

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6622

55th Legislature
1998 Regular Session

Passed by the Senate March 10, 1998
YEAS 34 NAYS 15

President of the Senate

Passed by the House March 6, 1998
YEAS 69 NAYS 29

**Speaker of the
House of Representatives**

Approved

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6622** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Governor of the State of Washington

**Secretary of State
State of Washington**

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.

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

17 (a) Estimate the cost of supporting all lines located in high-cost
18 locations and the cost of supporting one primary telecommunications

1 line for each residential or business customer located in high-cost
2 locations;

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

6 (i) All residential and business lines located in high-cost
7 locations;

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

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

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

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

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

24 (4) Once a program is approved by the legislature and subsequently
25 established, the following provisions apply unless otherwise directed
26 by the legislature:

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

29 (b) The commission may delegate to the commission secretary or
30 other staff the authority to resolve disputes or make other decisions
31 necessary to the administration of the program;

32 (c) The commission may contract with an independent program
33 administrator subject to the direction and control of the commission
34 and may authorize the establishment of an account or accounts in
35 independent financial institutions should that be necessary for
36 administration of the program;

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

1 (e) The commission may require the carriers participating in the
2 program, as part of their contribution, to pay into the public service
3 revolving fund the costs of the commission attributable to supervision
4 and administration of the program that are not otherwise recovered
5 through fees paid to the commission.

6 (5) The commission shall establish standards for review or testing
7 of all telecommunications carriers' compliance with the program for the
8 purpose of ensuring the support received by a telecommunications
9 carrier is used only for the purposes of the program and that each
10 telecommunications carrier is making its proper contribution to the
11 program. The commission may conduct the review or test, or contract
12 with an independent administrator or other person to conduct the review
13 or test.

14 (6) The commission shall coordinate administration of the program
15 with any federal universal service program and may administer the
16 federal fund in conjunction with the state program if so authorized by
17 federal law.

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

20 (a) "Telecommunications carrier" has the same meaning as defined in
21 47 U.S.C. Sec. 153(44).

22 (b) "Basic telecommunications services" means the following
23 services:

- 24 (i) Single-party service;
- 25 (ii) Voice grade access to the public switched network;
- 26 (iii) Support for local usage;
- 27 (iv) Dual tone multifrequency signaling (touch-tone);
- 28 (v) Access to emergency services (911);
- 29 (vi) Access to operator services;
- 30 (vii) Access to interexchange services;
- 31 (viii) Access to directory assistance; and
- 32 (ix) Toll limitation services.

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

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

1 NEW SECTION. **Sec. 2.** (1) The commission is authorized to take
2 actions, conduct proceedings, and enter orders as permitted or
3 contemplated for a state commission under the federal
4 telecommunications act of 1996, P.L. 104-104 (110 Stat. 56), but the
5 commission's authority to either establish a new state program or to
6 adopt new rules to preserve and advance universal service under section
7 254(f) of the federal act is limited to the actions expressly
8 authorized by section 1 of this act. The commission may establish by
9 rule fees to be paid by persons seeking commission action under the
10 federal act, and by parties to proceedings under that act, to offset in
11 whole or part the commission's expenses that are not otherwise
12 recovered through fees in implementing the act, but new fees or
13 assessments charged telecommunications carriers to either establish a
14 state program or to adopt rules to preserve and advance universal
15 service under section 254(f) of the federal act do not take effect
16 until the legislature has approved a state universal service program.

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

19 (a) Every telecommunications carrier that provides intrastate
20 telecommunications services shall contribute, on an equitable and
21 nondiscriminatory basis, to the preservation and advancement of
22 universal service in the state;

23 (b) The contributions shall be competitively and technologically
24 neutral; and

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

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

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

36 (1) Telecommunications companies may petition to be classified as
37 competitive telecommunications companies under RCW 80.36.320 or to have

1 services classified as competitive telecommunications services under
2 RCW 80.36.330. The commission may initiate classification proceedings
3 on its own motion. The commission may require all regulated
4 telecommunications companies potentially affected by a classification
5 proceeding to appear as parties for a determination of their
6 classification.

7 (2) Any company petition or commission motion for competitive
8 classification shall state an effective date not sooner than thirty
9 days from the filing date. The company must provide notice and
10 publication of the proposed competitive classification in the same
11 manner as provided in RCW 80.36.110 for tariff changes. The proposed
12 classification shall take effect on the stated effective date unless
13 suspended by the commission and set for hearing under chapter 34.05 RCW
14 or set for a formal investigation and fact-finding under RCW 80.36.145.
15 The commission shall enter its final order with respect to any
16 suspended classification within ~~((ten))~~ six months from the date of
17 filing of a company's petition or the commission's motion.

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

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

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

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

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

36 (d) Other indicators of market power which may include market
37 share, growth in market share, ease of entry, and the affiliation of
38 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.

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

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

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

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

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

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

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

18 (d) Other indicators of market power, which may include market
19 share, growth in market share, ease of entry, and the affiliation of
20 providers of services.

21 (2) When the commission finds that a telecommunications company has
22 demonstrated that a telecommunications service is competitive, the
23 commission may permit the service to be provided under a price list
24 effective on ten days notice to the commission and customers. The
25 commission shall prescribe the form of notice. The commission may
26 adopt procedural rules necessary to implement this section.

27 (3) Prices or rates charged for competitive telecommunications
28 services shall cover their cost. The commission shall determine proper
29 cost standards to implement this section, provided that in making any
30 assignment of costs or allocating any revenue requirement, the
31 commission shall act to preserve affordable universal
32 telecommunications service.

33 (4) The commission may investigate prices for competitive
34 telecommunications services upon complaint. In any complaint
35 proceeding initiated by the commission, the telecommunications company
36 providing the service shall bear the burden of proving that the prices
37 charged cover cost, and are fair, just, and reasonable.

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

1 (6) No losses incurred by a telecommunications company in the
2 provision of competitive services may be recovered through rates for
3 noncompetitive services. The commission may order refunds or credits
4 to any class of subscribers to a noncompetitive telecommunications
5 service which has paid excessive rates because of below cost pricing of
6 competitive telecommunications services.

7 (7) The commission may reclassify any competitive
8 telecommunications service if reclassification would protect the public
9 interest.

10 (8) The commission may waive the requirements of RCW 80.36.170 and
11 80.36.180 in whole or in part for a service classified as competitive
12 if it finds that competition will serve the same purpose and protect
13 the public interest.

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

16 NEW SECTION. **Sec. 8.** If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected.

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