# SENATE BILL REPORT
# SB 5592

As Reported By Senate Committee On:
Water, Energy & Telecommunications, February 28, 2007

**Title:** An act relating to the modernization of the regulation of telecommunications.

**Brief Description:** Revising regulation of telecommunications companies.

**Sponsors:** Senators Berkey, Poulsen, Honeyford, Shin, Morton, Kilmer, Stevens, Pridemore, Haugen, Hatfield and Rasmussen.

**Brief History:**
**Committee Activity:** Water, Energy & Telecommunications: 2/21/07, 2/28/07 [DPS].

## SENATE COMMITTEE ON WATER, ENERGY & TELECOMMUNICATIONS

**Majority Report:** That Substitute Senate Bill No. 5592 be substituted therefor, and the substitute bill do pass.
Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Honeyford, Ranking Minority Member; Delvin, Fraser, Holmquist, Marr, Morton, Oemig, Pridemore and Regala.

**Staff:** William Bridges (786-7424)

**Background:** The Washington Utilities and Transportation Commission (WUTC) classifies telephone companies into two groups: those companies that have held historic monopolies over local markets, informally called "incumbent local exchange carriers" or ILECs, and those companies offering services that are subject to effective competition, called "competitive carriers."

Alternative Form of Regulation (AFOR): The WUTC regulates noncompetitive companies under a "rate of return" system. Under this system, a company is basically allowed to charge rates that cover its costs, plus an opportunity to make a fair profit. Since 1989, noncompetitive companies have had the option of being regulated under a negotiated alternative to rate-of-return called "AFOR." Prior to approving an AFOR plan, the WUTC must consider a number of factors, such as the extent to which effective competition will be enhanced.

Competitive Service Classification: In addition to the AFOR process, the WUTC may classify individual telecommunications services as "competitive." In determining whether a service is competitive, the commission considers the number and size of alternative providers of services, the availability of alternative services in the relevant market, the ability of alternative providers to make functionally equivalent or substitutes readily available at competitive

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prices, and other indicators of market power. Competitive telecommunications services are subject to minimal regulation.

**Summary of Bill:** Creating a New Option for Deregulation: A new telecommunications chapter is created for companies that elect to be deregulated by filing a written notice with the WUTC, stating an effective date not sooner than five days after filing. The election exempts companies from all telecommunications statutes and regulations, such as regulations relating to tariffs, annual reports, the production of business records, stock ownership records, and budgeting rules. Electing companies are also exempt from regulations concerning securities, property transfers, affiliated interests, and certain investigative powers of the WUTC.

Preserving Certain Regulations: The new option for deregulation preserves certain regulations relating to the following subjects:

- complaints and adjudicative hearings (although the authority to inspect out-of-state records is removed);
- information delivery services ("900" and "979" phone numbers);
- coin-free pay phone access;
- bill inserts explaining the telephone solicitation law;
- Washington Telephone Assistance Program;
- pole attachments;
- eminent domain and land appropriation authority;
- entering property for surveying a telecommunications line;
- entering public and rail road rights-of-way;
- damages for injuring telecommunications equipment;
- alternative adjudication procedures;
- automatic dialing and announcing devices; and
- disclosure of alternative operator rates, such as in hotels (although the consumer protection act violation is removed).

Allowing Limited Rate Controls for Telephone Service: For the first five years after an election, a company may not increase its rates for basic telephone service by more than one dollar in any 12-month period. In addition, a company may not raise its rates more than 20 percent higher than the rate in the exchange where it has the most customers with basic telephone service.

For the first two-years after its election, a company's rates for any services other than basic service may not be more than 50 percent higher than the rate in the exchange where it has the most customers with that service.

For a period of at least 180 days and not more than two years from the date of its election, a company must continue to maintain and file with the WUTC a schedule with the rates, terms, and conditions of its telecommunications services. The company must give its customers 30 days notice before it withdraws a schedule.

Authorizing a Regulatory Fee: For the calendar year in which it makes its election, and for the first calendar year after its election, the company must pay a fee to the WUTC that is equal to the fee it paid for the year immediately preceding its election. For the next three calendar years, the fee is two-thirds of the fee it paid in the first year. Thereafter, the fee is the lesser of:  (1) the amount paid during the third year; or (2) two-tenths of one percent of any gross operating revenue for basic telecommunications service provided in the state during the period the company is an eligible telecommunications carrier in the state as defined by federal law.

Enforcing the New Regulatory Option:  The WUTC may informally or upon formal complaint by an affected person resolve disputes concerning an electing company's adherence to the rates, terms, or conditions of its services that would be subject to WUTC regulation but for its election, or its compliance with applicable rules or Washington statutes.  The WUTC may take actions, conduct proceedings, and enter orders concerning an electing company as permitted or contemplated for a state commission under the federal Telecommunications Act of 1996.

Findings and Legislative Intent:  Various findings are made, including that the competitiveness of telecommunications services makes regulatory modernization necessary to ensure fair regulatory treatment of telecommunications service providers who provide similar services.  The Legislature intends, among other things, to provide regulatory fairness among competitive telecommunications service providers by modernizing the state's telecommunications laws.

**EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Water, Energy & Telecommunications):**  The underlying bill is replaced by the creation of a joint task force to study the reform of telecommunications regulations. The task force must consist of the chairs and ranking members of the telecommunications committees of the Legislature and one representative of the Governor's office.  The task force must appoint an advisory committee of industry representatives and two additional representatives, each representing the WUTC and consumers, respectively.  The task force must deliver its recommendations to the Legislature by December 15, 2007.  Various findings are made concerning the changing telecommunications market.

**Appropriation:**  None.

**Fiscal Note:**  Not requested.

**Committee/Commission/Task Force Created:**  Yes.

**Effective Date:**  Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:**  PRO:  The telecommunications market place is changing rapidly.  Healthy competition means lower prices and better service.  Consumers are voting with their feet and leaving land lines for unregulated services like cell phones.  There are now more wireless subscribers than landline subscribers.  Telecommunications regulations need to be streamlined.  Federal Communications Commission data shows there is competition in almost every zip code.  There are only six states in Verizon's foot print that have rate-of-return regulation.  The bill keeps consumer protections, creates a new settlement process, and protects rural rates.  The WUTC's AFOR and competitive classification process are cumbersome and don't go far enough.  Verizon makes significant investments in the community.  Verizon is a good employer with family-wage jobs.  Verizon needs a level playing field because unregulated Comcast is beating it in the market.

CON:  The WUTC has a process for regulatory flexibility, and unlike Qwest, Verizon has never taken advantage of it.  This bill is too broad and applies to all companies and services even if they don't face effective competition in the market. The basic residential market is not competitive. The bill will allow 40 percent rate increases over five years and will not protect rates for bundled services. The bill will allow rates in rural areas to increase. The bill will eliminate obligations to serve in a service territory and remove prohibitions against price discrimination. The bill will eliminate merger reviews and will allow phone companies to sell parts of service territories without considering the effects on customers. There is no requirement that increased revenues will be plowed back into the state. The bill is too broad and will allow the deregulation of all business services. The current law has adequate regulatory flexibility and the AFOR is the most progressive in the country. Cell phone and cable phone service are not adequate substitutes for the land lines that businesses use. The deregulation of wholesale services would harm competitive phone companies who rely on incumbent phone companies for their last-mile facilities.

**Persons Testifying:** PRO: Senator Berkey, prime sponsor; Mathew Carrol, International Brotherhood of Electrical Workers Local 89; Aaron Reardon, Snohomish County Executive; Louise Stanton-Masten, Everett Area Chamber of Commerce; Greg Romano, David Valdez, Verizon.

CON: Art Butler, WEBTEC; David Danner, Washington Utilities and Transportation Committee; Simon ffitch, Public Counsel, Attorney General of Washington; Nancee Wildermuth, Sprint Nextel; Greg Kopta, XO Communications, Time Warner Telecom, Integra Telecom.