

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE SENATE BILL 5299**

58th Legislature  
2003 Regular Session

Passed by the Senate February 26, 2003  
YEAS 49 NAYS 0

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**President of the Senate**

Passed by the House April 14, 2003  
YEAS 92 NAYS 0

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**Speaker of the House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Milton H. Doumit, Jr.,  
Secretary of the Senate of the  
State of Washington, do hereby  
certify that the attached is  
**ENGROSSED SUBSTITUTE SENATE BILL  
5299** as passed by the Senate and  
the House of Representatives on  
the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**ENGROSSED SUBSTITUTE SENATE BILL 5299**

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Passed Legislature - 2003 Regular Session

**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 tariff and price list notices; 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

1 as would be provided in a hearing initiated after the same had become  
2 effective.

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

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

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

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

- 27 ~~(a) Custom calling service;~~
- 28 ~~(b) Second access lines; or~~
- 29 ~~(c) Other services the commission specifies by rule.~~

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

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

1       (3) The commission may suspend the initial tariff filing of any  
2 water company removed from and later subject to commission jurisdiction  
3 because of the number of customers or the average annual gross revenue  
4 per customer provisions of RCW 80.04.010. The commission may allow  
5 temporary rates during the suspension period. These rates shall not  
6 exceed the rates charged when the company was last regulated. Upon a  
7 showing of good cause by the company, the commission may establish a  
8 different level of temporary rates.

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

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

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

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

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

3       (1) Except as provided in subsection (2) of this section, unless  
4 the commission otherwise orders, no change shall be made in any rate,  
5 toll, rental, or charge, that was filed and published by any  
6 telecommunications company in compliance with the requirements of RCW  
7 80.36.100, except after notice as required in this subsection.

8       (a) For changes to any rate, toll, rental, or charge filed and  
9 published in a tariff, the company shall provide thirty days' notice to  
10 the commission and publication for thirty days as required in the case  
11 of original schedules in RCW 80.36.100(~~(, which)~~). The notice shall  
12 plainly state the changes proposed to be made in the schedule then in  
13 force, and the time when the changed rate, toll, or charge will go into  
14 effect, and all proposed changes shall be shown by printing, filing and  
15 publishing new schedules, or shall be plainly indicated upon the  
16 schedules in force at the time and kept open to public inspection.  
17 Proposed changes may be suspended by the commission within thirty days  
18 or before the stated effective date of the proposed change, whichever  
19 is later.

20       (b) For changes to any rate, toll, rental, or charge filed and  
21 published in a price list, the company shall provide ten days' notice  
22 to the commission and customers. The commission shall prescribe the  
23 form of notice.

24       (c) The commission for good cause shown may allow changes in rates,  
25 charges, tolls, or rentals without requiring the (~~(thirty days')~~)  
26 notice and publication provided for in (a) or (b) of this subsection,  
27 by an order or rule specifying the change to be made and the time when  
28 it takes effect, and the manner in which the change will be filed and  
29 published.

30       (d) When any change is made in any rate, toll, rental, or charge,  
31 the effect of which is to increase any rate, toll, rental, or charge  
32 then existing, attention shall be directed on the copy filed with the  
33 commission to the increase by some character immediately preceding or  
34 following the item in the schedule, which character shall be in such a  
35 form as the commission may designate.

36       (2)(a) A telecommunications company may file a tariff that  
37 decreases any rate, charge, rental, or toll with ten days' notice to  
38 the commission and publication without receiving a special order from

1 the commission when the filing does not contain an offsetting increase  
2 to another rate, charge, rental, or toll, and the filing company agrees  
3 not to file for an increase to any rate, charge, rental, or toll to  
4 recover the revenue deficit that results from the decrease for a period  
5 of one year.

6 (b) A telecommunications company may file a promotional offering to  
7 be effective, without receiving a special order from the commission,  
8 upon filing with the commission and publication. For the purposes of  
9 this section, "promotional offering" means a tariff or price list that,  
10 for a period of up to ninety days, waives or reduces charges or  
11 conditions of service for existing or new subscribers for the purpose  
12 of retaining or increasing the number of customers who subscribe to or  
13 use a service.

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

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

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

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

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

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

32 The commission shall conduct the initial classification and any  
33 subsequent review of the classification in accordance with such  
34 procedures as the commission may establish by rule.

35 (2) Competitive telecommunications companies shall be subject to  
36 minimal regulation. Minimal regulation means that competitive  
37 telecommunications companies may file, instead of tariffs, price lists

1 (~~that shall be effective after ten days' notice to the commission and~~  
2 ~~customers. The commission shall prescribe the form of notice~~)). The  
3 commission may also waive other regulatory requirements under this  
4 title for competitive telecommunications companies when it determines  
5 that competition will serve the same purposes as public interest  
6 regulation. The commission may waive different regulatory requirements  
7 for different companies if such different treatment is in the public  
8 interest. A competitive telecommunications company shall at a minimum:

9 (a) Keep its accounts according to regulations as determined by the  
10 commission;

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

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

15 (d) Cooperate with commission investigations of customer  
16 complaints.

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

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

29 (5) The commission may waive the requirements of RCW 80.36.170 and  
30 80.36.180 in whole or in part for a competitive telecommunications  
31 company if it finds that competition will serve the same purpose and  
32 protect the public interest.

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

35 (1) The commission may classify a telecommunications service  
36 provided by a telecommunications company as a competitive  
37 telecommunications service if the service is subject to effective

1 competition. Effective competition means that customers of the service  
2 have reasonably available alternatives and that the service is not  
3 provided to a significant captive customer base. In determining  
4 whether a service is competitive, factors the commission shall consider  
5 include but are not limited to:

- 6 (a) The number and size of alternative providers of services;
- 7 (b) The extent to which services are available from alternative  
8 providers in the relevant market;
- 9 (c) The ability of alternative providers to make functionally  
10 equivalent or substitute services readily available at competitive  
11 rates, terms, and conditions; and
- 12 (d) Other indicators of market power, which may include market  
13 share, growth in market share, ease of entry, and the affiliation of  
14 providers of services.

15 (2) When the commission finds that a telecommunications company has  
16 demonstrated that a telecommunications service is competitive, the  
17 commission may permit the service to be provided under a price list  
18 (~~effective on ten days notice to the commission and customers. The~~  
19 ~~commission shall prescribe the form of notice~~). The commission may  
20 adopt procedural rules necessary to implement this section.

21 (3) Prices or rates charged for competitive telecommunications  
22 services shall cover their cost. The commission shall determine proper  
23 cost standards to implement this section, provided that in making any  
24 assignment of costs or allocating any revenue requirement, the  
25 commission shall act to preserve affordable universal  
26 telecommunications service.

27 (4) The commission may investigate prices for competitive  
28 telecommunications services upon complaint. In any complaint  
29 proceeding initiated by the commission, the telecommunications company  
30 providing the service shall bear the burden of proving that the prices  
31 charged cover cost, and are fair, just, and reasonable.

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

34 (6) No losses incurred by a telecommunications company in the  
35 provision of competitive services may be recovered through rates for  
36 noncompetitive services. The commission may order refunds or credits  
37 to any class of subscribers to a noncompetitive telecommunications



1 service which has paid excessive rates because of below cost pricing of  
2 competitive telecommunications services.

3 (7) The commission may reclassify any competitive  
4 telecommunications service if reclassification would protect the public  
5 interest.

6 (8) The commission may waive the requirements of RCW 80.36.170 and  
7 80.36.180 in whole or in part for a service classified as competitive  
8 if it finds that competition will serve the same purpose and protect  
9 the public interest.

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