

CHAPTER 101

[Substitute Senate Bill No. 5098]

TELECOMMUNICATIONS COMPANIES—RATE SETTING PROCEDURES

AN ACT Relating to the regulation of telecommunications companies; amending RCW 80.04.010, 80.36.170, 80.36.180, 80.36.150, 80.36.100, 80.36.110, 80.36.130, 80.36.270, 80.36.310, 80.36.320, 80.36.330, 80.04.110, and 80.36.901; reenacting and amending RCW 80.04.130; and adding new sections to chapter 80.36 RCW.

Be it enacted by the Legislature of the State of Washington:

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

(1) The legislature declares that:

(a) Changes in technology and the structure of the telecommunications industry may produce conditions under which traditional rate of return, rate base regulation of telecommunications companies may not in all cases provide the most efficient and effective means of achieving the public policy goals of this state as declared in RCW 80.36.300, this section, and section 3 of this act. The commission should be authorized to employ an alternative form of regulation if that alternative is better suited to achieving those policy goals.

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

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

(a) Reduce regulatory delay and costs;

(b) Encourage innovation in services;

(c) Promote efficiency;

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

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

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

(g) Provide fair, just, and reasonable rates for all ratepayers.

The commission shall make written findings of fact as to each of the above-stated policy goals in ruling on any proposed alternative form of regulation.

(3) A telecommunications company subject to traditional rate of return, rate base regulation may petition the commission to regulate the company under an alternative form of regulation. The company shall submit with its petition its plan for an alternative form of regulation. The plan shall contain the company's proposal for transition to the alternative form of regulation. The commission shall review and may modify or reject the company's proposed plan. The commission also may initiate consideration of alternative forms of regulation for a company or companies on its own motion. The commission may approve the plan or modified plan and authorize its implementation, if it finds, after notice and hearing, that the plan or modified plan:

(a) Is in the public interest;

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

(c) Is better suited to achieving the policy goals set forth in RCW 80-.36.300 and this section than the traditional rate of return, rate base regulation;

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

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

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

(g) Will not unduly or unreasonably prejudice or disadvantage any particular customer class.

(4) Not later than sixty days from the entry of the commission's order, the company may file with the commission an election not to proceed with the alternative form of regulation as authorized by the commission. If the company elects to appeal to the courts the final order of the commission authorizing an alternative form of regulation, it shall not change its election to proceed or not proceed after the appeal is concluded. The pendency of a petition by the company for judicial review of the final order shall not serve to extend the sixty-day period.

(5) The commission may waive such regulatory requirements under Title 80 RCW for a telecommunications company subject to an alternative form of regulation as may be appropriate to facilitate the implementation of this section: **PROVIDED**, That the commission may not grant the authority

to price list services except as provided in RCW 80.36.300 through 80.36.370, the regulatory flexibility act, nor may it waive any statutory requirements or grants of legal rights to any person contained in this chapter and chapter 80.04 RCW as amended, except as otherwise expressly provided. The commission may waive different regulatory requirements for different companies or services if such different treatment is in the public interest.

(6) Upon petition by any person, or upon its own motion, the commission may rescind its approval of an alternative form of regulation if, after notice and hearing, it finds that the conditions set forth in subsection (3) of this section can no longer be satisfied. The commission or any person may file a complaint alleging that the rates charged by a telecommunications company under an alternative form of regulation are unfair, unjust, unreasonable, unduly discriminatory, or are otherwise not consistent with the requirements of this act: PROVIDED, That the complainant shall bear the burden of proving the allegations in the complaint.

Sec. 2. Section 1, chapter 229, Laws of 1987 and RCW 80.04.010 are each amended to read as follows:

As used in this title, unless specifically defined otherwise or unless the context indicates otherwise:

"Commission" means the utilities and transportation commission.

"Commissioner" means one of the members of such commission.

"Competitive telecommunications company" means a telecommunications company which has been classified as such by the commission pursuant to RCW 80.36.320.

"Competitive telecommunications service" means a service which has been classified as such by the commission pursuant to RCW 80.36.330.

"Corporation" includes a corporation, company, association or joint stock association.

"Person" includes an individual, a firm or partnership.

"Gas plant" includes all real estate, fixtures and personal property, owned, leased, controlled, used or to be used for or in connection with the transmission, distribution, sale or furnishing of natural gas, or the manufacture, transmission, distribution, sale or furnishing of other type gas, for light, heat or power.

"Gas company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receiver appointed by any court whatsoever, and every city or town, owning, controlling, operating or managing any gas plant within this state.

"Electric plant" includes all real estate, fixtures and personal property operated, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat, or power for hire; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.

"Electrical company" includes any corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever (other than a railroad or street railroad company generating electricity solely for railroad or street railroad purposes or for the use of its tenants and not for sale to others), and every city or town owning, operating or managing any electric plant for hire within this state. "Electrical company" does not include a company or person employing a cogeneration facility solely for the generation of electricity for its own use or the use of its tenants or for sale to an electrical company, state or local public agency, municipal corporation, or quasi municipal corporation engaged in the sale or distribution of electrical energy, but not for sale to others, unless such company or person is otherwise an electrical company.

"LATA" means a local access transport area as defined by the commission in conformance with applicable federal law.

"Private telecommunications system" means a telecommunications system controlled by a person or entity for the sole and exclusive use of such person, entity, or affiliate thereof, including the provision of private shared telecommunications services by such person or entity. "Private telecommunications system" does not include a system offered for hire, sale, or resale to the general public.

"Private shared telecommunications services" includes the provision of telecommunications and information management services and equipment within a user group located in discrete private premises in building complexes, campuses, or high-rise buildings, by a commercial shared services provider or by a user association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to the facilities of a local exchange and to interexchange telecommunications companies.

"Radio communications service company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court, and every city or town making available facilities to provide radio communications service, radio paging, or cellular communications service for hire, sale, or resale.

"Telecommunications company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public within this state.

"Noncompetitive telecommunications service" means any service which has not been classified as competitive by the commission.

"Facilities" means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and

routes used, operated, owned or controlled by any telecommunications company to facilitate the provision of telecommunications service.

"Telecommunications" is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

"Water system" includes all real estate, easements, fixtures, personal property, dams, dikes, head gates, weirs, canals, reservoirs, flumes or other structures or appliances operated, owned, used or to be used for or in connection with or to facilitate the supply, storage, distribution, sale, furnishing, diversion, carriage, apportionment or measurement of water for power, irrigation, reclamation, manufacturing, municipal, domestic or other beneficial uses for hire.

"Water company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, controlling, operating, or managing any water system for hire within this state: PROVIDED, That for purposes of commission jurisdiction it shall not include any water system serving less than one hundred customers where the average annual gross revenue per customer does not exceed three hundred dollars per year, which revenue figure may be increased annually by the commission by rule adopted pursuant to chapter ~~((34.04))~~ 34.05 RCW to reflect the rate of inflation as determined by the implicit price deflator of the United States department of commerce: AND PROVIDED FURTHER, That such measurement of customers or revenues shall include all portions of water companies having common ownership, regardless of location or corporate designation. However, water companies exempt from commission regulation shall be subject to the provisions of chapter 19.86 RCW.

"Cogeneration facility" means any machinery, equipment, structure, process, or property, or any part thereof, installed or acquired for the primary purpose of the sequential generation of electrical or mechanical power and useful heat from the same primary energy source or fuel.

"Public service company" includes every gas company, electrical company, telecommunications company, and water company. Ownership or operation of a cogeneration facility does not, by itself, make a company or person a public service company.

"Local exchange company" means a telecommunications company providing local exchange telecommunications service.

"Department" means the department of social and health services.

The term "service" is used in this title in its broadest and most inclusive sense.

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

(1) The legislature declares that the availability of an alternative abbreviated formal procedure for use by the commission instead of a full adjudicative proceeding may in appropriate circumstances advance the public interest by reducing the time required by the commission for decision and the costs incurred by interested parties and ratepayers. Therefore, the commission is authorized to use formal investigation and fact-finding instead of an adjudicative proceeding under chapter 34.05 RCW when it determines that its use is in the public interest and that a full adjudicative hearing is not necessary to fully develop the facts relevant to the proceeding and the positions of the parties, including intervenors.

(2) The commission may use formal investigation and fact-finding instead of the hearing provided in the following circumstances:

(a) A complaint proceeding under RCW 80.04.110 with concurrence of the respondent when the commission is the complainant or with concurrence of the complainant and respondent when not the commission;

(b) A tariff suspension under RCW 80.04.130; or

(c) A competitive classification proceeding under RCW 80.36.320 and 80.36.330.

(3) In formal investigation and fact-finding the commission may limit the record to written submissions by the parties, including intervenors. The commission shall review the written submissions and, based thereon, shall enter appropriate findings of fact and conclusions of law and its order. When there is a reasonable expression of public interest in the issues under consideration, the commission shall hold at least one public hearing for the receipt of information from members of the public that are not formal intervenors in the proceeding and may elect to convert the proceeding to an adjudicative proceeding at any stage. The assignment of an agency employee or administrative law judge to preside at such public hearing shall not require the entry of an initial order.

(4) The commission shall adopt rules of practice and procedure including rules for discovery of information necessary for the use of formal investigation and fact-finding and for the filing of written submissions. The commission may provide by rule for a number of rounds of written comments: PROVIDED, That the party with the burden of proof shall always have the opportunity to file reply comments.

Sec. 4. Section 80.36.170, chapter 14, Laws of 1961 as amended by section 31, chapter 450, Laws of 1985 and RCW 80.36.170 are each amended to read as follows:

No telecommunications company shall make or give any undue or unreasonable preference or advantage to any person, corporation or locality, or subject any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. The commission shall have primary jurisdiction to determine whether any rate,

regulation, or practice of a telecommunications company violates this section. This section shall not apply to contracts offered by a telecommunications company classified as competitive or to contracts for services classified as competitive under RCW 80.36.320 and 80.36.330.

Sec. 5. Section 80.36.180, chapter 14, Laws of 1961 as amended by section 32, chapter 450, Laws of 1985 and RCW 80.36.180 are each amended to read as follows:

No telecommunications company shall, directly or indirectly, or by any special rate, rebate, drawback or other device or method, unduly or unreasonably charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to communication by telecommunications or in connection therewith, except as authorized in this title or Title 81 RCW than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to communication by telecommunications under the same or substantially the same circumstances and conditions. The commission shall have primary jurisdiction to determine whether any rate, regulation, or practice of a telecommunications company violates this section. This section shall not apply to contracts offered by a telecommunications company classified as competitive or to contracts for services classified as competitive under RCW 80.36.320 or 80.36.330.

NEW SECTION. Sec. 6. A new section is added to chapter 80.36 RCW to read as follows:

Notwithstanding any other provision of this chapter, no telecommunications company shall offer a discounted message toll service based on volume that prohibits aggregation of volumes across all territory with respect to which that company functions as an interexchange carrier. The commission shall continue to have the authority to require state-wide, averaged toll rates to be made available by any telecommunications company subject to its jurisdiction.

NEW SECTION. Sec. 7. A new section is added to chapter 80.36 RCW to read as follows:

Notwithstanding any other provision of this chapter, no telecommunications company providing noncompetitive services shall, as to the pricing of or access to noncompetitive services, make or grant any undue or unreasonable preference or advantage to itself or to any other person providing telecommunications service, nor subject any telecommunications company to any undue or unreasonable prejudice or competitive disadvantage. The commission shall have primary jurisdiction to determine whether any rate, regulation, or practice of a telecommunications company violates this section.

Sec. 8. Section 80.36.150, chapter 14, Laws of 1961 as amended by section 29, chapter 450, Laws of 1985 and RCW 80.36.150 are each amended to read as follows:

(1) Every telecommunications company shall file with the commission, as and when required by it, a copy of any contract, agreement or arrangement in writing with any other telecommunications company, or with any other corporation, association or person relating in any way to the construction, maintenance or use of a telecommunications line or service by, or rates and charges over and upon, any such telecommunications line. The commission shall adopt rules that provide for the filing by telecommunications companies on the public record of the essential terms and conditions of every contract for service. The commission shall not require that customer proprietary information contained in contracts be disclosed on the public record.

(2) The commission shall not treat contracts as tariffs or price lists. The commission may require noncompetitive service to be tariffed unless the company demonstrates that the use of a contract is in the public interest based upon a customer requirement or a competitive necessity for deviation from tariffed rates, terms and conditions, or that the contract is for a new service with limited demand.

(3) Contracts shall be for a stated time period and shall cover the costs for the service contracted for, as determined by commission rule or order. Contracts shall be enforceable by the contracting parties according to their terms, unless the contract has been rejected by the commission before its stated effective date as improper under the commission's rules and orders, or the requirements of this chapter. If the commission finds a contract to be below cost after it has gone into effect, based on commission rules or orders or the requirements of this chapter in effect at the time of the execution of the contract, it may make the appropriate adjustment to the contracting company's revenue requirement in a subsequent proceeding.

(4) Contracts executed and filed prior to the effective date of this act are deemed lawful and enforceable by the contracting parties according to the contract terms. If the commission finds that any existing contract provides for rates that are below cost, based on commission rules or orders or the requirements of this chapter in effect at the time of the execution of the contract, it may make the appropriate adjustment to the contracting company's revenue requirement in a subsequent proceeding.

(5) If a contract covers competitive and noncompetitive services, the noncompetitive services shall be unbundled and priced separately from all other services and facilities in the contract. Such noncompetitive services shall be made available to all purchasers under the same or substantially the same circumstances at the same rate, terms, and conditions.

Sec. 9. Section 80.36.100, chapter 14, Laws of 1961 as amended by section 24, chapter 450, Laws of 1985 and RCW 80.36.100 are each amended to read as follows:

Every telecommunications company shall file with the commission and shall print and keep open to public inspection at such points as the commission may designate, schedules showing the rates, tolls, rentals, ~~((contracts))~~ and charges of such companies for messages, conversations and services rendered and equipment and facilities supplied for messages and services to be performed within the state between each point upon its line and all other points thereon, and between each point upon its line and all points upon every other similar line operated or controlled by it, and between each point on its line or upon any line leased, operated or controlled by it and all points upon the line of any other similar company, whenever a through service and joint rate shall have been established or ordered between any two such points. If no joint rate covering a through service has been established, the several companies in such through service shall file, print and keep open to public inspection as aforesaid the separately established rates, tolls, rentals, ~~((contracts))~~ and charges applicable for such through service. The schedules printed as aforesaid shall plainly state the places between which telecommunications service, or both, will be rendered, and shall also state separately all charges and all privileges or facilities granted or allowed, and any rules or regulations ~~((or forms of contract))~~ which may in anywise change, affect or determine any of the aggregate of the rates, tolls, rentals or charges for the service rendered. A schedule shall be plainly printed in large type, and a copy thereof shall be kept by every telecommunications company readily accessible to and for convenient inspection by the public at such places as may be designated by the commission, which schedule shall state the rates charged from such station to every other station on such company's line, or on any line controlled and used by it within the state. All or any of such schedules kept as aforesaid shall be immediately produced by such telecommunications company upon the demand of any person. A notice printed in bold type, and stating that such schedules are on file and open to inspection by any person, the places where the same are kept, and that the agent will assist such person to determine from such schedules any rate, toll, rental, rule or regulation which is in force shall be kept posted by every telecommunications company in a conspicuous place in every station or office of such company.

Sec. 10. Section 80.36.110, chapter 14, Laws of 1961 as amended by section 25, chapter 450, Laws of 1985 and RCW 80.36.110 are each amended to read as follows:

Unless the commission otherwise orders, no change shall be made in any rate, toll, rental, ~~((contract))~~ or charge, which shall have been filed and

published by any telecommunications company in compliance with the requirements of RCW 80.36.100, except after thirty days' notice to the commission and publication for thirty days as required in the case of original schedules in RCW 80.36.100, which notice shall plainly state the changes proposed to be made in the schedule then in force, and the time when the changed rate, toll, ~~((contract))~~ or charge will go into effect, and all proposed changes shall be shown by printing, filing and publishing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. The commission for good cause shown may allow changes in rates, charges, tolls, or rentals ~~((or contracts))~~ without requiring the thirty days' notice and publication herein provided for, by an order specifying the change so to be made and the time when it shall take effect, and the manner in which the same shall be filed and published. When any change is made in any rate, toll, ~~((contract;))~~ rental or charge, the effect of which is to increase any rate, toll, rental or charge then existing, attention shall be directed on the copy filed with the commission to such increase by some character immediately preceding or following the item in such schedule, which character shall be in such form as the commission may designate.

Sec. 11. Section 80.36.130, chapter 14, Laws of 1961 as amended by section 27, chapter 450, Laws of 1985 and RCW 80.36.130 are each amended to read as follows:

Except as provided in RCW 80.36.150, no telecommunications company shall charge, demand, collect or receive different compensation for any service rendered or to be rendered than the charge applicable to such service as specified in its schedule on file and in effect at that time, nor shall any telecommunications company refund or remit, directly or indirectly, any portion of the rate or charge so specified, nor extend to any person or corporation any form of contract or agreement or any rule or regulation or any privilege or facility except such as are specified in its schedule filed and in effect at the time, and regularly and uniformly extended to all persons and corporations under like circumstances for like or substantially similar service.

No telecommunications company subject to the provisions of this title shall, directly or indirectly, give any free or reduced service or any free pass or frank for the transmission of messages by telecommunications between points within this state, except to its officers, employees, agents, pensioners, surgeons, physicians, attorneys at law, and their families, and persons and corporations exclusively engaged in charitable and eleemosynary work, and ministers of religion, Young Men's Christian Associations, Young Women's Christian Associations; to indigent and destitute persons, and to officers and employees of other telecommunications companies, railroad companies, and street railroad companies.

Sec. 12. Section 80.36.270, chapter 14, Laws of 1961 as amended by section 39, chapter 450, Laws of 1985 and RCW 80.36.270 are each amended to read as follows:

Nothing in this title shall be construed to prevent any telecommunications company from continuing to furnish the use of its line, equipment or service under any contract or contracts in force on June 7, 1911 or upon the taking effect of any schedule or schedules of rates subsequently filed with the commission, as herein provided, at the rates fixed in such contract or contracts ~~((: PROVIDED, That the commission shall have power, in its discretion, to direct by order that such contract or contracts shall be terminated by the telecommunications company party thereto, and thereupon such contract or contracts shall be terminated by such telecommunications company as and when directed by such order))~~.

Sec. 13. Section 2, chapter 229, Laws of 1987 and section 1, chapter 333, Laws of 1987 and RCW 80.04.130 are each reenacted and amended to read as follows:

(1) Whenever any public service company shall file with the commission any schedule, classification, rule or regulation, the effect of which is to change any rate, charge, rental or toll theretofore charged, the commission shall have power, either upon its own motion or upon complaint, upon notice, to enter upon a hearing concerning such proposed change and the reasonableness and justness thereof, and pending such hearing and the decision thereon the commission may suspend the operation of such rate, charge, rental or toll for a period not exceeding ten months from the time the same would otherwise go into effect, and after a full hearing the commission may make such order in reference thereto as would be provided in a hearing initiated after the same had become effective. The commission shall not suspend a tariff that makes a decrease in a rate, charge, rental, or toll filed by a telecommunications company pending investigation of the fairness, justness, and reasonableness of the decrease when the filing does not contain any offsetting increase to another rate, charge, rental, or toll and the filing company agrees to not file for an increase to any rate, charge, rental, or toll to recover the revenue deficit that results from the decrease for a period of one year. The filing company shall file with any decrease sufficient information as the commission by rule may require to demonstrate the decreased rate, charge, rental, or toll is above the long run incremental cost of the service. A tariff decrease that results in a rate that is below long run incremental cost, or is contrary to commission rule or order, or the requirements of this chapter, shall be rejected for filing and returned to the company. The commission may prescribe a different rate to be effective on the prospective date stated in its final order after its investigation, if it concludes based on the record that the originally filed and effective rate is unjust, unfair, or unreasonable.

The commission may suspend the initial tariff filing of any water company removed from and later subject to commission jurisdiction because of the number of customers or the average annual gross revenue per customer provisions of RCW 80.04.010. The commission may allow temporary rates during the suspension period. These rates shall not exceed the rates charged when the company was last regulated. Upon a showing of good cause by the company, the commission may establish a different level of temporary rates.

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

(3) The implementation of mandatory local measured telecommunications service is a major policy change in available telecommunications service. The commission shall not accept for filing or approve, prior to June 1, ((+1990)) 1993, a tariff filed by a telecommunications company which imposes mandatory local measured service on any customer or class of customers, except that, upon finding that it is in the public interest, the commission may accept for filing and approve a tariff that imposes mandatory measured service for a telecommunications company's extended area service or foreign exchange service. This subsection does not apply to land, air, or marine mobile service, or to pay telephone service, or to any service which has been traditionally offered on a measured service basis.

(4) The implementation of lifeline service is a major policy change in available telecommunications service. The implementation of lifeline service will aid in achieving the stated goal of universal telephone service.

Sec. 14. Section 3, chapter 450, Laws of 1985 and RCW 80.36.310 are each amended to read as follows:

Telecommunications companies may petition to be classified as competitive telecommunications companies under RCW 80.36.320 or to have services classified as competitive telecommunications services under RCW 80.36.330. The commission may initiate classification proceedings on its own motion. The commission may require all regulated telecommunications companies potentially affected by a classification proceeding to appear as parties for a determination of their classification. The commission shall enter its final order with respect to classification within ten months from the date of filing of a company's petition or the commission's motion.

Sec. 15. Section 4, chapter 450, Laws of 1985 and RCW 80.36.320 are each amended to read as follows:

(1) The commission shall classify a telecommunications company providing service in a relevant market as a competitive telecommunications company if it finds, after notice and hearing, that the telecommunications company has demonstrated that the services it offers are subject to effective competition. Effective competition means that the company's customers have reasonably available alternatives and that the company does not have a

significant captive customer base. In determining whether a company is competitive, factors the commission shall consider include but are not limited to:

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

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

(2) Competitive telecommunications companies shall be subject to minimal regulation. Minimal regulation means that competitive telecommunications companies may file, instead of tariffs, price lists which shall be effective after ten days' notice to the commission and customers. The commission shall prescribe the form of notice. The commission may also waive other regulatory requirements under this title for competitive telecommunications companies when it determines that competition will serve the same purposes as public interest regulation. The commission may waive different regulatory requirements for different companies if such different treatment is in the public interest. A competitive telecommunications company shall at a minimum:

- (a) Keep its accounts according to regulations as determined by the commission;
- (b) File financial reports with the commission as required by the commission and in a form and at times prescribed by the commission;
- (c) Keep on file at the commission such current price lists and service standards as the commission may require; and
- (d) Cooperate with commission investigations of customer complaints.

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

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

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

Sec. 16. Section 5, chapter 450, Laws of 1985 and RCW 80.36.330 are each amended to read as follows:

(1) The commission may classify a telecommunications service provided by a telecommunications company as a competitive telecommunications service if it finds, after notice and hearing, that the service is subject to effective competition. Effective competition means that customers of the service have reasonably available alternatives and that the service is not provided to a significant captive customer base. In determining whether a service is competitive, factors the commission shall consider include but are not limited to:

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

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

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

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

(2) When the commission finds that a telecommunications company has demonstrated that a telecommunications service is competitive, the commission may permit the service to be provided under a price list effective on ten days notice to the commission and customers. The commission shall prescribe the form of notice. The commission may adopt procedural rules necessary to implement this section.

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

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

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

(6) No losses incurred by a telecommunications company in the provision of competitive services may be recovered through rates for noncompetitive services. The commission may order refunds or credits to any class of

subscribers to a noncompetitive telecommunications service which has paid excessive rates because of below cost pricing of competitive telecommunications services.

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

(8) The commission may waive the requirements of RCW 80.36.170 and 80.36.180 in whole or in part for a service classified as competitive if it finds that competition will serve the same purpose and protect the public interest.

Sec. 17. Section 80.04.110, chapter 14, Laws of 1961 as amended by section 11, chapter 450, Laws of 1985 and RCW 80.04.110 are each amended to read as follows:

Complaint may be made by the commission of its own motion or by any person or corporation, chamber of commerce, board of trade, or any commercial, mercantile, agricultural or manufacturing society, or any body politic or municipal corporation, or by the public counsel section of the office of the attorney general, or its successor, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission: PROVIDED, That no complaint shall be entertained by the commission except upon its own motion, as to the reasonableness of the schedule of the rates or charges of any gas company, electrical company, water company, or telecommunications company, unless the same be signed by the mayor, council or commission of the city or town in which the company complained of is engaged in business, or not less than twenty-five consumers or purchasers of such gas, electricity, water or telecommunications service: PROVIDED, FURTHER, That when two or more public service corporations, (meaning to exclude municipal and other public corporations) are engaged in competition in any locality or localities in the state, either may make complaint against the other or others that the rates, charges, rules, regulations or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly, and upon such complaint or upon complaint of the commission upon its own motion, the commission shall have power, after notice and hearing as in other cases, to, by its order, subject to appeal as in other cases, correct the abuse complained of by establishing such uniform rates, charges, rules, regulations or practices in lieu of those complained of, to be observed by all of such competing public service corporations in the locality or localities specified as shall be found reasonable, remunerative, nondiscriminatory, legal, and fair or tending to prevent oppression or monopoly or to encourage competition, and upon any such hearing it shall be proper for the commission to take into

consideration the rates, charges, rules, regulations and practices of the public service corporation or corporations complained of in any other locality or localities in the state.

All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of complaints or grievances or misjoinder of parties; and in any review of the courts of orders of the commission the same rule shall apply and pertain with regard to the joinder of complaints and parties as herein provided: PROVIDED, All grievances to be inquired into shall be plainly set forth in the complaint. No complaint shall be dismissed because of the absence of direct damage to the complainant.

Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the person or corporation complained of, which shall be accompanied by a notice fixing the time when and place where a hearing will be had upon such complaint. The time fixed for such hearing shall not be less than ten days after the date of the service of such notice and complaint, excepting as herein provided. The commission shall enter its final order with respect to a complaint filed by any entity or person other than the commission within ten months from the date of filing of the complaint, unless the date is extended for cause. Rules of practice and procedure not otherwise provided for in this title may be prescribed by the commission. Such rules may include the requirement that a complainant use informal processes before filing a formal complaint.

Sec. 18. Section 44, chapter 450, Laws of 1985 and RCW 80.36.901 are each amended to read as follows:

The legislature shall conduct an intensive review of chapter 450, Laws of 1985 during the (~~(1989-1991)~~) 1991-1993 biennium to determine whether the purposes of chapter 450, Laws of 1985 have been achieved and if further relaxation of regulatory requirements is in the public interest.

Passed the Senate April 7, 1989.

Passed the House March 27, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 102

[Substitute Senate Bill No. 5009]

VESSEL REGISTRATION—EXEMPTIONS

AN ACT Relating to vessel registration; and amending RCW 88.02.030.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 16, chapter 7, Laws of 1983 as last amended by section 1, chapter 452, Laws of 1985 and RCW 88.02.030 are each amended to read as follows: