

## 1 HOUSE BILL NO. 564

2 INTRODUCED BY A. OLSON

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE UNIVERSAL SERVICE TELECOMMUNICATIONS  
5 LAWS; REQUIRING THE PUBLIC SERVICE COMMISSION UPON PETITION OR ITS OWN MOTION TO  
6 INVESTIGATE THE NEED FOR A UNIVERSAL SERVICE FUND; PROVIDING THE COMMISSION WITH THE  
7 AUTHORITY TO ESTABLISH A UNIVERSAL SERVICE FUND; PROVIDING THE COMMISSION WITH THE  
8 AUTHORITY TO ADOPT RULES FOR THE ADMINISTRATION OF THE UNIVERSAL SERVICE FUND;  
9 PROVIDING FOR THE COLLECTION OF CONTRIBUTIONS TO THE UNIVERSAL SERVICE FUND ON A  
10 QUARTERLY RATHER THAN A MONTHLY BASIS; CLARIFYING THE METHODOLOGY FOR  
11 CONTRIBUTIONS TO THE UNIVERSAL SERVICE FUND; CLARIFYING THE PAYMENT PROCESS FROM THE  
12 UNIVERSAL SERVICE FUND; AMENDING SECTIONS 69-3-842, 69-3-843, 69-3-844, AND 69-3-845,  
13 MCA; REPEALING SECTION 41, CHAPTER 349, LAWS OF 1997, AND SECTION 6, CHAPTER 187, LAWS  
14 OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

15

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

17

18 **Section 1.** Section 69-3-842, MCA, is amended to read:

19 **"69-3-842. (Temporary) Universal service fund established -- purpose.** (1) ~~Pursuant to a~~  
20 ~~determination of need, the commission shall establish and administer~~ Upon petition FOR GOOD CAUSE by a  
21 telecommunications carrier or the consumer counsel or on the commission's own motion, the commission  
22 shall investigate the need for a fund to assist eligible telecommunications carriers in providing affordable  
23 telecommunications services in high-cost areas. This investigation must take into account the evolving  
24 nature of universal service as well as changes in federal and state telecommunications support systems,  
25 including but not limited to universal service funds and access reform.

26 (2) If the commission determines that a state universal service fund is necessary to promote the  
27 policies in 69-3-841 and is consistent with the public interest, the commission shall establish a state  
28 universal service fund. The fund must provide support for the following services:

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

30 (b) dual-tone multifrequency (DTMF or "touch tone") signaling or its equivalent;

1 (c) single-party service;

2 (d) access to emergency services, including access to 9-1-1, where available, and access to  
3 enhanced 9-1-1 when requested by a telecommunications carrier's local community and when the  
4 telecommunications carrier has technical capacity to provide it;

5 (e) access to operator services;

6 (f) access to interexchange services; and

7 (g) access to directory assistance.

8 ~~(2)(3)~~ The fund must support only access to the services listed in subsections ~~(1)(d)~~ (2)(d) through  
9 ~~(1)(g)~~ (2)(g) and not support the services themselves.

10 ~~(3)(4)~~ The fund must be administered to ensure that its operation is competitively and  
11 technologically neutral.

12 (5) FOR THE PURPOSES OF THIS SECTION, "INTEREXCHANGE SERVICES" MEANS TELECOMMUNICATIONS  
13 LONG-DISTANCE SERVICES. (Terminates December 31, 2001--sec. 6, Ch. 187, L. 1999.)"

14

15 **Section 2.** Section 69-3-843, MCA, is amended to read:

16 **"69-3-843. ~~(Temporary) Fund administrator -- commission rulemaking authority.~~** (1) A fiscal agent  
17 and daily administrator must be selected by the commission to receive and distribute funds under  
18 69-3-841, 69-3-842, 69-3-844, 69-3-845, and this section.

19 (2) The fiscal agent must be selected by the commission based upon a competitive bidding process  
20 after an opportunity for public comment on the specific qualifications required of the fiscal agent. A  
21 telecommunications carrier is not eligible to be the fiscal agent. The duties of the fiscal agent must be  
22 determined by a contract consistent with 69-3-841, 69-3-842, 69-3-844, 69-3-845, and this section. The  
23 contract term of the fiscal agent ~~must expire December 31, 2001~~ may not be for a period greater than 3  
24 years.

25 (3) The commission may adopt rules for the administration of the fund. ~~fiscal agent shall provide~~  
26 ~~monthly reports of fund activities to the commission and shall provide audits annually by a certified public~~  
27 ~~accountant in a manner determined by and under the direction of the commission.~~

28 ~~————(4) The fund financial accounts of the fiscal agent must be available at reasonable times to any~~  
29 ~~telecommunications carrier in the state and to the public. The commission may investigate the accounts~~  
30 ~~and practices of the fiscal agent and enter orders concerning the accounts and practices.(Terminates~~

1 ~~December 31, 2001--sec. 6, Ch. 187, L. 1999.}~~"

2

3 **Section 3.** Section 69-3-844, MCA, is amended to read:

4 **"69-3-844. (Temporary) Contributions to fund.** (1) The fiscal agent shall collect contributions from  
 5 all telecommunications carriers on a ~~monthly~~ QUARTERLY basis, based on a ~~July 1 to June 30 fiscal~~ JANUARY  
 6 1 TO DECEMBER 31 CALENDAR year. Those contributions must be determined on a percentage of total  
 7 INTRASTATE RETAIL revenue for all telecommunications carriers registered in the state. IF THE HIGH-COST  
 8 MECHANISMS OF THE FEDERAL UNIVERSAL SERVICE PROGRAM ARE ELIMINATED, CONTRIBUTIONS MUST BE DETERMINED ON  
 9 A PERCENTAGE OF TOTAL INTRASTATE AND INTERSTATE RETAIL REVENUE FOR ALL TELECOMMUNICATIONS CARRIERS  
 10 REGISTERED IN THE STATE. ~~Initial contributions to the fund may only be collected for the 2-month period prior~~  
 11 ~~to the effective date of distributions from the fund and must be calculated as follows:~~

12 ~~—— (a) determine the total retail revenue for all telecommunications carriers for the immediately~~  
 13 ~~preceding calendar year;~~

14 ~~—— (b) determine the total funds needed for distributions in the next fiscal year as authorized pursuant~~  
 15 ~~to 69-3-845;~~

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

18 ~~—— (d) adjust the percentage multiplier computed in subsection (1)(c) to recover or reimburse any fund~~  
 19 ~~shortfalls or excesses in the previous fiscal year, including uncollectibles, new providers seeking support,~~  
 20 ~~cost of administration, and auditing; and~~

21 ~~—— (e) send notice of the current uniform percentage and appropriate remittance forms to each~~  
 22 ~~telecommunications carrier at least 2 months prior to the effective date of the application of the~~  
 23 ~~percentage.~~

24 (2) The commission shall adopt ~~procedural~~ rules to govern collection of the contributions required  
 25 by this section, as well as rules allowing the fiscal agent and daily administrator to assess late fees and  
 26 interest on delinquent payments from telecommunications carriers. The fiscal agent is specifically  
 27 authorized to enforce the contribution requirements of this section through suit in the district courts of  
 28 Montana, and the prevailing party in an action is entitled to the recovery of costs and attorney fees  
 29 incurred in that action.

30 (3) ANY FUNDS RECEIVED BY AN ELIGIBLE TELECOMMUNICATIONS CARRIER FROM THE STATE HIGH-COST FUND

1 MUST BE USED FOR THE PROVISION, MAINTENANCE, AND UPGRADING OF FACILITIES AND SERVICES FOR WHICH THE  
 2 SUPPORT IS INTENDED.

3 ~~(3)~~(4) Any reduction in telecommunications carrier access expenses because of the removal of  
 4 implicit subsidies inherent in telecommunications carrier access rates must be passed through to Montana  
 5 end-user customer retail rates.(Terminates December 31, 2001--sec. 6, Ch. 187, L. 1999.)"

6

7 **Section 4.** Section 69-3-845, MCA, is amended to read:

8 **"69-3-845. (Temporary) Distributions Payments from fund -- calculation of costs.** (1) Subject to  
 9 ~~the requirements of this section, payments~~ Payments from the fund must be made from collected  
 10 contributions by the fiscal agent to qualifying eligible telecommunications carriers, on a ~~monthly~~ quarterly  
 11 basis, pursuant to rules adopted by the commission.

12 (2) Only eligible telecommunications carriers that offer the telecommunications services described  
 13 in ~~69-3-842(1)~~ 69-3-842(2) to all customers in a designated support area and that advertise the availability  
 14 of the telecommunications services and the charges for the telecommunications services using media of  
 15 general distribution may receive support from the fund for the designated support area.

16 ~~(3) Distributions must be calculated for the designated support areas established by the~~  
 17 ~~commission. In the case of an area served by a rural telephone company, the term "designated support~~  
 18 ~~area" means the rural telephone company's Montana service area unless the rural telephone company~~  
 19 ~~voluntarily adopts a proxy model for the calculation of the rural telephone company's cost of~~  
 20 ~~telecommunications services under subsection (6). After adoption of a proxy model, the rural telephone~~  
 21 ~~company's designated support area must be an area designated by the commission, which may be smaller~~  
 22 ~~than a wire center. The term designated support area for all other telecommunications carriers means a~~  
 23 ~~geographic area as established by the commission, which must be smaller than a wire center.~~

24 ~~—— (4) Support for the services listed in 69-3-842(1) must be calculated as the difference between~~  
 25 ~~the costs determined in each designated support area and the affordability benchmark in that support area.~~  
 26 ~~The commission shall adopt rules to determine affordability benchmarks.~~

27 ~~—— (5) Except as provided in subsection (6), for rural telephone companies and other eligible~~  
 28 ~~telecommunications carriers offering services in a designated support area served by a rural telephone~~  
 29 ~~company, the average cost for each line must be calculated and submitted, based on the preceding~~  
 30 ~~calendar year, to the fiscal agent as follows:~~

1 ~~———(a) If an additional eligible telecommunications carrier has not been designated pursuant to~~  
2 ~~69-3-840(3), the rural telephone company's total unseparated loop cost, as defined by federal separation~~  
3 ~~rule methodology in effect on December 31, 1996, must be added to the switching costs, local transport~~  
4 ~~costs, and customer operations costs assigned to the telecommunications services set forth in~~  
5 ~~69-3-842(1), which must be calculated using the methodology set forth in federal communications~~  
6 ~~commission jurisdictional separation rules in effect as of December 31 of each calendar year. This total~~  
7 ~~cost must be reduced by any federal universal service support, interstate allocation of loop costs, and loop~~  
8 ~~costs recovered through intrastate telecommunications carrier common line charges to long-distance~~  
9 ~~companies.~~

10 ~~———(b) Upon the designation of an additional eligible telecommunications carrier pursuant to~~  
11 ~~69-3-840(3) in a designated support area served by a rural telephone company, the additional eligible~~  
12 ~~telecommunications carrier has access to the fund on the same basis as the rural telephone company.~~  
13 ~~Upon the designation of the additional eligible telecommunications carrier, both the carrier and the rural~~  
14 ~~telephone company must receive distributions from the fund based upon the rural telephone company's~~  
15 ~~average cost for each line disaggregated to geographic areas smaller than a wire center. The support for~~  
16 ~~each line for each geographic area must be based upon the rural telephone company's costs, as determined~~  
17 ~~in subsection (5)(a), distributed to each of the geographic areas on the basis of relative distribution factors~~  
18 ~~established by a cost proxy model adopted by the commission.~~

19 ~~———(6) Except as provided in subsection (5)(b), for companies that are not rural telephone companies~~  
20 ~~and for rural telephone companies voluntarily electing to use a cost proxy model, the average cost for each~~  
21 ~~line in designated support areas must be calculated based on the cost proxy model adopted by the~~  
22 ~~commission. This total per-line cost must be reduced by any federal universal service support, interstate~~  
23 ~~allocation of loop costs, and loop costs recovered through intrastate telecommunications carrier common~~  
24 ~~line charges to long-distance companies.~~

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

26 ~~———(a) targets support to a geographic area smaller than a wire center;~~

27 ~~———(b) uses acceptable outside plant design and costing principles;~~

28 ~~———(c) uses reasonable switch design and costing principles;~~

29 ~~———(d) includes a reasonable share of the joint and common costs of the telecommunications carrier;~~

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

1 ~~\_\_\_\_\_ (f) meets reasonableness tests to ensure that model outputs are representative of costs that can~~  
2 ~~be reasonably expected in the construction of a network and that the network is capable of providing~~  
3 ~~telecommunications services that meet the telecommunications services quality standards of the~~  
4 ~~commission and federal regulators.~~

5 ~~\_\_\_\_\_ (8)(3) An eligible telecommunications carrier providing telecommunications services through resale~~  
6 ~~of another telecommunications carrier's telecommunications services or facilities may not receive support~~  
7 ~~for those telecommunications services or facilities if the rates charged to an eligible telecommunications~~  
8 ~~carrier by the other telecommunications carrier have been reduced by a contribution from universal service~~  
9 ~~funds under this section.~~

10 ~~(9)(4) Costs of administering the fund must be paid from the fund. (Terminates December 31,~~  
11 ~~2001--sec. 6, Ch. 187, L. 1999.)"~~

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13 NEW SECTION. **Section 5. Repealer.** Section 41, Chapter 349, Laws of 1997, and section 6,  
14 Chapter 187, Laws of 1999, are repealed.

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16 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

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