

*Cole
Back*

State BILL NO. *242* *House* *with*
INTRODUCED BY *Hertel, Brandy, Reed, M. Hansen, HARP, Foster*
Charles, P. Lynch, Zolner, W. Ryan, Berlin, K. J. ...

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A UNIVERSAL SERVICE FUND FOR TELECOMMUNICATIONS SERVICES; PROVIDING FOR THE TELECOMMUNICATIONS SERVICES SUPPORTED BY THE FUND AND OPERATION OF THE FUND THROUGH A CONTRIBUTION FROM TELECOMMUNICATIONS CARRIERS BASED UPON A PERCENTAGE OF THE TELECOMMUNICATIONS CARRIERS' RETAIL REVENUE; PROVIDING THAT THE FUND BE ADMINISTERED BY A PRIVATE CONTRACTED ENTITY UNDER THE DIRECTION OF THE PUBLIC SERVICE COMMISSION; PROVIDING FOR DISTRIBUTIONS FROM THE FUND TO ELIGIBLE TELECOMMUNICATIONS CARRIERS; PROVIDING FOR THE AUTHORIZATION OF FEDERALLY FUNDED DISCOUNTS FOR INTRASTATE SERVICES UNDER CERTAIN CIRCUMSTANCES TO SCHOOLS, LIBRARIES, AND HEALTH CARE PROVIDERS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because rulemaking authority is granted to the public service commission.

[Section 6] authorizes the public service commission to adopt procedural rules relating to the collection of contributions to the universal service fund.

[Section 6] authorizes the public service commission to adopt rules for the assessment of late fees and interest on contributions to the fund.

Under [section 5], the public service commission shall administer a contract with a third party that will manage the fund on a daily basis. The third party is responsible for the collection of contributions to the fund. The third party is also responsible for setting the amount of contribution based on total retail revenue of telecommunications carriers operating in Montana. The public service commission shall adopt procedural rules for the collection of the contributions. The public service commission shall also adopt rules allowing the third party to assess late fees and interest on late payments of contributions. The rules must set interest rates and penalties for late payments.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1 **NEW SECTION. Section 1. Short title.** [Sections 1 through 9] may be cited as the "Montana
2 Universal Service Fund Act".

3
4 **NEW SECTION. Section 2. Statement of policies.** The legislature finds that universally available
5 telecommunications services are essential to the health, welfare, and economic well-being of the citizens
6 of Montana. The federal Telecommunications Act of 1996, 47 U.S.C. 151, et seq., requires a transition
7 to local competition. Implicit subsidies have historically been used to further the public policy of keeping
8 local rates to customers in high-cost areas at affordable levels. The federal act and the transition to
9 competition require that all subsidies used to keep local rates at affordable levels be explicit. Additionally,
10 the federal act's universal service provisions establish a system of discounts for schools, libraries, and
11 health care providers. Securing these discounts can be dependent on state actions. In order to preserve
12 and advance the goal of universal service in the new competitive environment established by the federal
13 act, the legislature finds that a new Montana universal service fund, supported by contributions from the
14 telecommunications carriers operating in Montana, should be created that will:

15 (1) not duplicate the federal universal service fund mandated by the Telecommunications Act of
16 1996 but that will complement the federal fund by providing additional funding as necessary to ensure
17 universal service in the state of Montana;

18 (2) be competitively and technologically neutral in both funding and distribution;

19 (3) provide a specific, predictable, and sufficient mechanism of support for high-cost areas; and

20 (4) allow for implementation of the federal support system for telecommunications services provided
21 to schools, libraries, and health care providers.

22
23 **NEW SECTION. Section 3. Definitions.** (1) As used in [sections 1 through 9], the following
24 definitions apply:

25 (a) "Commission" means the public service commission provided for in 2-15-2602.

26 (b) "Eligible carrier" means a telecommunications provider designated by the commission under
27 [section 7].

28 (c) "Fund" means the universal service fund established in [section 4].

29 (d) "Incumbent telecommunications carrier" means a telecommunications carrier that on February
30 8, 1996, provided telephone exchange service in Montana and was considered to be a member of the

1 exchange carrier association pursuant to 47 CFR 69.601(b) or is a person or entity that, on or after
2 February 8, 1996, became a successor or assignee of the member.

3 (e) "Retail revenue" means the gross Montana revenue from telecommunications services that
4 originate or terminate in Montana, excluding revenue from the sale of telecommunications services to
5 another telecommunications services provider that uses the telecommunications services to provide
6 telecommunications services to the ultimate retail consumer who originates or terminates the transmission.

7 (f) (i) "Rural telephone company" means an incumbent telecommunications carrier to the extent
8 that as of January 1, 1997, the entity provides local telecommunications services in Montana and has
9 fewer than 100,000 access lines in Montana. The addition of access lines to provide telecommunications
10 services to customers not otherwise receiving telecommunications services from another
11 telecommunications carrier must be considered in counting access lines.

12 (ii) To the extent that a rural telephone company provides telecommunications services to an area
13 already served by another incumbent telecommunications carrier, the telecommunications carrier may not
14 be treated as a rural telephone company for that service area.

15 (g) "Telecommunications" means the transmission, between or among points specified by the user,
16 of information of the user's choosing, without change in the content of the information sent and received.

17 (h) "Telecommunications carrier" means any provider of telecommunications services operating in
18 Montana. The term does not mean aggregators of telecommunications services as defined in 47 U.S.C.
19 226.

20 (i) "Telecommunications services" means the offering of telecommunications for a fee directly to
21 the public, or to classes of users as to be effectively available directly to the public, regardless of the
22 facilities used.

23 (2) Interpretation of the terms "telecommunications" and "telecommunications services" must be
24 applied consistently with the interpretation of those terms by the federal communications commission.

25

26 **NEW SECTION. Section 4. Fund established -- purpose.** (1) The commission shall establish and
27 administer a fund to assist eligible carriers to provide affordable telecommunications services in high-cost
28 areas. Upon the selection of a fiscal agent under [section 5], the fund must begin to operate with funding
29 disbursements to begin in January 1998. The fund must provide support for the following services:

30 (a) voice grade access to the public switched network, including some usage;

- 1 (b) dual-tone multifrequency (DTMF or "touch tone") signaling or its equivalent;
- 2 (c) single-party service;
- 3 (d) access to emergency services, including access to 9-1-1, where available, and access to
- 4 enhanced 9-1-1 (E9-1-1) when requested by a telecommunications carrier's local community and when the
- 5 telecommunications carrier has technical capacity to provide it;
- 6 (e) access to operator services;
- 7 (f) access to interexchange services; and
- 8 (g) access to directory assistance.
- 9 (2) The fund must support only the access portion of the services listed in subsections (1)(d)
- 10 through (1)(g) and not the services themselves.
- 11 (3) The fund must be administered to ensure that its operation is competitively and technologically
- 12 neutral.

13

14 **NEW SECTION. Section 5. Fund administrator.** (1) A fiscal agent and daily administrator must

15 be selected to receive and distribute funds under [sections 1 through 9] for the fund.

16 (2) The fiscal agent must be selected upon competitive bid by the commission after an opportunity

17 for public comment on the specific qualifications required of the fiscal agent. A telecommunications carrier

18 is not eligible to be the fiscal agent. The duties of the fiscal agent must be determined by a contract

19 consistent with [sections 1 through 9]. The term of the fiscal agent may be not less than 3 years and not

20 more than 5 years.

21 (3) The fiscal agent shall provide quarterly reports of fund activities to the commission and shall

22 provide audits annually by a certified public accountant in a manner determined by and under the direction

23 of the commission.

24 (4) The financial accounts of the fiscal agent must be available at reasonable times to any

25 telecommunications carrier in the state and to the public. The commission may investigate the accounts

26 and practices of the fiscal agent and enter orders concerning the accounts and practices.

27

28 **NEW SECTION. Section 6. Contributions to fund.** (1) The fiscal agent shall collect contributions

29 from all telecommunications carriers, on a quarterly basis, beginning October 1, 1997, based on a July 1

30 to June 30 fiscal year. Contributions to the fund must be calculated as follows:

1 (a) by July 1, 1997, and April 1 in each subsequent year, determine the total retail revenue for all
2 telecommunications carriers for the immediately preceding calendar year;

3 (b) determine the total funds needed for distributions in the next fiscal year as authorized pursuant
4 to [section 8];

5 (c) compute a uniform percentage of the amount determined in subsection (1)(a) that will produce
6 an amount equal to the fund total calculated in subsection (1)(b);

7 (d) adjust the percentage multiplier computed in subsection (1)(c) to recover or reimburse any fund
8 shortfalls or excesses in the previous fiscal year; and

9 (e) send notice of the current uniform percentage and appropriate remittance forms to each
10 telecommunications carrier by September 1, 1997, and by June 1 of each subsequent year.

11 (2) The commission may adopt procedural rules to govern collection of the contributions required
12 by this section, as well as rules allowing the fiscal agent and daily administrator to assess late fees and
13 interest on delinquent payments from telecommunications carriers. Contributions may be net of
14 distributions from the fund. The fiscal agent is specifically authorized to enforce the contribution
15 requirements of [sections 1 through 9] through suit in the district courts of Montana.

16 (3) The contribution from telecommunications carriers required by this section may be shown as
17 a separate line item on each telecommunications carrier's retail telecommunications services bills if the
18 contribution is apportioned equally to all telecommunications services.

19 (4) Any reduction in telecommunications carrier access expenses because of the removal of implicit
20 subsidies inherent in telecommunications carrier access rates must be directly passed through to end-user
21 customers by a reduction in corresponding retail rates.

22

23 **NEW SECTION. Section 7. Determination of eligible carrier status -- designated support areas.**

24 (1) Upon the petition of a telecommunications carrier, including any telecommunications carrier otherwise
25 exempt from the commission's jurisdiction, the commission shall designate a telecommunications carrier
26 that meets the requirements of this section as an eligible carrier for an area designated by the commission
27 as a support area.

28 (2) In the case of an area served by a rural telephone company, the term "designated support area"
29 means the rural telephone company's Montana service area unless the rural telephone company voluntarily
30 adopts a proxy model for the calculation of the rural telephone company's cost of telecommunications

1 services under [section 8(6)]. After adoption of a proxy model, the rural telephone company's designated
2 support area must be an area designated by the commission, which may be smaller than a wire center.
3 Designated support area for all other telecommunications carriers means a geographic area as established
4 by the commission, which must be smaller than a wire center.

5 (3) A telecommunications carrier designated as an eligible carrier under this section is eligible to
6 receive universal service support in accordance with [section 8] and shall, throughout the designated
7 support area for which the designation is received:

8 (a) offer the telecommunications services that are supported by universal service funds under
9 [section 4(1)], using either its own facilities or a combination of its own facilities and resale of another
10 telecommunications carrier's telecommunications services; and

11 (b) advertise the availability of the telecommunications services and the charges for the
12 telecommunications services using media of general distribution.

13 (4) Upon receiving a petition from a telecommunications carrier and consistent with the public
14 interest, convenience, and necessity, the commission may, in the case of an area served by a rural
15 telephone company, and shall in the case of all other areas, designate more than one eligible carrier for a
16 designated support area, as long as each additional requesting telecommunications carrier meets the
17 requirements of this section. Before designating an additional eligible carrier for a designated support area
18 served by a rural telephone company, the commission shall find that the designation is in the public interest.

19 (5) The commission shall permit an eligible carrier to relinquish its designation in any designated
20 support area served by more than one eligible carrier. An eligible carrier that seeks to relinquish its eligible
21 carrier designation for an area served by more than one eligible carrier shall give advance notice to the
22 commission of the relinquishment.

23 (6) Prior to permitting a telecommunications carrier designated as an eligible carrier to cease
24 providing telecommunications services supported by the fund in an area served by more than one eligible
25 carrier, the commission shall require the remaining eligible carrier to ensure that all customers served by
26 the relinquishing carrier will continue to be served and shall require sufficient notice to permit the purchase
27 or construction of adequate facilities by any remaining eligible carrier. The remaining eligible carrier may
28 include the area in its rural telephone company service area if the telecommunications carrier otherwise
29 qualifies as a rural telephone company.

30

1 **NEW SECTION. Section 8. Distributions from fund -- calculation of costs.** (1) Subject to the
2 requirements of this section, payments from the fund must be made by the fiscal agent to qualifying eligible
3 carriers, on a monthly basis, beginning in January 1998, pursuant to rules adopted by the commission.

4 (2) Only eligible carriers that offer the telecommunications services described in [section 4(1)] to
5 all customers in a designated support area and that advertise the availability of the telecommunications
6 services and the charges for the telecommunications services using media of general distribution may
7 receive support from the fund for the support area.

8 (3) Distributions must be calculated by designated support areas established by the commission
9 under [section 7(2)] and must be paid in equal monthly payments. The first distribution is for the period
10 January 1, 1998, to June 30, 1998. Thereafter, distributions are to be calculated on an annual basis and
11 distributed in equal monthly payments beginning July 1 of each year.

12 (4) Support for the services listed in [section 4(1)] must be calculated as the difference between
13 the costs determined in each designated support area and the affordability benchmark in that support area.
14 The affordability benchmark must be set as follows:

15 (a) \$25 a month for lines within a support area that can call over 5,000 lines without incurring toll
16 charges;

17 (b) \$20 a month for lines within a support area that can call between 1,000 and 5,000 lines
18 without incurring toll charges;

19 (c) \$15 a month for lines within a support area that can call less than 1,000 lines without incurring
20 toll charges.

21 (5) Except as provided in subsection (6), for rural telephone companies and other eligible carriers
22 offering services in a designated support area served by a rural telephone company, the average cost for
23 each line must be calculated and submitted based on the preceding calendar year to the fiscal agent no later
24 than October 1, 1997, and April 1 of each subsequent year as follows:

25 (a) If an additional eligible carrier has not been designated pursuant to [section 7(4)], the rural
26 telephone company's total unseparated loop cost, as defined by federal separation rule methodology in
27 effect on December 31, 1996, must be added to the switching costs, local transport costs, and customer
28 operations costs assigned to the telecommunications services set forth in [section 4(1)], which must be
29 calculated using the methodology set forth in federal communications commission jurisdictional separations
30 rules in effect as of December 31 of each calendar year. This total cost must be reduced by any federal

1 universal service support, interstate allocation of loop costs charged to long distance companies, and loop
2 costs recovered through intrastate telecommunications carrier common line charges to long distance
3 companies.

4 (b) Upon the designation of an additional eligible carrier pursuant to [section 7(4)] in a designated
5 support area served by a rural telephone company, the additional eligible carrier has access to the fund on
6 the same basis as the rural telephone company. Upon the designation of the additional eligible carrier, both
7 it and the rural telephone company must receive distributions from the fund based upon the rural telephone
8 company's average cost for each line disaggregated to geographic areas smaller than a wire center. The
9 support for each line for each geographic area must be based upon the rural telephone company's costs,
10 as determined in subsection (5)(a), distributed to each of the geographic areas on the basis of relative
11 distribution factors established by a cost proxy model adopted by the commission.

12 (6) Except as provided in subsection (5)(b), for companies that are not rural telephone companies
13 and for rural telephone companies voluntarily electing to use a cost proxy model, the average cost for each
14 line in designated support areas must be calculated as follows:

15 (a) Beginning in the year 1998, the average cost for each line must be calculated based on the cost
16 proxy model adopted by the federal communications commission in CC docket No. 96-45. This total
17 per-line cost must be reduced by any federal universal service support, interstate allocation of loop costs
18 charged to long distance companies, and loop costs recovered through intrastate telecommunications carrier
19 common line charges to long distance companies.

20 (b) Beginning no later than the year 1999, the cost for each line must be calculated by a proxy
21 mechanism established by the commission.

22 (7) In determining any proxy mechanism under this section, the commission shall use a model that:

23 (a) targets support to a geographic area smaller than a wire center;

24 (b) uses acceptable outside plant design and costing principles;

25 (c) uses reasonable switch design and costing principles;

26 (d) includes a reasonable share of the joint and common costs of the telecommunications carrier
27 to provide the services set forth in [section 4(1)];

28 (e) meets standards for documenting model logic and the sources of cost data input; and

29 (f) meets reasonableness tests to ensure that model outputs are representative of costs that can
30 be reasonably expected in the construction of a network and that the network is capable of providing

1 telecommunications services that meet telecommunications services quality standards of the commission
2 and federal regulators.

3 (8) An eligible carrier providing telecommunications services through resale of another
4 telecommunications carrier's telecommunications services or facilities may not receive support for those
5 telecommunications services if the rates charged to an eligible carrier by the other telecommunications
6 carrier include a contribution for universal service funds under this section.

7 (9) Costs of administering the fund must be paid from the fund.
8

9 **NEW SECTION. Section 9. Discounts for schools, libraries, and health care providers.** The
10 commission is authorized to establish intrastate discounts to schools, libraries, and health care providers
11 and to perform administrative functions necessary as a condition of federal universal service support if the
12 discounts are recovered through the federal universal service fund.
13

14 **NEW SECTION. Section 10. Study of future needs.** (1) The commission shall study additional
15 universal service needs in Montana and report to the governor and the legislature in 1999. At a minimum,
16 that study must include recommendations on the following areas:

17 (a) combining the services to the telephone handicapped as provided for in Title 53, chapter 19,
18 part 3, with the universal service fund provided for in [sections 1 through 9];

19 (b) combining the funding for emergency telephone systems as set forth in Title 10, chapter 4, part
20 2, with the universal service fund provided for in [sections 1 through 9];

21 (c) combining the funding needs for low-income discounts required by 69-3-1003 with the universal
22 service fund provided for in [sections 1 through 9];

23 (d) establishing funding needs for services to schools, libraries, and health care providers that are
24 necessary to fulfill the requirements of the federal Telecommunications Act of 1996 after consideration of
25 federal funding sources; and

26 (e) other areas or recommended modifications to the universal service fund as considered
27 appropriate by the public service commission.

28 (2) This section does not expand the investigatory or audit authority of the public service
29 commission.
30

1 **NEW SECTION. Section 11. Severability.** If a part of [this act] is invalid, all valid parts that are
2 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
3 applications, the part remains in effect in all valid applications that are severable from the invalid
4 applications.

5

6 **NEW SECTION. Section 12. Codification instruction.** [Sections 1 through 9] are intended to be
7 codified as an integral part of Title 69, chapter 3, and the provisions of Title 69, chapter 3, apply to
8 [sections 1 through 9].

9

10 **NEW SECTION. Section 13. Effective date.** [This act] is effective on passage and approval.

11

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0242, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

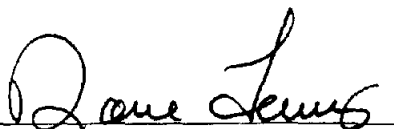
A bill creating a universal service fund for telecommunications services.

ASSUMPTIONS:

1. Legislation requires the Department of Public Service Regulation to adopt procedural rules relating to collection of contributions and rules on assessment of late fees.
2. Assume 25 pages of rules will be required at a publishing cost of \$70.00 per page.
3. Other costs associated with this legislation would be absorbed in the agency's budget as presented in the Governor's Executive Budget.

FISCAL IMPACT:

	<u>FY98</u> <u>Difference</u>	<u>FY99</u> <u>Difference</u>
<u>Expenditures:</u>		
Operating Expenses	1,750	0
<u>Funding:</u>		
State Special Revenue (02)	1,750	0
<u>Fiscal Impact:</u>		
State Special Revenue (02)	(1,750)	0

 1-31-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2/1/97
JOHN HERTEL, PRIMARY SPONSOR DATE

Fiscal Note for SB0242, as introduced

SB 242