
SENATE BILL 5947

State of Washington

56th Legislature

1999 Regular Session

By Senator Jacobsen

Read first time 02/17/1999. Referred to Committee on Energy,
Technology & Telecommunications.

1 AN ACT Relating to telecommunications companies; adding new
2 sections to chapter 80.36 RCW; and prescribing penalties.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 80.36 RCW
5 to read as follows:

6 (1) The commission may handle on an expedited basis, as provided in
7 this section, any complaint by a telecommunications company that
8 another telecommunications company has violated:

9 (a) Any duty or obligation imposed upon telecommunications
10 companies, local exchange carriers, and incumbent local exchange
11 carriers under 47 U.S.C. Sec. 251 (a) through (c);

12 (b) Any agreement approved by the commission under 47 U.S.C. Sec.
13 252(e); or

14 (c) Any act or practice which the commission may identify by rule
15 as serving as a barrier to competitive entry in the telecommunications
16 market.

17 (2) Before filing a complaint with the commission, the complainant
18 telecommunications company must serve notice to the defendant
19 telecommunications company of its intent to file a complaint with the

1 commission alleging a violation under subsection (1) of this section
2 and provide a forty-eight hour period for the alleged violation to be
3 corrected.

4 (3) If the defendant telecommunications company fails to cure the
5 alleged violation within forty-eight hours, the complainant
6 telecommunications company shall file a complaint, application for
7 expedited review, and any petition for emergency relief with the
8 commission and serve the defendant with the same. The complainant
9 telecommunications company shall attach to the complaint a copy of the
10 written notification that was served on the defendant
11 telecommunications company and any written response that was received
12 thereto.

13 (4) The defendant telecommunications company shall have seven days
14 to answer a complaint and shall file its answer and any other
15 responsive pleadings with the commission and serve the complainant with
16 the same.

17 (5) Within three working days of a complaint, application for
18 expedited review, and any petition for emergency relief being filed
19 with the commission, all parties shall serve on each other any
20 discovery requests for the production of data. Each party shall have
21 ten days to respond to the other party's requests. Any objections to
22 the discovery requests shall be served on the other party and filed
23 with the commission within five days after receipt of the discovery
24 request.

25 (6) Once the defendant files an answer to the complaint, the
26 commission or its designee shall within three working days determine
27 whether to:

28 (a) Approve the application for expedited review and begin an
29 expedited adjudicative proceeding under this section; or

30 (b) Deny the application and instead proceed with a regular
31 adjudicative proceeding under RCW 80.04.110.

32 (7)(a) If the commission or its designee approves an application
33 for expedited review, the commission may concurrently issue an order
34 granting a petition for emergency relief. An order for emergency
35 relief may be granted without an evidentiary hearing. To issue an
36 order for emergency relief the commission or its designee must find
37 that:

38 (i) The complainant is likely to succeed on the merits of the
39 complaint;

1 (ii) The complainant will likely suffer irreparable harm in its
2 ability to serve customers if emergency relief is not granted;

3 (iii) The emergency relief sought is technically feasible; and

4 (iv) An order granting emergency relief is in the public interest.

5 (b) An order for emergency relief shall direct the defendant
6 telecommunications company to act or refrain from acting as the
7 commission or its designee finds necessary to avoid, prevent, or
8 mitigate the complained of harm. An order for emergency relief shall
9 set a deadline for the defendant telecommunications company to comply
10 with the order before penalties are imposed under section 3 of this
11 act. The order granting emergency relief shall remain in effect until
12 the commission issues a final order deciding the complaint filed under
13 subsection (3) of this section.

14 (8) If an application for expedited review is approved:

15 (a) The commission shall designate a commissioner or other person
16 to preside over the expedited adjudicative proceeding;

17 (b) Within fourteen days of approving the application for expedited
18 review, the presiding officer shall schedule a prehearing conference
19 which may be conducted by telephone. During the prehearing conference
20 the presiding officer shall:

21 (i) Resolve all outstanding discovery disputes and establish a
22 schedule for completion of any additional discovery; and

23 (ii) Confirm that an attempt to resolve the dispute through
24 nonbinding mediation under section 2 of this act has been or is being
25 conducted;

26 (c) The presiding officer shall schedule a hearing to commence
27 within thirty days of the complaint being filed. During the hearing
28 evidence may be presented by the parties and commission staff both
29 orally and in written form. Any individual who testifies either orally
30 or in written form must be available for cross-examination;

31 (d) The presiding officer shall issue a written decision within
32 forty-five days of the complaint being filed. The presiding officer's
33 decision shall be based on the facts and no finding of an intent to
34 impede market entry by a competitor shall be necessary in order to
35 determine that a violation has occurred. The decision shall set forth
36 the reasoning for the decision and, if the decision finds that a
37 violation under subsection (1) of this section has occurred, directions
38 and a deadline for correcting the violation. The decision shall state
39 the amount of any penalties imposed under section 3 of this act;

1 (e) The decision of the presiding officer shall be a final order of
2 the commission unless exceptions are filed within seven days after
3 service of the decision upon the parties or the commission takes up the
4 matter on its own motion within seven days after service of the
5 decision upon the parties.

6 (i) If exceptions are filed or the commission takes up the matter
7 on its own motion, then the commission shall fifteen days after service
8 of the presiding officer's decision issue a final order.

9 (ii) Responses to any exceptions filed under this subsection shall
10 be made within three business days after service of the exceptions.

11 (iii) Any party may file a petition for reconsideration of a
12 commission final order as provided for by commission rule.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 80.36 RCW
14 to read as follows:

15 (1) Whenever the commission or its designee approves an application
16 for expedited review of a complaint under section 1 of this act, the
17 commission or its designee shall conduct at least one mediation session
18 with the parties.

19 (2) The mediation session shall be held no later than the date
20 scheduled for a prehearing conference under section 1(8) of this act.
21 An individual with authority to negotiate and settle the matter shall
22 be present from each party.

23 (3) The mediation session shall be confidential and any verbal
24 statements made during the session shall not be disclosed.

25 (4) Any agreement of the parties resolving any disputed issue shall
26 be submitted to the mediator for approval. Approval shall be granted
27 unless the mediator finds that the agreement is based upon a mistake in
28 material fact or that the agreement is not in the public interest. The
29 approved agreement shall be deemed to constitute a final order of the
30 commission, unless the commission enters its own order within six
31 working days following the mediator's approval of the agreement.

32 (5) Any agreement or order resolving a dispute through mediation
33 shall be considered part of the public record and shall be made
34 available by the commission upon request.

35 (6) Willful or negligent failure to attend the mediation conference
36 or to comply with the mediator's directions shall be reported to the
37 mediator or the commission in writing.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 80.36 RCW
2 to read as follows:

3 (1) If the commission or its designee finds that a violation under
4 section 1(1) of this act has occurred, the commission may impose
5 penalties up to one hundred thousand dollars per violation.
6 Additionally, the commission or its designee may impose a penalty of
7 one hundred thousand dollars for each day beyond the deadline set in
8 the decision issued under section 1(8) of this act that a violation
9 continues.

10 (2) If parties are able to resolve a dispute through mediation, as
11 provided in section 2 of this act, there shall be no assessment of one
12 hundred thousand dollars per violation. Nonetheless, if a violation is
13 not corrected by the date specified in any mediation agreement, the
14 commission or its designee may impose a penalty of one hundred thousand
15 dollars for each day beyond the specified date that a violation
16 continues.

17 (3) If the commission or its designee issues an order granting a
18 petition for emergency relief under section 1(7) of this act and the
19 defendant telecommunications company fails to comply with the deadline
20 set in that order, then the commission or its designee may impose a
21 penalty of one hundred thousand dollars for each day beyond the
22 deadline that noncompliance continues.

23 (4) Any imposition of penalties shall be by order of the
24 commission, after providing for notice and a hearing.

25 (5) Penalties imposed under this section shall be in addition to
26 any monetary payments ordered by the commission under an
27 interconnection agreement and shall not restrict a complainant's
28 ability to recover damages under any other remedy that may be available
29 under any other provision of state or federal law.

30 (6) Payment of penalties imposed under this section shall be made
31 to the public service revolving fund within thirty days of issuance by
32 the commission of an order imposing penalties. The commission is
33 authorized to apply to a court of competent jurisdiction for an order
34 requiring payment of any penalties imposed under this section.

35 NEW SECTION. **Sec. 4.** A new section is added to chapter 80.36 RCW
36 to read as follows:

37 (1) To the extent that the provisions of this section and sections
38 2 and 3 of this act may differ with the provisions of chapter 34.05

1 RCW, the administrative procedure act, the provisions of this section
2 and sections 2 and 3 of this act shall govern.

3 (2) In implementing the provisions of this section and sections 2
4 and 3 of this act, the commission may:

5 (a) Adopt rules as needed;

6 (b) Obtain external resources and contract for outside persons to
7 serve as presiding officers, mediators, or consultants for the purposes
8 of facilitating the prompt disposition of expedited proceedings
9 authorized under this section; and

10 (c) Establish by rule fees to be paid by persons seeking commission
11 action and by parties to proceedings under this section and sections 1
12 through 3 of this act to offset in whole or part the commission's
13 expenses.

14 NEW SECTION. **Sec. 5.** If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

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