

Requested by Representative MARSH

**PROPOSED AMENDMENTS TO
HOUSE BILL 2184**

1 On page 1 of the printed bill, line 2, after “provisions;” delete the rest
2 of the line and insert “amending ORS 759.400 and 759.425; and declaring an
3 emergency.”.

4 Delete lines 4 through 27 and delete pages 2 and 3 and insert:

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
8 service defined as basic by rule of the Public Utility Commission.

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

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

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

18 “[3)] (5) ‘Telecommunications carrier’ means any provider of retail tele-
19 communications services, except a call aggregator as defined in ORS 759.680.

20 **“SECTION 2.** ORS 759.425 is amended to read:

21 “759.425. [(1) *For purposes of this section, ‘retail telecommunications*

1 *service' does not include radio communications service, radio paging service,*
2 *commercial mobile radio service, personal communications service or cellular*
3 *communications service.]*

4 “[~~(2)(a)~~] **(1)(a)** The Public Utility Commission shall establish and imple-
5 ment a competitively neutral and nondiscriminatory universal service fund.
6 [*Except as provided in paragraph (b) of this subsection,*] The [*Public Utility*]
7 commission shall:

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

10 **“(B) Transfer \$10 million per year from the universal service fund**
11 **to the State Treasurer for deposit in the Broadband Fund established**
12 **under section 4 of this 2019 Act.**

13 **“(b) The commission shall designate the amount of moneys depos-**
14 **ited annually in the universal service fund to be used to ensure basic**
15 **telephone service. The amount designated under this paragraph may**
16 **not exceed \$30 million per year.**

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

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

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

28 **“(d) To be eligible to receive moneys distributed from the universal**
29 **service fund for the purpose described in paragraph (a)(A) of this**
30 **subsection, an entity must be a telecommunications carrier that oth-**

1 **erwise received moneys distributed from the universal service fund on**
2 **or before December 31, 2018.**

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

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

12 “[~~(4)(a)~~] **(3)(a)** The commission shall establish a benchmark for basic
13 telephone service as necessary for the administration and distribution of the
14 universal service fund. The universal service fund shall provide explicit
15 support to an eligible telecommunications carrier that is equal to the dif-
16 ference between the cost of providing basic telephone service and the
17 benchmark, less any explicit compensation received by the telecommuni-
18 cations carrier from federal sources specifically used to recover local loop
19 costs and less any explicit support received by the telecommunications car-
20 rier from a federal universal service program.

21 “(b) The commission shall periodically review the benchmark established
22 under paragraph (a) of this subsection and adjust the benchmark as neces-
23 sary to reflect:

24 “(A) Changes in competition in the telecommunications industry;

25 “(B) Changes in federal universal service support; and

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

27 “(c) Except for a telecommunications utility described in ORS 759.040, the
28 commission shall seek to limit the difference between the price a telecom-
29 munications utility may charge for basic telephone service and the
30 benchmark.

1 “[5] (4)(a) [*There is imposed on the sale of all retail telecommunications*
2 *services sold in this state a universal service surcharge.*] **There is imposed**
3 **a universal service surcharge on the sale in this state of all:**

4 **“(A) Retail telecommunications services;**

5 **“(B) Retail commercial mobile radio services; and**

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

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

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

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

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

23 **“(C) Another methodology for accurately apportioning intercon-**
24 **nected voice over internet protocol service revenues between federal**
25 **and state jurisdictions.**

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

1 “(A) **By information itemizing, on the billing statements provided**
2 **to customers, the charges subject to the surcharge, as may be identi-**
3 **fied by individual end-user location, the total number of end users and**
4 **the number of end users at each end-user location; or**

5 “(B) **If information described in subparagraph (A) of this paragraph**
6 **does not exist, by the service provider’s billing system books and re-**
7 **ords.**

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

15 “(f) The universal service surcharge may be listed **by a telecommuni-**
16 **cations carrier** as a separate line item **in billing statements provided to**
17 **customers** [*by all telecommunications carriers,*] as prescribed by the com-
18 mission by rule or order. **The commission may not prescribe whether,**
19 **or the manner by which, a commercial mobile radio services provider**
20 **or an interconnected voice over internet protocol services provider**
21 **may list the surcharge in billing statements provided to customers.**

22 “(g) A [*telecommunications carrier*] **service provider required to collect**
23 **the universal service surcharge** shall transmit amounts collected pursuant
24 to this section to the commission in accordance with a schedule adopted by
25 the commission. The commission shall deposit moneys transmitted to the
26 commission pursuant to this subsection in the universal service fund estab-
27 lished under subsection [(2)] (1) of this section.

28 “[(6)] (5) The universal service fund established under subsection [(2)] (1)
29 of this section is separate and distinct from the General Fund. The universal
30 service fund shall consist of all universal service surcharge moneys collected

1 by [*telecommunications carriers*] **service providers required to collect the**
2 **surcharge** and transmitted to the commission for deposit in the universal
3 service fund. The universal service fund may be used only for the purposes
4 described in this section and for payment of expenses incurred by the com-
5 mission or a third party appointed by the commission to administer this
6 section. All moneys in the universal service fund are continuously appropri-
7 ated to the commission to carry out the provisions of this section. Interest
8 on moneys deposited in the universal service fund shall accrue to the uni-
9 versal service fund.

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

18 “[8] **(6)** A pay telephone provider may apply to the commission, on a
19 form developed by the commission, for a refund of the universal service
20 surcharge imposed on the pay telephone provider under subsection [(5)] **(4)**
21 of this section for the provision of pay telephone service.

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

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

29 “759.425. (1)(a) The Public Utility Commission shall establish and imple-
30 ment a competitively neutral and nondiscriminatory universal service fund.

1 The commission shall[:]

2 “[~~(A)~~] use the universal service fund to ensure basic telephone service is
3 available at a reasonable and affordable rate[; *and*].

4 “[~~(B)~~ *Transfer \$10 million per year from the universal service fund to the*
5 *State Treasurer for deposit in the Broadband Fund established under section*
6 *4 of this 2019 Act.*]

7 “(b) The commission shall designate the amount of moneys deposited an-
8 nually in the universal service fund to be used to ensure basic telephone
9 service. The amount designated under this paragraph may not exceed \$30
10 million per year.

11 “(c) The commission may:

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

17 “(B) In addition to using the universal service fund to ensure basic tele-
18 phone service, use the universal service fund to encourage broadband service
19 availability and to provide support to telecommunications carriers that pro-
20 vide both basic telephone service and broadband service.

21 “(d) To be eligible to receive moneys distributed from the universal ser-
22 vice fund for the purpose described in paragraph (a)(A) of this subsection,
23 an entity must be a telecommunications carrier that otherwise received
24 moneys distributed from the universal service fund on or before December
25 31, 2018.

26 “(2)(a) The commission shall establish the price a telecommunications
27 utility may charge its customers for basic telephone service. The commission
28 shall periodically review and evaluate the status of telecommunications ser-
29 vices in the state and designate the services included in basic telephone
30 service. The commission shall periodically review and adjust as necessary

1 the price a telecommunications utility may charge for basic telephone ser-
2 vice.

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

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

14 “(b) The commission shall periodically review the benchmark established
15 under paragraph (a) of this subsection and adjust the benchmark as neces-
16 sary to reflect:

17 “(A) Changes in competition in the telecommunications industry;

18 “(B) Changes in federal universal service support; and

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

20 “(c) Except for a telecommunications utility described in ORS 759.040, the
21 commission shall seek to limit the difference between the price a telecom-
22 munications utility may charge for basic telephone service and the
23 benchmark.

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

26 “(A) Retail telecommunications services;

27 “(B) Retail commercial mobile radio services; and

28 “(C) Retail interconnected voice over internet protocol services.

29 “(b) A retail commercial mobile radio service provider may rely upon the
30 sourcing rules set forth in the Mobile Telecommunications Sourcing Act

1 (P.L. 106-252) to identify the intrastate revenues subject to the universal
2 service surcharge.

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

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

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

13 “(C) Another methodology for accurately apportioning interconnected
14 voice over internet protocol service revenues between federal and state ju-
15 risdictions.

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

21 “(A) By information itemizing, on the billing statements provided to cus-
22 tomers, the charges subject to the surcharge, as may be identified by indi-
23 vidual end-user location, the total number of end users and the number of
24 end users at each end-user location; or

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

27 “(e) Unless otherwise provided by the Public Utility Commission by rule,
28 the universal service surcharge must be a uniform percentage of the sale of
29 services subject to the surcharge in an amount sufficient to support the
30 purposes of the universal service fund established under subsection (1) of this

1 section, provided that the percentage does not exceed seven percent of the
2 sale of services subject to the surcharge.

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

10 “(g) A service provider required to collect the universal service surcharge
11 shall transmit amounts collected pursuant to this section to the commission
12 in accordance with a schedule adopted by the commission. The commission
13 shall deposit moneys transmitted to the commission pursuant to this sub-
14 section in the universal service fund established under subsection (1) of this
15 section.

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

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

1 “(7) Nothing in the section is intended to grant the commission the au-
2 thority to impose any requirement or condition, or to exercise any regulatory
3 authority, with respect to commercial mobile radio services or intercon-
4 nected voice over internet protocol services other than as expressly provided
5 for in this section.

6 **“SECTION 4. The Broadband Fund is established, separate and dis-
7 tinct from the General Fund. Interest earned by the Broadband Fund
8 shall be credited to the fund. Moneys in the Broadband Fund are
9 continuously appropriated to the Oregon Business Development De-
10 partment to be used only for providing grants or loans through the
11 program adopted by rule under section 5 of this 2019 Act. The fund
12 shall consist of moneys deposited in the fund pursuant to ORS 759.425.**

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

14 **“(a) ‘Underserved area’ means, based on the most recent broadband
15 deployment data published by the Federal Communications Commis-
16 sion or the State of Oregon, a geographic area encompassing one or
17 more census blocks, within which there is no service provider offering
18 residential wireline or wireless broadband service at a speed of at least
19 25 megabits per second for downloads and three megabits per second
20 for uploads.**

21 **“(b) ‘Unserved area’ means, based on the most recent broadband
22 deployment data published by the Federal Communications Commis-
23 sion or the State of Oregon, a geographic area encompassing one or
24 more census blocks, within which there is no service provider offering
25 residential wireline or wireless broadband service at a speed of at least
26 10 megabits per second for downloads and one megabit per second for
27 uploads.**

28 **“(2) The Oregon Business Development Department shall establish
29 by rule a program for providing grants or loans to assist eligible ap-
30 plicants with projects for the development of broadband service**

1 **infrastructure. In establishing the program required by this section,**
2 **the department shall take into consideration all federal funding op-**
3 **portunities for the development of broadband service infrastructure**
4 **and shall endeavor to administer the program in a manner that serves**
5 **to maximize the total available state and federal support for broadband**
6 **development.**

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

9 **“(a) Criteria for applications and for establishing the eligibility of**
10 **applicants and proposed projects for a grant or loan under the pro-**
11 **gram;**

12 **“(b) A process for:**

13 **“(A) Identifying broadband service providers that provide service**
14 **within or near the geographic area that would be benefitted by a**
15 **project proposed by an eligible applicant; and**

16 **“(B) Notifying the identified broadband service providers of the**
17 **pending application;**

18 **“(c) Standards for the department to evaluate applications from**
19 **eligible applicants;**

20 **“(d) Criteria and procedures for broadband service providers to en-**
21 **gage in a competitive bidding process for contracts to complete**
22 **projects pursuant to a grant or loan awarded under the program;**

23 **“(e) Reporting requirements by grant or loan award recipients on**
24 **the broadband service infrastructure developed using grant or loan**
25 **moneys and the locations served by the broadband service**
26 **infrastructure;**

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

29 **“(g) A process for appealing grant or loan decisions by the depart-**
30 **ment; and**

1 **“(h) Procedures to ensure that any records or data submitted to the**
2 **department pursuant to administration of the program that relate to**
3 **broadband, voice connections or subscriptions and that are confiden-**
4 **tial, privileged or otherwise protected from disclosure are not dis-**
5 **closed, except as permitted by state and federal law.**

6 **“(4) In making grant or loan award decisions under the program,**
7 **the department shall apply the following preferences:**

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

10 **“(A) Give first preference to proposed projects that will serve un-**
11 **served areas; and**

12 **“(B) Give second preference to proposed projects that will serve**
13 **underserved areas.**

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

16 **“(A) Give first preference to proposed projects that will provide**
17 **broadband service access to schools; and**

18 **“(B) Give second preference to proposed projects that will provide**
19 **broadband service access to residential customers.**

20 **“(5) The department shall, as part of the program, establish proce-**
21 **dures for distributing grant or loan funds awarded for the purpose of**
22 **providing broadband access to schools. Procedures established under**
23 **this subsection may include procedures for transferring moneys from**
24 **the Broadband Fund to the Connecting Oregon Schools Fund estab-**
25 **lished under section 3, chapter 51, Oregon Laws 2018.**

26 **“(6) The department may not award a grant or loan under the pro-**
27 **gram for a proposed project to:**

28 **“(a) Develop broadband service infrastructure to serve residential**
29 **locations that, at the time the application for the proposed project is**
30 **received by the department, have access to wireline or wireless**

1 broadband service at a speed of at least 25 megabits per second for
2 downloads and three megabits per second for uploads; or

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

5 “(7) If the department awards a grant or loan for a proposed project
6 to develop broadband service infrastructure that will serve nonresi-
7 dential locations that, at the time the application for the proposed
8 project was received by the department, were served by wireline or
9 wireless broadband service at a speed of at least 25 megabits per sec-
10 ond for downloads and three megabits per second for uploads, the
11 broadband service providers identified pursuant to rules adopted under
12 subsection (3)(b) of this section shall be afforded a right of first refusal
13 to contract for the development of broadband service infrastructure
14 as part of the project. If a broadband service provider exercises the
15 right of first refusal, the provider shall be awarded the contract to
16 develop broadband service infrastructure as part of the project, subject
17 to the requirement that the provider must offer access to the com-
18 pleted broadband service infrastructure:

19 “(a) Beginning no later than one year after the date that the de-
20 partment awards the grant or loan to develop the proposed project;

21 “(b) At demonstrated download and upload speeds equal to or faster
22 than the speeds indicated in the application for the proposed project;
23 and

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

26 **“SECTION 6. (1) Not later than September 15 of each year, the**
27 **Oregon Business Development Department shall report, in the manner**
28 **provided in ORS 192.245, to an interim committee of the Legislative**
29 **Assembly related to telecommunications on the status of the**
30 **Broadband Fund. The report required by this section shall include a**

1 description of all loans and grants provided through the program
2 adopted under section 5 of this 2019 Act, and the status of broadband
3 deployment in this state.

4 “(2) In addition to the information required in the report under
5 subsection (1) of this section, the report submitted on or before Sep-
6 tember 15, 2024, by the department pursuant to this section shall in-
7 clude an evaluation of the continuing need for the Broadband Fund,
8 including but not limited to recommendations regarding the repeal,
9 under section 8 of this 2019 Act, of the Broadband Fund and the pro-
10 gram adopted under section 5 of this 2019 Act.

11 “SECTION 7. Notwithstanding the amount provided for in ORS
12 759.425 (1)(b), until December 31, 2021, the amount of moneys deposited
13 annually in the universal service fund to be used to ensure basic tele-
14 phone service shall be an amount as provided for in Appendix A to
15 Public Utility Commission Order No. 16-093, as corrected by Public
16 Utility Commission Order No. 16-102.

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

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

22 “SECTION 9. The amendments to ORS 759.425 by section 3 of this
23 2019 Act become operative on January 2, 2030.

24 “SECTION 10. (1) Sections 4 to 7 of this 2019 Act and the amend-
25 ments to statute by sections 1 and 2 of this 2019 Act become operative
26 on January 1, 2020.

27 “(2) The Public Utility Commission and the Oregon Business De-
28 velopment Department may take any action before the operative date
29 specified in subsection (1) of this section that is necessary to enable
30 the commission and the department to exercise, on and after the op-

1 erative date specified in subsection (1) of this section, all of the duties,
2 functions and powers conferred on the commission and the department
3 by sections 4 to 7 of this 2019 Act and the amendments to statute by
4 sections 1 and 2 of this 2019 Act.

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

8
