
SUBSTITUTE SENATE BILL 5299

State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Technology & Communications (originally sponsored by Senators Stevens, Reardon, Esser, Finkbeiner, Johnson and T. Sheldon)

READ FIRST TIME 02/07/03.

1 AN ACT Relating to promotional service offerings; and amending RCW
2 80.04.130, 80.36.110, 80.36.320, and 80.36.330.

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

4 **Sec. 1.** RCW 80.04.130 and 2001 c 267 s 1 are each amended to read
5 as follows:

6 (1) Except as provided in subsection (2) of this section, whenever
7 any public service company shall file with the commission any schedule,
8 classification, rule, or regulation, the effect of which is to change
9 any rate, charge, rental, or toll theretofore charged, the commission
10 shall have power, either upon its own motion or upon complaint, upon
11 notice, to enter upon a hearing concerning such proposed change and the
12 reasonableness and justness thereof(~~(, and)~~). Pending such hearing and
13 the decision thereon, the commission may suspend the operation of such
14 rate, charge, rental, or toll for a period not exceeding ten months
15 from the time the same would otherwise go into effect(~~(, and)~~). After
16 a full hearing, the commission may make such order in reference thereto
17 as would be provided in a hearing initiated after the same had become
18 effective.

1 (2)(a) The commission shall not suspend a tariff that makes a
2 decrease in a rate, charge, rental, or toll filed by a
3 telecommunications company pending investigation of the fairness,
4 justness, and reasonableness of the decrease when the filing does not
5 contain any offsetting increase to another rate, charge, rental, or
6 toll and the filing company agrees to not file for an increase to any
7 rate, charge, rental, or toll to recover the revenue deficit that
8 results from the decrease for a period of one year.

9 (i) The filing company shall file with any decrease sufficient
10 information as the commission by rule may require to demonstrate the
11 decreased rate, charge, rental, or toll is above the long run
12 incremental cost of the service. A tariff decrease that results in a
13 rate that is below long run incremental cost, or is contrary to
14 commission rule or order, or the requirements of this chapter, shall be
15 rejected for filing and returned to the company.

16 (ii) The commission may prescribe a different rate to be effective
17 on the prospective date stated in its final order after its
18 investigation, if it concludes based on the record that the originally
19 filed and effective rate is unjust, unfair, or unreasonable.

20 ~~((For the purposes of this section, tariffs for the following
21 telecommunications services, that temporarily waive or reduce charges
22 for existing or new subscribers for a period not to exceed sixty days
23 in order to promote the use of the services shall be considered tariffs
24 that decrease rates, charges, rentals, or tolls:~~

25 ~~(a) Custom calling service;~~

26 ~~(b) Second access lines; or~~

27 ~~(c) Other services the commission specifies by rule.~~

28 ~~The commission may suspend any promotional tariff other than those
29 listed in (a) through (c) of this subsection.))~~

30 (b) The commission shall not suspend a promotional tariff. For the
31 purposes of this section, "promotional tariff" means a tariff that, for
32 a period of up to ninety days, waives or reduces charges or conditions
33 of service for existing or new subscribers for the purpose of retaining
34 or increasing the number of customers who subscribe to or use a
35 service.

36 (3) The commission may suspend the initial tariff filing of any
37 water company removed from and later subject to commission jurisdiction
38 because of the number of customers or the average annual gross revenue

1 per customer provisions of RCW 80.04.010. The commission may allow
2 temporary rates during the suspension period. These rates shall not
3 exceed the rates charged when the company was last regulated. Upon a
4 showing of good cause by the company, the commission may establish a
5 different level of temporary rates.

6 ~~((+2))~~ (4) At any hearing involving any change in any schedule,
7 classification, rule, or regulation the effect of which is to increase
8 any rate, charge, rental, or toll theretofore charged, the burden of
9 proof to show that such increase is just and reasonable shall be upon
10 the public service company.

11 ~~((+3))~~ (5) The implementation of mandatory local measured
12 telecommunications service is a major policy change in available
13 telecommunications service. The commission shall not accept for filing
14 a price list, nor shall it accept for filing or approve, prior to June
15 1, 2004, a tariff filed by a telecommunications company which imposes
16 mandatory local measured service on any customer or class of customers,
17 except that, upon finding that it is in the public interest, the
18 commission may accept for filing a price list or it may accept for
19 filing and approve a tariff that imposes mandatory measured service for
20 a telecommunications company's extended area service or foreign
21 exchange service. This subsection does not apply to land, air, or
22 marine mobile service, or to pay telephone service, or to any service
23 which has been traditionally offered on a measured service basis.

24 ~~((+4))~~ (6) The implementation of Washington telephone assistance
25 program service is a major policy change in available
26 telecommunications service. The implementation of Washington telephone
27 assistance program service will aid in achieving the stated goal of
28 universal telephone service.

29 ~~((+5))~~ (7) If a utility claims a sales or use tax exemption on the
30 pollution control equipment for an electrical generation facility and
31 abandons the generation facility before the pollution control equipment
32 is fully depreciated, any tariff filing for a rate increase to recover
33 abandonment costs for the pollution control equipment shall be
34 considered unjust and unreasonable for the purposes of this section.

35 **Sec. 2.** RCW 80.36.110 and 1997 c 166 s 1 are each amended to read
36 as follows:

37 (1) Except as provided in subsection (2) of this section, unless

1 the commission otherwise orders, no change shall be made in any rate,
2 toll, rental, or charge, that was filed and published by any
3 telecommunications company in compliance with the requirements of RCW
4 80.36.100, except after thirty days' notice to the commission and
5 publication for thirty days as required in the case of original
6 schedules in RCW 80.36.100, which notice shall plainly state the
7 changes proposed to be made in the schedule then in force, and the time
8 when the changed rate, toll, or charge will go into effect, and all
9 proposed changes shall be shown by printing, filing and publishing new
10 schedules, or shall be plainly indicated upon the schedules in force at
11 the time and kept open to public inspection. Proposed changes may be
12 suspended by the commission within thirty days or before the stated
13 effective date of the proposed change, whichever is later. The
14 commission for good cause shown may allow changes in rates, charges,
15 tolls, or rentals without requiring the thirty days' notice and
16 publication provided for in this section, by an order specifying the
17 change to be made and the time when it takes effect, and the manner in
18 which the change will be filed and published. When any change is made
19 in any rate, toll, rental, or charge, the effect of which is to
20 increase any rate, toll, rental, or charge then existing, attention
21 shall be directed on the copy filed with the commission to the increase
22 by some character immediately preceding or following the item in the
23 schedule, which character shall be in such a form as the commission may
24 designate.

25 (2)(a) A telecommunications company may file a tariff that
26 decreases any rate, charge, rental, or toll with ten days' notice to
27 the commission and publication without receiving a special order from
28 the commission when the filing does not contain an offsetting increase
29 to another rate, charge, rental, or toll, and the filing company agrees
30 not to file for an increase to any rate, charge, rental, or toll to
31 recover the revenue deficit that results from the decrease for a period
32 of one year.

33 (b) A telecommunications company may file a promotional offering to
34 be effective, without receiving a special order from the commission,
35 upon filing with the commission and publication. For the purposes of
36 this section, "promotional offering" means a tariff or price list that,
37 for a period of up to ninety days, waives or reduces charges or

1 conditions of service for existing or new subscribers for the purpose
2 of retaining or increasing the number of customers who subscribe to or
3 use a service.

4 **Sec. 3.** 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
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.

22 The commission shall conduct the initial classification and any
23 subsequent review of the classification in accordance with such
24 procedures as the commission may establish by rule.

25 (2) Competitive telecommunications companies shall be subject to
26 minimal regulation. Minimal regulation means that competitive
27 telecommunications companies may file, instead of tariffs, price lists
28 (~~that shall be~~). Except as provided in RCW 80.36.110(2)(b), price
29 lists are effective after ten days' notice to the commission and
30 customers. The commission shall prescribe the form of notice. The
31 commission may also waive other regulatory requirements under this
32 title for competitive telecommunications companies when it determines
33 that competition will serve the same purposes as public interest
34 regulation. The commission may waive different regulatory requirements
35 for different companies if such different treatment is in the public
36 interest. A competitive telecommunications company shall at a minimum:

1 (a) Keep its accounts according to regulations as determined by the
2 commission;

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

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

7 (d) Cooperate with commission investigations of customer
8 complaints.

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

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

21 (5) The commission may waive the requirements of RCW 80.36.170 and
22 80.36.180 in whole or in part for a competitive telecommunications
23 company if it finds that competition will serve the same purpose and
24 protect the public interest.

25 **Sec. 4.** RCW 80.36.330 and 1998 c 337 s 6 are each amended to read
26 as follows:

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

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

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

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

4 (d) Other indicators of market power, which may include market
5 share, growth in market share, ease of entry, and the affiliation of
6 providers of services.

7 (2) When the commission finds that a telecommunications company has
8 demonstrated that a telecommunications service is competitive, the
9 commission may permit the service to be provided under a price list.
10 Except as provided in RCW 80.36.110(2)(b), price lists are effective on
11 ten days notice to the commission and customers. The commission shall
12 prescribe the form of notice. The commission may adopt procedural
13 rules necessary to implement this section.

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

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

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

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

33 (7) The commission may reclassify any competitive
34 telecommunications service if reclassification would protect the public
35 interest.

36 (8) The commission may waive the requirements of RCW 80.36.170 and
37 80.36.180 in whole or in part for a service classified as competitive

1 if it finds that competition will serve the same purpose and protect
2 the public interest.

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