



1 PART 2

2 NEW PRICE CAP REGULATORY OPTION

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 80.36 RCW  
4 to read as follows:

5 (1)(a) Notwithstanding the provisions of RCW 80.36.135, an  
6 incumbent local exchange carrier may elect to have the rates, terms,  
7 and conditions for its basic and noncompetitive telecommunications  
8 services determined under the provisions of this section.

9 (b) Basic telecommunications services are as defined in RCW  
10 80.36.600(7)(b).

11 (c) Noncompetitive telecommunications services are  
12 telecommunications services that:

13 (i) Are not basic telecommunications services;

14 (ii) Have not been determined to be competitive telecommunications  
15 services under RCW 80.36.330; and

16 (iii) Have not been presumed to be competitive under subsection (6)  
17 of this section.

18 (d) For the purposes of this section, an "incumbent local exchange  
19 carrier" as defined in 47 U.S.C. Sec. 251(h)(1), means, with respect to  
20 an area, the local exchange carrier that:

21 (i) On February 8, 1996, provided telephone exchange service in  
22 such area; and

23 (ii)(A) On February 8, 1996, was deemed to be a member of the  
24 exchange carrier association under section 69.601(b) of the federal  
25 communication commission's regulations (47 C.F.R. 69.601(b)); or

26 (B) Is a person or entity that, on or after February 8, 1996,  
27 became a successor or assign of a member described in (d)(ii)(A) of  
28 this subsection.

29 (2)(a) An incumbent local exchange carrier shall file a notice of  
30 its intent with the commission to be an electing company and to be  
31 regulated under this section.

32 (b) Upon such a filing, all rates, terms, and conditions for basic  
33 and noncompetitive telecommunications services provided by the  
34 incumbent local exchange carrier that were contained in the tariffs and  
35 end-user contracts that were in effect on January 1, 1999, shall be  
36 deemed fair, just, and reasonable.

37 (c) An electing company's election to be regulated under this  
38 section is permanent and a return to rate-of-return, rate-based

1 regulation is not permitted. All liability associated with electing  
2 regulation under this section is the responsibility of the electing  
3 company.

4 (3) Nothing in this section restricts any customer's right to  
5 enforce any quality of service rules and standards. Not later than one  
6 hundred eighty days from the effective date of this act, the commission  
7 shall complete a proceeding to ensure that all such rules and standards  
8 are applied equally to all telecommunications providers.

9 (4) Nothing in this section restricts any telecommunications  
10 company's right to enforce wholesale rules and standards, including,  
11 but not limited to, those contained in carrier-to-carrier contracts  
12 regarding pricing of unbundled network elements and discounts for  
13 resold services.

14 (5)(a) The monthly rates for basic telecommunications services that  
15 were in effect on January 1, 1999, shall be the maximum amount that an  
16 electing company may charge for basic services.

17 (b) The monthly rates for noncompetitive telecommunications  
18 services that were in effect on January 1, 1999, shall be the maximum  
19 amount that an electing company may charge for noncompetitive services  
20 for a three-year period following the date that the electing company  
21 filed an election to be regulated under this section. After this  
22 three-year period, the monthly rates for noncompetitive  
23 telecommunications services provided to:

24 (i) Residential customers may not be increased by more than fifty  
25 cents in any one year and may not be increased by more than one dollar  
26 over any consecutive three-year period; and

27 (ii) Business customers may not be increased by more than one  
28 dollar in any one year and may not be increased by more than two  
29 dollars over any consecutive three-year period.

30 (c) An electing company may adjust prices subject to this  
31 subsection effective on ten days' notice, without commission approval,  
32 so long as no price exceeds the maximum amount set by this subsection.

33 (d) Monthly rates do not include government-mandated charges,  
34 including, but not limited to, charges imposed for excise or gross  
35 receipts taxes, E911 or 911 service, the Washington telephone  
36 assistance program, or universal service.

37 (6)(a) Whenever an electing company offers a service that was not  
38 available in a given exchange or wire center on the date that the  
39 company elected to be regulated under this section, the subsequent

1 introduction of the service in the exchange or wire center shall be  
2 presumed to be an offering of a competitive telecommunications service  
3 if it is a new service. A new service is a service that provides a  
4 significant difference in transmission speed, capability, or  
5 functionality in comparison to the services that existed in the  
6 exchange or wire center on the date that a company elected to be  
7 regulated under this section.

8 (b) The provisions of (a) of this subsection shall not apply if the  
9 service introduced into an exchange or wire center area after the date  
10 that a company elected to be regulated under this section is a basic  
11 telecommunications service.

12 (7) Price cap regulation shall replace the current rate-base, rate-  
13 of-return form of regulation by the commission of an electing company.  
14 An electing company shall not be subject to rate-of-return, rate-based  
15 regulation, or earnings review, and the commission shall have no  
16 authority in such matters over an electing company.

17 (8) An electing company under this section shall not be subject to  
18 the provisions of the following: RCW 80.04.130 (1) and (2), RCW  
19 80.04.300 through 80.04.360, chapter 80.16 RCW, RCW 80.36.110,  
20 80.36.140, and 80.36.150 (1) through (4).

21 **Sec. 3.** RCW 80.36.330 and 1998 c 337 s 6 are each amended to read  
22 as follows:

23 (1) The commission may classify a telecommunications service  
24 provided by a telecommunications company as a competitive  
25 telecommunications service if the service is subject to effective  
26 competition. Effective competition means that customers of the service  
27 have reasonably available alternatives and that the service is not  
28 provided to a significant captive customer base. In determining  
29 whether a service is competitive, factors the commission shall consider  
30 include but are not limited to:

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

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

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

1 (d) Other indicators of market power, which may include market  
2 share, growth in market share, ease of entry, and the affiliation of  
3 providers of services.

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

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

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

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

23 (6) No losses incurred by a telecommunications company in the  
24 provision of competitive services may be recovered through rates for  
25 noncompetitive services. The commission may order refunds or credits  
26 to any class of subscribers to a noncompetitive telecommunications  
27 service which has paid excessive rates because of below cost pricing of  
28 competitive telecommunications services.

29 ~~((The commission may reclassify any competitive  
30 telecommunications service if reclassification would protect the public  
31 interest.))~~ (a) Not sooner than one year after a service has been  
32 classified as competitive, the commission may, on its own motion or in  
33 response to a customer's petition, reclassify any competitive  
34 telecommunications service if:

35 (i) The commission finds, after de novo review, that the service in  
36 question is no longer subject to effective competition; and

37 (ii) Reclassification would protect the public interest.

38 (b) The commission may not reclassify a service that is presumed to  
39 be competitive under section 2(6) of this act.

1 (c) If a reclassification is for a service provided by a company  
2 that has elected to be regulated under section 2 of this act, the  
3 company may not charge a price for the reclassified service exceeding  
4 the following:

5 (i) The amount charged for the service on January 1, 1999, if the  
6 reclassification occurs before January 1, 2002;

7 (ii) The amount charged for the service on January 1, 1999, plus an  
8 additional one dollar for each consecutive three-year period following  
9 January 1, 2002, if the reclassification is for a residential service  
10 and the reclassification occurs on or after January 1, 2002; and

11 (iii) The amount charged for the service on January 1, 1999, plus  
12 an additional two dollars for each consecutive three-year period  
13 following January 1, 2002, if the reclassification is for a business  
14 service and the reclassification occurs on or after January 1, 2002.

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

19 (9) In designating telecommunications services as competitive  
20 telecommunications services for a company that has elected to be  
21 regulated under section 2 of this act:

22 (a) The commission may make classifications apply to a particular  
23 telephone exchange or wire center area and to a specific customer  
24 class.

25 (b) In determining whether a service should be designated as a  
26 competitive telecommunications service for a given telephone exchange  
27 or wire center area, the commission shall give great weight to evidence  
28 showing that other telecommunications companies are offering like or  
29 similar services to a majority of customers located within the relevant  
30 customer class and telephone exchange or wire center area.

31 (c) The commission shall enter a final order with respect to any  
32 motion or petition for classification or reclassification of a service  
33 within ninety days from the date of filing.

34 **PART 3**  
35 **INTERCONNECTION ENFORCEMENT AND PREVENTING OTHER**  
36 **ANTICOMPETITIVE PRACTICES OR ACTS**

1        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 80.36 RCW  
2 to read as follows:

3        (1) The commission may handle on an expedited basis, as provided in  
4 this section, any complaint that a telecommunications company has:

5        (a) Violated an agreement approved by the commission under 47  
6 U.S.C. Sec. 252(e); or

7        (b) Committed an act or practice which the commission may identify  
8 by rule as serving as a barrier to competitive entry in the  
9 telecommunications market.

10       (2) A person may file a complaint alleging a violation under  
11 subsection (1) of this section and an application for expedited review  
12 with the commission and serve the respondent with the same.

13       (3) The respondent telecommunications company shall have five  
14 working days to answer the complaint and shall file its answer and any  
15 other responsive pleadings with the commission and serve the  
16 complainant with the same.

17       (4) Within five working days after a complaint and application for  
18 expedited review is filed with the commission, all parties shall serve  
19 on each other any discovery requests for the production of data. Each  
20 party shall have fifteen days to respond to the other party's requests.  
21 Any objections to the discovery requests shall be served on the other  
22 party and filed with the commission within five working days after  
23 receipt of the discovery request.

24       (5)(a) Once the respondent files an answer to the complaint, the  
25 commission or its designee shall determine within three working days  
26 whether to:

27       (i) Approve the application for expedited review and begin an  
28 expedited adjudicative proceeding under this section;

29       (ii) Deny the application and proceed with a regular adjudicative  
30 proceeding under RCW 80.04.110; or

31       (iii) Dismiss the application as frivolous and advanced without  
32 reasonable cause.

33       (b) If the commission or its designee dismisses the complaint as  
34 frivolous and advanced without reasonable cause, the commission or its  
35 designee shall require the complainant to reimburse the commission and  
36 the respondent for costs, including reasonable attorneys' fees,  
37 incurred to the date of dismissal in responding to the complaint.

38       (6) In determining whether to approve an application for expedited  
39 review, the commission or its designee shall consider whether the

1 complainant is likely to suffer irreparable harm in its ability to  
2 serve customers if the alleged violation under subsection (1) of this  
3 section continues unabated.

4 (7) If an application for expedited review is approved:

5 (a) The commission shall designate a commissioner or other person  
6 to preside over the expedited adjudicative proceeding;

7 (b) Within fourteen days of approving the application for expedited  
8 review, the presiding officer shall schedule a prehearing conference  
9 which may be conducted by telephone. During the prehearing conference  
10 the presiding officer shall:

11 (i) Resolve all outstanding discovery disputes and establish a  
12 schedule for completion of any additional discovery; and

13 (ii) Confirm that an attempt to resolve the dispute through  
14 nonbinding mediation under section 5 of this act has been or is being  
15 conducted;

16 (c) The presiding officer shall schedule a hearing to commence  
17 within thirty-five days of the complaint being filed. During the  
18 hearing evidence may be presented by the parties and commission staff  
19 both orally and in written form. Any individual who testifies either  
20 orally or in written form must be available for cross-examination;

21 (d) The presiding officer shall issue a recommended decision in  
22 written form within sixty days of the complaint being filed. The  
23 presiding officer's recommended decision shall be based on the facts  
24 and no finding of an intent to impede market entry by a competitor  
25 shall be necessary in order to determine that a violation has occurred.  
26 The recommended decision shall set forth the reasoning for the decision  
27 and, if the recommended decision finds that a violation under  
28 subsection (1) of this section has occurred, directions and a deadline  
29 for correcting the violation. The recommended decision shall state the  
30 amount of any penalties imposed under section 6 of this act;

31 (e) The commission shall hear the arguments or comments of the  
32 parties regarding the recommended decision at a regular or special open  
33 public meeting. The parties may submit written comments to the  
34 commission prior to the meeting under the schedule established in the  
35 recommended decision. The commission shall conduct this session within  
36 ten days after the date of the recommended decision;

37 (f) The commission shall serve a final decision on the parties, in  
38 the form of a commission order, resolving the issues within ten days of  
39 the hearing conducted under (e) of this subsection. The order shall be

1 based on the facts and no finding of an intent to impede market entry  
2 by a competitor shall be necessary in order to determine that a  
3 violation has occurred. The order shall set forth the reasoning for  
4 the final decision and, if the final decision finds that a violation  
5 under subsection (1) of this section has occurred, directions and a  
6 deadline for correcting the violation. The final decision shall state  
7 the amount of any penalties imposed under section 6 of this act;

8 (g) Within ten days after the commission serves its order under (f)  
9 of this subsection, the parties may petition for reconsideration. A  
10 petition for reconsideration is denied unless the commission by  
11 separate decision grants the petition within ten days after it is  
12 filed, or such longer time established by the commission secretary. If  
13 a party files a petition for reconsideration, the commission may, in  
14 its discretion, request that an answer be filed or call for additional  
15 comments, briefing, evidence, or argument from the parties. Filing a  
16 petition for reconsideration of the order does not stay the effect of  
17 the order.

18 (8)(a) In conducting an expedited review of a complaint under this  
19 section, the commission may at any time issue an order granting  
20 emergency relief for the complainant if the commission finds that:

21 (i) The respondent has failed to file a timely answer to a  
22 complaint, has not met discovery deadlines, has failed to attend the  
23 required mediation session under section 5 of this act, has failed to  
24 attend required hearings, or has otherwise failed to comply with a  
25 request made by the presiding officer or by the commission;

26 (ii) The complainant is likely to suffer irreparable harm in its  
27 ability to serve customers if emergency relief is not granted;

28 (iii) The emergency relief sought is technically feasible; and

29 (iv) An order granting emergency relief is in the public interest.

30 (b) An order for emergency relief shall direct the respondent  
31 telecommunications company to act or refrain from acting as the  
32 commission finds necessary to avoid, prevent, or mitigate the  
33 complained of harm. An order for emergency relief shall set a deadline  
34 for the respondent telecommunications company to comply with the order  
35 before penalties are imposed under section 6 of this act. The order  
36 granting emergency relief shall remain in effect until the commission  
37 issues a final order deciding the complaint filed under subsection (2)  
38 of this section.

1        NEW SECTION.    **Sec. 5.**    A new section is added to chapter 80.36 RCW  
2 to read as follows:

3        (1) Whenever the commission or its designee approves an application  
4 for expedited review of a complaint under section 4 of this act, the  
5 commission or its designee shall conduct at least one mediation session  
6 with the parties.

7        (2) The mediation session shall be held no later than the date  
8 scheduled for a prehearing conference under section 4(7) of this act.  
9 An individual with authority to negotiate and settle the matter shall  
10 be present from each party.

11        (3) The mediation session shall be confidential and any verbal  
12 statements made during the session shall not be disclosed.

13        (4) Any agreement of the parties resolving any disputed issue shall  
14 be submitted to the mediator for approval. Approval shall be granted  
15 unless the mediator finds that the agreement is based upon a mistake in  
16 material fact or that the agreement is not in the public interest. The  
17 approved agreement shall be deemed to constitute a final order of the  
18 commission, unless the commission enters its own order within six  
19 working days following the mediator's approval of the agreement.

20        (5) Any agreement or order resolving a dispute through mediation  
21 shall be considered part of the public record and shall be made  
22 available by the commission upon request.

23        (6) Willful or negligent failure to attend the mediation conference  
24 or to comply with the mediator's directions shall be reported to the  
25 mediator or the commission in writing.

26        NEW SECTION.    **Sec. 6.**    A new section is added to chapter 80.36 RCW  
27 to read as follows:

28        (1) If the commission or its designee finds that a violation under  
29 section 4(1) of this act has occurred, the commission may impose a  
30 penalty. Additionally, the commission or its designee may impose a  
31 penalty for each day that a violation continues beyond the deadline set  
32 in the final decision issued under section 4(7) of this act.

33        (2) If parties are able to resolve a dispute through mediation, as  
34 provided in section 5 of this act, there shall be no initial assessment  
35 of penalties. However, if a violation is not corrected by the date  
36 specified in any mediation agreement, the commission or its designee  
37 may impose a penalty for each day beyond the specified date that a  
38 violation continues.

1 (3) If the commission issues an order granting emergency relief  
2 under section 4(8) of this act and the respondent telecommunications  
3 company fails to comply with the deadline set in that order, then the  
4 commission or its designee may impose a penalty for each day beyond the  
5 deadline that noncompliance continues.

6 (4) In determining the amount of any penalties imposed under  
7 subsections (1) through (3) of this section, the commission or its  
8 designee shall take into account the appropriateness of the penalties  
9 with respect to the gravity of the violation, the size of the  
10 respondent telecommunications company's Washington operations, and the  
11 respondent telecommunications company's history of previous violations.  
12 In no case shall penalties imposed per violation exceed one-half of one  
13 percent of a respondent telecommunications company's gross revenues  
14 from its Washington operations during the previous year. If a  
15 respondent Washington telecommunications company had no Washington  
16 operations during the previous year, then penalties imposed per  
17 violation under this section shall not exceed five thousand dollars.  
18 For purposes of this section, "violation" means all related matters  
19 alleged in a complaint filed under section 4 of this act.

20 (5) Any imposition of penalties shall be by order of the  
21 commission, after providing for notice and a hearing.

22 (6) Penalties imposed under this section are in lieu of penalties  
23 available under RCW 80.04.380 but in addition to any monetary payments  
24 ordered by the commission under an interconnection agreement and shall  
25 not restrict a complainant's ability to recover damages under any other  
26 remedy that may be available under any other provision of state or  
27 federal law.

28 (7) Payment of penalties imposed under this section shall be paid  
29 into the treasury of the state and credited to the state general fund  
30 within thirty days of issuance by the commission of an order imposing  
31 penalties. The commission may petition a court of competent  
32 jurisdiction for enforcement of its order requiring payment of  
33 penalties imposed under this section.

34 NEW SECTION. **Sec. 7.** A new section is added to chapter 80.36 RCW  
35 to read as follows:

36 (1) To the extent that the provisions of this section and sections  
37 4 through 6 of this act may differ with the provisions of chapter 34.05

1 RCW, the administrative procedure act, the provisions of this section  
2 and sections 4 through 6 of this act shall govern.

3 (2) In implementing the provisions of this section and sections 4  
4 through 6 of this act, the commission may:

5 (a) Adopt rules as needed; and

6 (b) Obtain external resources and contract for outside persons to  
7 serve as presiding officers, mediators, or consultants for the purposes  
8 of facilitating the prompt disposition of expedited proceedings  
9 authorized under section 4 of this act.

10 **PART 4**

11 **MISCELLANEOUS PROVISIONS**

12 NEW SECTION. **Sec. 8.** Part headings used in this act are not any  
13 part of the law.

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

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