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**SENATE BILL 5615**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** Senators Kastama, Honeyford, Chase, Kilmer, and Morton

Read first time 02/01/11. Referred to Committee on Environment, Water & Energy.

1        AN ACT Relating to preserve and advance telecommunications service  
2 and connectivity in the state through regulatory parity for incumbent  
3 local exchange companies; amending RCW 80.36.610 and 80.36.450; adding  
4 new sections to chapter 80.36 RCW; creating a new section; and  
5 repealing RCW 80.36.135.

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

7        NEW SECTION.    **Sec. 1.**    The legislature finds that changes in  
8 technology and the structure of the telecommunications industry have  
9 produced conditions under which traditional regulation of local  
10 exchange companies may not in all cases provide the most efficient and  
11 effective means of achieving the public policy goals of universal  
12 service as declared in RCW 80.36.300. In light of these changes, the  
13 legislature finds and declares that local exchange companies should  
14 have the option to elect to be regulated under the optional form of  
15 regulation and pricing flexibility contained in this act.

16        NEW SECTION.    **Sec. 2.**    (1)(a) A local exchange company serving two  
17 percent or more of the access lines in the state of Washington may  
18 elect to be regulated under the minimal form of regulation set forth in

1 this section by filing with the commission a "notice of election of  
2 minimal regulation" and specifying an effective date for the election,  
3 which may not be less than sixty days from the date the notice is filed  
4 with the commission. The local exchange company shall file supporting  
5 data with the notice to demonstrate that it meets the public interest  
6 test. If the election of minimal regulation meets the public interest  
7 test set out in (b) of this subsection, the commission shall approve  
8 the election within the sixty-day review period.

9 (b) The election of minimal regulation is deemed to be in the  
10 public interest if the local exchange company demonstrates that:

11 (i) Its number of access lines served has decreased over the  
12 preceding five calendar years when comparing the first and fifth years;  
13 and

14 (ii) The number of access lines the company serves has decreased  
15 over the same comparison period as a percentage of the population of  
16 the zip codes, looking at whole zip codes, associated in whole or in  
17 part with exchanges served by that local exchange company, taking into  
18 account transfers and acquisitions during that period.

19 (2) Except as provided in subsection (3) of this section, a local  
20 exchange company electing under this section is subject to the same  
21 level of regulation as companies classified as competitive under RCW  
22 80.36.320. In approving an election, the commission shall grant the  
23 local exchange company the same waivers from regulatory requirements  
24 that are granted to companies classified as competitive under RCW  
25 80.36.320, other than a waiver from chapter 80.12 RCW. After the  
26 approval of the election of minimal regulation, the local exchange  
27 company is not required to file reports or data with the commission,  
28 except the company must file an annual report that allows for  
29 calculation of the annual regulatory fee.

30 (3) A local exchange company that has made an election under this  
31 section shall offer basic residential service throughout the area in  
32 which the company has served as an incumbent local exchange company as  
33 of the date the notice is filed under this section.

34 (4)(a) Until July 1, 2013, the local exchange company may not  
35 increase its monthly charge for basic residential service above the  
36 charge existing in tariff as of July 1, 2010, unless there has been:

37 (i) A change in local calling areas; (ii) a change in access charges;  
38 or (iii) other changes affecting basic residential service, in which

1 case the local exchange carrier may increase the monthly charge for  
2 basic residential service if the increase is approved by the  
3 commission.

4 (b) After July 1, 2013, upon request by a local exchange company,  
5 the commission shall review whether any person is offering a service  
6 that includes, alone or as part of a bundle or package of services, the  
7 essential components of basic residential service that is comparable to  
8 the local exchange company's basic residential service in an exchange  
9 served by the local exchange company. The commission shall consider  
10 intermodal forms of competition including, but not limited to, wireless  
11 service, cable telephony, and interconnected voice over internet  
12 protocol service. If the commission determines that a person is  
13 offering a service that includes, alone or as part of a bundle or  
14 package of services, the essential components of basic residential  
15 service comparable to the local exchange company's basic residential  
16 service in the exchange served by the local exchange company, then  
17 basic residential service for that area is subject to minimal  
18 regulation as set forth in this section.

19 (5) The commission shall retain full authority to regulate the  
20 local exchange company's applicable wholesale obligations under 47  
21 U.S.C. Secs. 251 and 252.

22 (6) The commission may terminate minimal regulation under this  
23 section in full or in part for a specific service, and may impose  
24 conditions on a local exchange company's pricing flexibility for that  
25 service only if it determines, after notice and hearing, that the local  
26 exchange company has materially violated statutes or rules applicable  
27 to the specific service and that revocation of or the imposition of  
28 conditions or restrictions on the local exchange company's pricing  
29 flexibility is in the public interest. In such a proceeding, the  
30 complainant bears the burden of proving the allegations in the  
31 complaint.

32 (7)(a) A local exchange company serving two percent or more of the  
33 access lines in the state of Washington shall reduce its intrastate  
34 switched access rates to the level of its interstate switched access  
35 rates in equal twenty-five percent increments, regardless of whether  
36 such a local exchange company has elected to file a notice under this  
37 section. The first reduction must occur one hundred eighty days after

1 the effective date of this section with additional twenty-five percent  
2 reductions occurring in annual increments over the following three  
3 years.

4 (b) All originating access minutes of use associated with calls to  
5 800-type numbers must be treated as terminating switched access minutes  
6 of use for the purpose of intrastate switched access compensation.

7 (8) Notwithstanding the provisions of this section, the commission  
8 retains authority to consider and resolve individual customer  
9 complaints for a local exchange company subject to minimal regulation  
10 under this section, and a local exchange company subject to minimal  
11 regulation under this section shall cooperate with any commission  
12 investigations of customer complaints. Except for basic residential  
13 service as provided in subsection (3) of this section or wholesale  
14 obligations as provided in subsection (5) of this section, actions or  
15 transactions for a local exchange company subject to minimal regulation  
16 under this section may not be deemed actions or transactions otherwise  
17 permitted, prohibited, or regulated by the commission for the purposes  
18 of RCW 19.86.170.

19 NEW SECTION. **Sec. 3.** (1) A local exchange company serving less  
20 than two percent of the access lines in the state of Washington may  
21 elect pricing flexibility as set forth in this section. The local  
22 exchange company shall notify the commission of its election by filing  
23 with the commission a notice of election of pricing flexibility. Such  
24 a notice will serve to transfer the local exchange company to pricing  
25 flexibility on the thirtieth day after filing with the commission.

26 (2) Upon election of pricing flexibility, a local exchange company  
27 may file changes to its retail tariff on not less than three calendar  
28 days' prior notice. Notwithstanding other provisions to the contrary  
29 in this title, such tariff filings may not be subject to rejection,  
30 suspension, or modification by the commission. However, if an increase  
31 is proposed to basic residential service, the local exchange company  
32 shall provide its retail subscribers to such a service written notice  
33 of the proposed increase at least thirty days prior to the effective  
34 date. If a petition, brought by ten percent of the then current  
35 subscribers, or five hundred subscribers, whichever is less, to the  
36 basic residential service, is filed with the commission at least ten  
37 days prior to the proposed effective date of the proposed increase to

1 basic residential service, the commission may exercise all or part of  
2 the powers and procedures under RCW 80.04.130 and 80.36.110(1) for such  
3 a filing. The local exchange company may withdraw the proposed  
4 increase to basic residential service at any time prior to the  
5 commission's issuance of a final determination on whether the proposed  
6 increase to basic residential service rates is fair, just, reasonable,  
7 and sufficient.

8 (3) In addition to the authority specified in RCW 80.36.332  
9 regarding packaging or bundling of telecommunications services, a local  
10 exchange company making an election under subsection (1) of this  
11 section may package or bundle any tariffed service with any nontariffed  
12 service or any combination of services as long as the tariffed services  
13 in the package or bundle are readily and separately available to  
14 customers at the separately tariffed rates and the availability and  
15 rates of the tariffed services on a stand-alone basis are displayed in  
16 the company's tariff and on its web site consistent with commission  
17 rules.

18 (4) The pricing flexibility provided under this section does not  
19 extend to the access charges assessed by a local exchange company under  
20 its tariffs or the tariffs of the Washington exchange company  
21 association in which it concurs or for any applicable wholesale  
22 obligations under 47 U.S.C. Secs. 251 and 252.

23 NEW SECTION. **Sec. 4.** The commission shall not enter any order  
24 requiring any reduction to any access charges assessed by a local  
25 exchange company serving less than two percent of the access lines in  
26 the state of Washington without the prior written consent of such a  
27 company, unless or until such time as there is adopted, implemented,  
28 and funded an explicit state universal service program that includes  
29 all incumbent local exchange companies serving less than two percent of  
30 the access lines in the state of Washington. Such a state universal  
31 service program must meet and fulfill the purposes of RCW 80.36.300(1)  
32 through (3) and be consistent with 47 U.S.C. Sec. 254. Nothing in this  
33 section may be construed as limiting the commission's authority over  
34 tariff filings that have the effect of increasing access rates or  
35 limiting any person's ability to intervene in such a proceeding.

1       **Sec. 5.** RCW 80.36.610 and 1998 c 337 s 2 are each amended to read  
2 as follows:

3       (1) The commission is authorized to take actions, conduct  
4 proceedings, and enter orders as permitted or contemplated for a state  
5 commission under the federal telecommunications act of 1996, P.L. 104-  
6 104 (110 Stat. 56), but the commission's authority to either establish  
7 a new state program or to adopt new rules to preserve and advance  
8 universal service under section 254(f) of the federal act is limited to  
9 the actions expressly authorized by RCW 80.36.600. The commission may  
10 establish by rule fees to be paid by persons seeking commission action  
11 under the federal act, and by parties to proceedings under that act, to  
12 offset in whole or part the commission's expenses that are not  
13 otherwise recovered through fees in implementing the act, but new fees  
14 or assessments charged telecommunications carriers to either establish  
15 a state program or to adopt rules to preserve and advance universal  
16 service under section 254(f) of the federal act do not take effect  
17 until the legislature has approved a state universal service program.

18       (2) The legislature intends that under the future universal service  
19 program established in this state:

20       (a) Every telecommunications carrier that provides intrastate  
21 telecommunications services shall contribute, on an equitable and  
22 nondiscriminatory basis, to the preservation and advancement of  
23 universal service in the state;

24       (b) The contributions shall be competitively and technologically  
25 neutral; and

26       (c) The universal service program to be established in accordance  
27 with RCW 80.36.600 shall not be inconsistent with the requirements of  
28 47 U.S.C. Sec. 254.

29       (3) The commission is authorized to accept and exercise any  
30 authority delegated to it from the federal communications commission  
31 arising out of the national broadband plan, or any successor plan, and  
32 to implement rules and orders of the federal communications commission,  
33 but only to the extent necessary to implement such delegated authority.

34       **Sec. 6.** RCW 80.36.450 and 2003 c 134 s 6 are each amended to read  
35 as follows:

36       The Washington telephone assistance program shall limit  
37 reimbursement to one residential switched access line per eligible

1 household, which may be part of a package or bundle of services offered  
2 by a provider, or one discounted community service voice mailbox per  
3 eligible person.

4 NEW SECTION. **Sec. 7.** Sections 2 through 4 of this act are each  
5 added to chapter 80.36 RCW.

6 NEW SECTION. **Sec. 8.** RCW 80.36.135 (Alternative regulation of  
7 telecommunications companies--Waiver of provisions during state of  
8 emergency) and 2008 c 181 s 414, 2000 c 82 s 1, 1995 c 110 s 5, & 1989  
9 c 101 s 1 are each repealed.

10 NEW SECTION. **Sec. 9.** If any provision of this act or its  
11 application to any person or circumstance is held invalid, the  
12 remainder of the act or the application of the provision to other  
13 persons or circumstances is not affected.

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