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STATE UNIVERSAL SERVICE FUNDS CREATED AFTER THE FEDERAL TELECOMMUNICATIONS ACT OF 1996

This memorandum describes universal service legislation in other states. At least seven states have enacted legislation on universal service after the passage of the federal Telecommunications Act of 1996. These states include Idaho, Minnesota, Montana, Nebraska, Oklahoma, Utah, and Washington. Idaho's and Washington's legislation require a study and a report of recommended legislation. The other states have created legislation that is more indepth. The focus of this memorandum is on high-cost funds and unless intertwined in the following bills with other universal service programs, other programs will not be addressed.

MINNESOTA

In 1997, the Minnesota Legislature enacted Senate Bill No. 739. Minnesota's law requires the universal service fund to be supported by traditional telephone companies, radio common carriers, personal communication service providers, and the cellular carriers. Services supported by the fund include single-party service, including access, usage, and touch tone transmission; line quality capable of carrying facsimile and data transmissions; equal access; emergency service number capabilities; statewide telecommunications relay service for the hearing-impaired; and blocking of long-distance toll service.

The Minnesota Public Utilities Commission makes the rules for the administration and distribution of universal service funds. The administration of the fund must be coordinated with and be consistent with the goals of the federal universal service fund.

MONTANA

In 1997, the Montana Legislature enacted Senate Bill No. 89. In addition to creating a new universal service fund, the bill gave the Montana Public Utilities Commission rulemaking authority to implement the federal Telecommunications Act of 1996. Specifically, the bill gave the commission authority over negotiation, mediation, and hearings on interconnection agreements.

The legislation requires the Public Utilities Commission to establish and administer a universal service fund that provides affordable services in high-cost areas. The fund must complement the federal fund; be competitively and technologically neutral in funding and distribution; provide specific, predictable, and sufficient mechanisms of support for high-cost areas; and allow for a federal support system for schools, libraries, and health care providers.

The universal service fund must support the following services:

1. Voice grade access to the public switched network.
2. Dual-tone multifrequency signaling or its equivalent.
3. Single-party service.
4. Access to emergency services.
5. Access to operator services.
6. Access to interexchange services.
7. Access to directory assistance.

Based on a competitive bidding process, the Public Utilities Commission is to choose a daily administrator for the universal service fund. The daily administrator may not be a telecommunications carrier. The daily administrator has the duties of providing quarterly reports and annual audit reports to the Public Utilities Commission. In addition, the daily administrator must make available financial accounts for viewing by telecommunications companies and the public. The commission may investigate and make orders concerning the accounts and practices of the daily administrator. The administration costs must be paid from the fund.

Contributions to the universal service fund are collected by the daily administrator on a quarterly basis. The contribution is calculated by determining the total revenue for all telecommunications carriers from the preceding year and determining the funds needed for distribution for universal service for the upcoming year and then computing uniform percentage amount of revenue that will produce the desired distribution. The amount is adjusted for the previous year's shortfalls and excesses. The Public Utilities Commission is required to make rules to govern the collection from telecommunications carriers of universal service contributions based on the uniform percentage rate. The rules must allow the daily administrator to assess late fees and interest on delinquent payments. As to offset any increased expenditure in consumer prices, any reduction in access expenses for carriers because of the removal of implicit subsidies in access rates must be passed on to end-user customers through retail prices.

Distributions under the universal service fund are paid to eligible telecommunications carriers that offer the services supported by the fund. The commission is to calculate the distribution for designated support areas. A designated support area for a rural telephone company is its service areas unless the rural telephone company voluntarily adopts the proxy model adopted by the commission. A designated support area for all other telecommunications carriers means a geographic area determined by the commission which must be smaller than a wire center.

The amount of support an eligible telecommunications carrier receives is the amount of costs in its designated support area minus the benchmark amount. The Public Utilities Commission determines the benchmark. The amount of costs in a designated service area is expressed in the average cost per line. The Montana law has different methods for determining the average cost of each line in an area served by a rural telephone company, based on whether there is competition.

If there is only one eligible telecommunications carrier in the area served, the average line cost is the sum of a telephone company's total unsupported loop cost, as determined by the federal separation methodology, and the switching costs, local transport costs, and consumer operation costs for universal services, as determined by the Federal Communications Commission jurisdictional separation rules. From this sum is subtracted any federal universal service support, interstate allocation of loop costs, and loop cost recovered through intrastate telecommunications carrier common line charges to long-distance companies.

If there is an additional eligible telecommunications carrier in a designated support area, the additional carrier has access to the universal service fund on the same basis as the rural telephone company. Both carriers must receive distribution based on the rural telephone company's average cost for each line disaggregated to geographic areas smaller than a wire center. Support for each line is based on the rural telephone company's cost as determined in the equation for the situation when there is only one eligible telecommunications company and distributed to each of the geographic areas on the basis of relative distribution factors established by a cost proxy model adopted by the Public Utilities Commission.

Except for when there is an additional carrier, the companies that are not rural companies and for rural companies that voluntarily choose, there is the option of having the average line cost for a designated service area determined by a Public Utilities Commission proxy model. This total per line cost must be reduced by any federal universal service support, interstate allocation of loop costs, and loop costs recovered through intrastate telecommunications carrier common line charges to long-distance companies.

The Public Utilities Commission cost proxy must target support to a geographic area smaller than a wire center. The cost proxy must use acceptable outside plant design and costing principles and use reasonable switch design in costing principles. In addition, the proxy model must include a reasonable share of the joint and common costs of the telecommunications carrier and meet the standards for documenting model logic and the source of cost data input. Also, the model must meet a reasonableness test to ensure outputs are representative of costs that can be reasonably expected in the construction of a network and that network is capable of providing telecommunications services that meet the quality standards of the Public Utilities Commission and the Federal Communications Commission.

If an eligible telecommunications carrier is providing service to resale, there is no universal service support for the carrier if the resold service has already been reduced by a contribution to the universal service fund.

Under a separate program, the interim universal access program, there is a fund for the purpose of providing the general public with access to advanced telecommunications services that are not subscription-based services. The program provides funding through discounts for advanced services for use by public access points, schools, tribal colleges, libraries, and health care providers. This program is funded by surcharge on retail revenue for all intrastate telecommunications services in the state.

NEBRASKA

The Nebraska Legislature enacted two bills after the passage of the federal Telecommunications Act of 1996. Under Legislative Bill No. 660, the Nebraska Public Utilities Commission is required to negotiate and arbitrate interconnection agreements to establish local exchange competition. The bill also releases local exchange companies from Public Utilities Commission basic local exchange rate regulation upon a determination by the commission that the local exchange company is subject to local exchange competition. In addition, the bill makes certain telecommunications providers, otherwise exempt from commission regulation, including cable television providers, radio paging, and wireless telecommunications providers, subject to commission jurisdiction for the purposes of the state universal service fund.

Legislative Bill No. 686, relates to a state universal service fund, which is to supplement the federal universal service fund and to make telecommunications services accessible at an affordable price for all state residents without regard to their location. The bill states eight principles to preserve and advance universal service:

1. Quality service at a just, reasonable, and affordable rate.
2. Access to advance services available in all regions of the state.
3. Rates charged and services offered to consumers throughout the state should be comparable to those charged and offered in urban areas.
4. Equitable and nondiscriminatory contributions by all providers to preserve and advance universal service.
5. Specific, predictable, sufficient, and competitively neutral mechanisms in administration of the universal service fund.
6. Access to advanced telecommunications services by schools, libraries, and rural health care providers. Sharing of these services by these entities with local users is encouraged if the local user pays a retail rate.
7. Replacement of implicit support mechanisms in intrastate access rates while insuring affordable local service rates.
8. Minimal cost of administration.

The Public Utilities Commission has the power to create the fund and the attendant rules and contracts. The commission is to set up a funding mechanism for the universal service fund. The fund is consistent with the policies and principles of the federal universal service fund. The initial level of coverage for local telecommunications service is set at 96 percent. Every year thereafter the commission is to set the level of the fund. Any moneys in the fund may be invested by the state.

As for the administration of the fund, the Public Utilities Commission may contract with a neutral third party to administer the fund. If the commission contracts with a third party, then the commission is to supervise that party, audit that party, and enforce collection of uncollected accounts. The third party has the duty to estimate the fund, bill the telephone companies, collect funds, and distribute the fund.

The bill creates an advisory board of seven to nine members as determined by the Public Utilities Commission. One member on the board is from the commission, one member represents the schools, one member represents the libraries, one member represents rural health care providers, two or three members represent the telephone companies, and one or two members represent the public. The advisory board's role is to advise as to the overview and administration of the fund and to recommend services to include within universal service.

The Nebraska bill creates a state Lifeline fund for low-income customers. The bill prohibits a telephone company that receives state universal service funds from disconnecting a Lifeline customer for nonpayment of bills.

OKLAHOMA

In 1997, the Oklahoma Legislature passed House Bill No. 1815. In addition to establishing a universal service fund, the legislation made the Oklahoma Public Utilities Commission responsible for approving telecommunications company increases or decreases in the telecommunications service rate. In addition, the legislation prohibits any increase in basic local exchange service rates until February 5, 2002.

The legislation creates a state Lifeline program and a high-cost universal service program and fund within the Public Utilities Commission. The purpose of the high-cost fund is to promote primary universal services at reasonable and affordable rates and reasonably comparable services at affordable rates in rural areas as in urban areas. Primary universal service includes an access line and dial tone that provides access to other lines for two-way switched or dedicated communication in the local calling area for a flat fee, a primary directory listing, dual-tone multifrequency signaling and access to operator services, directory assistance, relay service for the hearing-impaired, emergency services and long distance. The commission is given the power to expand primary universal service after notice and a hearing.

Universal service funds may be used to reimburse local exchange telecommunications carriers for reasonable investments and expenses not covered by the federal universal service fund in providing universal service; for infrastructure expenditures incurred in response to governmental mandates; for Lifeline service program credits; for schools, libraries, hospitals, and county seat special universal service reimbursement; to defray the cost of administering the universal service fund; and for other purposes as determined by the Public Utilities Commission.

The universal service fund is funded by a charge paid by all telecommunications carriers at a level sufficient to maintain universal service. The fund must be funded in a competitively neutral manner by all telecommunications carriers. The funding must be based on total retail-billed intrastate telecommunications revenues of each carrier as a percentage of all carriers' total retail-billed intrastate revenues. The cost of administration is included in the fund. Oklahoma requires a 2.5 percent surcharge on intrastate retail revenues to support universal service.

The Public Utilities Commission must provide for the administration of the fund through its employees or by contracting for administrative services with a noninterested party. The commission cannot require local exchange telecommunications service providers to reduce rates for intrastate access services prior to universal fund distribution.

For the purposes of determining funding levels, the legislation creates three separate methods for an eligible telecommunications carrier providing service to fewer than 75,000 access lines to identify and measure the cost of providing primary universal services. The first method of calculating primary universal service costs allows all embedded investment and expenses for providing primary universal service. The local exchange carrier may identify high-cost areas within the local exchange area it serves and perform a fully distributed allocation of embedded costs and identification of associated primary universal service revenue. The high-cost area may not be smaller than a single exchange, wire center, or census block group, as chosen by the carrier.

The second option for the carrier is to adopt the cost studies for a local exchange carrier that serves 75,000 or more access lines. The third option for the local exchange carrier is to adopt other costing or measurement methodology as established by the Federal Communications Commission for federal universal service.

The costing methodology for each incumbent local exchange carrier which services 75,000 or more access lines and each competitive local exchange carrier requires the identification of high-cost areas within the local exchange and the performance of a cost study using a Public Utilities Commission approved methodology from the options given to the carriers with less than 75,000 access lines. The high-cost area may not be smaller than a single exchange, wire center, or census block group.

Each request for funding from an incumbent local exchange carrier serving less than 75,000 access lines is to be premised on a decrease in the federal universal service fund revenues of the carrier, a change in federal or state law that produces a reduction in revenues, or an increase in cost. A decrease in funding must be premised on a change in state or federal law which causes a reduction in cost. In each case, universal service funding is to be adjusted to keep the carrier whole.

Upon request, the Public Utilities Commission is required to make a determination of the level of funding, if any, an incumbent local exchange carrier serving 75,000 or more access lines or a competitive local exchange carrier may receive under the previous criteria.

Commercial mobile services are to seek reimbursement from the universal service fund notwithstanding not meeting the criteria for a designation as an eligible telecommunications carrier.

The Public Utilities Commission may designate an additional local exchange provider to be eligible for funding in an area where an incumbent local exchange carrier is eligible if the additional company offers primary universal service to all customers in the universal service area using a portion of its own facilities. The additional carrier may only receive funding for the portion of the facilities that it owns and uses for the regulated services. The additional carrier may not receive funding at a higher level than the incumbent carrier if the incumbent is providing service in the same area. The additional carrier must advertise its charges and the Public Utilities Commission determines if the designation is in the public interest. Once there is more than one carrier eligible for funding in an area, the Public Utilities Commission is required to permit all but one carrier to relinquish the designation.

However, in an area served by an incumbent carrier that serves fewer than 75,000 access lines, only the incumbent provider is eligible for primary universal service funding. The incumbent may waive this right. The Public Utilities Commission may take away this right if it determines it is in the public interest to name another carrier of last resort.

UTAH

In 1997, the Utah Legislature enacted House Bill No. 71, which provides for a universal service fund. The fund reimburses for basic telephone services. Basic telephone services include local exchange services and functions and elements as determined by the Public Utilities Commission. Local exchange service provides telephone lines to customers with the associated transmission of two-way interactive, switched voice communications with the geographic area encompassing one or more local communities.

The Public Utilities Commission is to establish the universal service fund and establish rules for administration of the fund which are consistent with the federal Telecommunications Act. The funds must preserve and promote universal service to ensure access to affordable basic telephone service. The state universal service fund is intended to supplement the federal universal service fund and provide services to Lifeline customers and high-cost customers.

The fund is to be nondiscriminatory and competitively and technologically neutral in collection and distribution. The fund must promote equitable cost recovery of basic telephone services through the imposition of just and reasonable rates for access and usage. The fund must provide mechanisms for specific, predictable, and sufficient funds. Contributions must be equitable and nondiscriminatory. The Public Utilities Commission may require contributions through explicit charges. These charges may not be applied to wholesale services. The charges must be in the form of an end-user surcharge applied to intrastate retail rates. The commission determines which telecommunications company is qualified for funds.

The Public Utilities Commission also is required to suggest legislation that includes the regulations it creates to implement this bill.

OTHER STATES' PRE-1997

Some states had universal service funds before the enactment of the federal Telecommunications Act of 1996. According to the National Exchange Carrier Association, Inc., there are a variety of ways in which these states define their contribution methodology. For example, Vermont charges 1.4 percent of intrastate, interstate, and international retail revenues against telecommunications carriers to fund universal service. Vermont does not provide high-cost support. Kansas charges nine percent of intrastate retail revenues to support universal service. Arizona charges $0.01345 per access line; $0.13450 per interconnection trunk; and 0.0881 percent of intrastate toll retail revenues to fund universal service.