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SENATE BILL 6677

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State of Washington

56th Legislature

2000 Regular Session

By Senators Brown and Finkbeiner; by request of Governor Locke

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

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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