

2 **ESSB 6622** - H COMM AMD  
3 By Committee on Energy & Utilities

4 ADOPTED AS AMENDED 3/6/98

5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. Sec. 1. (1) The commission shall plan and prepare  
8 to implement a program for the preservation and advancement of  
9 universal telecommunications service which shall not take effect until  
10 the legislature approves the program. The purpose of the universal  
11 service program is to benefit telecommunications ratepayers in the  
12 state by minimizing implicit sources of support and maximizing explicit  
13 sources of support that are specific, sufficient, competitively  
14 neutral, and technologically neutral to support basic  
15 telecommunications services for customers of telecommunications  
16 companies in high-cost locations.

17 (2) In preparing a universal service program for approval by the  
18 legislature, the commission shall:

19 (a) Estimate the cost of supporting all lines located in high-cost  
20 locations and the cost of supporting one primary telecommunications  
21 line for each residential or business customer located in high-cost  
22 locations;

23 (b) Determine the assessments that must be made on all  
24 telecommunications carriers, and the manner of collection, to provide  
25 support for:

26 (i) All residential and business lines located in high-cost  
27 locations;

28 (ii) Only one primary line for each residential or business  
29 customer located in high-cost locations;

30 (c) Designate those telecommunications carriers serving high-cost  
31 locations that are eligible to receive support for the benefit of their  
32 customers in those locations;

33 (d) Adopt or prepare to adopt all necessary rules for  
34 administration of the program; and

1 (e) Provide a schedule of all fees and payments proposed or  
2 expected to be proposed by the commission under subsection (4)(d) of  
3 this section.

4 (3) The commission shall report by November 1, 1998, to the  
5 legislature on these steps taken to prepare for implementation and  
6 shall inform the legislature of the estimated cost to support all lines  
7 located in high-cost locations and the estimated cost to support only  
8 one primary line for each residential or business customer located in  
9 high-cost locations under a universal service program.

10 (4) Once a program is approved by the legislature and subsequently  
11 established, the following provisions apply unless otherwise directed  
12 by the legislature:

13 (a) All transfers of money necessary to provide the support shall  
14 be outside the state treasury and not be subject to appropriation;

15 (b) The commission may delegate to the commission secretary or  
16 other staff the authority to resolve disputes or make other decisions  
17 necessary to the administration of the program;

18 (c) The commission may contract with an independent program  
19 administrator subject to the direction and control of the commission  
20 and may authorize the establishment of an account or accounts in  
21 independent financial institutions should that be necessary for  
22 administration of the program;

23 (d) The expenses of an independent program administrator shall be  
24 authorized by the commission and shall be paid out of contributions by  
25 the telecommunications carriers participating in the program;

26 (e) The commission may require the carriers participating in the  
27 program, as part of their contribution, to pay into the public service  
28 revolving fund the costs of the commission attributable to supervision  
29 and administration of the program that are not otherwise recovered  
30 through fees paid to the commission.

31 (5) The commission shall establish standards for review or testing  
32 of all telecommunications carriers' compliance with the program for the  
33 purpose of ensuring the support received by a telecommunications  
34 carrier is used only for the purposes of the program and that each  
35 telecommunications carrier is making its proper contribution to the  
36 program. The commission may conduct the review or test, or contract  
37 with an independent administrator or other person to conduct the review  
38 or test.

1 (6) The commission shall coordinate administration of the program  
2 with any federal universal service program and may administer the  
3 federal fund in conjunction with the state program if so authorized by  
4 federal law.

5 (7) The definitions in this subsection apply throughout this  
6 section unless the context clearly requires otherwise.

7 (a) "Telecommunications carrier" has the same meaning as defined in  
8 47 U.S.C. Sec. 153(44).

9 (b) "Basic telecommunications services" means the following  
10 services:

11 (i) Single-party service;

12 (ii) Voice grade access to the public switched network;

13 (iii) Support for local usage;

14 (iv) Dual tone multifrequency signaling (touch-tone);

15 (v) Access to emergency services (911);

16 (vi) Access to operator services;

17 (vii) Access to interexchange services;

18 (viii) Access to directory assistance; and

19 (ix) Toll limitation services.

20 (c) "High-cost location" means a location where the cost of  
21 providing telecommunications services is greater than a benchmark  
22 established by the commission by rule.

23 (8) Each telecommunications carrier that provides intrastate  
24 telecommunications services shall provide whatever information the  
25 commission may reasonably require in order to fulfill the commission's  
26 responsibilities under subsection (2) of this section.

27 NEW SECTION. **Sec. 2.** (1) The commission is authorized to take  
28 actions, conduct proceedings, and enter orders as permitted or  
29 contemplated for a state commission under the federal  
30 telecommunications act of 1996, P.L. 104-104 (110 Stat. 56), but the  
31 commission's authority to either establish a new state program or to  
32 adopt new rules to preserve and advance universal service under section  
33 254(f) of the federal act is limited to the actions expressly  
34 authorized by section 1 of this act. The commission may establish by  
35 rule fees to be paid by persons seeking commission action under the  
36 federal act, and by parties to proceedings under that act, to offset in  
37 whole or part the commission's expenses that are not otherwise  
38 recovered through fees in implementing the act, but new fees or

1 assessments charged telecommunications carriers to either establish a  
2 state program or to adopt rules to preserve and advance universal  
3 service under section 254(f) of the federal act do not take effect  
4 until the legislature has approved a state universal service program.

5 (2) The legislature intends that under the future universal service  
6 program established in this state:

7 (a) Every telecommunications carrier that provides intrastate  
8 telecommunications services shall contribute, on an equitable and  
9 nondiscriminatory basis, to the preservation and advancement of  
10 universal service in the state;

11 (b) The contributions shall be competitively and technologically  
12 neutral; and

13 (c) The universal service program to be established in accordance  
14 with section 1 of this act shall not be inconsistent with the  
15 requirements of 47 U.S.C. Sec. 254.

16 NEW SECTION. **Sec. 3.** Any rules regarding universal service  
17 adopted by the utilities and transportation commission shall comply  
18 with the purpose, as stated in section 1 of this act, for establishing  
19 a program for the preservation and advancement of universal  
20 telecommunications service. Services to be supported are only those  
21 basic services defined in section 1(7) of this act.

22 **Sec. 4.** RCW 80.36.310 and 1989 c 101 s 14 are each amended to read  
23 as follows:

24 (1) Telecommunications companies may petition to be classified as  
25 competitive telecommunications companies under RCW 80.36.320 or to have  
26 services classified as competitive telecommunications services under  
27 RCW 80.36.330. The commission may initiate classification proceedings  
28 on its own motion. The commission may require all regulated  
29 telecommunications companies potentially affected by a classification  
30 proceeding to appear as parties for a determination of their  
31 classification.

32 (2) Any company petition or commission motion for competitive  
33 classification shall state an effective date not sooner than thirty  
34 days from the filing date. The company must provide notice and  
35 publication of the proposed competitive classification in the same  
36 manner as provided in RCW 80.36.110 for tariff changes. The proposed  
37 classification shall take effect on the stated effective date unless

1 suspended by the commission and set for hearing under chapter 34.05 RCW  
2 or set for a formal investigation and fact-finding under RCW 80.36.145.  
3 The commission shall enter its final order with respect to any  
4 suspended classification within ~~((ten))~~ six months from the date of  
5 filing of a company's petition or the commission's motion.

6 **Sec. 5.** RCW 80.36.320 and 1989 c 101 s 15 are each amended to read  
7 as follows:

8 (1) The commission shall classify a telecommunications company  
9 ~~((providing service in a relevant market))~~ as a competitive  
10 telecommunications company if ~~((it finds, after notice and hearing,~~  
11 ~~that the telecommunications company has demonstrated that))~~ the  
12 services it offers are subject to effective competition. Effective  
13 competition means that the company's customers have reasonably  
14 available alternatives and that the company does not have a significant  
15 captive customer base. In determining whether a company is  
16 competitive, factors the commission shall consider include but are not  
17 limited to:

- 18 (a) The number and sizes of alternative providers of service;  
19 (b) The extent to which services are available from alternative  
20 providers in the relevant market;  
21 (c) The ability of alternative providers to make functionally  
22 equivalent or substitute services readily available at competitive  
23 rates, terms, and conditions; and  
24 (d) Other indicators of market power which may include market  
25 share, growth in market share, ease of entry, and the affiliation of  
26 providers of services.

27 The commission shall conduct the initial classification and any  
28 subsequent review of the classification in accordance with such  
29 procedures as the commission may establish by rule.

30 (2) Competitive telecommunications companies shall be subject to  
31 minimal regulation. Minimal regulation means that competitive  
32 telecommunications companies may file, instead of tariffs, price lists  
33 ~~((which))~~ that shall be effective after ten days' notice to the  
34 commission and customers. The commission shall prescribe the form of  
35 notice. The commission may also waive other regulatory requirements  
36 under this title for competitive telecommunications companies when it  
37 determines that competition will serve the same purposes as public  
38 interest regulation. The commission may waive different regulatory

1 requirements for different companies if such different treatment is in  
2 the public interest. A competitive telecommunications company shall at  
3 a minimum:

4 (a) Keep its accounts according to regulations as determined by the  
5 commission;

6 (b) File financial reports with the commission as required by the  
7 commission and in a form and at times prescribed by the commission;

8 (c) Keep on file at the commission such current price lists and  
9 service standards as the commission may require; and

10 (d) Cooperate with commission investigations of customer  
11 complaints.

12 (3) When a telecommunications company has demonstrated that the  
13 equal access requirements ordered by the federal district court in the  
14 case of U.S. v. AT&T, 552 F. Supp. 131 (1982), or in supplemental  
15 orders, have been met, the commission shall review the classification  
16 of telecommunications companies providing inter-LATA interexchange  
17 services. At that time, the commission shall classify all such  
18 companies as competitive telecommunications companies unless it finds  
19 that effective competition, as defined in subsection (1) of this  
20 section, does not then exist.

21 (4) The commission may revoke any waivers it grants and may  
22 reclassify any competitive telecommunications company if ~~((such))~~ the  
23 revocation or reclassification would protect the public interest.

24 (5) The commission may waive the requirements of RCW 80.36.170 and  
25 80.36.180 in whole or in part for a competitive telecommunications  
26 company if it finds that competition will serve the same purpose and  
27 protect the public interest.

28 **Sec. 6.** RCW 80.36.330 and 1989 c 101 s 16 are each amended to read  
29 as follows:

30 (1) The commission may classify a telecommunications service  
31 provided by a telecommunications company as a competitive  
32 telecommunications service if ~~((it finds, after notice and hearing,~~  
33 ~~that))~~ the service is subject to effective competition. Effective  
34 competition means that customers of the service have reasonably  
35 available alternatives and that the service is not provided to a  
36 significant captive customer base. In determining whether a service is  
37 competitive, factors the commission shall consider include but are not  
38 limited to:

- 1 (a) The number and size of alternative providers of services;  
2 (b) The extent to which services are available from alternative  
3 providers in the relevant market;  
4 (c) The ability of alternative providers to make functionally  
5 equivalent or substitute services readily available at competitive  
6 rates, terms, and conditions; and  
7 (d) Other indicators of market power, which may include market  
8 share, growth in market share, ease of entry, and the affiliation of  
9 providers of services.

10 (2) When the commission finds that a telecommunications company has  
11 demonstrated that a telecommunications service is competitive, the  
12 commission may permit the service to be provided under a price list  
13 effective on ten days notice to the commission and customers. The  
14 commission shall prescribe the form of notice. The commission may  
15 adopt procedural rules necessary to implement this section.

16 (3) Prices or rates charged for competitive telecommunications  
17 services shall cover their cost. The commission shall determine proper  
18 cost standards to implement this section, provided that in making any  
19 assignment of costs or allocating any revenue requirement, the  
20 commission shall act to preserve affordable universal  
21 telecommunications service.

22 (4) The commission may investigate prices for competitive  
23 telecommunications services upon complaint. In any complaint  
24 proceeding initiated by the commission, the telecommunications company  
25 providing the service shall bear the burden of proving that the prices  
26 charged cover cost, and are fair, just, and reasonable.

27 (5) Telecommunications companies shall provide the commission with  
28 all data it deems necessary to implement this section.

29 (6) No losses incurred by a telecommunications company in the  
30 provision of competitive services may be recovered through rates for  
31 noncompetitive services. The commission may order refunds or credits  
32 to any class of subscribers to a noncompetitive telecommunications  
33 service which has paid excessive rates because of below cost pricing of  
34 competitive telecommunications services.

35 (7) The commission may reclassify any competitive  
36 telecommunications service if reclassification would protect the public  
37 interest.

38 (8) The commission may waive the requirements of RCW 80.36.170 and  
39 80.36.180 in whole or in part for a service classified as competitive

1 if it finds that competition will serve the same purpose and protect  
2 the public interest.

3 NEW SECTION. **Sec. 7.** Sections 1 through 3 of this act are each  
4 added to chapter 80.36 RCW.

5 NEW SECTION. **Sec. 8.** If any provision of this act or its  
6 application to any person or circumstance is held invalid, the  
7 remainder of the act or the application of the provision to other  
8 persons or circumstances is not affected."

9 Correct the title.

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