

HOUSE BILL REPORT

SHB 2103

As Passed House:

March 8, 2007

Title: An act relating to competitive classification of telecommunications services.

Brief Description: Modifying the competitive classification of telecommunications services.

Sponsors: By House Committee on Technology, Energy & Communications (originally sponsored by Representatives Morris, Crouse and Wallace).

Brief History:

Committee Activity:

Technology, Energy & Communications: 2/16/07, 2/20/07 [DPS].

Floor Activity:

Passed House: 3/8/07, 96-0.

Brief Summary of Substitute Bill

- Requires the Washington Utilities and Transportation Commission (WUTC) to consider the number and size of alternative providers of service not subject to commission jurisdiction in determining whether a telecommunication service is competitive.
- Allows a noncompetitive telecommunications company to petition to have packages or bundles of telecommunications services subject to minimal regulation.
- Provides the conditions for which the WUTC may classify as competitive any package or bundle of telecommunications services.

HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Morris, Chair; McCoy, Vice Chair; Crouse, Ranking Minority Member; McCune, Assistant Ranking Minority Member; Eddy, Ericksen, Hankins, Hudgins, Hurst, Takko and VanDeWege.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Scott Richards (786-7156).

Background:

Washington's Telecommunication Policy

In 1985, the Legislature declared that it is the policy of the state to: (1) preserve affordable universal telecommunications service; (2) maintain and advance the efficiency and availability of telecommunications service; (3) ensure that customers pay only reasonable charges for telecommunications service; (4) ensure that rates for noncompetitive telecommunications services do not subsidize the competitive ventures of regulated telecommunications companies; (5) promote diversity in the supply of telecommunications services and products in telecommunications markets throughout the state; and (6) permit flexible regulation of competitive telecommunications companies and services.

Washington Utilities and Transportation Commission (WUTC)

The WUTC regulates the rates, services, and practices of privately-owned utilities and transportation companies, including electric, telecommunications, natural gas, water, solid waste collection companies, pipeline safety, private commercial ferries, buses, and motor carriers.

The WUTC regulates about 20 local telephone companies and 450 competitive firms. The WUTC does not regulate wireless communications or cable TV. The WUTC's regulation of telecommunications companies may involve: reviewing tariffs, contracts and interconnection agreements; monitoring the financial performance of approximately 20 companies that continue to have a captive customer base; reviewing mergers and transfers to protect captive customers and competition; and removing regulation as competition increases.

Competitive Classification of Telecommunications

A telecommunications company may petition the WUTC to be classified as a competitive telecommunications company or to have services classified as competitive telecommunications services.

The WUTC may classify a telecommunications service provided by a telecommunications company as a competitive service if the service is subject to effective competition. Effective competition means that customers of the service have reasonably available alternatives and that the service is not provided to a significant captive customer base.

In determining whether a service is competitive, the WUTC considers:

- the number and size of alternative providers of services;
- the extent to which services are available from alternative providers in the relevant market;
- the ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and
- other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

Competitive telecommunications services are subject to minimal regulation. The WUTC may waive regulatory requirements for companies offering a competitive telecommunications

service when it determines that competition will serve the same purposes as public interest regulation. The WUTC may waive different regulatory requirements for different companies if such different treatment is in the public interest. The WUTC may reclassify any competitive telecommunications service if reclassification would protect the public interest.

Prices or rates charged for competitive telecommunications services shall cover the cost of providing the service. The WUTC shall determine proper cost standards, provided that in making any assignment of costs or allocating any revenue requirement, the WUTC shall act to preserve affordable universal telecommunications service.

No losses incurred by a telecommunications company in the provision of competitive services may be recovered through rates for noncompetitive services. The WUTC may order refunds or credits to any class of subscribers to a noncompetitive telecommunications service which has paid excessive rates because of below cost pricing of competitive telecommunications services.

Summary of Substitute Bill:

Competitive Telecommunications Service

In determining whether a competitive telecommunications service is subject to effective competition, the WUTC shall consider the number and size of alternative providers of telecommunications services not subject to WUTC's jurisdiction in addition to those that are regulated by the WUTC.

A noncompetitive telecommunications company may petition to have packages or bundles of telecommunications services it offers be subject to minimal regulation. The WUTC shall grant the petition where:

- each noncompetitive service in the package or bundle is readily and separately available to customers at fair, just, and reasonable prices;
- the price of the package or bundle is equal to or greater than the cost for tariffed services plus the cost of any competitive services as determined if the service is subject to effective competition; and
- the availability and price of the stand-alone noncompetitive services are displayed in the company's tariff and on its website consistent with WUTC rules.

"Minimal regulation" shall mean that the telecommunications company shall: (1) keep its accounts according to rules adopted by the WUTC; (2) file financial reports for competitive telecommunications services with the WUTC as required; and (3) cooperate with the WUTC investigations of customer complaints.

The WUTC may waive any regulatory requirement under this title with respect to packages or bundles of telecommunications services if it finds those requirements are no longer necessary to protect public interest.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) A few years ago, the Technology, Energy & Communications Committee created the alternative form of regulation process (AFOR). This bill is an update of that process. There has been a group meeting with the WUTC and some of the incumbent carriers and competitive companies to negotiate a compromise on the AFOR process.

This bill would give the WUTC some flexibility in looking at competitors other than the companies they regulate. They could look at cable and wireless companies, forms of competition not envisioned when the statute went into effect. These two are aggressive forms of competition. Also, this bill gives the WUTC another option to use a streamlined approach for determining whether non-essential services and packages are competitive. This bill benefits customers by providing more flexibility with the type of services that may be put in a package in order to compete. Additionally, it allows quicker access to the market. There is increasing competition from cable providers who are packaging services quickly without regulatory oversight. With the fully regulated tariff process, it takes a significant amount of time to respond. This bill would allow regulated telecommunications companies to price our bundles and roll them out without first seeking WUTC approval, once they have granted us approval of competitive classification. The industry is changing and it's nothing like it used to be a few years ago. This bill allows flexibility to meet the challenge of this evolving market. This bill is a step in the right direction.

(With concerns) The use of the term "essential services" may result in unintended consequences due to its meaning related to anti-trust law. "Essential services" as defined in the bill is very narrowly defined.

The competitive environment is changing rapidly. Customers are leaving to go to telephone over cable and wireless. This bill does not go far enough to enact the comprehensive reform necessary to reflect the marketplace. House Bill 1681 may reflect the needs better. Competitors could intervene in the application process to delay the implementation and gather information about what packages are going into the marketplace. Cable companies do not face the scrutiny and have an unfair advantage. The bill does not go far enough to level the playing field. It does not speak to how to bundle regulated and unregulated services together. There is no change to the fundamental process for seeking competitive classification. Also a future WUTC can revoke competitive classifications allowed in this bill, creating regulatory uncertainty.

(Opposed) It is not appropriate to classify any telecommunications service as competitive without any demonstration or finding that there is effective competition for them. Also, it is inappropriate to introduce a new ambiguous term, "essential services" into the language.

Persons Testifying: (In support) Representative Morris, prime sponsor; Barb Young, Embarq; Mary Taylor, CenturyTel; Tom Walker, Qwest; and Dave Danner, Washington Utilities and Transportation Commission.

(With concerns) Gregory Kopta, XO Communications Services and TimeWarner Telecommunications; and Milt Doumit, David Valdez, and Greg Romano, Verizon.

(Opposed) Art Butler, WebTec.

Persons Signed In To Testify But Not Testifying: None.