
SENATE BILL 5299

State of Washington

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By Senators Stevens, Reardon, Esser, Finkbeiner, Johnson and T. Sheldon

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

1 telecommunications company pending investigation of the fairness,
2 justness, and reasonableness of the decrease when the filing does not
3 contain any offsetting increase to another rate, charge, rental, or
4 toll and the filing company agrees to not file for an increase to any
5 rate, charge, rental, or toll to recover the revenue deficit that
6 results from the decrease for a period of one year. The filing company
7 shall file with any decrease sufficient information as the commission
8 by rule may require to demonstrate the decreased rate, charge, rental,
9 or toll is above the long run incremental cost of the service. A
10 tariff decrease that results in a rate that is below long run
11 incremental cost, or is contrary to commission rule or order, or the
12 requirements of this chapter, shall be rejected for filing and returned
13 to the company. The commission may prescribe a different rate to be
14 effective on the prospective date stated in its final order after its
15 investigation, if it concludes based on the record that the originally
16 filed and effective rate is unjust, unfair, or unreasonable.

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

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

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

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

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

27 (b) The commission may suspend the initial tariff filing of any
28 water company removed from and later subject to commission jurisdiction
29 because of the number of customers or the average annual gross revenue
30 per customer provisions of RCW 80.04.010. The commission may allow
31 temporary rates during the suspension period. These rates shall not
32 exceed the rates charged when the company was last regulated. Upon a
33 showing of good cause by the company, the commission may establish a
34 different level of temporary rates.

35 (2) For promotional service offerings not to exceed ninety days, a
36 telecommunications company may file a change to a price list or tariff
37 that contains only decreases to filed rates or waives conditions, and

1 that shall be effective upon filing or such other date specified by the
2 company. The price list or tariff is not subject to suspension by the
3 commission.

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

9 ~~((3))~~ (4) The implementation of mandatory local measured
10 telecommunications service is a major policy change in available
11 telecommunications service. The commission shall not accept for filing
12 a price list, nor shall it accept for filing or approve, prior to June
13 1, 2004, a tariff filed by a telecommunications company which imposes
14 mandatory local measured service on any customer or class of customers,
15 except that, upon finding that it is in the public interest, the
16 commission may accept for filing a price list or it may accept for
17 filing and approve a tariff that imposes mandatory measured service for
18 a telecommunications company's extended area service or foreign
19 exchange service. This subsection does not apply to land, air, or
20 marine mobile service, or to pay telephone service, or to any service
21 which has been traditionally offered on a measured service basis.

22 ~~((4))~~ (5) The implementation of Washington telephone assistance
23 program service is a major policy change in available
24 telecommunications service. The implementation of Washington telephone
25 assistance program service will aid in achieving the stated goal of
26 universal telephone service.

27 ~~((5))~~ (6) If a utility claims a sales or use tax exemption on the
28 pollution control equipment for an electrical generation facility and
29 abandons the generation facility before the pollution control equipment
30 is fully depreciated, any tariff filing for a rate increase to recover
31 abandonment costs for the pollution control equipment shall be
32 considered unjust and unreasonable for the purposes of this section.

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

35 (1) Except as provided in subsection (2) of this section and in RCW
36 80.04.130(2), unless the commission otherwise orders, no change shall
37 be made in any rate, toll, rental, or charge, that was filed and

1 published by any telecommunications company in compliance with the
2 requirements of RCW 80.36.100, except after thirty days' notice to the
3 commission and publication for thirty days as required in the case of
4 original schedules in RCW 80.36.100, which notice shall plainly state
5 the changes proposed to be made in the schedule then in force, and the
6 time when the changed rate, toll, or charge will go into effect, and
7 all proposed changes shall be shown by printing, filing and publishing
8 new schedules, or shall be plainly indicated upon the schedules in
9 force at the time and kept open to public inspection. Proposed changes
10 may be suspended by the commission within thirty days or before the
11 stated effective date of the proposed change, whichever is later. The
12 commission for good cause shown may allow changes in rates, charges,
13 tolls, or rentals without requiring the thirty days' notice and
14 publication provided for in this section, by an order specifying the
15 change to be made and the time when it takes effect, and the manner in
16 which the change will be filed and published. When any change is made
17 in any rate, toll, rental, or charge, the effect of which is to
18 increase any rate, toll, rental, or charge then existing, attention
19 shall be directed on the copy filed with the commission to the increase
20 by some character immediately preceding or following the item in the
21 schedule, which character shall be in such a form as the commission may
22 designate.

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

31 **Sec. 3.** RCW 80.36.320 and 1998 c 337 s 5 are each amended to read
32 as follows:

33 (1) The commission shall classify a telecommunications company as
34 a competitive telecommunications company if the services it offers are
35 subject to effective competition. Effective competition means that the
36 company's customers have reasonably available alternatives and that the

1 company does not have a significant captive customer base. In
2 determining whether a company is competitive, factors the commission
3 shall consider include but are not limited to:

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

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

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

10 (d) Other indicators of market power which may include market
11 share, growth in market share, ease of entry, and the affiliation of
12 providers of services.

13 The commission shall conduct the initial classification and any
14 subsequent review of the classification in accordance with such
15 procedures as the commission may establish by rule.

16 (2) Competitive telecommunications companies shall be subject to
17 minimal regulation. Minimal regulation means that competitive
18 telecommunications companies may file, instead of tariffs, price lists
19 ~~((that shall be))~~. Except as provided in RCW 80.04.130(2), price lists
20 are effective after ten days' notice to the commission and customers.
21 The commission shall prescribe the form of notice. The commission may
22 also waive other regulatory requirements under this title for
23 competitive telecommunications companies when it determines that
24 competition will serve the same purposes as public interest regulation.
25 The commission may waive different regulatory requirements for
26 different companies if such different treatment is in the public
27 interest. A competitive telecommunications company shall at a minimum:

28 (a) Keep its accounts according to regulations as determined by the
29 commission;

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

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

34 (d) Cooperate with commission investigations of customer
35 complaints.

36 (3) When a telecommunications company has demonstrated that the
37 equal access requirements ordered by the federal district court in the
38 case of U.S. v. AT&T, 552 F. Supp. 131 (1982), or in supplemental

1 orders, have been met, the commission shall review the classification
2 of telecommunications companies providing inter-LATA interexchange
3 services. At that time, the commission shall classify all such
4 companies as competitive telecommunications companies unless it finds
5 that effective competition, as defined in subsection (1) of this
6 section, does not then exist.

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

10 (5) The commission may waive the requirements of RCW 80.36.170 and
11 80.36.180 in whole or in part for a competitive telecommunications
12 company if it finds that competition will serve the same purpose and
13 protect the public interest.

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

16 (1) The commission may classify a telecommunications service
17 provided by a telecommunications company as a competitive
18 telecommunications service if the service is subject to effective
19 competition. Effective competition means that customers of the service
20 have reasonably available alternatives and that the service is not
21 provided to a significant captive customer base. In determining
22 whether a service is competitive, factors the commission shall consider
23 include but are not limited to:

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

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

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

30 (d) Other indicators of market power, which may include market
31 share, growth in market share, ease of entry, and the affiliation of
32 providers of services.

33 (2) When the commission finds that a telecommunications company has
34 demonstrated that a telecommunications service is competitive, the
35 commission may permit the service to be provided under a price list.
36 Except as provided in RCW 80.04.130(2), price lists are effective on

1 ten days notice to the commission and customers. The commission shall
2 prescribe the form of notice. The commission may adopt procedural
3 rules necessary to implement this section.

4 (3) Prices or rates charged for competitive telecommunications
5 services shall cover their cost. The commission shall determine proper
6 cost standards to implement this section, provided that in making any
7 assignment of costs or allocating any revenue requirement, the
8 commission shall act to preserve affordable universal
9 telecommunications service.

10 (4) The commission may investigate prices for competitive
11 telecommunications services upon complaint. In any complaint
12 proceeding initiated by the commission, the telecommunications company
13 providing the service shall bear the burden of proving that the prices
14 charged cover cost, and are fair, just, and reasonable.

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

17 (6) No losses incurred by a telecommunications company in the
18 provision of competitive services may be recovered through rates for
19 noncompetitive services. The commission may order refunds or credits
20 to any class of subscribers to a noncompetitive telecommunications
21 service which has paid excessive rates because of below cost pricing of
22 competitive telecommunications services.

23 (7) The commission may reclassify any competitive
24 telecommunications service if reclassification would protect the public
25 interest.

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

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