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HOUSE BILL 2199

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State of Washington

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By Representative Morris

Read first time 03/04/2003. Referred to Committee on Technology,  
Telecommunications & Energy.

1 AN ACT Relating to telecommunications; amending RCW 80.36.300,  
2 80.36.320, and 80.36.135; and adding a new section to chapter 80.36  
3 RCW.

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

5 **Sec. 1.** RCW 80.36.300 and 1985 c 450 s 1 are each amended to read  
6 as follows:

7 The legislature declares it is the policy of the state to:

8 (1) Preserve affordable universal telecommunications service;

9 (2) Maintain and advance the efficiency and availability of  
10 telecommunications service;

11 (3) Ensure that customers pay only reasonable charges for  
12 telecommunications service;

13 (4) Ensure that rates for noncompetitive telecommunications  
14 services do not subsidize the competitive ventures of regulated  
15 telecommunications companies;

16 (5) Promote diversity in the supply of telecommunications services  
17 and products in telecommunications markets throughout the state;  
18 ((and))

1 (6) Permit flexible regulation of competitive telecommunications  
2 companies and services; and

3 (7) Ensure that rate of return, rate base regulation of  
4 telecommunications companies is commensurate with the level of  
5 competitive activity from alternative service providers in a company's  
6 service territory.

7 **Sec. 2.** RCW 80.36.320 and 1998 c 337 s 5 are each amended to read  
8 as follows:

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

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

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

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

22 (d) The presence of all alternative service providers offering  
23 alternative services in competition with a telecommunications company  
24 without regard to the technology used by an alternative service  
25 provider in providing alternative service.

26 (e) Other indicators of market power which may include market  
27 share, growth in market share, ease of entry, and the affiliation of  
28 providers of services.

29 The commission shall conduct the initial classification and any  
30 subsequent review of the classification in accordance with such  
31 procedures as the commission may establish by rule.

32 (2) Competitive telecommunications companies shall be subject to  
33 minimal regulation. Minimal regulation means that competitive  
34 telecommunications companies may file, instead of tariffs, price lists  
35 that shall be effective after ten days' notice to the commission and  
36 customers. The commission shall prescribe the form of notice. The  
37 commission may also waive other regulatory requirements under this

1 title for competitive telecommunications companies when it determines  
2 that competition will serve the same purposes as public interest  
3 regulation. The commission may waive different regulatory requirements  
4 for different companies if such different treatment is in the public  
5 interest. A competitive telecommunications company shall at a minimum:

6 (a) Keep its accounts according to regulations as determined by the  
7 commission;

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

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

12 (d) Cooperate with commission investigations of customer  
13 complaints.

14 (3) When a telecommunications company has demonstrated that the  
15 equal access requirements ordered by the federal district court in the  
16 case of U.S. v. AT&T, 552 F. Supp. 131 (1982), or in supplemental  
17 orders, have been met, the commission shall review the classification  
18 of telecommunications companies providing inter-LATA interexchange  
19 services. At that time, the commission shall classify all such  
20 companies as competitive telecommunications companies unless it finds  
21 that effective competition, as defined in subsection (1) of this  
22 section, does not then exist.

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

26 (5) The commission may waive the requirements of RCW 80.36.170 and  
27 80.36.180 in whole or in part for a competitive telecommunications  
28 company if it finds that competition will serve the same purpose and  
29 protect the public interest.

30 **Sec. 3.** RCW 80.36.135 and 2000 c 82 s 1 are each amended to read  
31 as follows:

32 (1) The legislature declares that:

33 (a) Changes in technology and the structure of the  
34 telecommunications industry (~~may produce~~) have produced conditions  
35 under which traditional rate of return, rate base regulation of  
36 telecommunications companies may not in all cases provide the most  
37 efficient and effective means of achieving the public policy goals of

1 this state as declared in RCW 80.36.300, this section, and RCW  
2 80.36.145. The commission should (~~be authorized to~~) employ an  
3 alternative form of regulation if that alternative is better suited to  
4 achieving those policy goals.

5 (b) Because of the great diversity in the scope and type of  
6 services provided by telecommunications companies, including  
7 alternative services and alternative service providers whether or not  
8 the services or the providers are regulated by the commission,  
9 alternative regulatory arrangements that meet the varying circumstances  
10 of different companies and their ratepayers (~~may be~~) is desirable.

11 (2) Subject to the conditions set forth in this chapter and RCW  
12 80.04.130, the commission may regulate telecommunications companies  
13 subject to traditional rate of return, rate base regulation by  
14 authorizing an alternative form of regulation. The commission may  
15 determine the manner and extent of any alternative forms of regulation  
16 as may in the public interest be appropriate. In addition to the  
17 public policy goals declared in RCW 80.36.300, the commission shall  
18 consider, in determining the appropriateness of any proposed  
19 alternative form of regulation, whether it will:

20 (a) Facilitate the broad deployment of technological improvements  
21 and advanced telecommunications services to underserved areas or  
22 underserved customer classes;

23 (b) Improve the efficiency of the regulatory process;

24 (c) Preserve or enhance the development of effective competition  
25 and protect against the exercise of market power during its  
26 development;

27 (d) Preserve or enhance service quality and protect against the  
28 degradation of the quality or availability of efficient  
29 telecommunications services;

30 (e) Provide for rates and charges that are fair, just, reasonable,  
31 sufficient, and not unduly discriminatory or preferential; and

32 (f) Not unduly or unreasonably prejudice or disadvantage any  
33 particular customer class.

34 (3) A telecommunications company or companies subject to  
35 traditional rate of return, rate base regulation may petition the  
36 commission to establish an alternative form of regulation. The company  
37 or companies shall submit with the petition a plan for an alternative  
38 form of regulation. The plan shall contain a proposal for transition

1 to the alternative form of regulation and the proposed duration of the  
2 plan. The plan must also contain a proposal for ensuring adequate  
3 carrier-to-carrier service quality, including service quality standards  
4 or performance measures for interconnection, and appropriate  
5 enforcement or remedial provisions in the event the company fails to  
6 meet service quality standards or performance measures. The commission  
7 also may initiate consideration of alternative forms of regulation for  
8 a company or companies on its own motion. The commission, after notice  
9 and hearing, shall issue an order accepting, modifying, or rejecting  
10 the plan within nine months after the petition or motion is filed,  
11 unless extended by the commission for good cause. The commission shall  
12 order implementation of the alternative plan of regulation unless it  
13 finds that, on balance, an alternative plan as proposed or modified  
14 fails to meet the considerations stated in subsection (2) of this  
15 section.

16 (4) Not later than sixty days from the entry of the commission's  
17 order, the company or companies affected by the order may file with the  
18 commission an election not to proceed with the alternative form of  
19 regulation as authorized by the commission.

20 (5) The commission may waive such regulatory requirements under  
21 Title 80 RCW for a telecommunications company subject to an alternative  
22 form of regulation as may be appropriate to facilitate the  
23 implementation of this section. However, the commission may not waive  
24 any grant of legal rights to any person contained in this chapter and  
25 chapter 80.04 RCW. The commission may waive different regulatory  
26 requirements for different companies or services if such different  
27 treatment is in the public interest.

28 (6) Upon petition by the company, and after notice and hearing, the  
29 commission may rescind or modify an alternative form of regulation in  
30 the manner requested by the company.

31 (7) The commission or any person may file a complaint under RCW  
32 80.04.110 alleging that a telecommunications company under an  
33 alternative form of regulation has not complied with the terms and  
34 conditions set forth in the alternative form of regulation. The  
35 complainant shall bear the burden of proving the allegations in the  
36 complaint.

1        NEW SECTION.   **Sec. 4.**   A new section is added to chapter 80.36 RCW  
2   to read as follows:  
3        The commission shall obtain information on the number of customers  
4   as defined under RCW 82.04.065(6) receiving telephone service as  
5   defined under RCW 82.04.065(3) to determine the level of competition  
6   within each rate of return, rate base telecommunications company's  
7   service territory.   This information shall be used in evaluating  
8   petitions by telecommunications companies and motions by the commission  
9   for competitive classification under RCW 80.36.320 and alternative  
10  forms of regulation under RCW 80.36.135.

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