
HOUSE BILL 1983

State of Washington

60th Legislature

2007 Regular Session

By Representative Ericksen

Read first time 02/02/2007. Referred to Committee on Technology,
Energy & Communications.

1 AN ACT Relating to promoting competition for video services;
2 amending RCW 35.21.860, 35.99.020, 35.102.020, and 80.36.370; and
3 adding a new chapter to Title 80 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The Legislature finds and declares all of
6 the following:

7 (1) Washington's economy would be enhanced by investment in new
8 communications and video programming infrastructure, including fiber
9 optic and internet protocol technologies.

10 (2) Cable services and video services bring important daily
11 benefits to Washington by providing news, education, and entertainment.

12 (3) Competitive cable service providers and video service providers
13 are capable of providing new video programming services and competition
14 to consumers in Washington and have stated their desire to do so.

15 (4) There has been only minimal competitive entry into the
16 facilities-based video programming market since Washington's
17 franchising requirements were first enacted.

18 (5) The cable franchise requirements and associated build-out
19 requirements have acted as a barrier to entry to many new

1 facilities-based entrants, because time-to-market and reasonable cost
2 of entry are critical for new entrants seeking to compete with the
3 cable incumbents.

4 (6) Under both federal and state law, there is considerable
5 uncertainty concerning whether and to what degree the cable franchise
6 requirements apply to various competitive cable service providers and
7 competitive video service providers, especially to the extent those new
8 entrants are already subject to public right-of-way management under
9 other state regulatory schemes.

10 (7) To remove legal uncertainty under state law with respect to the
11 authority of competitive cable service providers and video service
12 providers to use the public rights-of-way to the extent the cable
13 franchise requirements do not apply, and to promote competitive entry
14 by all competitive cable service providers and video service providers,
15 the state of Washington can and should provide a state-issued
16 authorization for competitive cable service providers and video service
17 providers to deploy their systems and provide cable service and video
18 service to residents of the state. This state-issued grant will allow
19 all competitive cable service providers and video service providers to
20 move forward in making the significant investments required to provide
21 new services and competition for video programming.

22 NEW SECTION. **Sec. 2.** The definitions in this section apply
23 throughout this chapter unless the context clearly requires otherwise.

24 (1) "Cable operator" means any person or group of persons who
25 provides cable service over a cable system and directly or through one
26 or more affiliates owns a significant interest in the cable system, or
27 who otherwise controls or is responsible for, through any arrangement,
28 the management and operation of such a cable system.

29 (2) "Cable service" means the one-way transmission to subscribers
30 of video or other programming service, and subscriber interaction, if
31 any, which is required for the selection or use of such video
32 programming or other programming service.

33 (3) "Cable system" means a facility, consisting of a set of closed
34 transmission paths and associated signal generation, reception, and
35 control equipment that is designed to provide cable service that
36 includes video programming and that is provided to multiple subscribers
37 within a community. "Cable system" does not include:

1 (a) A facility that serves only to retransmit the television
2 signals of one or more television broadcast stations;

3 (b) A facility that serves subscribers without using any public
4 right-of-way;

5 (c) A facility of a common carrier, except that such a facility is
6 considered a cable system to the extent the facility is used in the
7 transmission of video programming directly to subscribers, unless the
8 extent of use is solely to provide interactive on-demand services;

9 (d) An open video system; or

10 (e) Any facilities of any electric utility used solely for
11 operating its electric utility system.

12 (4) "Commission" means the utilities and transportation commission.

13 (5) "Competitive cable service provider" means:

14 (a) A person authorized by this chapter to provide cable service
15 over a cable system other than the incumbent cable operator providing
16 service in the area to be served by the competitive cable service
17 provider; or

18 (b) A cable operator authorized by this chapter to provide cable
19 services over a cable system in areas where it currently does not have
20 an existing franchise agreement as of the effective date of this
21 section.

22 (6) "Competitive cable service provider fee" means the amount paid
23 by a competitive cable service provider under section 4 of this act.

24 (7) "Competitive video service provider" means a person authorized
25 by this chapter to provide video service. "Competitive video service
26 provider" does not include a cable operator, and a competitive video
27 service provider is not considered a cable operator, and the facilities
28 of a competitive video service provider is not considered a cable
29 system.

30 (8) "Competitive video service provider fee" means the amount paid
31 by a competitive video service provider under section 4 of this act.

32 (9) "Franchise" means an initial authorization, or renewal of an
33 authorization, issued by a franchising entity, regardless of whether
34 the authorization is designed as a franchise, permit, license,
35 resolution, contract, certificate, agreement, or otherwise, that
36 authorizes the construction and operation of a cable system or video
37 service provider's network in the public rights-of-way.

1 (10) "Franchising entity" means the city or county entitled to
2 require franchises and impose fees under local ordinances.

3 (11) "Public rights-of-way" means the area on, below, or above a
4 public roadway, highway, street, public sidewalk, alley, or waterway,
5 or utility easements dedicated for compatible uses.

6 (12) "Video programming" means programming provided by, or
7 generally considered comparable to programming provided by, a
8 television broadcast station.

9 (13) "Video service" means video programming services provided
10 through wireline facilities located at least in part in the public
11 rights-of-way without regard to delivery technology, including internet
12 protocol technology. "Video service" does not include any video
13 programming provided by a commercial mobile service provider or cable
14 service provided by a competitive cable service provider.

15 NEW SECTION. **Sec. 3.** (1) Any entity certificated to provide local
16 exchange service in the state that seeks to operate or operates as a
17 competitive cable service provider or competitive video service
18 provider in its local exchange service area automatically possesses
19 authorization upon the effective date of this section.

20 (2) Any other competitive cable service provider or competitive
21 video service provider possesses authorization upon securing permission
22 from the commission.

23 (3) The commission shall adopt rules to govern the cable service or
24 video service authorization application process for competitive cable
25 service providers and competitive video service providers included in
26 this subsection. To the extent required by applicable law, any cable
27 or video service authorization granted by this chapter or the
28 commission constitutes a franchise for purposes of 47 U.S.C. Sec.
29 541(b)(1). To the extent required for purposes of 47 U.S.C. Secs.
30 521-561, only the state of Washington holds the exclusive franchising
31 authority for competitive cable service providers and competitive video
32 service providers in this state.

33 (4) No franchising entity or other political entity of the state
34 may:

35 (a) Require a competitive cable service provider or competitive
36 video service provider to obtain a separate franchise; or

1 (b) Otherwise impose any fee or franchise requirement on any
2 competitive cable service provider or competitive video service
3 provider, except as provided in this chapter. For purposes of this
4 subsection, a franchise requirement includes, without limitation, any
5 provision regulating rates charged by competitive cable service
6 providers or competitive video service providers or requiring
7 competitive cable service providers or competitive video service
8 providers to satisfy any build-out requirements or deploy any
9 facilities or equipment.

10 (5) A cable operator with an existing franchise to provide cable
11 service in any municipality in the state as of the effective date of
12 this section is not eligible to seek a state authorization to provide
13 cable service or video service under this chapter as to such a
14 municipality until the expiration date of the existing franchise
15 agreement.

16 (6)(a) No later than one hundred eighty days after a request by a
17 municipality or county in which the competitive cable service provider
18 or the competitive video service provider is providing cable service or
19 video service, the holder of a state authorization to provide cable
20 service or video service shall designate a sufficient amount of
21 capacity on its communications network to allow the provision of a
22 comparable number of channels or capacity of public, educational, and
23 governmental noncommercial programming provided by the incumbent cable
24 operator.

25 (b) The content to be provided over the public, educational, and
26 governmental noncommercial programming access under this section is the
27 responsibility of the municipality or county receiving the benefit of
28 the capacity. The holder of a state authorization to provide cable
29 service or video service bears only the responsibility for the
30 transmission of the content, subject to technological restraints.

31 (7) The municipality or county shall ensure that all transmissions,
32 content, or programming to be transmitted by a holder of a state
33 authorization to provide cable service or video service are provided or
34 submitted to the competitive cable service provider or competitive
35 video service provider in a manner or form that is capable of being
36 accepted and transmitted by a provider, without requirement for
37 additional alteration or change in the content by the provider, over
38 the particular network of the competitive cable service provider or

1 competitive video service provider, that is compatible with the
2 technology or protocol utilized by the competitive cable service
3 provider or competitive video service provider to deliver services.

4 (8) When technically feasible, the holder of a state authorization
5 to provide cable service or video service and an incumbent cable
6 service provider shall use reasonable efforts to interconnect their
7 cable or video systems for the purpose of providing public,
8 educational, and governmental noncommercial programming.
9 Interconnection may be accomplished by direct cable, microwave link,
10 satellite, or other reasonable method of connection. Holders of a
11 state authorization to provide cable service or video service and
12 incumbent cable service providers shall negotiate in good faith and
13 incumbent cable service providers may not withhold interconnection of
14 public, educational, and governmental noncommercial programming
15 channels.

16 (9) Except as provided in subsections (1) through (3) of this
17 section, competitive cable service providers and competitive video
18 service providers enjoy the same rights under the laws of the state of
19 Washington as incumbent cable operators and other providers of video
20 programming.

21 (10) The commission is solely responsible for enforcing this
22 chapter and may do so by filing a complaint in superior court.

23 NEW SECTION. **Sec. 4.** (1) A competitive cable service provider or
24 competitive video service provider shall provide notice to each
25 franchising entity with jurisdiction in any locality in which a
26 competitive cable service provider or competitive video service
27 provider begins to offer cable service or video service.

28 (2) In any locality in which a competitive cable service provider
29 offers cable service or a competitive video service provider offers
30 video service, the competitive cable service provider or competitive
31 video service provider shall calculate and pay the competitive cable
32 service provider or competitive video service provider fee to the
33 franchising entity with jurisdiction in that locality upon the
34 franchising entity's written request. If the franchising entity makes
35 such a request, the competitive cable service provider or competitive
36 video service provider fee is due on a quarterly basis, forty-five days
37 after the close of the quarter, and is calculated as a percentage of

1 gross revenues. The franchising entity may not demand any additional
2 fees or charges from the competitive cable service provider or
3 competitive video service provider, and may not demand the use of any
4 other calculation method.

5 (3) The percentage to be applied against gross revenues pursuant to
6 subsection (2) of this section is set by the franchising entity and
7 identified in its written request equal to the percentage paid by the
8 incumbent cable operator or five percent, whichever is less.

9 (4)(a) For purposes of this section, "gross revenues" means all
10 consideration of any kind or nature including, without limitation,
11 cash, credits, property, and in-kind contributions received by the
12 provider from subscribers for the provision of cable service over a
13 cable system by a competitive cable provider or video service by a
14 competitive video service provider within the franchising entity's
15 jurisdiction. Competitive cable service providers and competitive
16 video service providers are subject to and required to pay either the
17 competitive cable service provider fee or the competitive video service
18 provider fee, but never both the competitive cable service provider and
19 competitive video service provider fees.

20 (b) For purposes of this section, "gross revenues" does not
21 include:

22 (i) Revenues not actually received, even if billed, such as bad
23 debt;

24 (ii) Revenues received by any affiliate or any other person in
25 exchange for supplying goods or services used by the provider to
26 provide cable service or video service;

27 (iii) Refunds, rebates, or discounts made to subscribers, leased
28 access providers, advertisers, or any municipality or other unit of
29 local government;

30 (iv) Any revenues from services not classified as cable service or
31 video service including, without limitation, revenue received from
32 telecommunications services, revenue received from information
33 services, revenue received in connection with advertising, revenue
34 received in connection with home shopping services, or any other
35 revenues attributed by the competitive cable service provider or
36 competitive video service provider to noncable service or nonvideo
37 service in accordance with any applicable laws, rules, regulations,
38 standards, or orders;

1 (v) Any revenue paid by subscribers to home shopping programmers
2 directly from the sale of merchandise through any home shopping channel
3 offered as part of the cable services or video services;

4 (vi) The sale of cable services or video services for resale in
5 which the purchaser is required to collect the five percent fee from
6 the purchaser's customer;

7 (vii) Any tax of general applicability imposed upon the competitive
8 cable service provider or competitive video service provider or upon
9 subscribers by a city, state, federal, or any other governmental entity
10 and required to be collected by the competitive cable service provider
11 or competitive video service provider and remitted to the taxing entity
12 including, but not limited to, sales and use tax, gross receipts tax,
13 excise tax, utility users tax, public service tax, and
14 telecommunications taxes, and including the five percent fee specified
15 in this section;

16 (viii) The provision of cable services or video services to public
17 institutions, public schools, or governmental entities at no charge;

18 (ix) Any foregone revenue from the competitive cable service
19 provider's or competitive video service provider's provision of free or
20 reduced-cost video service to any person including, without limitation,
21 any municipality and other public institutions or other institutions;

22 (x) Sales of capital assets or sales of surplus equipment;

23 (xi) Reimbursement by programmers of marketing costs incurred by
24 the competitive cable service provider or competitive video service
25 provider for the introduction or promotion of new programming;

26 (xii) Directory or internet advertising revenue including, but not
27 limited to, yellow pages, white pages, banner advertisement, and
28 electronic publishing; or

29 (xiii) Copyright fees paid to the United States copyright office.

30 (5) At the request of a franchising entity, no more than once per
31 year, the commission may perform reasonable audits of the competitive
32 cable service provider's or competitive video service provider's
33 calculation of the competitive cable service provider or competitive
34 video service provider fee.

35 (6) Any competitive cable service provider or competitive video
36 service provider may identify and collect the amount of the competitive
37 cable service provider fee or competitive video service provider fee as
38 a separate line item on the regular bill of each subscriber.

1 NEW SECTION. **Sec. 5.** (1) A franchising entity shall allow the
2 holder of a state authorization to provide cable service or video
3 service to install, construct, and maintain a communications network
4 within a public right-of-way and shall provide the holder of a state
5 authorization to provide cable service or video service with open,
6 comparable, nondiscriminatory, and competitively neutral access to the
7 public right-of-way.

8 (2) A franchising entity may not discriminate against the holder of
9 a state authorization to provide cable service or video service by
10 denying any of the following:

11 (a) The authorization or placement of a communications network in
12 public rights-of-way;

13 (b) Access to a building; or

14 (c) A municipal utility pole attachment term.

15 (3) A franchising entity may impose on a competitive cable service
16 provider or competitive video service provider a permitting fee only to
17 the extent it imposes such a fee on incumbent cable operators, and any
18 fee may not exceed the actual, direct costs incurred by the franchising
19 entity for issuing the relevant permit. In no event may a fee under
20 this subsection be levied under the following circumstances: (a) If
21 the competitive cable service provider or competitive video service
22 provider already has paid a permit fee of any kind in connection with
23 the same activity that would otherwise be covered by the permit fee
24 under this subsection or is otherwise authorized by law or contract to
25 place the facilities used by the competitive cable service provider or
26 competitive video service provider in the public rights-of-way; or (b)
27 for general revenue purposes.

28 NEW SECTION. **Sec. 6.** (1) A competitive cable service provider or
29 competitive video service provider that has been granted a state
30 authorization to provide cable service or video service may not deny
31 access to service to any group of potential residential subscribers
32 because of the income of the residents in the local area in which the
33 group resides.

34 (2) The holder of a state authorization to provide cable service or
35 video service may use direct-to-home satellite service or another
36 alternative technology that provides comparable content, service, and
37 functionality to satisfy the requirements of this section.

1 NEW SECTION. **Sec. 7.** (1) This chapter is intended to be
2 consistent with the federal cable act, 47 U.S.C. Sec. 521 et seq.

3 (2) Except as otherwise provided in sections 2 through 6 of this
4 act, this chapter does not prevent a competitive cable service
5 provider, competitive video service provider, cable operator, or
6 franchising entity from seeking clarification of its rights and
7 obligations under federal law or to exercise any right or authority
8 under federal or state law.

9 **Sec. 8.** RCW 35.21.860 and 2000 c 83 s 8 are each amended to read
10 as follows:

11 (1) No city or town may impose a franchise fee or any other fee or
12 charge of whatever nature or description upon the light and power, or
13 gas distribution businesses, as defined in RCW 82.16.010, or telephone
14 business, as defined in RCW 82.04.065, or service provider for use of
15 the right of way, except:

16 (a) A tax authorized by RCW 35.21.865 may be imposed;

17 (b) A fee may be charged to such businesses or service providers
18 that recovers actual administrative expenses incurred by a city or town
19 that are directly related to receiving and approving a permit, license,
20 and franchise, to inspecting plans and construction, or to the
21 preparation of a detailed statement pursuant to chapter 43.21C RCW;

22 (c) Taxes permitted by state law on service providers; and

23 (d) (~~Franchise requirements and fees for cable television services~~
24 ~~as allowed by federal law; and~~

25 ~~(e))~~) A site-specific charge pursuant to an agreement between the
26 city or town and a service provider of personal wireless services
27 acceptable to the parties for:

28 (i) The placement of new structures in the right of way regardless
29 of height, unless the new structure is the result of a mandated
30 relocation in which case no charge will be imposed if the previous
31 location was not charged;

32 (ii) The placement of replacement structures when the replacement
33 is necessary for the installation or attachment of wireless facilities,
34 and the overall height of the replacement structure and the wireless
35 facility is more than sixty feet; or

36 (iii) The placement of personal wireless facilities on structures
37 owned by the city or town located in the right of way. However, a

1 site-specific charge shall not apply to the placement of personal
2 wireless facilities on existing structures, unless the structure is
3 owned by the city or town.

4 A city or town is not required to approve the use permit for the
5 placement of a facility for personal wireless services that meets one
6 of the criteria in this subsection absent such an agreement. If the
7 parties are unable to agree on the amount of the charge, the service
8 provider may submit the amount of the charge to binding arbitration by
9 serving notice on the city or town. Within thirty days of receipt of
10 the initial notice, each party shall furnish a list of acceptable
11 arbitrators. The parties shall select an arbitrator; failing to agree
12 on an arbitrator, each party shall select one arbitrator and the two
13 arbitrators shall select a third arbitrator for an arbitration panel.
14 The arbitrator or arbitrators shall determine the charge based on
15 comparable siting agreements involving public land and rights of way.
16 The arbitrator or arbitrators shall not decide any other disputed
17 issues, including but not limited to size, location, and zoning
18 requirements. Costs of the arbitration, including compensation for the
19 arbitrator's services, must be borne equally by the parties
20 participating in the arbitration and each party shall bear its own
21 costs and expenses, including legal fees and witness expenses, in
22 connection with the arbitration proceeding.

23 (2) Subsection (1) of this section does not prohibit franchise fees
24 imposed on an electrical energy, natural gas, or telephone business, by
25 contract existing on April 20, 1982, with a city or town, for the
26 duration of the contract, but the franchise fees shall be considered
27 taxes for the purposes of the limitations established in RCW 35.21.865
28 and 35.21.870 to the extent the fees exceed the costs allowable under
29 subsection (1) of this section.

30 **Sec. 9.** RCW 35.99.020 and 2000 c 83 s 2 are each amended to read
31 as follows:

32 A city or town may grant, issue, or deny permits for the use of the
33 right of way by a service provider for installing, maintaining,
34 repairing, or removing facilities for telecommunications services (~~or~~
35 ~~cable television services~~) pursuant to ordinances, consistent with
36 chapter 83, Laws of 2000.

1 **Sec. 10.** RCW 35.102.020 and 2003 c 79 s 2 are each amended to read
2 as follows:

3 Chapter 79, Laws of 2003 does not apply to taxes on any service
4 that historically or traditionally has been taxed as a utility business
5 for municipal tax purposes, such as:

- 6 (1) A light and power business or a natural gas distribution
7 business, as defined in RCW 82.16.010;
8 (2) A telephone business, as defined in RCW 82.04.065;
9 (3) ~~((Cable television services;~~
10 ~~(4))~~) (4) Sewer or water services;
11 ~~((5))~~ (4) Drainage services;
12 ~~((6))~~ (5) Solid waste services; or
13 ~~((7))~~ (6) Steam services.

14 **Sec. 11.** RCW 80.36.370 and 1990 c 118 s 1 are each amended to read
15 as follows:

16 The commission shall not regulate the following:

- 17 (1) ~~((One way broadcast or cable television transmission of
18 television or radio signals;~~
19 ~~(2))~~) Private telecommunications systems;
20 ~~((3))~~ (2) Telegraph services;
21 ~~((4))~~ (3) Any sale, lease, or use of customer premises equipment
22 except such equipment as is regulated on July 28, 1985;
23 ~~((5))~~ (4) Private shared telecommunications services, unless the
24 commission finds, upon notice and investigation, that customers of such
25 services have no alternative access to local exchange
26 telecommunications companies. If the commission makes such a finding,
27 it may require the private shared telecommunications services provider
28 to make alternative facilities or conduit space available on reasonable
29 terms and conditions at reasonable prices;
30 ~~((6))~~ (5) Radio communications services provided by a regulated
31 telecommunications company, except that when those services are the
32 only voice grade, local exchange telecommunications service available
33 to a customer of the company the commission may regulate the radio
34 communication service of that company.

35 NEW SECTION. **Sec. 12.** If any provision of this act or its

1 application to any person or circumstance is held invalid, the
2 remainder of the act or the application of the provision to other
3 persons or circumstances is not affected.

4 NEW SECTION. **Sec. 13.** Sections 1 through 7 of this act constitute
5 a new chapter in Title 80 RCW.

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