
ENGROSSED SUBSTITUTE SENATE BILL 6622

State of Washington

55th Legislature

1998 Regular Session

By Senate Committee on Energy & Utilities (originally sponsored by Senator Finkbeiner; by request of Utilities & Transportation Commission)

Read first time 02/06/98.

1 AN ACT Relating to the implementation of the federal
2 telecommunications act of 1996, P.L. 104-104 (110 Stat. 56); amending
3 RCW 80.36.310, 80.36.320, and 80.36.330; adding new sections to chapter
4 80.36 RCW; creating a new section; and providing a contingent
5 expiration date.

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

7 NEW SECTION. **Sec. 1.** (1) The commission shall establish a program
8 for the advancement of universal telecommunications service. The
9 purpose of the universal service program is to benefit all
10 telecommunications ratepayers in the state by providing for specific,
11 sufficient, competitively neutral, and technologically neutral support
12 for basic telecommunications services for customers of
13 telecommunications companies in high-cost locations and by reducing
14 implicit sources of support for universal service.

15 (2) The commission shall establish the level of support that all
16 telecommunications carriers are to provide, make assessments on all
17 carriers to provide that support, designate those telecommunications
18 carriers serving high-cost locations that are eligible to receive
19 support for the benefit of their customers in those locations, and make

1 all necessary rules for administration of the program. The commission
2 may delegate to the commission secretary or other staff the authority
3 to resolve disputes or make other decisions necessary to the
4 administration of the program.

5 (3) All transfers of money necessary to provide the support shall
6 be outside the state treasury and not be subject to appropriation. The
7 commission may contract with an independent program administrator
8 subject to the direction and control of the commission and may
9 authorize the establishment of an account or accounts in independent
10 financial institutions should that be necessary for administration of
11 the program. The expenses of the independent program administrator
12 shall be authorized by the commission and shall be paid out of
13 contributions by the telecommunications carriers participating in the
14 program. The commission may require the carriers participating in the
15 program, as part of their contribution, to pay into the public service
16 revolving fund the costs of the commission attributable to supervision
17 and administration of the program.

18 (4) The commission shall audit, or contract with the administrator
19 or other person to audit, telecommunications carriers that receive
20 support under the program to ensure that they are using that support
21 only for the purposes of the program.

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

26 (6) The total amount of assessments by the commission shall not
27 exceed the total of explicit and implicit support for all companies for
28 the 1997 period. The commission shall require as a condition of
29 receiving support that eligible telecommunications carriers subject to
30 regulation under this chapter reduce intrastate rates containing
31 implicit subsidies by an amount equal to their high-cost support.

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

34 (a) "Telecommunications carrier" has the same meaning as defined in
35 47 U.S.C. Sec. 153(44).

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

38 (i) Single-party service;

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

- 1 (iii) Support for local usage;
- 2 (iv) Dual tone multifrequency signaling (touch-tone);
- 3 (v) Access to emergency services (911);
- 4 (vi) Access to operator services;
- 5 (vii) Access to interexchange services;
- 6 (viii) Access to directory assistance; and
- 7 (ix) Toll limitation services.

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

11 NEW SECTION. **Sec. 2.** The program authorized by section 1 of this
12 act shall not take effect until the legislature acts to approve it.
13 The utilities and transportation commission shall by November 1, 1998,
14 report to the legislature on development of each of the program
15 elements prescribed in section 1 of this act, including the estimated
16 size and cost of the program. The report may also include
17 recommendations for legislative action necessary to implement the
18 program as established or revised.

19 NEW SECTION. **Sec. 3.** The commission is authorized to take
20 actions, conduct proceedings, and enter orders as permitted or
21 contemplated for a state commission under the federal
22 telecommunications act of 1996, P.L. 104-104 (110 Stat. 56). The
23 commission may establish by rule fees to be paid by persons seeking
24 commission action under the federal act, and by parties to proceedings
25 under that act, to offset in whole or part the commission's expenses in
26 implementing the act.

27 NEW SECTION. **Sec. 4.** The rule-making authority granted to the
28 utilities and transportation commission by sections 1 and 3 of this act
29 for the purpose of establishing a program for the advancement of
30 universal telecommunications service shall expire on December 31, 1999,
31 unless extended by the legislature.

32 **Sec. 5.** RCW 80.36.310 and 1989 c 101 s 14 are each amended to read
33 as follows:

34 (1) Telecommunications companies may petition to be classified as
35 competitive telecommunications companies under RCW 80.36.320 or to have

1 services classified as competitive telecommunications services under
2 RCW 80.36.330. The commission may initiate classification proceedings
3 on its own motion. The commission may require all regulated
4 telecommunications companies potentially affected by a classification
5 proceeding to appear as parties for a determination of their
6 classification.

7 (2) Any company petition or commission motion for competitive
8 classification shall state an effective date not sooner than thirty
9 days from the filing date. The company must provide notice and
10 publication of the proposed competitive classification in the same
11 manner as provided in RCW 80.36.110 for tariff changes. The proposed
12 classification shall take effect on the stated effective date unless
13 suspended by the commission or set for hearing. The commission shall
14 enter its final order with respect to any suspended classification
15 within ((ten)) six months from the date of filing of a company's
16 petition or the commission's motion.

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

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

- 29 (a) The number and sizes of alternative providers of service;
30 (b) The extent to which services are available from alternative
31 providers in the relevant market;
32 (c) The ability of alternative providers to make functionally
33 equivalent or substitute services readily available at competitive
34 rates, terms, and conditions; and
35 (d) Other indicators of market power which may include market
36 share, growth in market share, ease of entry, and the affiliation of
37 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. 7.** 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. Effective
7 competition means that customers of the service have reasonably
8 available alternatives and that the service is not provided to a
9 significant captive customer base. In determining whether a service is
10 competitive, factors the commission shall consider include but are not
11 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 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) The commission may waive the requirements of RCW 80.36.170 and
11 80.36.180 in whole or in part for a service classified as competitive
12 if it finds that competition will serve the same purpose and protect
13 the public interest.

14 NEW SECTION. **Sec. 8.** Sections 1 and 3 of this act are each added
15 to chapter 80.36 RCW.

16 NEW SECTION. **Sec. 9.** If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected.

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