
HOUSE BILL 2881

State of Washington

56th Legislature

2000 Regular Session

By Representatives Crouse, Poulsen and Eickmeyer; by request of Governor Locke

Read first time 01/21/2000. Referred to Committee on Technology, Telecommunications & Energy.

1 AN ACT Relating to new procedures for alternative forms of
2 regulation of telecommunications companies; amending RCW 80.36.135; and
3 adding a new section to chapter 80.36 RCW.

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

5 **Sec. 1.** RCW 80.36.135 and 1995 c 110 s 5 are each amended to read
6 as follows:

7 (1) The legislature declares that:

8 (a) Changes in technology and the structure of the
9 telecommunications industry may produce conditions under which
10 traditional rate of return, rate base regulation of telecommunications
11 companies may not in all cases provide the most efficient and effective
12 means of achieving the public policy goals of this state as declared in
13 RCW 80.36.300, this section, and RCW 80.36.145. The commission should
14 be authorized to employ an alternative form of regulation if that
15 alternative is better suited to achieving those policy goals.

16 (b) Because of the great diversity in the scope and type of
17 services provided by telecommunications companies, alternative
18 regulatory arrangements that meet the varying circumstances of
19 different companies and their ratepayers may be desirable.

1 (2) Subject to the conditions set forth in this chapter and RCW
2 80.04.130, the commission may regulate telecommunications companies
3 subject (~~((before July 23, 1989,))~~) to traditional rate of return, rate
4 base regulation by authorizing an alternative form of regulation. The
5 commission may determine the manner and extent of any alternative forms
6 of regulation as may in the public interest be appropriate. In
7 addition to the public policy goals declared in RCW 80.36.300, the
8 commission shall consider, in determining the appropriateness of any
9 proposed alternative form of regulation, whether it will:

10 (a) Reduce regulatory delay and costs;

11 (b) Encourage innovation in services;

12 (c) Promote efficiency;

13 (d) Facilitate the broad dissemination of technological
14 improvements to all classes of ratepayers;

15 (e) Enhance the ability of telecommunications companies to respond
16 to competition;

17 (f) Ensure that telecommunications companies do not have the
18 opportunity to exercise substantial market power absent effective
19 competition or effective regulatory constraints; and

20 (g) Enhance the stability and predictability of a
21 telecommunications company's regulatory requirements;

22 (h) Provide for rates and charges that are fair, just, ((and))
23 reasonable ((rates for all ratepayers.

24 ~~The commission shall make written findings of fact as to each of~~
25 ~~the above stated policy goals in ruling on any proposed alternative~~
26 ~~form of regulation)), sufficient, and not unduly discriminatory or~~
27 ~~preferential; and~~

28 (i) Promote the public interest.

29 (3) A telecommunications company or companies subject to
30 traditional rate of return, rate base regulation may petition the
31 commission to establish an alternative form of regulation. The company
32 or companies shall submit with the petition a plan for an alternative
33 form of regulation. The plan shall contain a proposal for transition
34 to the alternative form of regulation(~~(. The commission shall review~~
35 ~~and may modify or reject the proposed)) and the proposed duration of~~
36 the plan. The commission also may initiate consideration of
37 alternative forms of regulation for a company or companies on its own
38 motion. The commission (~~may approve the plan or modified plan and~~

1 authorize its implementation, if it finds, after notice and hearing,
2 that the plan or modified plan:

3 (a) Is in the public interest;

4 (b) Is necessary to respond to such changes in technology and the
5 structure of the intrastate telecommunications industry as are in fact
6 occurring;

7 (c) Is better suited to achieving the policy goals set forth in RCW
8 80.36.300 and this section than the traditional rate of return, rate
9 base regulation;

10 (d) Ensures that ratepayers will benefit from any efficiency gains
11 and cost savings arising out of the regulatory change and will afford
12 ratepayers the opportunity to benefit from improvements in productivity
13 due to technological change;

14 (e) Will not result in a degradation of the quality or availability
15 of efficient telecommunications services;

16 (f) Will produce fair, just, and reasonable rates for
17 telecommunications services; and

18 (g) Will not unduly or unreasonably prejudice or disadvantage any
19 particular customer class.)), after notice and hearing, shall issue an
20 order accepting or rejecting a plan within nine months after the
21 petition or motion is filed, unless extended by the commission for good
22 cause. The commission shall order implementation of an alternative
23 plan of regulation unless it finds that traditional regulation is, on
24 balance, more likely to meet the objectives stated in subsection (2) of
25 this section.

26 (4) If consideration of the plan was initiated by the commission on
27 its own motion not later than sixty days from the entry of the
28 commission's order, the company or companies affected by the order may
29 file with the commission an election not to proceed with the
30 alternative form of regulation as authorized by the commission. ((If
31 a company elects to appeal to the courts the final order of the
32 commission authorizing an alternative form of regulation, it shall not
33 change its election to proceed or not proceed after the appeal is
34 concluded. The pendency of a petition by a company for judicial review
35 of the final order shall not serve to extend the sixty day period.))

36 (5) The commission may waive such regulatory requirements under
37 Title 80 RCW for a telecommunications company subject to an alternative
38 form of regulation as may be appropriate to facilitate the
39 implementation of this section((: PROVIDED, That the commission may

1 not grant the authority to price list services except as provided in
2 RCW 80.36.300 through 80.36.370, the regulatory flexibility act, nor
3 may it waive any statutory requirements or grants of legal rights to
4 any person contained in this chapter and chapter 80.04 RCW as amended,
5 except as otherwise expressly provided)). The commission may waive
6 different regulatory requirements for different companies or services
7 if such different treatment is in the public interest.

8 (6) Upon petition by ((any person, or upon its own motion)) the
9 company, and after notice and hearing, the commission may rescind ((its
10 approval of)) or modify an alternative form of regulation ((if, after
11 notice and hearing, it finds that the conditions set forth in
12 subsection (3) of this section can no longer be satisfied. The
13 commission or any person may file a complaint alleging that the rates
14 charged by a telecommunications company under an alternative form of
15 regulation are unfair, unjust, unreasonable, unduly discriminatory, or
16 are otherwise not consistent with the requirements of chapter 101, Laws
17 of 1989: PROVIDED, That the complainant shall bear the burden of
18 proving the allegations in the complaint)) in the manner requested by
19 the company.

20 NEW SECTION. Sec. 2. A new section is added to chapter 80.36 RCW
21 to read as follows:

22 (1) For the purposes of this section, "advanced telecommunications
23 services" means digital subscriber line service and frame relay
24 service. The commission may designate by rule additional advanced
25 telecommunications services.

26 (2) A telecommunications company subject to regulation under this
27 title may elect to provide advanced telecommunications services solely
28 through one or more separate affiliates that (a) are separate from the
29 telecommunications company; and (b) meet the requirements of subsection
30 (4) of this section. If a company makes such an election, the
31 commission shall not consider the revenues expenses, or investment of
32 such an advanced telecommunications services affiliate in reviewing or
33 setting the rates and charges of the telecommunications company of
34 which it is an affiliate. The advanced telecommunications services
35 affiliate is subject to the same requirements as a company classified
36 as competitive under RCW 80.36.320.

37 (3) An advanced telecommunications services affiliate operating
38 under subsection (2) of this section:

1 (a) Shall operate independently from the telecommunications company
2 of which it is an affiliate;

3 (b) Shall maintain books, records, and accounts in the manner
4 prescribed by the commission and separate from the books, records, and
5 accounts maintained by the telecommunications company of which it is an
6 affiliate;

7 (c) Shall have separate officers, directors, and employees from the
8 telecommunications company of which it is an affiliate;

9 (d) May not obtain credit under an arrangement that would permit a
10 creditor, upon default, to have recourse to the assets of the
11 telecommunications company of which it is an affiliate; and

12 (e) Shall conduct all transactions with the telecommunications
13 company of which it is an affiliate on an arm's length basis, with any
14 such transactions reduced to writing and available for public
15 inspection.

16 (4) A telecommunications company electing to provide advanced
17 telecommunications services under this section:

18 (a) May not discriminate between an advanced services affiliate and
19 any other entity in the provision or procurement of goods, services,
20 facilities, and information, or in the establishment of standards; and

21 (b) Shall account for all transactions with an advanced services
22 affiliate in accordance with accounting principles designated or
23 approved by the commission.

24 (5) A telecommunications company electing to provide advanced
25 telecommunications services under this section:

26 (a) Shall fulfill any requests from an unaffiliated entity for
27 telephone exchange service and exchange access within a period no
28 longer than the period in which it provides telephone exchange service
29 and exchange access to itself or to its affiliates;

30 (b) Shall not provide any facilities, services, or information
31 concerning its provision of exchange access to any advanced
32 telecommunications services unless the facilities, services, or
33 information are made available to other providers of advanced
34 telecommunications services in that market on the same terms and
35 conditions; and

36 (c) May provide any facilities or services to its advanced
37 telecommunications service affiliate if the services or facilities are
38 made available to all carriers at the same rates and on the same terms
39 and conditions, and so long as the costs are appropriately allocated.

1 (6) An advanced telecommunications services affiliate operating
2 under this section may not market or sell telephone exchange services
3 provided by the telecommunications company of which it is an affiliate
4 unless that company permits other entities offering the same or similar
5 service to market and sell its telephone exchange services.

6 (7) Nothing in this section affects a company's obligations under
7 chapter 80.16 RCW.

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