

2 SSB 6622 - S AMD - 767

3 By Senators Finkbeiner, Brown and Jacobsen

4 ADOPTED 2/17/98

5 On page 3, after line 30, insert the following:

6 "Sec. 5. RCW 80.36.310 and 1989 c 101 s 14 are each amended to
7 read as follows:

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

16 (2) Any company petition or commission motion for competitive
17 classification shall state an effective date not sooner than thirty
18 days from the filing date. The company must provide notice and
19 publication of the proposed competitive classification in the same
20 manner as provided in RCW 80.36.110 for tariff changes. The proposed
21 classification shall take effect on the stated effective date unless
22 suspended by the commission or set for hearing. The commission shall
23 enter its final order with respect to any suspended classification
24 within ((ten)) six months from the date of filing of a company's
25 petition or the commission's motion.

26 Sec. 6. RCW 80.36.320 and 1989 c 101 s 15 are each amended to read
27 as follows:

28 (1) The commission shall classify a telecommunications company
29 (~~providing service in a relevant market~~) as a competitive
30 telecommunications company if (~~it finds, after notice and hearing,~~
31 ~~that the telecommunications company has demonstrated that~~) the
32 services it offers are subject to effective competition. Effective
33 competition means that the company's customers have reasonably
34 available alternatives and that the company does not have a significant
35 captive customer base. In determining whether a company is

1 competitive, factors the commission shall consider include but are not
2 limited to:

3 (a) The number and sizes of alternative providers of service;

4 (b) The extent to which services are available from alternative
5 providers in the relevant market;

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

9 (d) Other indicators of market power which may include market
10 share, growth in market share, ease of entry, and the affiliation of
11 providers of services.

12 The commission shall conduct the initial classification and any
13 subsequent review of the classification in accordance with such
14 procedures as the commission may establish by rule.

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

27 (a) Keep its accounts according to regulations as determined by the
28 commission;

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

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

33 (d) Cooperate with commission investigations of customer
34 complaints.

35 (3) When a telecommunications company has demonstrated that the
36 equal access requirements ordered by the federal district court in the
37 case of U.S. v. AT&T, 552 F. Supp. 131 (1982), or in supplemental
38 orders, have been met, the commission shall review the classification
39 of telecommunications companies providing inter-LATA interexchange

1 services. At that time, the commission shall classify all such
2 companies as competitive telecommunications companies unless it finds
3 that effective competition, as defined in subsection (1) of this
4 section, does not then exist.

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

8 (5) The commission may waive the requirements of RCW 80.36.170 and
9 80.36.180 in whole or in part for a competitive telecommunications
10 company if it finds that competition will serve the same purpose and
11 protect the public interest.

12 **Sec. 7.** RCW 80.36.330 and 1989 c 101 s 16 are each amended to read
13 as follows:

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

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

24 (b) The extent to which services are available from alternative
25 providers in the relevant market;

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

29 (d) Other indicators of market power, which may include market
30 share, growth in market share, ease of entry, and the affiliation of
31 providers of services.

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

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

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

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

14 (6) No losses incurred by a telecommunications company in the
15 provision of competitive services may be recovered through rates for
16 noncompetitive services. The commission may order refunds or credits
17 to any class of subscribers to a noncompetitive telecommunications
18 service which has paid excessive rates because of below cost pricing of
19 competitive telecommunications services.

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

23 (8) The commission may waive the requirements of RCW 80.36.170 and
24 80.36.180 in whole or in part for a service classified as competitive
25 if it finds that competition will serve the same purpose and protect
26 the public interest."

27 Renumber the remaining sections consecutively and correct internal
28 references accordingly.

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31 ADOPTED 2/17/98

32 On page 1, line 2 of the title, after ";" insert "amending RCW
33 80.36.310, 80.36.320, and 80.36.330;"

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