
SENATE BILL 5732

State of Washington 52nd Legislature 1991 Regular Session

By Senators Moore and Williams.

Read first time . Referred to Committee on .

1 AN ACT Relating to enhanced telecommunications services; amending
2 RCW 80.04.010 and 80.36.370; adding new sections to chapter 80.36 RCW;
3 and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature declares that:

6 (1)(a) The public policy goals of this state as declared in RCW
7 80.36.300 and this section will be achieved most efficiently and
8 effectively if enhanced services are developed and provided by many
9 suppliers in markets throughout the state, including both long-
10 established enhanced service providers and new entrants. Advances in
11 computer and communications technology and the proliferation of
12 enhanced services hold promise for improvements in the quality and
13 variety of enhanced services available to the public. However, the
14 entrance of large local exchange companies into the enhanced services
15 industry may have the undesirable effects of stifling competition,

1 reducing the diversity of services offered, and producing subsidies
2 between noncompetitive telecommunications services and unregulated
3 enhanced services provided by local exchange companies.

4 (2) Enhanced service providers and their customers require local
5 exchange telecommunications services that are provided by local
6 exchange companies. Local exchange companies, as well as other
7 telecommunications companies and independent enhanced service
8 providers, should be permitted to provide enhanced services to the
9 public. To prevent damage to competition in enhanced services and to
10 promote the commission's ability to regulate telecommunications
11 companies' provision of exchange and interexchange telecommunications
12 services in the public interest, the enhanced services operations of
13 local exchange companies should be separate from their exchange and
14 interexchange telecommunications services operations. This separation
15 will be accomplished through the formation of separate subsidiaries for
16 the provision of enhanced services by local exchange companies in
17 accordance with section 2 of this act.

18 (3) The scope of small local exchange companies' regulated
19 operations reduces the potential for undesirable impacts of their entry
20 into enhanced services. Therefore, small local exchange companies
21 serving fewer than ten thousand exchange access lines in the state of
22 Washington should be exempt from the general requirement that they
23 separate their exchange and interexchange telecommunications services
24 operations from their enhanced services operations, if any, unless the
25 commission finds, after notice and hearing, that formation of a
26 separate subsidiary by a small local exchange company is a cost-
27 effective means to ensure that rates for regulated services are fair,
28 just, and reasonable for all ratepayers.

1 NEW SECTION. **Sec. 2.** Local exchange companies may provide
2 enhanced services not prohibited by federal rule or statute. Local
3 exchange companies shall separate their enhanced services operations,
4 if any, from their exchange and interexchange telecommunications
5 services operations as set forth in this section.

6 (1) A local exchange company may engage in the provision of
7 enhanced services only through a subsidiary meeting the requirements of
8 section 3 of this act and rules prescribed by the commission to carry
9 out this section.

10 (2) A separate subsidiary is not required for a local exchange
11 company serving fewer than ten thousand exchange access lines in
12 Washington except that the commission's authority to regulate small
13 local exchange companies' provision of exchange and interexchange
14 telecommunications services includes the authority to require a small
15 local exchange company to form a separate subsidiary for its enhanced
16 services operations in accordance with section 3 of this act if, after
17 notice and hearing, the commission finds that such a separation of
18 operations is a cost-effective means to ensure that rates for regulated
19 services are fair, just, and reasonable for all ratepayers.

20 NEW SECTION. **Sec. 3.** (1) Any subsidiary required to be formed
21 under section 2 of this act shall have a board of directors not less
22 than twenty percent of whom are not employees, officers, or directors
23 of the local exchange company or any other affiliate of such local
24 exchange company.

25 (2) Any transaction between any local exchange company and
26 affiliates of the local exchange company shall not be based on any
27 preference or discrimination arising out of affiliation, shall be
28 carried out in the same manner as the company or affiliate conducts
29 such business with unaffiliated persons, shall be fully auditable and

1 reflect all costs associated with the conduct of such business, and
2 shall otherwise be in accordance with chapter 80.16 RCW.

3 (3) A subsidiary required to be formed under section 2 of this act
4 may not:

5 (a) Enter into any joint venture or partnership with the local
6 exchange company;

7 (b) Have employees or a financial structure in common with the
8 local exchange company;

9 (c) Own any property in common with the local exchange company; or

10 (d) Establish any other subsidiary or affiliate except after notice
11 to the commission in such form and containing such information as the
12 commission may require.

13 (4) A subsidiary required to be formed under section 2 of this act
14 shall carry out directly its own marketing, sales, advertising,
15 accounting, hiring and training of personnel, purchasing, and
16 maintenance.

17 (5) Any subsidiary required to be formed under section 2 of this
18 act shall maintain books, records, and accounts in a manner prescribed
19 by the commission which shall be separate from the books, records, and
20 accounts maintained by the local exchange company and any other
21 affiliates of the local exchange company, and which identify any
22 conduct of business with the local exchange company or its other
23 affiliates.

24 (6) The subsidiary required to be formed under section 2 of this
25 act may carry out institutional advertising with the local exchange
26 company, except that such advertising may not specifically relate to
27 any service, and the subsidiary and the local exchange company shall
28 share any costs of such advertising in proportion to their earnings.

29 (7) A subsidiary required to be formed under section 2 of this act
30 shall submit to the commission a copy of any statement, prospectus, or

1 annual or periodic report required to be filed with the securities and
2 exchange commission or the secretary of state.

3 (8) Nothing in this section shall be construed to relieve a local
4 exchange company of any separate subsidiary requirement imposed with
5 respect to the performance of any other service.

6 NEW SECTION. **Sec. 4.** In addition to any other authority the
7 commission may exercise under this chapter, the commission shall take
8 such actions as are necessary to:

9 (1) Prevent anticompetitive practices between a local exchange
10 company and any other affiliate of the local exchange company; and

11 (2) Protect local exchange telecommunications service ratepayers
12 from bearing any cost not associated with the provision of such
13 services by the local exchange company.

14 **Sec. 5.** RCW 80.04.010 and 1989 c 101 s 2 are each amended to read
15 as follows:

16 As used in this title, unless specifically defined otherwise or
17 unless the context indicates otherwise:

18 "Commission" means the utilities and transportation commission.

19 "Commissioner" means one of the members of such commission.

20 "Competitive telecommunications company" means a telecommunications
21 company which has been classified as such by the commission pursuant to
22 RCW 80.36.320.

23 "Competitive telecommunications service" means a service which has
24 been classified as such by the commission pursuant to RCW 80.36.330.

25 "Corporation" includes a corporation, company, association or joint
26 stock association.

27 "Person" includes an individual, a firm or partnership.

1 "Gas plant" includes all real estate, fixtures and personal
2 property, owned, leased, controlled, used or to be used for or in
3 connection with the transmission, distribution, sale or furnishing of
4 natural gas, or the manufacture, transmission, distribution, sale or
5 furnishing of other type gas, for light, heat or power.

6 "Gas company" includes every corporation, company, association,
7 joint stock association, partnership and person, their lessees,
8 trustees or receiver appointed by any court whatsoever, and every city
9 or town, owning, controlling, operating or managing any gas plant
10 within this state.

11 "Electric plant" includes all real estate, fixtures and personal
12 property operated, owned, used or to be used for or in connection with
13 or to facilitate the generation, transmission, distribution, sale or
14 furnishing of electricity for light, heat, or power for hire; and any
15 conduits, ducts or other devices, materials, apparatus or property for
16 containing, holding or carrying conductors used or to be used for the
17 transmission of electricity for light, heat or power.

18 "Electrical company" includes any corporation, company,
19 association, joint stock association, partnership and person, their
20 lessees, trustees or receivers appointed by any court whatsoever (other
21 than a railroad or street railroad company generating electricity
22 solely for railroad or street railroad purposes or for the use of its
23 tenants and not for sale to others), and every city or town owning,
24 operating or managing any electric plant for hire within this state.

25 "Electrical company" does not include a company or person employing a
26 cogeneration facility solely for the generation of electricity for its
27 own use or the use of its tenants or for sale to an electrical company,
28 state or local public agency, municipal corporation, or quasi municipal
29 corporation engaged in the sale or distribution of electrical energy,

1 but not for sale to others, unless such company or person is otherwise
2 an electrical company.

3 "LATA" means a local access transport area as defined by the
4 commission in conformance with applicable federal law.

5 "Private telecommunications system" means a telecommunications
6 system controlled by a person or entity for the sole and exclusive use
7 of such person, entity, or affiliate thereof, including the provision
8 of private shared telecommunications services by such person or entity.

9 "Private telecommunications system" does not include a system offered
10 for hire, sale, or resale to the general public.

11 "Private shared telecommunications services" includes the provision
12 of telecommunications and information management services and equipment
13 within a user group located in discrete private premises in building
14 complexes, campuses, or high-rise buildings, by a commercial shared
15 services provider or by a user association, through privately owned
16 customer premises equipment and associated data processing and
17 information management services and includes the provision of
18 connections to the facilities of a local exchange and to interexchange
19 telecommunications companies.

20 "Radio communications service company" includes every corporation,
21 company, association, joint stock association, partnership, and person,
22 their lessees, trustees, or receivers appointed by any court, and every
23 city or town making available facilities to provide radio
24 communications service, radio paging, or cellular communications
25 service for hire, sale, or resale.

26 "Telecommunications company" includes every corporation, company,
27 association, joint stock association, partnership and person, their
28 lessees, trustees or receivers appointed by any court whatsoever, and
29 every city or town owning, operating or managing any facilities used to

1 provide telecommunications for hire, sale, or resale to the general
2 public within this state.

3 "Noncompetitive telecommunications service" means any service which
4 has not been classified as competitive by the commission.

5 "Facilities" means lines, conduits, ducts, poles, wires, cables,
6 cross-arms, receivers, transmitters, instruments, machines, appliances,
7 instrumentalities and all devices, real estate, easements, apparatus,
8 property and routes used, operated, owned or controlled by any
9 telecommunications company to facilitate the provision of
10 telecommunications service.

11 "Telecommunications" is the transmission of information by wire,
12 radio, optical cable, electromagnetic, or other similar means. As used
13 in this definition, "information" means knowledge or intelligence
14 represented by any form of writing, signs, signals, pictures, sounds,
15 or any other symbols.

16 "Water system" includes all real estate, easements, fixtures,
17 personal property, dams, dikes, head gates, weirs, canals, reservoirs,
18 flumes or other structures or appliances operated, owned, used or to be
19 used for or in connection with or to facilitate the supply, storage,
20 distribution, sale, furnishing, diversion, carriage, apportionment or
21 measurement of water for power, irrigation, reclamation, manufacturing,
22 municipal, domestic or other beneficial uses for hire.

23 "Water company" includes every corporation, company, association,
24 joint stock association, partnership and person, their lessees,
25 trustees or receivers appointed by any court whatsoever, and every city
26 or town owning, controlling, operating, or managing any water system
27 for hire within this state: PROVIDED, That for purposes of commission
28 jurisdiction it shall not include any water system serving less than
29 one hundred customers where the average annual gross revenue per
30 customer does not exceed three hundred dollars per year, which revenue

1 figure may be increased annually by the commission by rule adopted
2 pursuant to chapter 34.05 RCW to reflect the rate of inflation as
3 determined by the implicit price deflator of the United States
4 department of commerce: AND PROVIDED FURTHER, That such measurement of
5 customers or revenues shall include all portions of water companies
6 having common ownership, regardless of location or corporate
7 designation. However, water companies exempt from commission regulation
8 shall be subject to the provisions of chapter 19.86 RCW.

9 "Cogeneration facility" means any machinery, equipment, structure,
10 process, or property, or any part thereof, installed or acquired for
11 the primary purpose of the sequential generation of electrical or
12 mechanical power and useful heat from the same primary energy source or
13 fuel.

14 "Public service company" includes every gas company, electrical
15 company, telecommunications company, and water company. Ownership or
16 operation of a cogeneration facility does not, by itself, make a
17 company or person a public service company.

18 "Local exchange company" means a telecommunications company
19 providing local exchange telecommunications service.

20 "Department" means the department of social and health services.

21 The term "service" is used in this title in its broadest and most
22 inclusive sense.

23 "Enhanced services" means services offered over common carrier
24 telecommunications transmission facilities, which employ computer
25 processing applications that act on the format, content, code,
26 protocol, or similar aspects of the subscriber's transmitted
27 information; provide the subscriber additional, different, or
28 restructured information; or involve subscriber interaction with stored
29 information.

1 "Enhanced service provider" includes every corporation, company,
2 association, joint stock association, partnership, and person, their
3 lessees, trustees, or receivers appointed by any court, and every city
4 or town owning, operating, or managing any machines, instrumentalities,
5 or devices used to provide enhanced services for hire, sale, or resale.

6 **Sec. 6.** RCW 80.36.370 and 1990 c 118 s 1 are each amended to read
7 as follows:

8 The commission shall not regulate the following:

9 (1) One way broadcast or cable television transmission of
10 television or radio signals;

11 (2) Private telecommunications systems;

12 (3) Telegraph services;

13 (4) Enhanced services;

14 (5) Any sale, lease, or use of customer premises equipment except
15 such equipment as is regulated on July 28, 1985;

16 ~~((+5))~~ (6) Private shared telecommunications services, unless the
17 commission finds, upon notice and investigation, that customers of such
18 services have no alternative access to local exchange
19 telecommunications companies. If the commission makes such a finding,
20 it may require the private shared telecommunications services provider
21 to make alternative facilities or conduit space available on reasonable
22 terms and conditions at reasonable prices;

23 ~~((+6))~~ (7) Radio communications services provided by a regulated
24 telecommunications company, except that when those services are the
25 only voice grade, local exchange telecommunications service available
26 to a customer of the company the commission may regulate the radio
27 communication service of that company.

1 NEW SECTION. **Sec. 7.** Sections 2 through 4 of this act are
2 each added to chapter 80.36 RCW.