
ENGROSSED SUBSTITUTE SENATE BILL 6622

AS AMENDED BY THE HOUSE

Passed Legislature - 1998 Regular Session

State of Washington 55th Legislature 1998 Regular Session

By Senate Committee on Energy & Utilities (originally sponsored by Senator Finkbeiner; by request of Utilities & Transportation Commission)

Read first time 02/06/98.

1 AN ACT Relating to the implementation of the federal
2 telecommunications act of 1996, P.L. 104-104 (110 Stat. 56); amending
3 RCW 80.36.310, 80.36.320, and 80.36.330; adding new sections to chapter
4 80.36 RCW; and providing a contingent expiration date.

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

6 NEW SECTION. **Sec. 1.** (1) The commission shall plan and prepare to
7 implement a program for the preservation and advancement of universal
8 telecommunications service which shall not take effect until the
9 legislature approves the program. The purpose of the universal service
10 program is to benefit telecommunications ratepayers in the state by
11 minimizing implicit sources of support and maximizing explicit sources
12 of support that are specific, sufficient, competitively neutral, and
13 technologically neutral to support basic telecommunications services
14 for customers of telecommunications companies in high-cost locations.

1 (2) In preparing a universal service program for approval by the
2 legislature, the commission shall:

3 (a) Estimate the cost of supporting all lines located in high-cost
4 locations and the cost of supporting one primary telecommunications
5 line for each residential or business customer located in high-cost
6 locations;

7 (b) Determine the assessments that must be made on all
8 telecommunications carriers, and the manner of collection, to provide
9 support for:

10 (i) All residential and business lines located in high-cost
11 locations;

12 (ii) Only one primary line for each residential or business
13 customer located in high-cost locations;

14 (c) Designate those telecommunications carriers serving high-cost
15 locations that are eligible to receive support for the benefit of their
16 customers in those locations;

17 (d) Adopt or prepare to adopt all necessary rules for
18 administration of the program; and

19 (e) Provide a schedule of all fees and payments proposed or
20 expected to be proposed by the commission under subsection (4)(d) of
21 this section.

22 (3) The commission shall report by November 1, 1998, to the
23 legislature on these steps taken to prepare for implementation and
24 shall inform the legislature of the estimated cost to support all lines
25 located in high-cost locations and the estimated cost to support only
26 one primary line for each residential or business customer located in
27 high-cost locations under a universal service program.

28 (4) Once a program is approved by the legislature and subsequently
29 established, the following provisions apply unless otherwise directed
30 by the legislature:

31 (a) All transfers of money necessary to provide the support shall
32 be outside the state treasury and not be subject to appropriation;

1 (b) The commission may delegate to the commission secretary or
2 other staff the authority to resolve disputes or make other decisions
3 necessary to the administration of the program;

4 (c) The commission may contract with an independent program
5 administrator subject to the direction and control of the commission
6 and may authorize the establishment of an account or accounts in
7 independent financial institutions should that be necessary for
8 administration of the program;

9 (d) The expenses of an independent program administrator shall be
10 authorized by the commission and shall be paid out of contributions by
11 the telecommunications carriers participating in the program;

12 (e) The commission may require the carriers participating in the
13 program, as part of their contribution, to pay into the public service
14 revolving fund the costs of the commission attributable to supervision
15 and administration of the program that are not otherwise recovered
16 through fees paid to the commission.

17 (5) The commission shall establish standards for review or testing
18 of all telecommunications carriers' compliance with the program for the
19 purpose of ensuring the support received by a telecommunications
20 carrier is used only for the purposes of the program and that each
21 telecommunications carrier is making its proper contribution to the
22 program. The commission may conduct the review or test, or contract
23 with an independent administrator or other person to conduct the review
24 or test.

25 (6) The commission shall coordinate administration of the program
26 with any federal universal service program and may administer the
27 federal fund in conjunction with the state program if so authorized by
28 federal law.

29 (7) The definitions in this subsection apply throughout this
30 section unless the context clearly requires otherwise.

31 (a) "Telecommunications carrier" has the same meaning as defined in
32 47 U.S.C. Sec. 153(44).

1 (b) "Basic telecommunications services" means the following
2 services:

- 3 (i) Single-party service;
- 4 (ii) Voice grade access to the public switched network;
- 5 (iii) Support for local usage;
- 6 (iv) Dual tone multifrequency signaling (touch-tone);
- 7 (v) Access to emergency services (911);
- 8 (vi) Access to operator services;
- 9 (vii) Access to interexchange services;
- 10 (viii) Access to directory assistance; and
- 11 (ix) Toll limitation services.

12 (c) "High-cost location" means a location where the cost of
13 providing telecommunications services is greater than a benchmark
14 established by the commission by rule.

15 (8) Each telecommunications carrier that provides intrastate
16 telecommunications services shall provide whatever information the
17 commission may reasonably require in order to fulfill the commission's
18 responsibilities under subsection (2) of this section.

19 NEW SECTION. Sec. 2. (1) The commission is authorized to take
20 actions, conduct proceedings, and enter orders as permitted or
21 contemplated for a state commission under the federal
22 telecommunications act of 1996, P.L. 104-104 (110 Stat. 56), but the
23 commission's authority to either establish a new state program or to
24 adopt new rules to preserve and advance universal service under section
25 254(f) of the federal act is limited to the actions expressly
26 authorized by section 1 of this act. The commission may establish by
27 rule fees to be paid by persons seeking commission action under the
28 federal act, and by parties to proceedings under that act, to offset in
29 whole or part the commission's expenses that are not otherwise
30 recovered through fees in implementing the act, but new fees or
31 assessments charged telecommunications carriers to either establish a
32 state program or to adopt rules to preserve and advance universal

1 service under section 254(f) of the federal act do not take effect
2 until the legislature has approved a state universal service program.

3 (2) The legislature intends that under the future universal service
4 program established in this state:

5 (a) Every telecommunications carrier that provides intrastate
6 telecommunications services shall contribute, on an equitable and
7 nondiscriminatory basis, to the preservation and advancement of
8 universal service in the state;

9 (b) The contributions shall be competitively and technologically
10 neutral; and

11 (c) The universal service program to be established in accordance
12 with section 1 of this act shall not be inconsistent with the
13 requirements of 47 U.S.C. Sec. 254.

14 NEW SECTION. Sec. 3. Any rules regarding universal service
15 adopted by the utilities and transportation commission shall comply
16 with the purpose, as stated in section 1 of this act, for establishing
17 a program for the preservation and advancement of universal
18 telecommunications service. Services to be supported are only those
19 basic services defined in section 1(7) of this act.]

20 Sec. 4. RCW 80.36.310 and 1989 c 101 s 14 are each amended to read
21 as follows:

22 (1) Telecommunications companies may petition to be classified as
23 competitive telecommunications companies under RCW 80.36.320 or to have
24 services classified as competitive telecommunications services under
25 RCW 80.36.330. The commission may initiate classification proceedings
26 on its own motion. The commission may require all regulated
27 telecommunications companies potentially affected by a classification
28 proceeding to appear as parties for a determination of their
29 classification.

30 (2) Any company petition or commission motion for competitive
31 classification shall state an effective date not sooner than thirty

1 days from the filing date. The company must provide notice and
2 publication of the proposed competitive classification in the same
3 manner as provided in RCW 80.36.110 for tariff changes. The proposed
4 classification shall take effect on the stated effective date unless
5 suspended by the commission and set for hearing under chapter 34.05 RCW
6 or set for a formal investigation and fact-finding under RCW 80.36.145.
7 The commission shall enter its final order with respect to any
8 suspended classification within ((ten)) six months from the date of
9 filing of a company's petition or the commission's motion.

10 **Sec. 5.** RCW 80.36.320 and 1989 c 101 s 15 are each amended to read
11 as follows:

12 (1) The commission shall classify a telecommunications company
13 ((~~providing service in a relevant market~~)) as a competitive
14 telecommunications company if ((~~it finds, after notice and hearing,~~
15 ~~that the telecommunications company has demonstrated that~~)) the
16 services it offers are subject to effective competition. Effective
17 competition means that the company's customers have reasonably
18 available alternatives and that the company does not have a significant
19 captive customer base. In determining whether a company is
20 competitive, factors the commission shall consider include but are not
21 limited to:

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

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

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

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

1 The commission shall conduct the initial classification and any
2 subsequent review of the classification in accordance with such
3 procedures as the commission may establish by rule.

4 (2) Competitive telecommunications companies shall be subject to
5 minimal regulation. Minimal regulation means that competitive
6 telecommunications companies may file, instead of tariffs, price lists
7 (~~which~~) that shall be effective after ten days' notice to the
8 commission and customers. The commission shall prescribe the form of
9 notice. The commission may also waive other regulatory requirements
10 under this title for competitive telecommunications companies when it
11 determines that competition will serve the same purposes as public
12 interest regulation. The commission may waive different regulatory
13 requirements for different companies if such different treatment is in
14 the public interest. A competitive telecommunications company shall at
15 a minimum:

16 (a) Keep its accounts according to regulations as determined by the
17 commission;

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

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

22 (d) Cooperate with commission investigations of customer
23 complaints.

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

1 (4) The commission may revoke any waivers it grants and may
2 reclassify any competitive telecommunications company if ~~((such))~~ the
3 revocation or reclassification would protect the public interest.

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

8 **Sec. 6.** RCW 80.36.330 and 1989 c 101 s 16 are each amended to read
9 as follows:

10 (1) The commission may classify a telecommunications service
11 provided by a telecommunications company as a competitive
12 telecommunications service if ~~((it finds, after notice and hearing,~~
13 ~~that))~~ the service is subject to effective competition. Effective
14 competition means that customers of the service have reasonably
15 available alternatives and that the service is not provided to a
16 significant captive customer base. In determining whether a service is
17 competitive, factors the commission shall consider include but are not
18 limited to:

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

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

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

25 (d) Other indicators of market power, which may include market
26 share, growth in market share, ease of entry, and the affiliation of
27 providers of services.

28 (2) When the commission finds that a telecommunications company has
29 demonstrated that a telecommunications service is competitive, the
30 commission may permit the service to be provided under a price list
31 effective on ten days notice to the commission and customers. The

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

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

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

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

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

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

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

29 NEW SECTION. Sec. 7. Sections 1 through 3 of this act are each
30 added to chapter 80.36 RCW.

1 NEW SECTION. **Sec. 8.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

Passed the Senate March 10, 1998.

Passed the House March 6, 1998.

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