

2 **ESSB 6622** - H COMM AMD **ADOPTED 3-6-98**
3 By Committee on Energy & Utilities

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5 Strike everything after the enacting clause and insert the
6 following:

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

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

19 (a) Estimate the cost of supporting all lines located in high-cost
20 locations and the cost of supporting one primary telecommunications
21 line for each residential or business customer located in high-cost
22 locations;

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

26 (i) All residential and business lines located in high-cost
27 locations;

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

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

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

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

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

10 (4) Once a program is approved by the legislature and subsequently
11 established, the following provisions apply unless otherwise directed
12 by the legislature:

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

15 (b) The commission may delegate to the commission secretary or
16 other staff the authority to resolve disputes or make other decisions
17 necessary to the administration of the program;

18 (c) The commission may contract with an independent program
19 administrator subject to the direction and control of the commission
20 and may authorize the establishment of an account or accounts in
21 independent financial institutions should that be necessary for
22 administration of the program;

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

26 (e) The commission may require the carriers participating in the
27 program, as part of their contribution, to pay into the public service
28 revolving fund the costs of the commission attributable to supervision
29 and administration of the program that are not already recovered
30 through existing fees paid to the commission.

31 (5) The commission shall establish standards for review or testing
32 of all telecommunications carriers' compliance with the program for the
33 purpose of ensuring the support received by a telecommunications
34 carrier is used only for the purposes of the program and that each
35 telecommunications carrier is making its proper contribution to the
36 program. The commission may conduct the review or test, or contract
37 with an independent administrator or other person to conduct the review
38 or test.

1 (6) The commission shall coordinate administration of the program
2 with any federal universal service program and may administer the
3 federal fund in conjunction with the state program if so authorized by
4 federal law.

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

7 (a) "Telecommunications carrier" has the same meaning as defined in
8 47 U.S.C. Sec. 153(44).

9 (b) "Basic telecommunications services" means the following
10 services:

11 (i) Single-party service;

12 (ii) Voice grade access to the public switched network;

13 (iii) Support for local usage;

14 (iv) Dual tone multifrequency signaling (touch-tone);

15 (v) Access to emergency services (911);

16 (vi) Access to operator services;

17 (vii) Access to interexchange services;

18 (viii) Access to directory assistance; and

19 (ix) Toll limitation services.

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

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

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

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

7 (b) The contributions shall be competitively and technologically
8 neutral; and

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

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

18 **Sec. 4.** RCW 80.36.310 and 1989 c 101 s 14 are each amended to read
19 as follows:

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

28 (2) Any company petition or commission motion for competitive
29 classification shall state an effective date not sooner than thirty
30 days from the filing date. The company must provide notice and
31 publication of the proposed competitive classification in the same
32 manner as provided in RCW 80.36.110 for tariff changes. The proposed
33 classification shall take effect on the stated effective date unless
34 suspended by the commission and set for hearing under chapter 34.05 RCW
35 or set for a formal investigation and fact-finding under RCW 80.36.145.
36 The commission shall enter its final order with respect to any

1 suspended classification within (~~ten~~) six months from the date of
2 filing of a company's petition or the commission's motion.

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

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

- 15 (a) The number and sizes of alternative providers of service;
16 (b) The extent to which services are available from alternative
17 providers in the relevant market;
18 (c) The ability of alternative providers to make functionally
19 equivalent or substitute services readily available at competitive
20 rates, terms, and conditions; and
21 (d) Other indicators of market power which may include market
22 share, growth in market share, ease of entry, and the affiliation of
23 providers of services.

24 The commission shall conduct the initial classification and any
25 subsequent review of the classification in accordance with such
26 procedures as the commission may establish by rule.

27 (2) Competitive telecommunications companies shall be subject to
28 minimal regulation. Minimal regulation means that competitive
29 telecommunications companies may file, instead of tariffs, price lists
30 (~~which~~) that shall be effective after ten days' notice to the
31 commission and customers. The commission shall prescribe the form of
32 notice. The commission may also waive other regulatory requirements
33 under this title for competitive telecommunications companies when it
34 determines that competition will serve the same purposes as public
35 interest regulation. The commission may waive different regulatory
36 requirements for different companies if such different treatment is in
37 the public interest. A competitive telecommunications company shall at
38 a minimum:

1 (a) Keep its accounts according to regulations as determined by the
2 commission;

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

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

7 (d) Cooperate with commission investigations of customer
8 complaints.

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

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

21 (5) The commission may waive the requirements of RCW 80.36.170 and
22 80.36.180 in whole or in part for a competitive telecommunications
23 company if it finds that competition will serve the same purpose and
24 protect the public interest.

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

27 (1) The commission may classify a telecommunications service
28 provided by a telecommunications company as a competitive
29 telecommunications service if ~~((it finds, after notice and hearing,~~
30 ~~that))~~ the service is subject to effective competition. Effective
31 competition means that customers of the service have reasonably
32 available alternatives and that the service is not provided to a
33 significant captive customer base. In determining whether a service is
34 competitive, factors the commission shall consider include but are not
35 limited to:

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

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

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

4 (d) Other indicators of market power, which may include market
5 share, growth in market share, ease of entry, and the affiliation of
6 providers of services.

7 (2) When the commission finds that a telecommunications company has
8 demonstrated that a telecommunications service is competitive, the
9 commission may permit the service to be provided under a price list
10 effective on ten days notice to the commission and customers. The
11 commission shall prescribe the form of notice. The commission may
12 adopt procedural rules necessary to implement this section.

13 (3) Prices or rates charged for competitive telecommunications
14 services shall cover their cost. The commission shall determine proper
15 cost standards to implement this section, provided that in making any
16 assignment of costs or allocating any revenue requirement, the
17 commission shall act to preserve affordable universal
18 telecommunications service.

19 (4) The commission may investigate prices for competitive
20 telecommunications services upon complaint. In any complaint
21 proceeding initiated by the commission, the telecommunications company
22 providing the service shall bear the burden of proving that the prices
23 charged cover cost, and are fair, just, and reasonable.

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

26 (6) No losses incurred by a telecommunications company in the
27 provision of competitive services may be recovered through rates for
28 noncompetitive services. The commission may order refunds or credits
29 to any class of subscribers to a noncompetitive telecommunications
30 service which has paid excessive rates because of below cost pricing of
31 competitive telecommunications services.

32 (7) The commission may reclassify any competitive
33 telecommunications service if reclassification would protect the public
34 interest.

35 (8) The commission may waive the requirements of RCW 80.36.170 and
36 80.36.180 in whole or in part for a service classified as competitive
37 if it finds that competition will serve the same purpose and protect
38 the public interest.

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

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

7 Correct the title.

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