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**SUBSTITUTE SENATE BILL 5380**

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**State of Washington****57th Legislature****2001 Regular Session**

**By** Senate Committee on Economic Development & Telecommunications  
(originally sponsored by Senators T. Sheldon, Jacobsen and Finkbeiner;  
by request of Utilities & Transportation Commission)

READ FIRST TIME 02/22/01.

1       AN ACT Relating to telecommunications; amending RCW 80.36.320 and  
2 80.36.330; and adding new sections to chapter 80.36 RCW.

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

4       **Sec. 1.** RCW 80.36.320 and 1998 c 337 s 5 are each amended to read  
5 as follows:

6           (1) The commission shall classify a telecommunications company as  
7 a competitive telecommunications company if the services it offers are  
8 subject to effective competition. Effective competition means that the  
9 company's customers have reasonably available alternatives and that the  
10 company does not have a significant captive customer base. In  
11 determining whether a company is competitive, factors the commission  
12 shall consider include but are not limited to:

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

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

16           (c) The ability of alternative providers to make functionally  
17 equivalent or substitute services readily available at competitive  
18 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       The commission shall conduct the initial classification and any  
5 subsequent review of the classification in accordance with such  
6 procedures as the commission may establish by rule.

7       (2) ((Competitive telecommunications companies shall be subject to  
8 minimal regulation. Minimal regulation means that competitive  
9 telecommunications companies may file, instead of tariffs, price lists  
10 that shall be effective after ten days' notice to the commission and  
11 customers. The commission shall prescribe the form of notice. The  
12 commission may also waive other regulatory requirements under this  
13 title for competitive telecommunications companies when it determines  
14 that competition will serve the same purposes as public interest  
15 regulation. The commission may waive different regulatory requirements  
16 for different companies if such different treatment is in the public  
17 interest.))

18       A competitive telecommunications company shall at a minimum:

19           (a) Keep its accounts according to regulations as determined by the  
20 commission;

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

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

25           (d) Cooperate with commission investigations of customer  
26 complaints.

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

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

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

5       **Sec. 2.** RCW 80.36.330 and 1998 c 337 s 6 are each amended to read  
6 as follows:

7           (1) The commission may classify a telecommunications service  
8 provided by a telecommunications company as a competitive  
9 telecommunications service if the service is subject to effective  
10 competition. Effective competition means that customers of the service  
11 have reasonably available alternatives and that the service is not  
12 provided to a significant captive customer base. In determining  
13 whether a service is competitive, factors the commission shall consider  
14 include but are not limited to:

15           (a) The number and size of alternative providers of services;  
16           (b) The extent to which services are available from alternative  
17 providers in the relevant market;

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

21           (d) Other indicators of market power, which may include market  
22 share, growth in market share, ease of entry, and the affiliation of  
23 providers of services.

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

30           (3)) Prices or rates charged for ((competitive))  
31 telecommunications services classified as competitive under this  
32 section shall cover their cost. The commission shall determine proper  
33 cost standards to implement this section, provided that in making any  
34 assignment of costs or allocating any revenue requirement, the  
35 commission shall act to preserve affordable universal  
36 telecommunications service.

37           ((4))) (3) The commission may investigate prices for  
38 ((competitive)) telecommunications services classified as competitive

1   under this section upon complaint. In any complaint proceeding  
2 initiated by the commission, the telecommunications company providing  
3 the service shall bear the burden of proving that the prices charged  
4 cover cost, and are fair, just, and reasonable.

5       ((+5))) (4) Telecommunications companies shall provide the  
6 commission with all data it deems necessary to implement this section.

7       ((+6))) (5) No losses incurred by a telecommunications company in  
8 the provision of ((competitive)) telecommunications services classified  
9 as competitive under this section may be recovered through rates for  
10 noncompetitive services. The commission may order refunds or credits  
11 to any class of subscribers to a noncompetitive telecommunications  
12 service which has paid excessive rates because of below cost pricing of  
13 competitive telecommunications services.

14      ((+7))) (6) The commission may reclassify any ((competitive))  
15 telecommunications service classified as competitive under this section  
16 if reclassification would protect the public interest.

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

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

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

25       (a) "Competitive telecommunications service" includes any service  
26 provided by a company classified as competitive under RCW 80.36.320 and  
27 any service classified as competitive under RCW 80.36.330.

28       (b) "Price list" means a written offer containing the prices,  
29 terms, and conditions under which a competitive telecommunications  
30 service is offered.

31       (2) Competitive telecommunications services shall be subject to  
32 minimal regulation as provided for in this section.

33       (a) The commission shall waive the application to competitive  
34 telecommunications service of any regulatory requirement under this  
35 title, except RCW 80.36.320 and 80.36.330 and this section, if it  
36 determines that competition will serve the same purposes as public  
37 interest regulation. The commission may waive different regulatory  
38 requirements for different types of service or different types of

1 companies if the treatment is in the public interest and does not  
2 result in unfair competitive advantage.

3 (b) The commission may permit or require that telecommunications  
4 companies maintain publicly accessible price lists or file price lists  
5 with the commission. However, regardless of whether price lists are  
6 filed with the commission, no telecommunications company may impose  
7 mandatory local measured telecommunications service that is  
8 inconsistent with the provisions of RCW 80.04.130(3).

9 (c) Each telecommunications company shall notify customers of any  
10 change in the prices, terms, or conditions under which any competitive  
11 telecommunications service is offered or provided. The commission may  
12 prescribe the form, manner, and timing of the notice, except that for  
13 changes in presubscribed local exchange, local toll, and long-distance  
14 service, telecommunications companies must provide written notice to  
15 each affected customer at least ten days prior to the effective date of  
16 any price increase or other change in a material term or condition.

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

19       The commission, after a process of public participation, shall  
20 report to the appropriate committees of the legislature by December 1,  
21 2001, on the following issues related to implementing sections 1  
22 through 3 of this act:

23       (1) An update on the development of competitive telecommunications  
24 services in the Washington marketplace, including differences by  
25 geographic areas, customer classes, and types of services;

26       (2) A plan for providing consumers with a meaningful way to track  
27 and compare competitive telecommunications services, with emphasis on  
28 improving consumers' ability to make informed choices among alternative  
29 providers; and

30       (3) The standards the commission applies to determine whether  
31 different regulatory treatment authorized under section 3(2)(a) of this  
32 act is in the public interest and does not result in unfair competitive  
33 advantage.

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