 8 of this
44 2019 Act, of the Broadband Fund and the program adopted under section 5 of this 2019 Act.

45 **SECTION 7.** Notwithstanding the amount provided for in ORS 759.425 (1)(b) and the per-

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

5 **SECTION 8.** (1) Sections 4, 5 and 6 of this 2019 Act are repealed on January 2, 2030.

6 (2) Any moneys in the Broadband Fund that are unexpended and unobligated on January
7 2, 2030, revert to the universal service fund established under ORS 759.425.

8 **SECTION 9.** The amendments to ORS 759.425 by section 3 of this 2019 Act become oper-
9 ative on January 2, 2030.

10 **SECTION 10.** (1) Sections 4 to 7 of this 2019 Act and the amendments to ORS 759.400 and
11 759.425 by sections 1 and 2 of this 2019 Act become operative on January 1, 2020.

12 (2) The Public Utility Commission and the Oregon Business Development Department
13 may take any action before the operative date specified in subsection (1) of this section that
14 is necessary to enable the commission and the department to exercise, on and after the op-
15 erative date specified in subsection (1) of this section, all of the duties, functions and powers
16 conferred on the commission and the department by sections 4 to 7 of this 2019 Act and the
17 amendments to ORS 759.400 and 759.425 by sections 1 and 2 of this 2019 Act.

18 **SECTION 11.** This 2019 Act being necessary for the immediate preservation of the public
19 peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect
20 on its passage.