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**SUBSTITUTE HOUSE BILL 1286**

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**State of Washington                      58th Legislature                      2003 Regular Session**

**By** House Committee on Technology, Telecommunications & Energy  
(originally sponsored by Representatives Ruderman, Crouse, Morris,  
Nixon, Sullivan and Delvin)

READ FIRST TIME 02/11/03.

1            AN ACT Relating to promotional service offerings; and amending RCW  
2 80.04.130, 80.36.110, 80.36.320, and 80.36.330.

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

4            **Sec. 1.** RCW 80.04.130 and 2001 c 267 s 1 are each amended to read  
5 as follows:

6            (1) Except as provided in subsection (2) of this section, whenever  
7 any public service company shall file with the commission any schedule,  
8 classification, rule, or regulation, the effect of which is to change  
9 any rate, charge, rental, or toll theretofore charged, the commission  
10 shall have power, either upon its own motion or upon complaint, upon  
11 notice, to enter upon a hearing concerning such proposed change and the  
12 reasonableness and justness thereof(~~(, and)~~). Pending such hearing and  
13 the decision thereon, the commission may suspend the operation of such  
14 rate, charge, rental, or toll for a period not exceeding ten months  
15 from the time the same would otherwise go into effect(~~(, and)~~). After  
16 a full hearing, the commission may make such order in reference thereto  
17 as would be provided in a hearing initiated after the same had become  
18 effective.

1        (2)(a) The commission shall not suspend a tariff that makes a  
2 decrease in a rate, charge, rental, or toll filed by a  
3 telecommunications company pending investigation of the fairness,  
4 justness, and reasonableness of the decrease when the filing does not  
5 contain any offsetting increase to another rate, charge, rental, or  
6 toll and the filing company agrees to not file for an increase to any  
7 rate, charge, rental, or toll to recover the revenue deficit that  
8 results from the decrease for a period of one year.

9        (i) The filing company shall file with any decrease sufficient  
10 information as the commission by rule may require to demonstrate the  
11 decreased rate, charge, rental, or toll is above the long run  
12 incremental cost of the service. A tariff decrease that results in a  
13 rate that is below long run incremental cost, or is contrary to  
14 commission rule or order, or the requirements of this chapter, shall be  
15 rejected for filing and returned to the company.

16        (ii) The commission may prescribe a different rate to be effective  
17 on the prospective date stated in its final order after its  
18 investigation, if it concludes based on the record that the originally  
19 filed and effective rate is unjust, unfair, or unreasonable.

20        ~~((For the purposes of this section, tariffs for the following  
21 telecommunications services, that temporarily waive or reduce charges  
22 for existing or new subscribers for a period not to exceed sixty days  
23 in order to promote the use of the services shall be considered tariffs  
24 that decrease rates, charges, rentals, or tolls:~~

25        ~~(a) Custom calling service;~~

26        ~~(b) Second access lines; or~~

27        ~~(c) Other services the commission specifies by rule.~~

28        ~~The commission may suspend any promotional tariff other than those  
29 listed in (a) through (c) of this subsection.))~~

30        (b) The commission shall not suspend a promotional tariff. For the  
31 purposes of this section, "promotional tariff" means a tariff that, for  
32 a period of up to ninety days, waives or reduces charges or conditions  
33 of service for existing or new subscribers for the purpose of retaining  
34 or increasing the number of customers who subscribe to or use a  
35 service.

36        (3) The commission may suspend the initial tariff filing of any  
37 water company removed from and later subject to commission jurisdiction  
38 because of the number of customers or the average annual gross revenue

1 per customer provisions of RCW 80.04.010. The commission may allow  
2 temporary rates during the suspension period. These rates shall not  
3 exceed the rates charged when the company was last regulated. Upon a  
4 showing of good cause by the company, the commission may establish a  
5 different level of temporary rates.

6 ~~((+2))~~ (4) At any hearing involving any change in any schedule,  
7 classification, rule, or regulation the effect of which is to increase  
8 any rate, charge, rental, or toll theretofore charged, the burden of  
9 proof to show that such increase is just and reasonable shall be upon  
10 the public service company.

11 ~~((+3))~~ (5) The implementation of mandatory local measured  
12 telecommunications service is a major policy change in available  
13 telecommunications service. The commission shall not accept for filing  
14 a price list, nor shall it accept for filing or approve, prior to June  
15 1, 2004, a tariff filed by a telecommunications company which imposes  
16 mandatory local measured service on any customer or class of customers,  
17 except that, upon finding that it is in the public interest, the  
18 commission may accept for filing a price list or it may accept for  
19 filing and approve a tariff that imposes mandatory measured service for  
20 a telecommunications company's extended area service or foreign  
21 exchange service. This subsection does not apply to land, air, or  
22 marine mobile service, or to pay telephone service, or to any service  
23 which has been traditionally offered on a measured service basis.

24 ~~((+4))~~ (6) The implementation of Washington telephone assistance  
25 program service is a major policy change in available  
26 telecommunications service. The implementation of Washington telephone  
27 assistance program service will aid in achieving the stated goal of  
28 universal telephone service.

29 ~~((+5))~~ (7) If a utility claims a sales or use tax exemption on the  
30 pollution control equipment for an electrical generation facility and  
31 abandons the generation facility before the pollution control equipment  
32 is fully depreciated, any tariff filing for a rate increase to recover  
33 abandonment costs for the pollution control equipment shall be  
34 considered unjust and unreasonable for the purposes of this section.

35 **Sec. 2.** RCW 80.36.110 and 1997 c 166 s 1 are each amended to read  
36 as follows:

37 (1) Except as provided in subsection (2) of this section, unless

1 the commission otherwise orders, no change shall be made in any rate,  
2 toll, rental, or charge, that was filed and published by any  
3 telecommunications company in compliance with the requirements of RCW  
4 80.36.100, except after thirty days' notice to the commission and  
5 publication for thirty days as required in the case of original  
6 schedules in RCW 80.36.100, which notice shall plainly state the  
7 changes proposed to be made in the schedule then in force, and the time  
8 when the changed rate, toll, or charge will go into effect, and all  
9 proposed changes shall be shown by printing, filing and publishing new  
10 schedules, or shall be plainly indicated upon the schedules in force at  
11 the time and kept open to public inspection. Proposed changes may be  
12 suspended by the commission within thirty days or before the stated  
13 effective date of the proposed change, whichever is later. The  
14 commission for good cause shown may allow changes in rates, charges,  
15 tolls, or rentals without requiring the thirty days' notice and  
16 publication provided for in this section, by an order specifying the  
17 change to be made and the time when it takes effect, and the manner in  
18 which the change will be filed and published. When any change is made  
19 in any rate, toll, rental, or charge, the effect of which is to  
20 increase any rate, toll, rental, or charge then existing, attention  
21 shall be directed on the copy filed with the commission to the increase  
22 by some character immediately preceding or following the item in the  
23 schedule, which character shall be in such a form as the commission may  
24 designate.

25 (2)(a) A telecommunications company may file a tariff that  
26 decreases any rate, charge, rental, or toll with ten days' notice to  
27 the commission and publication without receiving a special order from  
28 the commission when the filing does not contain an offsetting increase  
29 to another rate, charge, rental, or toll, and the filing company agrees  
30 not to file for an increase to any rate, charge, rental, or toll to  
31 recover the revenue deficit that results from the decrease for a period  
32 of one year.

33 (b) A telecommunications company may file a promotional offering to  
34 be effective, without receiving a special order from the commission,  
35 upon filing with the commission and publication. For the purposes of  
36 this section, "promotional offering" means a tariff or price list that,  
37 for a period of up to ninety days, waives or reduces charges or

1 conditions of service for existing or new subscribers for the purpose  
2 of retaining or increasing the number of customers who subscribe to or  
3 use a service.

4 **Sec. 3.** RCW 80.36.320 and 1998 c 337 s 5 are each amended to read  
5 as follows:

6 (1) The commission shall classify a telecommunications company as  
7 a competitive telecommunications company if the services it offers are  
8 subject to effective competition. Effective competition means that the  
9 company's customers have reasonably available alternatives and that the  
10 company does not have a significant captive customer base. In  
11 determining whether a company is competitive, factors the commission  
12 shall consider include but are not limited to:

- 13 (a) The number and sizes of alternative providers of service;  
14 (b) The extent to which services are available from alternative  
15 providers in the relevant market;  
16 (c) The ability of alternative providers to make functionally  
17 equivalent or substitute services readily available at competitive  
18 rates, terms, and conditions; and  
19 (d) Other indicators of market power which may include market  
20 share, growth in market share, ease of entry, and the affiliation of  
21 providers of services.

22 The commission shall conduct the initial classification and any  
23 subsequent review of the classification in accordance with such  
24 procedures as the commission may establish by rule.

25 (2) Competitive telecommunications companies shall be subject to  
26 minimal regulation. Minimal regulation means that competitive  
27 telecommunications companies may file, instead of tariffs, price lists  
28 (~~that shall be~~). Except as provided in RCW 80.36.110(2)(b), price  
29 lists are effective after ten days' notice to the commission and  
30 customers. The commission shall prescribe the form of notice. The  
31 commission may also waive other regulatory requirements under this  
32 title for competitive telecommunications companies when it determines  
33 that competition will serve the same purposes as public interest  
34 regulation. The commission may waive different regulatory requirements  
35 for different companies if such different treatment is in the public  
36 interest. A competitive telecommunications company shall at a minimum:

1 (a) Keep its accounts according to regulations as determined by the  
2 commission;

3 (b) File financial reports with the commission as required by the  
4 commission and in a form and at times prescribed by the commission;

5 (c) Keep on file at the commission such current price lists and  
6 service standards as the commission may require; and

7 (d) Cooperate with commission investigations of customer  
8 complaints.

9 (3) When a telecommunications company has demonstrated that the  
10 equal access requirements ordered by the federal district court in the  
11 case of U.S. v. AT&T, 552 F. Supp. 131 (1982), or in supplemental  
12 orders, have been met, the commission shall review the classification  
13 of telecommunications companies providing inter-LATA interexchange  
14 services. At that time, the commission shall classify all such  
15 companies as competitive telecommunications companies unless it finds  
16 that effective competition, as defined in subsection (1) of this  
17 section, does not then exist.

18 (4) The commission may revoke any waivers it grants and may  
19 reclassify any competitive telecommunications company if the revocation  
20 or reclassification would protect the public interest.

21 (5) The commission may waive the requirements of RCW 80.36.170 and  
22 80.36.180 in whole or in part for a competitive telecommunications  
23 company if it finds that competition will serve the same purpose and  
24 protect the public interest.

25 **Sec. 4.** RCW 80.36.330 and 1998 c 337 s 6 are each amended to read  
26 as follows:

27 (1) The commission may classify a telecommunications service  
28 provided by a telecommunications company as a competitive  
29 telecommunications service if the service is subject to effective  
30 competition. Effective competition means that customers of the service  
31 have reasonably available alternatives and that the service is not  
32 provided to a significant captive customer base. In determining  
33 whether a service is competitive, factors the commission shall consider  
34 include but are not limited to:

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

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

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

4 (d) Other indicators of market power, which may include market  
5 share, growth in market share, ease of entry, and the affiliation of  
6 providers of services.

7 (2) When the commission finds that a telecommunications company has  
8 demonstrated that a telecommunications service is competitive, the  
9 commission may permit the service to be provided under a price list.  
10 Except as provided in RCW 80.36.110(2)(b), price lists are effective on  
11 ten days notice to the commission and customers. The commission shall  
12 prescribe the form of notice. The commission may adopt procedural  
13 rules necessary to implement this section.

14 (3) Prices or rates charged for competitive telecommunications  
15 services shall cover their cost. The commission shall determine proper  
16 cost standards to implement this section, provided that in making any  
17 assignment of costs or allocating any revenue requirement, the  
18 commission shall act to preserve affordable universal  
19 telecommunications service.

20 (4) The commission may investigate prices for competitive  
21 telecommunications services upon complaint. In any complaint  
22 proceeding initiated by the commission, the telecommunications company  
23 providing the service shall bear the burden of proving that the prices  
24 charged cover cost, and are fair, just, and reasonable.

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

27 (6) No losses incurred by a telecommunications company in the  
28 provision of competitive services may be recovered through rates for  
29 noncompetitive services. The commission may order refunds or credits  
30 to any class of subscribers to a noncompetitive telecommunications  
31 service which has paid excessive rates because of below cost pricing of  
32 competitive telecommunications services.

33 (7) The commission may reclassify any competitive  
34 telecommunications service if reclassification would protect the public  
35 interest.

36 (8) The commission may waive the requirements of RCW 80.36.170 and  
37 80.36.180 in whole or in part for a service classified as competitive

1 if it finds that competition will serve the same purpose and protect  
2 the public interest.

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