
SUBSTITUTE SENATE BILL 6356

State of Washington

55th Legislature

1998 Regular Session

By Senate Committee on Energy & Utilities (originally sponsored by Senators Finkbeiner, Brown and Rossi; by request of Utilities & Transportation Commission)

Read first time 02/06/98.

1 AN ACT Relating to streamlining and clarifying regulatory
2 requirements of telecommunication providers regulated by the utilities
3 and transportation commission; and amending RCW 80.36.310, 80.36.320,
4 and 80.36.330.

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

6 **Sec. 1.** RCW 80.36.310 and 1989 c 101 s 14 are each amended to read
7 as follows:

8 (1) Telecommunications companies may petition to be classified as
9 competitive telecommunications companies under RCW 80.36.320 or to have
10 services classified as competitive telecommunications services under
11 RCW 80.36.330. The commission may initiate classification proceedings
12 on its own motion. The commission may require all regulated
13 telecommunications companies potentially affected by a classification
14 proceeding to appear as parties for a determination of their
15 classification.

16 (2) Any company petition or commission motion for competitive
17 classification shall state an effective date not sooner than thirty
18 days from the filing date. The company must provide notice and
19 publication of the proposed competitive classification in the same

1 manner as provided in RCW 80.36.110 for tariff changes. The proposed
2 classification shall take effect on the stated effective date unless
3 suspended by the commission or set for hearing. The commission shall
4 enter its final order with respect to any suspended classification
5 within ((ten)) six months from the date of filing of a company's
6 petition or the commission's motion.

7 **Sec. 2.** RCW 80.36.320 and 1989 c 101 s 15 are each amended to read
8 as follows:

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

- 19 (a) The number and sizes of alternative providers of service;
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 The commission shall conduct the initial classification and any
29 subsequent review of the classification in accordance with such
30 procedures as the commission may establish by rule.

31 (2) Competitive telecommunications companies shall be subject to
32 minimal regulation. Minimal regulation means that competitive
33 telecommunications companies may file, instead of tariffs, price lists
34 ~~((which))~~ that shall be effective after ten days' notice to the
35 commission and customers. The commission shall prescribe the form of
36 notice. The commission may also waive other regulatory requirements
37 under this title for competitive telecommunications companies when it
38 determines that competition will serve the same purposes as public

1 interest regulation. The commission may waive different regulatory
2 requirements for different companies if such different treatment is in
3 the public interest. A competitive telecommunications company shall at
4 a minimum:

5 (a) Keep its accounts according to regulations as determined by the
6 commission;

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

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

11 (d) Cooperate with commission investigations of customer
12 complaints.

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

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

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

29 **Sec. 3.** RCW 80.36.330 and 1989 c 101 s 16 are each amended to read
30 as follows:

31 (1) The commission may classify a telecommunications service
32 provided by a telecommunications company as a competitive
33 telecommunications service if ~~((it finds, after notice and hearing,~~
34 ~~that))~~ the service is subject to effective competition. Effective
35 competition means that customers of the service have reasonably
36 available alternatives and that the service is not provided to a
37 significant captive customer base. In determining whether a service is

1 competitive, factors the commission shall consider include but are not
2 limited to:

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

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

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

9 (d) Other indicators of market power, which may include market
10 share, growth in market share, ease of entry, and the affiliation of
11 providers of services.

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

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

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

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

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

37 (7) The commission may reclassify any competitive
38 telecommunications service if reclassification would protect the public
39 interest.

1 (8) The commission may waive the requirements of RCW 80.36.170 and
2 80.36.180 in whole or in part for a service classified as competitive
3 if it finds that competition will serve the same purpose and protect
4 the public interest.

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