
HOUSE BILL 2741

State of Washington

55th Legislature

1998 Regular Session

By Representatives Bush and Delvin; by request of Utilities & Transportation Commission

Read first time 01/19/98. Referred to Committee on Energy & Utilities.

1 AN ACT Relating to streamlining and clarifying regulatory
2 requirements of telecommunication providers regulated by the utilities
3 and transportation commission; amending RCW 80.36.310, 80.36.320,
4 80.36.330, 80.36.135, and 80.36.300; and adding a new section to
5 chapter 80.36 RCW.

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

7 **Sec. 1.** RCW 80.36.310 and 1989 c 101 s 14 are each amended to read
8 as follows:

9 (1) Telecommunications companies may petition to be classified as
10 competitive telecommunications companies under RCW 80.36.320 or to have
11 services classified as competitive telecommunications services under
12 RCW 80.36.330. The commission may initiate classification proceedings
13 on its own motion. The commission may require all regulated
14 telecommunications companies potentially affected by a classification
15 proceeding to appear as parties for a determination of their
16 classification.

17 (2) Any company petition or commission motion for competitive
18 classification shall state an effective date not sooner than thirty
19 days from the filing date. The company must provide notice and

1 publication of the proposed competitive classification in the same
2 manner as provided in RCW 80.36.110 for tariff changes. The proposed
3 classification shall take effect on the stated effective date unless
4 suspended by the commission or set for hearing as provided in
5 subsection (3) of this section. The commission may, before the stated
6 effective date, suspend the proposed classification. The commission
7 shall enter its final order with respect to any suspended
8 classification within ((ten)) six months from the date of filing of a
9 company's petition or the commission's motion.

10 (3) Any company that is, or whose service is, proposed to be
11 declared competitive by a petition or motion for competitive
12 classification may, within thirty days of the filing of the petition or
13 motion, request a hearing on the proposed classification. If a hearing
14 is requested by the company, the commission shall act on the proposed
15 classification only after notice and hearing. The commission shall
16 enter its final order with respect to such petition or motion within
17 six months from the date of filing.

18 **Sec. 2.** RCW 80.36.320 and 1989 c 101 s 15 are each amended to read
19 as follows:

20 (1) The commission shall classify a telecommunications company
21 ~~((providing service in a relevant market))~~ as a competitive
22 telecommunications company if ~~((it finds, after notice and hearing,~~
23 ~~that the telecommunications company has demonstrated that))~~ the
24 services it offers are subject to effective competition within the
25 relevant geographic and product market. Effective competition means
26 that the company's customers have reasonably available alternatives and
27 that the company does not have a significant captive customer base. In
28 determining whether a company is competitive, factors the commission
29 shall consider include but are not limited to:

- 30 (a) The number and sizes of alternative providers of service;
31 (b) The extent to which services are available from alternative
32 providers in the relevant geographic and product market;
33 (c) The ability of alternative providers to make functionally
34 equivalent or substitute services readily available at competitive
35 rates, terms, and conditions; and
36 (d) Other indicators of market power which may include market
37 share, growth in market share, ease of entry, and the affiliation of
38 providers of services.

1 The commission shall conduct the initial classification and any
2 subsequent review of the classification in accordance with such
3 procedures as the commission may establish by rule.

4 (2) Competitive telecommunications companies shall be subject to
5 minimal regulation. Minimal regulation means that competitive
6 telecommunications companies may file, instead of tariffs, price lists
7 (~~which~~) that shall be effective after ten days' notice to the
8 commission and customers. The commission shall prescribe the form of
9 notice. The commission may also waive other regulatory requirements
10 under this title for competitive telecommunications companies when it
11 determines that competition will serve the same purposes as public
12 interest regulation. The commission may waive different regulatory
13 requirements for different companies if such different treatment is in
14 the public interest. A competitive telecommunications company shall at
15 a minimum:

16 (a) Keep its accounts according to regulations as determined by the
17 commission;

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

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

22 (d) Cooperate with commission investigations of customer
23 complaints.

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

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

36 (5) The commission may waive the requirements of RCW 80.36.170 and
37 80.36.180 in whole or in part for a competitive telecommunications
38 company if it finds that competition will serve the same purpose and
39 protect the public interest.

1 **Sec. 3.** RCW 80.36.330 and 1989 c 101 s 16 are each amended to read
2 as follows:

3 (1) The commission may classify a telecommunications service
4 provided by a telecommunications company as a competitive
5 telecommunications service if (~~it finds, after notice and hearing,~~
6 ~~that~~) the service is subject to effective competition within the
7 relevant geographic and product market. Effective competition means
8 that customers of the service have reasonably available alternatives
9 and that the service is not provided to a significant captive customer
10 base. In determining whether a service is competitive, factors the
11 commission shall consider include but are not limited to:

12 (a) The number and size of alternative providers of services;

13 (b) The extent to which services are available from alternative
14 providers in the relevant geographic and product market;

15 (c) The ability of alternative providers to make functionally
16 equivalent or substitute services readily available at competitive
17 rates, terms, and conditions; and

18 (d) Other indicators of market power, which may include market
19 share, growth in market share, ease of entry, and the affiliation of
20 providers of services.

21 (2) When the commission finds that a telecommunications company has
22 demonstrated that a telecommunications service is competitive, the
23 commission may permit the service to be provided under a price list
24 effective on ten days notice to the commission and customers. The
25 commission shall prescribe the form of notice. The commission may
26 adopt procedural rules necessary to implement this section.

27 (3) Prices or rates charged for competitive telecommunications
28 services shall cover their cost. The commission shall determine proper
29 cost standards to implement this section, provided that in making any
30 assignment of costs or allocating any revenue requirement, the
31 commission shall act to preserve affordable universal
32 telecommunications service.

33 (4) The commission may investigate prices for competitive
34 telecommunications services upon complaint. In any complaint
35 proceeding initiated by the commission, the telecommunications company
36 providing the service shall bear the burden of proving that the prices
37 charged cover cost, and are fair, just, and reasonable.

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

1 (6) No losses incurred by a telecommunications company in the
2 provision of competitive services may be recovered through rates for
3 noncompetitive services. The commission may order refunds or credits
4 to any class of subscribers to a noncompetitive telecommunications
5 service which has paid excessive rates because of below cost pricing of
6 competitive telecommunications services.

7 (7) The commission may reclassify any competitive
8 telecommunications service if reclassification would protect the public
9 interest.

10 (8) Once the commission classifies a service as competitive in a
11 geographic and product market, in any subsequent proceeding for
12 competitive classification of the same service in the same market,
13 whether initiated by petition or motion, there shall be a rebuttable
14 presumption that such a service meets all the requirements for
15 competitive classification.

16 (9) The commission may waive the requirements of RCW 80.36.170 and
17 80.36.180 in whole or in part for a service classified as competitive
18 if it finds that competition will serve the same purpose and protect
19 the public interest.

20 NEW SECTION. Sec. 4. A new section is added to chapter 80.36 RCW
21 to read as follows:

22 A company may package a product or service or combination of
23 products and services for sale, whether unregulated, price listed under
24 RCW 80.36.330, or fully regulated, provided that any price listed or
25 fully regulated product or service included in the package continues to
26 be offered as a stand-alone service at prices set forth in the
27 appropriate tariff or price list filed with the commission, and at the
28 time the package offering is introduced or at the time the price of the
29 package is subsequently changed, the packaged rate or price may not
30 exceed the sum of the unpackaged rates or prices for the individual
31 service elements or services.

32 **Sec. 5.** RCW 80.36.135 and 1995 c 110 s 5 are each amended to read
33 as follows:

34 (1) The legislature declares that:

35 (a) Changes in technology and the structure of the
36 telecommunications industry may produce conditions under which
37 traditional rate of return, rate base regulation of telecommunications

1 companies may not in all cases provide the most efficient and effective
2 means of achieving the public policy goals of this state as declared in
3 RCW 80.36.300, this section, and RCW 80.36.145. The commission should
4 be authorized to employ an alternative form of regulation if that
5 alternative is better suited to achieving those policy goals.

6 (b) Because of the great diversity in the scope and type of
7 services provided by telecommunications companies, alternative
8 regulatory arrangements that meet the varying circumstances of
9 different companies and their ratepayers may be desirable.

10 (2) Subject to the conditions set forth in this chapter and RCW
11 80.04.130, the commission may regulate telecommunications companies
12 subject before July 23, 1989, to traditional rate of return, rate base
13 regulation by authorizing an alternative form of regulation. The
14 commission may determine the manner and extent of any alternative forms
15 of regulation as may in the public interest be appropriate. In
16 addition to the public policy goals declared in RCW 80.36.300, the
17 commission shall consider, in determining the appropriateness of any
18 proposed alternative form of regulation, whether it will:

19 (a) Reduce regulatory delay and costs;

20 (b) Encourage innovation in services;

21 (c) Promote efficiency;

22 (d) Facilitate the broad dissemination of technological
23 improvements to all classes of ratepayers;

24 (e) Enhance the ability of telecommunications companies to respond
25 to competition;

26 (f) Ensure that telecommunications companies do not have the
27 opportunity to exercise substantial market power absent effective
28 competition or effective regulatory constraints; and

29 (g) Provide fair, just, and reasonable rates for all ratepayers.

30 The commission shall make written findings of fact as to each of
31 the above-stated policy goals in ruling on any proposed alternative
32 form of regulation.

33 (3)(a) A telecommunications company or companies subject to
34 traditional rate of return, rate base regulation may petition the
35 commission to establish an alternative form of regulation. The company
36 or companies shall submit with the petition a plan for an alternative
37 form of regulation. The plan shall contain a proposal for transition
38 to the alternative form of regulation and may, but need not, require a
39 sharing of earnings with ratepayers.

1 **(b)** The commission shall review and may modify or reject the
2 proposed plan. The commission also may initiate consideration of
3 alternative forms of regulation for a company or companies on its own
4 motion.

5 **(c)** The commission need not conduct a rate proceeding prior to
6 approval of a plan. The commission may approve the plan or modified
7 plan and authorize its implementation, if it finds, after notice and
8 hearing, that the plan or modified plan:

9 ~~((a))~~ **(i)** Is in the public interest;

10 ~~((b))~~ **(ii)** Is ~~((necessary to respond to such))~~ appropriate given
11 changes in technology and the structure of the intrastate
12 telecommunications industry as are in fact occurring;

13 ~~((c))~~ **(iii)** Is better suited to achieving the policy goals set
14 forth in RCW 80.36.300 and this section than the traditional rate of
15 return, rate base regulation;

16 ~~((d))~~ **(iv)** Ensures that ratepayers will benefit from any
17 efficiency gains and cost savings arising out of the regulatory change
18 and will afford ratepayers the opportunity to benefit from improvements
19 in productivity due to technological change;

20 ~~((e))~~ **(v)** Will not result in a degradation of the quality or
21 availability of efficient telecommunications services;

22 ~~((f))~~ **(vi)** Will produce fair, just, and reasonable rates for
23 telecommunications services; and

24 ~~((g))~~ **(vii)** Will not unduly or unreasonably prejudice or
25 disadvantage any particular customer class.

26 (4) Not later than sixty days from the entry of the commission's
27 order, the company or companies affected by the order may file with the
28 commission an election not to proceed with the alternative form of
29 regulation as authorized by the commission. If a company elects to
30 appeal to the courts the final order of the commission authorizing an
31 alternative form of regulation, it shall not change its election to
32 proceed or not proceed after the appeal is concluded. The pendency of
33 a petition by a company for judicial review of the final order shall
34 not serve to extend the sixty-day period.

35 (5) The commission may waive such regulatory requirements under
36 Title 80 RCW for a telecommunications company subject to an alternative
37 form of regulation as may be appropriate to facilitate the
38 implementation of this section: PROVIDED, That the commission may not
39 grant the authority to price list services except as provided in RCW

1 80.36.300 through 80.36.370, the regulatory flexibility act, nor may it
2 waive any statutory requirements or grants of legal rights to any
3 person contained in this chapter and chapter 80.04 RCW as amended,
4 except as otherwise expressly provided. The commission may waive
5 different regulatory requirements for different companies or services
6 if such different treatment is in the public interest.

7 (6) Upon petition by any person, or upon its own motion, the
8 commission may rescind its approval of an alternative form of
9 regulation if, after notice and hearing, it finds that the conditions
10 set forth in subsection (3) of this section can no longer be satisfied.
11 The commission or any person may file a complaint alleging that the
12 rates charged by a telecommunications company under an alternative form
13 of regulation are unfair, unjust, unreasonable, unduly discriminatory,
14 or are otherwise not consistent with the requirements of chapter 101,
15 Laws of 1989: PROVIDED, That the complainant shall bear the burden of
16 proving the allegations in the complaint.

17 **Sec. 6.** RCW 80.36.300 and 1985 c 450 s 1 are each amended to read
18 as follows:

19 The legislature declares it is the policy of the state to:

20 (1) Preserve affordable universal telecommunications service;

21 (2) Maintain and advance the efficiency and availability of
22 telecommunications service;

23 (3) Ensure that customers pay only reasonable charges for
24 telecommunications service;

25 (4) Ensure that rates for noncompetitive telecommunications
26 services do not subsidize the competitive ventures of regulated
27 telecommunications companies;

28 (5) Promote diversity in the supply of telecommunications services
29 and products in telecommunications markets throughout the state;
30 (~~and~~)

31 (6) Permit flexible regulation of competitive telecommunications
32 companies and services;

33 (7) Encourage adequate investment in the telecommunications
34 infrastructure; and

35 (8) Promote the creation of a state-of-the-art telecommunications
36 infrastructure offering modern, advanced telecommunications service.

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