

# SENATE BILL REPORT

## SB 5735

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As Reported By Senate Committee On:  
Energy, Technology & Telecommunications, March 2, 1999

**Title:** An act relating to telecommunications competition.

**Brief Description:** Increasing competition among telecommunications carriers in order to provide customers with higher service quality standards.

**Sponsors:** Senators Finkbeiner, T. Sheldon, Shin, Loveland, McDonald, Johnson, Jacobsen and West.

**Brief History:**

**Committee Activity:** Energy, Technology & Telecommunications: 2/18/99, 3/1/99 [DPS, DNPS].

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### SENATE COMMITTEE ON ENERGY, TECHNOLOGY & TELECOMMUNICATIONS

**Majority Report:** That Substitute Senate Bill No. 5735 be substituted therefor, and the substitute bill do pass.

Signed by Senators Brown, Chair; Goings, Vice Chair; Fairley and Fraser.

**Minority Report:** Do not pass substitute.

Signed by Senator Hochstatter.

**Staff:** Andrea McNamara (786-7483)

**Background:** The Federal Telecommunication Act of 1996 requires incumbent local exchange carriers (ILECs) to share access to their networks with competitive entrants through resale, interconnection, and the lease of unbundled network elements for the purpose of promoting telecommunications competition.

Interconnection is accomplished through negotiated or arbitrated agreements between the companies that are then approved by the Washington Utilities and Transportation Commission (WUTC). Disputes that arise between companies relating to their interconnection agreements may be taken to the WUTC for resolution. The WUTC recently implemented new rules governing the dispute resolution process.

Incumbent local exchange carriers are regulated under rate-of-return regulation. The WUTC determines the amount the company may earn and permits the company to set rates calculated to produce that amount. The WUTC will disallow a rate if it is not fair, just, reasonable and sufficient, if it is unjustly discriminatory or unduly prejudicial, or if the ILEC's total earnings exceed the allowed amount.

Under current law, a company subject to rate-of-return regulation may petition the WUTC for an Alternative Form of Regulation (AFOR). Specific procedural and substantive

requirements must be met, and the WUTC may accept, reject, or modify an AFOR plan. Once accepted by the WUTC, a company may elect whether or not to proceed. If implemented, an AFOR may provide for a method of regulation other than rate-of-return regulation, including a price cap model.

A telecommunications company or service is not subject to rate regulation by the WUTC if the company or the service is classified as competitive. To be classified as competitive, a showing of effective competition is required.

**Summary of Substitute Bill:** Incumbent local exchange carriers (ILECs) are expressly required to provide new entrants with interconnection and access to operations support systems (OSS) on par with the service ILECs provide themselves and their affiliates.

The WUTC is directed to adopt, in rule, interconnection and OSS performance measurements by December 1, 1999.

The WUTC rules may address who has access to performance measurement reports, the frequency of reporting requirements, and ways in which accuracy may be audited. The WUTC must consider the standards adopted and proposed by FCC and other states to promote regional consistency and reduce unnecessarily duplicative or inconsistent requirements.

The WUTC is explicitly authorized and directed to resolve certain types of disputes on an expedited basis, specifically those relating to enforcing interconnection agreements, obligations under the Federal Telecom Act, and barriers to competitive entry.

A complainant may seek emergency relief during the course of a dispute, and the commission may issue an order granting emergency relief if it makes certain findings, including that the complainant is likely to succeed on the merits and would suffer irreparable harm if emergency relief is not granted, the emergency relief is technically feasible, and such an order is in the public interest.

Temporary orders granting emergency relief may be issued with or without an evidentiary hearing. When issued without a hearing, they remain in effect for ten days, unless extended for an additional ten days. When issued after a hearing, they remain in effect until a final order resolving the dispute is issued.

Penalties may be imposed for failing to comply with an approved interconnection agreement, certain obligations under the Federal Telecom Act, or an order of the commission issued to enforce either. For violations of interconnection agreements or obligations under the Federal Telecom Act, penalties may be up to \$10,000 per violation per day. For violations of commission enforcement orders, penalties may be up to \$25,000 per violation per day. Penalties must be deposited into the Public Service Revolving Fund.

The WUTC is authorized to delegate hearing/decision authority to "designated employees" (e.g., ALJs) in the same manner they currently do for other similar complaint proceedings.

**Substitute Bill Compared to Original Bill:** The substitute bill extends the date by which the WUTC must adopt carrier-to-carrier service quality rules to December 1, 1999, from September 1, 1999.

The substitute bill replaces specific requirements with general directives for the WUTC's service quality rules, relating to the circumstances under which other parties may receive copies of the performance measurement reports, the frequency of reports, and the auditing of the accuracy of the reports.

The substitute bill removes all new remedies available to the WUTC to enforce interconnection agreements and obligations under the Telecom Act of '96 except for "emergency relief"

The substitute bill reduces the new penalty amounts to a maximum of \$10,000 per violation per day for violations of interconnection agreements and up to \$25,000 per violation per day for violations of commission orders enforcing carrier obligations.

The substitute bill deletes all provisions relating to price caps, alternative forms of regulation, and competitive classifications.

**Appropriation:** None.

**Fiscal Note:** Requested on February 16, 1999.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Testimony For (Original Bill):** This bill takes a customer-driven, balanced approach to creating incentives and reducing barriers for all types of carriers to invest in telecommunications in Washington. It will promote robust competition with multiple providers being able to offer multiple services by improving the situation for competitive entrants and allowing flexibility to incumbents. Improving interconnection for competitors is critical to advancing competition, and this bill gives the commission new tools to enforce interconnection agreements in an expeditious and meaningful way.

**Testimony Against (Original Bill):** The bill will not improve the incentive for incumbent carriers to invest in bandwidth because it does not provide sufficient certainty of their regulatory status. The only realistic way that investment is going to be made in rural areas is to free up the incumbent carriers from traditional rate-of-return regulation, but the investment commitment required for a company to opt into the price cap form of regulation is not workable.

**Testified:** Gary Gardner, WA Assn. of Internet Service Providers (pro); Jim Kendall, Telebyte NW (con); Teresa Osinski, WUTC (pro); Jerri Wood, Communications Workers of America Local 7800 (con); Rex Knowles, NEXTLINK (pro); Rick Finnigan, WA Independent Telephone Assn. (con); Sherilyn Peterson, Perkins Cole (con); Mark Usellis, US West (con); Art Butler, TRACER (pro); Gail Gavey, MCI World COM (pro); Mike Woodin, AT&T (pro); Terry Byington, American Electronics Assn. (pro); Rosemary Williamson, GTE (con).