

**PREPAID WIRELESS TELECOMMUNICATIONS SERVICE**

**AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to prepaid wireless telecommunications service.

**Highlighted Provisions:**

This bill:

- defines terms;
- modifies the charge imposed by the Public Service Commission related to a prepaid wireless telecommunications service for support of the Universal Public Telecommunications Service Support Fund by:
  - establishing a formula for calculating the prepaid wireless telecommunications service charge;
  - granting the State Tax Commission authority to collect, enforce, and administer the charge; and
  - requiring the seller of a transaction involving a prepaid wireless telecommunications service to collect and remit the charge to the State Tax Commission; and
- makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**



This bill provides a special effective date.

**Utah Code Sections Affected:**

AMENDS:

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

ENACTS:

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

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

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

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

(1) For purposes of this section:

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

(b) "Carrier of last resort" means:

(i) an incumbent telephone corporation; or

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

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

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

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

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

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

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

(g) "Wholesale broadband Internet access service" means the end-user loop component  
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:

(i) access lines;

(ii) connections; or

(iii) broadband Internet access service.

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

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

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

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

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

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

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

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

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

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

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

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

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

Commission.

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

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

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

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

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

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

(i) each access line provider; and

(ii) each connection provider; and

(b) establish an explicit charge on each prepaid wireless telecommunications service, to be:

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

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

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

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

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

~~[(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.

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

(A) is paid for in advance; and

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

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

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

(B) in a manner that includes the charges levied under Sections [69-2-402](#), [69-2-403](#), 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



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

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

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

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

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

(i) Section 59-12-104;

(ii) Section 59-12-104.1;

(iii) Section 59-12-104.2;

(iv) Section 59-12-104.6;

(v) Section 59-12-107.1; and

(vi) Section 59-12-123.

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

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

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

Section 3. **Effective date.**

This bill takes effect on January 1, 2021.