
SUBSTITUTE SENATE BILL 5735

State of Washington

56th Legislature

1999 Regular Session

By Senate Committee on Energy, Technology & Telecommunications
(originally sponsored by Senators Finkbeiner, T. Sheldon, Shin,
Loveland, McDonald, Johnson, Jacobsen and West)

Read first time 03/03/99.

1 AN ACT Relating to intercarrier relations between
2 telecommunications companies and the authority of the utilities and
3 transportation commission to resolve intercarrier disputes; amending
4 RCW 80.01.060; adding new sections to chapter 80.36 RCW; creating a new
5 section; prescribing penalties; and declaring an emergency.

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

7 **PART I**

8 **CARRIER-TO-CARRIER SERVICE QUALITY**

9 NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. (1) The legislature
10 finds that:

11 (a) Congress has required, through the telecommunications act of
12 1996, P.L. 104-104 (110 Stat. 56), incumbent carriers to make available
13 to new entrants in a nondiscriminatory and just and reasonable manner
14 the services and facilities incumbent carriers use to provide retail
15 services to their own customers; and

16 (b) In order to take advantage of the service and facility
17 offerings that congress requires incumbent carriers to provide: (i)
18 New entrants must receive a level of interconnection that is at least

1 equal in quality to that provided by an incumbent carrier to itself;
2 and (ii) new entrants must have access to the operations support
3 systems that incumbent carriers use to process orders from their own
4 customers.

5 (2) The legislature further finds that:

6 (a) Unlike robust wholesale markets where market forces furnish
7 wholesalers with the necessary incentive to provide timely and quality
8 services to their buyers, as the single supplier of wholesale
9 facilities and services in the local market, incumbent
10 telecommunications carriers have no such incentive particularly when
11 purchasers of their wholesale offerings are also their retail
12 competitors; and

13 (b) Carrier-to-carrier service quality standards are a fair and
14 objective mechanism through which competing carriers can monitor
15 incumbent carriers' compliance, and incumbent carriers can demonstrate
16 their compliance, with statutory obligations thereby: (i) Creating an
17 important incentive for compliance; (ii) reducing the need for
18 regulatory oversight by encouraging self-policing; and (iii) providing
19 necessary information to facilitate timely and fair resolution of
20 complaints when regulatory intervention is required.

21 (3) The legislature therefore intends to:

22 (a) Promote more efficient competition between incumbent carriers
23 and new entrants by requiring carrier-to-carrier service quality
24 standards related to access to interconnection and operations support
25 systems;

26 (b) Direct the commission to establish carrier-to-carrier service
27 quality standards in such a way as to accomplish the following goals:
28 (i) Promote more efficient and effective communication between
29 incumbent carriers and competing carriers; (ii) make more transparent
30 the extent to which incumbent carriers are meeting their statutory
31 obligations to provide to competing carriers, in a nondiscriminatory
32 and just and reasonable manner, the services and facilities incumbent
33 carriers use to provide retail services to their own customers; and
34 (iii) fairly balance the need for information about an incumbent
35 carrier's performance against the burdens imposed on an incumbent
36 carrier in generating and distributing this information.

1 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
2 section apply throughout this act unless the context clearly requires
3 otherwise.

4 (1) "Efficient and effective communication" means communication
5 that allows a competing carrier to: (a) Access the customer data
6 necessary to sign up customers; (b) place orders for services or
7 facilities with the incumbent; (c) track the progress of those orders
8 to completion; (d) receive relevant billing information from the
9 incumbent; and (e) obtain prompt repair and maintenance for the
10 elements and services it obtains from the incumbent.

11 (2) "Incumbent carrier" means an incumbent local exchange carrier,
12 as that term is defined in the telecommunications act of 1996, P.L.
13 104-104 (110 Stat. 56).

14 (3) "Operations support systems" means the computer systems, data
15 bases, and personnel that incumbent carriers rely upon to discharge the
16 internal functions, including: (a) Preordering; (b) ordering; (c)
17 provisioning; (d) maintenance and repair; and (e) billing, necessary to
18 provide service to their customers.

19 (4) "Performance measurements" means the measures used to collect
20 data regarding an incumbent carrier's performance, such as the period
21 of time it takes to order and provision a resold service.

22 (5) "Performance standards" means specific performance goals or
23 benchmarks, such as a requirement that an incumbent carrier complete
24 all or some percentage of its resale orders for residential service
25 within a specified period of time.

26 (6) "Reporting requirements" means the obligations of incumbent
27 carriers to collect performance measurements and provide the results of
28 those measurements to other parties.

29 (7) "Technical standards" means the establishment of industry-wide
30 operations support systems interface specifications.

31 NEW SECTION. **Sec. 3.** INCUMBENT CARRIER DUTIES. (1) An incumbent
32 carrier has a duty to provide interconnection between its network and
33 that of a requesting carrier that is at least equal in quality to that
34 which the incumbent provides itself, a subsidiary, an affiliate, or any
35 other party.

36 (2)(a) For those operations support systems provided to competing
37 carriers that are analogous to functions that an incumbent carrier
38 provides itself in connection with retail service offerings, an

1 incumbent carrier has a duty to provide access to competing carriers
2 that is equivalent to the level of access that the incumbent provides
3 itself in terms of quality, accuracy, and timeliness; and (b) for those
4 operations support system functions that have no direct retail analog,
5 an incumbent carrier has a duty to provide access sufficient to allow
6 an efficient competitor a meaningful opportunity to compete.

7 NEW SECTION. **Sec. 4.** WASHINGTON UTILITIES AND TRANSPORTATION
8 COMMISSION RULES REGARDING INTERCONNECTION AND OPERATIONS SUPPORT
9 SYSTEMS. (1) Not later than December 1, 1999, the commission shall
10 adopt by rule performance measurements that gauge the timeliness and
11 quality of an incumbent carrier's interconnection with competing
12 carriers.

13 (2) Not later than December 1, 1999, the commission shall adopt by
14 rule performance measurements that gauge an incumbent carrier's ability
15 to provision operations support systems to competing carriers in terms
16 of timeliness, quality, and accuracy.

17 (3) The rules adopted under this section shall not include
18 technical standards.

19 (4) For each of the performance measurements adopted under this
20 section, the commission rules may specify which incumbent carriers must
21 make performance measurement reports and under what circumstances, who
22 may receive performance measurement reports and under what
23 circumstances, the frequency with which reports must be generated and
24 distributed, and appropriate auditing procedures.

25 (5) The rules shall not require performance measurement reports by
26 any rural telephone company that is exempt from section 251(c) of the
27 telecommunications act of 1996, P.L. 104-104 (110 Stat. 56), unless and
28 until the commission has terminated the exemption pursuant to section
29 251(f) of the telecommunications act of 1996, P.L. 104-104 (110 Stat.
30 56).

31 (6) The rules shall address the circumstances under which competing
32 carriers, the commission, and the general public may receive copies of
33 the reports.

34 (7) In adopting its carrier-to-carrier service quality rules, the
35 commission shall consider all practical methodologies that would
36 increase the consistency and predictability of determining whether an
37 incumbent carrier is meeting its statutory obligations to provide
38 interconnection and operations support systems. Wherever possible, the

1 rules shall also identify performance standards for evaluating when an
2 incumbent carrier's performance warrants further regulatory scrutiny.

3 (8) The commission shall consider, and periodically review, the
4 performance measurements and performance standards adopted and proposed
5 by the federal communications commission and other state commissions in
6 an effort to promote regional consistency and reduce unnecessarily
7 duplicative or inconsistent requirements.

8 **PART II**

9 **INTERCONNECTION ENFORCEMENT AND EXPEDITED DISPUTE RESOLUTION**

10 NEW SECTION. **Sec. 5.** (1) The commission is authorized and
11 directed to handle on an expedited basis, as provided in this section
12 and by rule of the commission, any complaint by a telecommunications
13 company that another telecommunications company has violated:

14 (a) Any duty or obligation imposed upon telecommunications carriers
15 under 47 U.S.C. Sec. 251 (a) through (c);

16 (b) Any agreement approved by the commission under 47 U.S.C. Sec.
17 252(e); or

18 (c) Any act or practice which the commission may identify by rule
19 as serving as a barrier to competitive entry into the
20 telecommunications market.

21 The powers authorized in this section are in addition to, and not
22 exclusive of, any other powers granted to the commission. The remedies
23 authorized in this section are in addition to, and not exclusive of,
24 any other remedies available at law to the parties.

25 (2) Upon the filing of a complaint seeking expedited relief under
26 this section, the complainant may petition the commission for emergency
27 relief. The commission may grant a petition for emergency relief at
28 any time with or without an evidentiary hearing. The commission may
29 grant a petition for emergency relief if it finds that:

30 (a) The complainant is likely to succeed on the merits;

31 (b) The complainant is likely to suffer irreparable harm if
32 emergency relief is not granted;

33 (c) The emergency relief sought is technically feasible; and

34 (d) An order granting emergency relief is in the public interest.

35 (3) An order granting emergency relief shall direct the respondent
36 telecommunications company to act or refrain from acting as the
37 commission finds necessary to avoid, prevent, or mitigate the

1 complained-of harm. Violation of an order granting emergency relief
2 shall subject the respondent telecommunications company to penalties
3 under section 6 of this act. An order granting emergency relief shall
4 set a deadline for compliance with the order before such penalties are
5 imposed against the respondent telecommunications company. An order
6 granting emergency relief without a hearing shall remain in effect for
7 no more than ten days but may be extended once for an additional ten-
8 day period. An order granting emergency relief after a hearing shall
9 remain in effect until the commission issues a final order on the
10 complaint filed under subsection (1) of this section.

11 (4) As a condition to the issuance of any emergency order, the
12 commission may require the party requesting the emergency relief to
13 provide an appropriate bond or security.

14 NEW SECTION. **Sec. 6.** (1) Every telecommunications company shall
15 comply with all terms of an interconnection agreement to which it is a
16 party, that has been approved by the commission under 47 U.S.C. Sec.
17 252(e). Any telecommunications company that fails to comply with the
18 terms of such an agreement, or any of its duties or obligations arising
19 under 47 U.S.C. Sec. 251 (a) through (c) shall be subject to a penalty
20 of not more than ten thousand dollars for each and every violation.
21 Each violation of such an interconnection agreement or obligation is a
22 separate and distinct offense and, in the case of a continuing
23 violation, every day's continuance is a separate and distinct offense.

24 (2) Any telecommunications company that violates an order of the
25 commission issued to enforce the terms of an interconnection agreement
26 approved under 47 U.S.C. Sec. 252(e) or to enforce duties or
27 obligations arising under 47 U.S.C. Sec. 251 (a) through (c), including
28 an order granting emergency relief under section 5 of this act, shall
29 be subject to a penalty of up to twenty-five thousand dollars for each
30 and every violation. Each violation of such an order shall be a
31 separate and distinct offense and, in the case of a continuing
32 violation, every day's continuance shall be a separate and distinct
33 offense.

34 (3) Payment of penalties imposed under this section shall be paid
35 into the public service revolving fund within thirty days of issuance
36 by the commission of an order imposing penalties. The commission may
37 petition a court of competent jurisdiction for enforcement of its order
38 requiring payment of penalties imposed under this section.

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of the
5 state government and its existing public institutions, and takes effect
6 immediately.

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