

HOUSE BILL ANALYSIS

HB 1850

Title: An Act relating to telecommunications competition.

Brief Description: Increasing competition among telecommunications carriers in order to provide customers with higher service quality standards.

Sponsors: Representatives Ruderman, DeBolt, Poulsen, Bush, Kastama, Kessler, Doumit, Dunshee, Constantine, Delvin and Lambert.

HOUSE COMMITTEE ON

Meeting Date: February 17, 1999

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Background:

Interconnections and Carrier-to-Carrier Service Quality

The Telecommunications Act of 1996 restructures local telephone markets and ends the monopolies that states have historically granted to local exchange carriers (LECs). It requires incumbent local exchange carriers (ILECs, or former monopoly local telephone companies) to share their telecommunications networks with their competitors. A new telecommunications market entrant can get shared access to an ILEC's network by purchasing wholesale telephone services, by leasing elements of an ILEC's network, and by interconnecting its own facilities with the ILEC's network.

An ILEC and a new competitive market entrant may negotiate and enter into binding agreements for services, network elements, and/or interconnection. If the negotiations stall, the parties may request that the Washington Utilities and Transportation Commission (WUTC) negotiate any open issues. The Telecommunications Act of 1996 requires that agreements adopted by negotiation or arbitration be submitted to the WUTC for approval. If the parties cannot reach an agreement, the WUTC may hear complaints based upon unfair competition. Recently, the WUTC issued an order providing for expedited review of alleged violations of interconnection agreements. The WUTC may assess penalties up to \$1100 per violation per day for violations of interconnection agreements.

A recent U.S. Supreme Court ruling holds that the Federal Communications Commission (FCC) has general jurisdiction to implement the 1996 Act's local

competition provisions. In general, unless a state is granted an exclusive power under the act, to the extent that a state's laws or rules conflict with FCC rules, the FCC rules govern.

Rate Regulation

The default form of regulation for LECs is rate-of-return, rate-base (ROR) regulation. Under ROR regulation, the WUTC decides how much a LEC may earn and permits the LEC to set rates calculated to produce that amount. As long as the LEC's earnings do not exceed the allowable maximum, the WUTC will disallow a rate only if the rate is not fair, just, reasonable and sufficient, or if the rate is unjustly discriminatory or unduly prejudicial.

Telecommunications companies subject to ROR regulation before July 23, 1989 are eligible to apply for an alternative form of regulation (AFOR) of their own design. The WUTC can accept, reject or modify a plan in an AFOR application. An ILEC may petition not to go forward with an AFOR within sixty days of an AFOR being granted.

A telecommunications company or service is not subject to rate regulation by the WUTC if the company or the service is classified as subject to effective competition by the WUTC. Effective competition means customers have alternative service providers and there is no significant captive customer base. A telecommunications company subject to rate-of-return regulation may have some of its services classified as competitive services. That means the company can set any price for the service, so long as it covers the cost of provision. However, profits that such a company earns on its competitive services are taken into account by the WUTC in determining whether the company is earning a reasonable rate of return.

Summary:

PART I CARRIER-TO CARRIER SERVICE QUALITY:

The Legislature finds that there is a need for carrier-to-carrier service standards because ILECs have no incentive to open telecommunications markets for competition by providing new market entrants with quality interconnectivity and access to operations support systems. The Legislature intends to promote competition by directing the WUTC to establish carrier-to-carrier service quality standards.

ILECs have a duty to provide new entrants with interconnection at the same or better quality ILECs provide for themselves or affiliated parties. ILECs must provide new entrants with access to operations support systems that are the same or better than the operations support systems ILECs provide themselves or affiliated parties in terms of quality, accuracy, and timeliness.

Before September 1, 1999, the WUTC must promulgate rules that establish performance measures for the manner in which ILECs provide interconnection and access to operations support systems.

ILECs must make reports of their efforts regarding the performance measures. Rural telephone companies are exempt from this requirement. The WUTC must promulgate rules specifying: who must prepare the reports; what should be in the reports; who may receive the reports; how frequently reports must be made; etc. At a minimum, the rules will require that all new market entrants will be able to access the reports and that reports will be made at least once a quarter, but not more than once a month. The rules must require ILECs to retain the raw data they used for reporting for two years and include a mechanism for the WUTC to audit reporting methodologies and accuracy. The rules may specify other means of requiring ILECs to release raw data.

The WUTC will also enact rules creating performance standards. The WUTC is directed to periodically review and consider the performance measures and standards adopted by the FCC and other states.

PART II INTERCONNECTION ENFORCEMENT AND DISPUTE RESOLUTION:

The WUTC is authorized and directed to resolve disputes under interconnection agreements, enforce carrier-to-carrier service quality rules, and issue remedial orders. Any powers and remedies that the WUTC is given in this section are in addition to all of their other powers and remedies.

If the WUTC finds, after notice and hearing, that a violation of an interconnection agreement or service quality rules has occurred, the WUTC shall issue a cease and desist order. The WUTC may also award specific performance and actual damages or up to \$25,000 per violation per day. If the WUTC finds abuse or frustration of the dispute resolution process, violation of a cease and desist order, wilful and intentional violations, or a series of repeated violations, the WUTC may award treble damages or \$75,000 per violation per day.

The WUTC may issue a written show cause or temporary cease and desist order, or both, without notice and hearing, if: (a) immediate action is necessary to protect the ability of a party to provide uninterrupted service to a customer, or (b) conditions exist which preclude the provisioning of any firm order confirmations, functionality, or network element. A person receiving such an order can comply with it or appear before the WUTC to provide information pertaining to the alleged violations. However, the order is effective upon delivery and remains in effect for ten days after a hearing. The order becomes final if the subject of the order does not request a hearing within fourteen days of receipt. When such an order is requested of the WUTC, the party making the request must enter into a bond conditioned to pay any damages and costs that may result from issuance of the requested order.

If the WUTC finds a series or repeated wilful or intentional violations the WUTC shall impose sanctions in addition to the sanctions discussed above. These may include a penalty of up to \$100,000 per finding, specifically tailored regulation, or an order to structurally or functionally divest a portion of the offending party's network or service offerings. The latter sanction can be imposed only where strict fines and tailored regulation have failed to correct the pattern of violations.

The WUTC will adopt rules creating dispute resolution and enforcement procedures. The rules will specify the parties eligible to use the procedures, circumstances under which WUTC orders may be issued to resolve disputes, timelines, the form and elements of filings, notice and service procedures, rules of discovery, mandatory nonbinding mediation requirement and option for settlement conference, and appropriate bond and surety requirements. To the extent that this section differs from the state Administrative Procedures Act (APA) the provisions of this section and the rules to be promulgated apply instead of the APA.

WUTC employees may enter final orders, show cause orders, and cease and desist orders in dispute resolution proceedings under this section.

PART III PRICE CAPS AND COMPETITIVE CLASSIFICATIONS:

It is the policy of the state to maintain and advance the deployment of advanced telecommunications capabilities to all citizens of the state on a reasonable and timely basis.

The WUTC is directed and authorized to provide an alternative form of regulation to those telecommunications companies for whom rate-of-return regulation no longer serves public policy goals. An ILEC may elect a price cap AFOR if it seeks to broadly deploy advanced telecommunications capabilities throughout the state. Language allowing for varying forms of regulation for telecommunications companies in different circumstances and outlining procedures for telecommunications companies to appeal WUTC decisions regarding the provision of AFORs is stricken from the AFOR statute.

Broad deployment of telecommunications capabilities in a reasonable and timely manner— means that within 5 years, at least 75% of nonresidential access lines provisioned by the ILEC in rural counties will be capable of transmitting data at a rate of at least one megabit per second. An ILEC electing price regulation must submit plans for deploying advanced telecommunications capabilities. The plans must be certified annually. The plans are exempt from public disclosure for sixty days after the last day of the year in which they were submitted.

Upon the effective date of an ILEC's election, price regulation replaces rate of return regulation. The WUTC can no longer consider rate of return or earning when

overseeing the performance of the ILEC. Rates and tolls are frozen on the effective date of election except that an ILEC can reduce rates on ten days notice. Price caps do not apply to services later classified as competitive. Additionally, if, after election, an ILECs number of local exchanges change by more than 5% or the number of lines served changes by more than 10%, the WUTC may adjust basic service rates.

Rates, tolls and other charges not subject to price regulation are still subject to laws regarding the filing of tariffs, submission of contracts, and classification as competitive. An electing ILEC may bundle for sale any service subject to price regulation so long as it is available separately at the price cap rate. Additionally, electing ILECs are no longer subject to a number of laws and regulations that deal with rate of return regulation, including RCW 80.04.300 through 80.04.360.

The law pertaining to the classification of services as competitive is amended to allow for classifications within a geographic and product market and customer class. A geographic area can include an exchange or a wire servicing area. A consideration for whether a service is competitive includes whether alternative providers can make substitute services reasonably available to a majority of customers within a relevant geographic and product market and customer class.

Appropriation: None.

Fiscal Note: Requested.

Effective Date: Sections 1 through 7 take effect immediately upon enactment. All other sections take effect 90 days after adjournment.