CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 6622

Chapter 337, Laws of 1998

55th Legislature
1998 Regular Session

IMPLEMENTING THE FEDERAL COMMUNICATION ACT OF 1996

EFFECTIVE DATE: 6/11/98

Passed by the Senate March 10, 1998
YEAS 34    NAYS 15

BRAD OWEN
President of the Senate

Passed by the House March 6, 1998
YEAS 69    NAYS 29

CLYDE BALLARD
Speaker of the
House of Representatives

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is ENGROSSED SUBSTITUTE SENATE BILL 6622 as passed by the Senate and the House of Representatives on the dates hereon set forth.

MIKE O’CONNELL
Secretary

Approved April 3, 1998

GARY LOCKE
Governor of the State of Washington

FILED

April 3, 1998 - 3:14 p.m.
AN ACT Relating to the implementation of the federal
telecommunications act of 1996, P.L. 104-104 (110 Stat. 56); amending
RCW 80.36.310, 80.36.320, and 80.36.330; adding new sections to chapter
80.36 RCW; and providing a contingent expiration date.

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

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

(2) In preparing a universal service program for approval by the
legislature, the commission shall:
(a) Estimate the cost of supporting all lines located in high-cost
locations and the cost of supporting one primary telecommunications
line for each residential or business customer located in high-cost locations;

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

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

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

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

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

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

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

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

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

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

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

(d) The expenses of an independent program administrator shall be authorized by the commission and shall be paid out of contributions by the telecommunications carriers participating in the program;
(e) The commission may require the carriers participating in the program, as part of their contribution, to pay into the public service revolving fund the costs of the commission attributable to supervision and administration of the program that are not otherwise recovered through fees paid to the commission.

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

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

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

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

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

(i) Single-party service;
(ii) Voice grade access to the public switched network;
(iii) Support for local usage;
(iv) Dual tone multifrequency signaling (touch-tone);
(v) Access to emergency services (911);
(vi) Access to operator services;
(vii) Access to interexchange services;
(viii) Access to directory assistance; and
(ix) Toll limitation services.

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

(8) Each telecommunications carrier that provides intrastate telecommunications services shall provide whatever information the commission may reasonably require in order to fulfill the commission’s responsibilities under subsection (2) of this section.
NEW SECTION. Sec. 2. (1) The commission is authorized to take actions, conduct proceedings, and enter orders as permitted or contemplated for a state commission under the federal telecommunications act of 1996, P.L. 104-104 (110 Stat. 56), but the commission’s authority to either establish a new state program or to adopt new rules to preserve and advance universal service under section 254(f) of the federal act is limited to the actions expressly authorized by section 1 of this act. The commission may establish by rule fees to be paid by persons seeking commission action under the federal act, and by parties to proceedings under that act, to offset in whole or part the commission’s expenses that are not otherwise recovered through fees in implementing the act, but new fees or assessments charged telecommunications carriers to either establish a state program or to adopt rules to preserve and advance universal service under section 254(f) of the federal act do not take effect until the legislature has approved a state universal service program.

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

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

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

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

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

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

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

(2) Any company petition or commission motion for competitive
classification shall state an effective date not sooner than thirty
days from the filing date. The company must provide notice and
publication of the proposed competitive classification in the same
manner as provided in RCW 80.36.110 for tariff changes. The proposed
classification shall take effect on the stated effective date unless
suspended by the commission and set for hearing under chapter 34.05 RCW
or set for a formal investigation and fact-finding under RCW 80.36.145.
The commission shall enter its final order with respect to any
suspended classification within ((ten)) six months from the date of
filing of a company’s petition or the commission’s motion.

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

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

(a) The number and sizes of alternative providers of service;
(b) The extent to which services are available from alternative
providers in the relevant market;
(c) The ability of alternative providers to make functionally
equivalent or substitute services readily available at competitive
rates, terms, and conditions; and
(d) Other indicators of market power which may include market
share, growth in market share, ease of entry, and the affiliation of
providers of services.
The commission shall conduct the initial classification and any subsequent review of the classification in accordance with such procedures as the commission may establish by rule.

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

(a) Keep its accounts according to regulations as determined by the commission;
(b) File financial reports with the commission as required by the commission and in a form and at times prescribed by the commission;
(c) Keep on file at the commission such current price lists and service standards as the commission may require; and
(d) Cooperate with commission investigations of customer complaints.

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

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

(5) The commission may waive the requirements of RCW 80.36.170 and 80.36.180 in whole or in part for a competitive telecommunications company if it finds that competition will serve the same purpose and protect the public interest.
Sec. 6. RCW 80.36.330 and 1989 c 101 s 16 are each amended to read as follows:

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

- The number and size of alternative providers of services;
- The extent to which services are available from alternative providers in the relevant market;
- The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and
- Other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

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

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

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

5. Telecommunications companies shall provide the commission with all data it deems necessary to implement this section.
(6) No losses incurred by a telecommunications company in the provision of competitive services may be recovered through rates for noncompetitive services. The commission may order refunds or credits to any class of subscribers to a noncompetitive telecommunications service which has paid excessive rates because of below cost pricing of competitive telecommunications services.

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

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

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

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

Passed the Senate March 10, 1998.
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