
SENATE BILL 5735

State of Washington

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By Senators Finkbeiner, T. Sheldon, Shin, Loveland, McDonald, Johnson, Jacobsen and West

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1 AN ACT Relating to telecommunications competition; amending RCW
2 80.01.060, 80.36.300, 80.36.135, and 80.36.330; adding new sections to
3 chapter 80.36 RCW; creating a new section; prescribing penalties; and
4 declaring an emergency.

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

6 **PART I**

7 **CARRIER-TO-CARRIER SERVICE QUALITY**

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

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

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

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

4 (2) The legislature further finds that:

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

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

20 (3) The legislature therefore intends to:

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

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

36 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
37 section apply throughout sections 1 through 6 of this act unless the
38 context clearly requires otherwise.

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

8 (2) "Incumbent carrier" means an incumbent local exchange carrier,
9 as that term is defined in the telecommunications act of 1996, P.L.
10 104-104 (110 Stat. 56).

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

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

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

23 (6) "Reporting requirements" means the obligations of incumbent
24 carriers to collect performance measurements and provide the results of
25 those measurements to other parties.

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

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

33 (2)(a) For those operations support systems provided to competing
34 carriers that are analogous to functions that an incumbent carrier
35 provides itself in connection with retail service offerings, an
36 incumbent carrier has a duty to provide access to competing carriers
37 that is equivalent to the level of access that the incumbent provides
38 itself in terms of quality, accuracy, and timeliness; and (b) for those

1 operations support system functions that have no direct retail analog,
2 an incumbent carrier has a duty to provide access sufficient to allow
3 an efficient competitor a meaningful opportunity to compete.

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

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

14 (3) The rules adopted under this section shall not include
15 technical standards.

16 NEW SECTION. **Sec. 5.** PERFORMANCE MEASUREMENT REPORTS. (1) For
17 each of the performance measurements adopted under section 4 of this
18 act, the commission rules shall specify which incumbent carriers must
19 make performance measurement reports and under what circumstances, who
20 may receive performance measurement reports and under what
21 circumstances, the frequency with which reports must be generated and
22 distributed, and appropriate auditing procedures.

23 (2) The rules shall not require performance measurement reports by
24 any rural telephone company that is exempt from section 251(c) of the
25 telecommunications act of 1996, P.L. 104-104 (110 Stat. 56).

26 (3) The rules shall allow, at a minimum, all competing carriers
27 that are currently obtaining services or facilities from an incumbent
28 carrier through an interconnection agreement or under a statement of
29 generally available terms to receive the incumbent carrier's required
30 reports upon request. The rules may allow other groups of carriers,
31 such as those considering whether to enter a market, the commission,
32 and the general public, to receive reports upon request if the
33 commission finds it is in the public interest to do so. If access is
34 granted to these additional recipients, the rules shall address whether
35 it is appropriate to limit access to only aggregate competing carrier
36 measurement results or provide alternative ways to protect competitive
37 information.

1 (4) The rules shall require that reports on performance
2 measurements be made no less frequently than once per quarter and no
3 more frequently than once per month. The rules may specify different
4 reporting intervals for different performance measurements as the
5 commission finds necessary to balance the benefits and burdens of
6 frequent reporting.

7 (5) The rules shall: (a) Require incumbent carriers to retain the
8 data used in generating performance measurement reports for no less
9 than two years; and (b) include a mechanism for the commission or
10 competing carriers to conduct periodic audits of the reports as
11 necessary to ensure that incumbent carriers are using appropriate
12 methodologies and are accurately reporting the requirement
13 measurements. The rules may also specify the conditions, other than
14 during an audit, under which an incumbent carrier must provide to the
15 commission or a competing carrier the raw data underlying a performance
16 measurement report.

17 NEW SECTION. **Sec. 6.** EVALUATION OF PERFORMANCE MEASUREMENTS. (1)
18 In adopting its carrier-to-carrier service quality rules, the
19 commission shall consider all practical methodologies that would
20 further the goal of injecting more consistency and predictability into
21 determining whether an incumbent carrier is meeting its statutory
22 obligations to provide interconnection and operations support systems.
23 Wherever possible, the rules shall also identify performance standards
24 for evaluating when an incumbent carrier's performance warrants further
25 regulatory scrutiny.

26 (2) The commission shall consider, and periodically review, the
27 performance measurements and performance standards adopted and proposed
28 by the federal communications commission and other state commissions in
29 an effort to promote regional consistency and reduce unnecessarily
30 duplicative or inconsistent requirements.

31 **PART II**

32 **INTERCONNECTION ENFORCEMENT AND DISPUTE RESOLUTION**

33 NEW SECTION. **Sec. 7.** (1) The commission is authorized and
34 directed to:

35 (a) Resolve disputes arising under or pertaining to approved
36 interconnection agreements, including: (i) The proper interpretation

1 of terms and conditions; (ii) implementation of activities explicitly
2 provided for or implicitly contemplated in the agreements; and (iii)
3 enforcement of the terms and conditions of the agreements;

4 (b) Enforce carrier-to-carrier service quality rules adopted under
5 sections 1 through 6 of this act; and

6 (c) Issue appropriate remedial orders.

7 The powers authorized in this section are in addition to, and not
8 exclusive of, any other powers granted to the commission. The remedies
9 authorized in this section are in addition to, and not exclusive of,
10 any other remedies available at law to the parties.

11 (2) When the commission finds after notice and hearing that a
12 person has engaged in or is about to engage in an act or practice
13 constituting a violation of the terms or conditions of an
14 interconnection agreement or the commission's carrier-to-carrier
15 service quality rules, the commission shall issue an order directing
16 the person to cease and desist from continuing the act or practice.
17 The commission may also award additional remedies or relief as
18 necessary and appropriate, including:

19 (a) Specific performance of any obligation created in or found by
20 the commission to be intended under the interconnection agreement
21 subject to the dispute and reasonable timelines in which to comply;

22 (b) Penalties in an amount commensurate with the actual damages
23 suffered by the injured party or up to twenty-five thousand dollars
24 per violation per day commencing from the date the commission finds the
25 violation to have first occurred and continuing through the date the
26 violation is corrected;

27 (c) Sanctions for abuse or frustration of the dispute resolution
28 process adopted under subsection (5) of this section or for a violation
29 of a cease and desist order issued under this section, including but
30 not limited to penalties in an amount commensurate with treble damages
31 or up to seventy-five thousand dollars per violation per day commencing
32 from the date the commission finds the violation to have first occurred
33 and continuing through the date the violation is corrected; and

34 (d) Sanctions for willful or intentional violations or a series of
35 repeated violations by a party, including but not limited to penalties
36 in an amount commensurate with treble damages or up to seventy-five
37 thousand dollars per violation per day commencing from the date the
38 commission finds the violation to have first occurred and continuing
39 through the date the violation is corrected.

1 (3) Whenever it appears to the commission that interconnection or
2 carrier-to-carrier service quality conditions exist that require
3 immediate action to protect the ability of a party to provide
4 uninterrupted service to a customer or preclude the provisioning of any
5 firm order confirmations, functionality, or network element, the
6 commission may issue a written show cause or temporary cease and desist
7 order, or both, to the person or persons responsible without prior
8 notice or hearing. Such an order may direct and afford the person or
9 persons responsible the alternative of either:

10 (a) Immediately discontinuing or modifying the offending conduct;
11 or

12 (b) Appearing before the commission at the time and place specified
13 in the written order for the purpose of providing to the commission
14 information pertaining to the violations and conditions alleged in the
15 written order. A temporary cease and desist order is effective
16 immediately upon delivery to the person affected, remains in effect
17 until ten days after the hearing is held, and becomes final if the
18 person to whom notice is addressed does not request a hearing within
19 fourteen days after receipt of the notice. When requested by a party
20 other than the commission, no temporary cease and desist order shall be
21 granted under this subsection until the party requesting it enters into
22 a bond, in such a sum as fixed by the commission granting the order,
23 with surety to the satisfaction of the commission, conditioned to pay
24 all damages and costs which may accrue by reason of the temporary cease
25 and desist order.

26 (4) If the commission finds that a party subject to an
27 interconnection agreement, the carrier-to-carrier service quality
28 rules, or a show cause or cease and desist order has engaged in a
29 series of repeated willful or intentional violations, the commission
30 shall impose sanctions in addition to the remedies set forth in
31 subsections (2) and (3) of this section. In determining the nature and
32 severity of the sanctions, the commission shall consider the extent of
33 the harm caused to other carriers and their customers, the relevant
34 market share of the violating party, the impact of the violations to
35 the establishment of competition and the deployment of advanced
36 telecommunications capability, and the public interest. Sanctions
37 imposed under this subsection may include:

38 (a) Monetary penalties of up to one hundred thousand dollars per
39 finding;

1 (b) Commission oversight or regulation specifically tailored to
2 monitor and ensure compliance for such a period of time as necessary to
3 correct the offending conduct; or

4 (c) An order to structurally or functionally separate or divest a
5 portion of the offending party's network or service offerings, except
6 that this sanction shall not be ordered unless the commission finds
7 that the monetary penalties and commission oversight or regulation have
8 failed to correct the offending conduct.

9 (5) The commission shall adopt by rule dispute resolution and
10 enforcement procedures for implementing this section. The rules shall
11 specify, at a minimum:

12 (a) Parties eligible to utilize the procedures, including any
13 telecommunications company that is party to an approved interconnection
14 agreement or statement of generally available terms and any customer
15 aggrieved by a violation of such an agreement or statement;

16 (b) The circumstances under which interim and final commission
17 orders to resolve disputes must be issued and reconsidered by the
18 commission within specified timelines, including separate timelines
19 for: (i) Formal dispute resolution which may be no longer than ninety
20 days, with no longer than fifteen days for reconsideration; (ii)
21 expedited dispute resolution which may be no longer than twenty days,
22 with no longer than five days for reconsideration; and (iii) interim
23 rulings which may be no longer than three days. Such timelines may not
24 be extended except upon agreement of the parties or a finding by the
25 commission of extraordinary conditions warranting delay;

26 (c) The form and elements of required filings;

27 (d) Required notice periods and acceptable methods of service;

28 (e) Applicable rules of discovery;

29 (f) The parties' obligations to participate in a mandatory,
30 nonbinding mediation session, and, if requested by any party, an
31 informal settlement conference; and

32 (g) Appropriate bond amounts and surety requirements for the
33 issuance of temporary cease and desist orders.

34 (6) To the extent that any provisions of this section or the rules
35 adopted under this section conflict with the provisions of chapter
36 34.05 RCW, the administrative procedure act, this section and the rules
37 adopted under it shall govern.

1 **Sec. 8.** RCW 80.01.060 and 1995 c 331 s 3 are each amended to read
2 as follows:

3 (1) The commission may designate employees of the commission as
4 hearing examiners, administrative law judges, and review judges when it
5 deems such action necessary for its general administration. The
6 designated employees have power to administer oaths, to issue subpoenas
7 for the attendance of witnesses and the production of papers, waybills,
8 books, accounts, documents, and testimony, to examine witnesses, and to
9 receive testimony in any inquiry, investigation, hearing, or proceeding
10 in any part of the state, under such rules as the commission may adopt.

11 (2) In general rate increase filings by a natural gas, electric, or
12 telecommunications company, the designated employee may preside, but
13 may not enter an initial order unless expressly agreed to in writing by
14 the company making the filing. In all other cases, the designated
15 employee may enter an initial order including findings of fact and
16 conclusions of law in accordance with RCW 34.05.461(1)(a) and (c) and
17 (3) through (9) or 34.05.485. RCW 34.05.461 (1)(b) and (2) do not
18 apply to entry of orders under this section.

19 (3) The designated employee may not enter final orders, except
20 that the commission may designate persons by rule to preside and enter
21 final orders in emergency adjudications under RCW 34.05.479 and dispute
22 resolution proceedings under section 7 of this act. The designated
23 employee may not enter show cause or cease and desist orders except
24 that the commission may designate persons by rule to preside and enter
25 show cause or cease and desist orders in dispute resolution proceedings
26 under section 7 of this act.

27 ~~((+3+))~~ (4) If the designated employee does not enter an initial
28 order as provided in subsection (2) of this section, then a majority of
29 the members of the commission who are to enter the final order must
30 hear or review substantially all of the record submitted by any party.

31 **PART III**

32 **PRICE CAPS AND COMPETITIVE CLASSIFICATIONS**

33 **Sec. 9.** RCW 80.36.300 and 1985 c 450 s 1 are each amended to read
34 as follows:

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

36 (1) Preserve affordable universal telecommunications service;

1 (2) Maintain and advance the efficiency and availability of
2 telecommunications service, including the deployment on a reasonable
3 and timely basis of advanced telecommunications capabilities to all
4 citizens of the state;

5 (3) Ensure that customers pay only reasonable charges for
6 telecommunications service;

7 (4) Ensure that rates for noncompetitive telecommunications
8 services do not subsidize the competitive ventures of regulated
9 telecommunications companies;

10 (5) Promote diversity in the supply of telecommunications services
11 and products in telecommunications markets throughout the state; and

12 (6) Permit flexible regulation of competitive telecommunications
13 companies and services.

14 **Sec. 10.** RCW 80.36.135 and 1995 c 110 s 5 are each amended to read
15 as follows:

16 (1) The legislature declares that(~~(+~~
17 ~~(a))~~) changes in technology and the structure of the
18 telecommunications industry (~~(may produce))~~ have produced conditions
19 under which traditional rate of return, rate base regulation of
20 telecommunications companies (~~(may))~~ does not (~~(in all cases))~~ provide
21 the most efficient and effective means of achieving the public policy
22 goals of this state as declared in RCW 80.36.300, this section, section
23 11 of this act, and RCW 80.36.145. The commission (~~(should be))~~ is
24 therefore authorized and directed to employ an alternative form of
25 regulation (~~(if))~~ when that alternative is better suited to achieving
26 those policy goals.

27 (~~(b) Because of the great diversity in the scope and type of~~
28 ~~services provided by telecommunications companies, alternative~~
29 ~~regulatory arrangements that meet the varying circumstances of~~
30 ~~different companies and their ratepayers may be desirable.))~~

31 (2)(a) Subject to the conditions set forth in this chapter and RCW
32 80.04.130, the commission may regulate telecommunications companies
33 subject before July 23, 1989, to traditional rate of return, rate base
34 regulation by authorizing an alternative form of regulation under this
35 chapter.

36 (b) Subject to the conditions set forth in this chapter, an
37 incumbent local exchange carrier may elect to have the rates, terms,

1 and conditions for its telecommunications services determined under a
2 price cap form of regulation as provided for in section 11 of this act.

3 (3) The commission may determine the manner and extent of any
4 alternative forms of regulation as may in the public interest be
5 appropriate. In addition to the public policy goals declared in RCW
6 80.36.300, the commission shall consider, in determining the
7 appropriateness of any proposed alternative form of regulation, whether
8 it will:

9 (a) Reduce regulatory delay and costs;

10 (b) Encourage innovation in services;

11 (c) Promote efficiency;

12 (d) Facilitate the broad dissemination of technological
13 improvements to all classes of ratepayers;

14 (e) Enhance the ability of telecommunications companies to respond
15 to competition;

16 (f) Ensure that telecommunications companies do not have the
17 opportunity to exercise substantial market power absent effective
18 competition or effective regulatory constraints; and

19 (g) Provide fair, just, and reasonable rates for all ratepayers.

20 The commission shall make written findings of fact as to each of
21 the above-stated policy goals in ruling on any proposed alternative
22 form of regulation.

23 ~~((+3+))~~ (4) A telecommunications company or companies subject to
24 traditional rate of return, rate base regulation may petition the
25 commission to establish an alternative form of regulation. The company
26 or companies shall submit with the petition a plan for an alternative
27 form of regulation. The plan shall contain a proposal for transition
28 to the alternative form of regulation. The commission shall review and
29 may modify or reject the proposed plan. The commission also may
30 initiate consideration of alternative forms of regulation for a company
31 or companies on its own motion. The commission may approve the plan or
32 modified plan and authorize its implementation, if it finds, after
33 notice and hearing, that the plan or modified plan:

34 (a) Is in the public interest;

35 (b) Is necessary to respond to such changes in technology and the
36 structure of the intrastate telecommunications industry as are in fact
37 occurring;

1 (c) Is better suited to achieving the policy goals set forth in RCW
2 80.36.300 and this section than the traditional rate of return, rate
3 base regulation;

4 (d) Ensures that ratepayers will benefit from any efficiency gains
5 and cost savings arising out of the regulatory change and will afford
6 ratepayers the opportunity to benefit from improvements in productivity
7 due to technological change;

8 (e) Will not result in a degradation of the quality or availability
9 of efficient telecommunications services;

10 (f) Will produce fair, just, and reasonable rates for
11 telecommunications services; and

12 (g) Will not unduly or unreasonably prejudice or disadvantage any
13 particular customer class.

14 ~~((4) Not later than sixty days from the entry of the commission's
15 order, the company or companies affected by the order may file with the
16 commission an election not to proceed with the alternative form of
17 regulation as authorized by the commission. If a company elects to
18 appeal to the courts the final order of the commission authorizing an
19 alternative form of regulation, it shall not change its election to
20 proceed or not proceed after the appeal is concluded. The pendency of
21 a petition by a company for judicial review of the final order shall
22 not serve to extend the sixty day period.))~~

23 (5) The commission may waive such regulatory requirements under
24 Title 80 RCW for a telecommunications company subject to an alternative
25 form of regulation as may be appropriate to facilitate the
26 implementation of this section: PROVIDED, That the commission may not
27 grant the authority to price list services except as provided in RCW
28 80.36.300 through 80.36.370, the regulatory flexibility act, nor may it
29 waive any statutory requirements or grants of legal rights to any
30 person contained in this chapter and chapter 80.04 RCW as amended,
31 except as otherwise expressly provided. The commission may waive
32 different regulatory requirements for different companies or services
33 if such different treatment is in the public interest.

34 (6) Upon petition by any person, or upon its own motion, the
35 commission may rescind its approval of an alternative form of
36 regulation if, after notice and hearing, it finds that the conditions
37 set forth in subsection ~~((3))~~ (4) of this section can no longer be
38 satisfied. The commission or any person may file a complaint alleging
39 that the rates charged by a telecommunications company under an

1 alternative form of regulation are unfair, unjust, unreasonable, unduly
2 discriminatory, or are otherwise not consistent with the requirements
3 of chapter 101, Laws of 1989: PROVIDED, That the complainant shall
4 bear the burden of proving the allegations in the complaint.

5 NEW SECTION. **Sec. 11.** (1) An incumbent local exchange carrier
6 seeking to broadly deploy advanced telecommunications services and high
7 bandwidth infrastructure throughout the state or its service area may
8 elect to be subject to price regulation under this section. Unless
9 extended by the electing carrier, or for good cause by the commission,
10 an election under this section shall become effective not later than
11 one hundred eighty days after receipt by the commission of a completed
12 notice of intent.

13 (2) An electing carrier shall file with the commission a notice of
14 its intent to broadly deploy advanced telecommunications capabilities
15 in a reasonable and timely manner throughout the state or its existing
16 service area, including the specific infrastructure or service
17 deployment commitments the carrier will certify on an annual basis to
18 the commission. Specific infrastructure and service deployment
19 commitments filed under this subsection shall be exempt from public
20 disclosure until sixty days after the end of the year for which they
21 were filed. For the purposes of this subsection, an intent to broadly
22 deploy advanced telecommunications capabilities in a reasonable and
23 timely manner means deployment that results, within five years, in at
24 least seventy-five percent of the nonresidential access lines
25 provisioned by the electing carrier in counties with a population
26 density of fewer than one hundred persons per square mile being capable
27 of transmitting data at a rate of at least one megabit per second.

28 (3) Upon the effective date of an election made under this section,
29 price regulation shall replace the rate-base, rate-of-return form of
30 regulation by the commission of the electing carrier. The commission
31 shall not consider rate-of-return, rate-base or the earnings of an
32 electing carrier in connection with its oversight of an electing
33 carrier's operations.

34 (4) The rates, tolls, rentals, and charges contained in an electing
35 carrier's approved tariffs and end-user contracts on the effective date
36 of the election shall be the maximum the electing carrier may charge
37 for such services, except that:

1 (a) An electing carrier may reduce the rates, tolls, rentals, and
2 charges contained in any such tariffs or end-user contracts without
3 commission approval, effective on ten days' notice;

4 (b) This subsection does not apply to any services later classified
5 as competitive under RCW 80.36.310; and

6 (c) The commission shall adjust the rates contained in any such
7 tariffs for basic telecommunications services if the number of local
8 exchanges served by the electing carrier changes by more than five
9 percent, or the number of access lines served by the electing carrier
10 changes by more than ten percent, after an electing company has filed
11 its notice of intent under this section.

12 (5) The rates, tolls, rentals, and charges for services not subject
13 to subsection (4) of this section may be established by filing a
14 tariff, end-user contract, or price list with the commission as
15 provided for in RCW 80.36.100, 80.36.150, and 80.36.330, and may be
16 changed as provided for in RCW 80.36.110.

17 (6) An electing carrier may package for sale any service subject to
18 subsection (4) of this section with any of the other services it or its
19 affiliates may offer, with or without a discount, provided that the
20 electing carrier shall continue to make the price-capped service
21 available separately, at the rate, toll, rental, or charge and under
22 the same terms and conditions as required by subsection (4) of this
23 section.

24 (7) An electing carrier shall be exempt from regulatory
25 requirements necessary only for rate-based, rate-of-return regulation,
26 including RCW 80.04.300 through 80.04.360 and any related rules adopted
27 by the commission.

28 (8) Nothing in this section shall be construed to limit the
29 commission's or any party's right to enforce:

30 (a) The carrier-to-carrier service quality rules adopted under
31 sections 1 through 6 of this act;

32 (b) The commission's retail service quality rules; and

33 (c) Any preexisting commission or court order relating to service
34 quality issued to the electing carrier prior to its election under this
35 section.

36 **Sec. 12.** RCW 80.36.330 and 1998 c 337 s 6 are each amended to read
37 as follows:

1 (1) The commission may classify a telecommunications service
2 provided by a telecommunications company as a competitive
3 telecommunications service if the service is subject to effective
4 competition within the relevant geographic and product market and
5 customer class. Effective competition means that customers of the
6 service have reasonably available alternatives and that the service is
7 not provided to a significant captive customer base. In determining
8 whether a service is competitive, factors the commission shall consider
9 include but are not limited to:

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

11 (b) The extent to which services are available from alternative
12 providers in the relevant geographic and product market to the relevant
13 customer class or classes;

14 (c) The ability of alternative providers to make functionally
15 equivalent or substitute services readily available at competitive
16 rates, terms, and conditions to a majority of customers within the
17 relevant geographic and product market and the relevant customer class
18 or classes; and

19 (d) Other indicators of market power, which may include market
20 share, growth in market share, ease of entry, and the affiliation of
21 providers of services. For the purposes of this subsection, a relevant
22 geographic market may include the exchange or wire center serving area
23 of the telecommunications company seeking the competitive
24 classification.

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

31 (3) Prices or rates charged for competitive telecommunications
32 services 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) The commission may investigate prices for competitive
38 telecommunications services upon complaint. In any complaint
39 proceeding initiated by the commission, the telecommunications company

1 providing the service shall bear the burden of proving that the prices
2 charged cover cost, and are fair, just, and reasonable.

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

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

11 (7) The commission may reclassify any competitive
12 telecommunications service if reclassification would protect the public
13 interest.

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

18 **PART IV**
19 **MISCELLANEOUS**

20 NEW SECTION. **Sec. 13.** Section captions and part headings used in
21 this act are not any part of the law.

22 NEW SECTION. **Sec. 14.** Sections 1 through 7 and 11 of this act are
23 each added to chapter 80.36 RCW.

24 NEW SECTION. **Sec. 15.** If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 16.** Sections 1 through 7 of this act are
29 necessary for the immediate preservation of the public peace, health,
30 or safety, or support of the state government and its existing public
31 institutions, and take effect immediately.

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