

1 primarily supported through a system of hidden and implicit subsidies,
2 but these hidden and implicit subsidies are incongruous with the
3 development of a competitive telecommunications industry;

4 (b) A new universal service program supported by explicit
5 contributions is needed to ensure that consumers in all regions of the
6 state have access to telecommunications, advanced telecommunications,
7 and information services that are reasonably comparable to those
8 services provided in urban areas and that are available at rates that
9 are reasonably comparable to rates charged for similar services in
10 urban locations;

11 (c) Current prices paid by consumers for basic telecommunications
12 services are affordable, as evidenced by a telephone penetration rate
13 of 94.8 percent for Washington households; and

14 (d) State regulation of the telecommunications industry should
15 focus less on price regulation and more on the promotion of
16 competition.

17 (2) The legislature intends that modification of state
18 telecommunications regulation shall achieve the following goals:

19 (a) Ensure that all citizens and businesses have reasonable access
20 to a modern telecommunications network to the benefit of all
21 telecommunications ratepayers in the state;

22 (b) Protect consumers by maintaining prices for noncompetitive
23 telecommunications services at affordable levels;

24 (c) Facilitate the development of an advanced telecommunications
25 and information services infrastructure in rural, insular, and high-
26 cost locations so that the benefits of competition in
27 telecommunications, advanced telecommunications, and information
28 services, as contemplated by the federal telecommunications act of
29 1996, P.L. 104-104, reach not only urban areas but also other areas of
30 the state on a reasonably comparable and timely basis;

31 (d) Minimize reliance upon implicit subsidies for universal service
32 by maximizing reliance upon explicit subsidies through explicit
33 contributions to a universal service fund, transfers from which will
34 preserve and enhance a ubiquitous telecommunications network by
35 ensuring rates and service quality in rural, insular, and high-cost
36 locations at levels that are reasonably comparable to those in other
37 areas; and

38 (e) Accelerate innovation and promotion of telecommunications
39 competition by providing a new alternative to rate-based, rate-of-

1 return regulation and by strengthening enforcement of interconnection
2 agreements and removing other barriers to competitive entry.

3 **PART 2**

4 **UNIVERSAL SERVICE--TWO PROGRAMS ESTABLISHED**

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 80.36 RCW
6 to read as follows:

7 Consistent with the legislative findings and goals under section 1
8 of this act, a universal service system, not inconsistent with the
9 requirements of 47 U.S.C. Sec. 254, shall be established. This
10 universal service system shall be divided into two separate programs:
11 A basic telecommunications services program and a telecommunications
12 infrastructure program.

13 (1) The commission shall establish the basic telecommunications
14 services program to provide specific, sufficient, and competitively and
15 technologically neutral support for basic telecommunications services
16 for telecommunications access lines located in high-cost locations.
17 Basic telecommunications services are as listed in section 8 of this
18 act.

19 (2) The Washington economic development finance authority shall
20 establish and administer the telecommunications infrastructure program
21 in coordination with the department of revenue. Under this program
22 business and occupation tax credits will be utilized to promote the
23 development of an advanced telecommunications and information services
24 infrastructure in high-cost locations so that advanced
25 telecommunications and information services may be offered in high-cost
26 locations at rates and standards of quality comparable to those offered
27 urban and other low-cost customers.

28 **PART 3**

29 **UNIVERSAL SERVICE SYSTEM--**

30 **BASIC TELECOMMUNICATIONS SERVICES PROGRAM**

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

33 The definitions in this section apply throughout sections 1 through
34 9 of this act and RCW 80.36.610 unless the context clearly requires
35 otherwise.

1 (1) "Administrator" means the administrator of the universal
2 service fund designated under section 4 of this act.

3 (2) "Advanced telecommunications provider" means any person,
4 corporation, partnership, or association that operates equipment and
5 facilities capable of distributing digital communications signals for
6 the transmission of voice, data, image, and video over distance for
7 either self use or the provision of such services to others.

8 (3) "Eligible telecommunications provider" means a
9 telecommunications carrier that has met the criteria established by the
10 commission under section 8 of this act and is qualified to receive
11 distributions from the universal service fund for the provision of
12 basic telecommunications services in high-cost locations.

13 (4) "End-user telecommunications revenue" means the
14 telecommunications carriers' international, interstate, and intrastate
15 revenues derived from Washington end-users for telecommunications and
16 telecommunications services.

17 (5) "Federal universal service program" means a universal service
18 program established under 47 U.S.C. Secs. 214(e) and 254.

19 (6) "Federal universal service support" means moneys paid under 47
20 U.S.C. Sec. 254(e) to eligible telecommunications carriers that provide
21 basic telecommunications services in high-cost locations.

22 (7) "High-cost location" means a rural, insular, or other location
23 where the cost of providing telecommunications services is greater than
24 an appropriate price benchmark as provided in section 5 of this act.

25 (8) "Incumbent local exchange carrier" as defined in 47 U.S.C. Sec.
26 251(h)(1), means, with respect to an area, the local exchange carrier
27 that:

28 (a) On February 8, 1996, provided telephone exchange service in
29 such area; and

30 (b)(i) On February 8, 1996, was deemed to be a member of the
31 exchange carrier association pursuant to section 69.601(b) of the
32 federal communications commission's regulations (47 C.F.R. 69.601(b));
33 or

34 (ii) Is a person or entity that, on or after February 8, 1996,
35 became a successor or assign of a member described in (b)(i) of this
36 subsection.

37 (9) "Primary telecommunications line" means the first access line
38 that provides a connection to the public switched telecommunications
39 network for each residential or business customer.

1 (10) "Telecommunications," as defined in 47 U.S.C. Sec. 153(43),
2 means the transmission, between or among points specified by the user,
3 of information of the user's choosing, without change in the form or
4 content of the information as sent and received.

5 (11) "Telecommunications access line" means the connection of the
6 end-user customer to the local and toll public switched
7 telecommunications network.

8 (12) "Telecommunications carrier" has the same meaning as that term
9 is defined in 47 U.S.C. Sec. 153(44) on the effective date of this act.

10 (13) "Telecommunications services," as defined in 47 U.S.C. Sec.
11 153(46), means the offering of telecommunications for a fee directly to
12 the public, or to such classes of users as to be effectively available
13 directly to the public, regardless of the facilities used.

14 (14) "Universal service fund" means the basic telecommunications
15 services universal service fund created in section 4 of this act.

16 NEW SECTION. **Sec. 4.** A new section is added to chapter 80.36 RCW
17 to read as follows:

18 (1) In establishing the basic telecommunications services program
19 under section 2 of this act, the commission shall create a basic
20 telecommunications services universal service fund. This fund shall be
21 outside the state treasury and transfers from the universal service
22 fund shall not be subject to appropriation. The universal service fund
23 shall include contributions by telecommunications carriers as provided
24 in subsection (5) of this section, penalties imposed and paid under
25 section 7 of this act, and other moneys authorized to be deposited in
26 the universal service fund by law or by order of any court of competent
27 jurisdiction.

28 (2) Basic telecommunications services are as listed in section 5(1)
29 of this act.

30 (3) Each year the commission shall set by order the full and
31 adjusted sizes of the universal service fund as follows:

32 (a) If a federal universal service program provides federal
33 universal service support for:

34 (i) Only primary telecommunications access lines located in high-
35 cost locations, then the commission shall set the full size of the
36 universal service fund at the amount of money needed to provide support
37 for basic telecommunications services for one primary

1 telecommunications access line per each residential or business
2 customer located in a high-cost location;

3 (ii) All telecommunications access lines located in high-cost
4 locations, then the commission shall set the full size of the universal
5 service fund at the amount of money needed to provide support for basic
6 telecommunications services for all telecommunications access lines
7 located in a high-cost location.

8 (b) If federal universal service support is uncertain because a
9 federal universal service program has not begun, or has terminated or
10 is expected to terminate, then the commission shall set the full size
11 of the universal service fund at the amount of money needed to provide
12 support for basic telecommunications services for one primary
13 telecommunications access line per each residential or business
14 customer located in a high-cost location.

15 (c) After determining the full size of the universal service fund,
16 the commission shall determine the adjusted universal service fund
17 size. The adjusted universal service fund size shall equal the full
18 universal service fund size minus:

19 (i) Any universal service fund balance in excess of ten million
20 dollars carried over from the previous year; and

21 (ii) The amount of federal universal service support expected to be
22 distributed during the year to eligible telecommunications carriers for
23 their provision of basic telecommunications services in high-cost
24 locations located in this state.

25 (4) To determine the amount of money needed to provide universal
26 service support for basic telecommunications services for a
27 telecommunications access line located in a high-cost location, the
28 commission shall:

29 (a) Set price benchmarks as provided in section 5 of this act; and

30 (b) Compute the amount of universal service support needed per
31 telecommunications access line located in a high-cost area as the
32 difference between the cost to provide basic telecommunications
33 services and the appropriate price benchmark amount.

34 (5)(a) The commission shall require every telecommunications
35 carrier to contribute to the universal service fund on an equitable and
36 nondiscriminatory basis.

37 (b) The sum of all contributions shall equal the amount of money
38 set as the adjusted size of the universal service fund under subsection
39 (3) of this section plus an amount collected to cover the universal

1 service fund administrator's budget. The budget shall be determined as
2 provided in subsection (6) of this section.

3 (c) Annually the commission shall establish each carrier's
4 contribution based on each carrier's proportionate share of total end-
5 user telecommunications revenue.

6 (6) The universal service fund shall be administered by an
7 independent fund administrator selected by the commission according to
8 criteria established under subsection (10) of this section. Prior to
9 each year, the commission shall establish and approve a budget for
10 universal service administration. Administrative expenses shall be
11 paid out of the administrator's expenses account of the universal
12 service fund after approval by the commission. The administrator may
13 establish accounts in one or more independent financial institutions.
14 Annually the administrator's administration of the universal service
15 fund shall be subject to audit.

16 (7) The universal service fund shall be divided into two separate
17 accounts:

18 (a) The administrator's expenses account; and

19 (b) The basic telecommunications services account.

20 (8) The administrator shall deposit the amount of contributions
21 collected to cover the administrator's budget into the administrator's
22 expenses account and the remaining contributions to the basic
23 telecommunications services account.

24 (9)(a) Each telecommunications carrier shall provide information
25 the commission or the administrator deems necessary for the
26 implementation and operation of the program, including, but not limited
27 to, information on costs to the company to provide service in high-cost
28 locations.

29 (b) The provisions of RCW 80.04.095 shall apply to any information
30 submitted under this subsection.

31 (10) In establishing the universal service program, the commission
32 shall adopt rules as needed to establish and operate the universal
33 service program, and that are consistent with the legislative direction
34 provided by this act. At a minimum, the rules shall include the
35 following:

36 (a) Provisions for the operation of the universal service fund;

37 (b) Criteria for the selection of an independent third party
38 administrator of the universal service fund through a competitive bid
39 process;

1 (c) Reporting requirements for telecommunications carriers; and
2 (d) The methodology for minimizing the implicit sources of support
3 as new explicit sources of universal service support are established.

4 (11) The commission may delegate to the commission secretary or
5 other staff the authority to resolve disputes, approve expenses of the
6 administrator, and make other administrative decisions necessary to the
7 administration and supervision of the program consistent with the
8 relevant statutes and commission rules.

9 NEW SECTION. **Sec. 5.** A new section is added to chapter 80.36 RCW
10 to read as follows:

11 (1) The commission shall set separate residential and business
12 price benchmarks for each telephone exchange area located in a high-
13 cost location. The price benchmarks for each telephone exchange area
14 shall equal the amount that an incumbent local exchange carrier charged
15 per single residential or business wireline telecommunications access
16 line on January 1, 1999, for the following package of basic
17 telecommunications services:

- 18 (a) Single-party service;
- 19 (b) Voice grade access to the public switched network;
- 20 (c) Support for local usage;
- 21 (d) Dual tone multifrequency signaling (touch-tone);
- 22 (e) Access to emergency services (E911);
- 23 (f) Access to operator services;
- 24 (g) Access to interexchange services;
- 25 (h) Access to directory assistance and white pages directory; and
- 26 (i) Toll limitation services.

27 (2) In the event that one of these basic telecommunications
28 services was not available in a given local telephone exchange on
29 January 1, 1999, then the price benchmarks shall be set at the amount
30 that was charged for those basic telecommunications services listed in
31 subsection (1) of this section that were available on January 1, 1999.

32 (3) If two or more incumbent local exchange carriers provided basic
33 telecommunications service in the same telephone exchange on January 1,
34 1999, the price benchmarks shall be set at the highest amounts that
35 were charged by an incumbent local exchange carrier for basic
36 telecommunications services for residential or business wireline
37 telecommunications access lines located in that exchange on January 1,
38 1999.

1 (4) When a telecommunications access line for a customer located in
2 a given telephone exchange area is provided by a nonwireline carrier,
3 the price benchmark for this nonwireline telecommunications access line
4 shall equal the business benchmark set for a wireline
5 telecommunications access line for that telephone exchange area.

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

8 The commission shall coordinate the state universal service program
9 with any federal universal service program. The commission shall
10 establish rules which the independent fund administrator shall use to
11 jointly administer federal and state universal service support, if such
12 joint administration is permitted by federal law.

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

15 (1) In addition to any other penalties prescribed by law, the
16 commission may impose penalties for delays in making the required
17 reports or contributions under the universal service program basic
18 telecommunications services established in section 2 of this act. Such
19 penalties shall be calculated as a percentage of the carrier's required
20 contribution for the previous calendar year. The penalties shall be as
21 follows:

22 (a) For delays of more than seven days but less than fourteen days,
23 two percent;

24 (b) For delays of at least fourteen days but less than twenty-one
25 days, four percent;

26 (c) For delays of at least twenty-one days but less than twenty-
27 eight days, six percent;

28 (d) For delays of twenty-eight days or more, eight percent; and

29 (e) For delays of thirty-five days or more, in the commission's
30 discretion, an additional two percent per week.

31 (2) If a carrier owed no contributions for the previous calendar
32 year, then the penalties shall be as follows:

33 (a) For late payment of required contributions, the penalties shall
34 be calculated by multiplying the percentages set forth in subsection
35 (1) of this section against the amount of the required contributions
36 that is past due; and

1 (b) For late filing of a required report, the penalty shall be one
2 hundred dollars for every day that a report is late.

3 (3) Any penalties imposed by the commission under this section
4 shall be paid to the universal service fund's basic telecommunications
5 services account.

6 (4) In addition to any penalties imposed under this section, the
7 administrator may withhold distributions from the basic
8 telecommunications services account to any eligible telecommunications
9 carrier that fails to submit information as required under this act.

10 NEW SECTION. **Sec. 8.** A new section is added to chapter 80.36 RCW
11 to read as follows:

12 To implement the basic telecommunications services program
13 established under section 2 of this act, the commission shall:

14 (1) Establish criteria for designating telecommunications carriers
15 as being eligible to receive distributions from the universal service
16 fund's basic telecommunications services account for the provision of
17 basic telecommunications services in high-cost locations. The criteria
18 may include a requirement that a carrier serve all persons requesting
19 service within a geographical area for which designation is to be made;

20 (2) Designate telecommunications carriers as eligible
21 telecommunications carriers under the criteria established under
22 subsection (1) of this section;

23 (3) Provide specific, sufficient, competitively neutral, and
24 technologically neutral universal service support for basic
25 telecommunications services for one primary line per residential or
26 business customer located in a high-cost location. In the event that
27 a federal universal service program provides explicit support for all
28 telecommunications lines located in a high-cost location, then the
29 commission shall provide specific, sufficient, competitively neutral,
30 and technologically neutral universal service support for all
31 telecommunications lines located in a high-cost location;

32 (4) Designate by rule the following services as basic
33 telecommunications services:

34 (a) Single-party service;

35 (b) Voice grade access to the public switched network;

36 (c) Support for local usage;

37 (d) Dual tone multifrequency signaling (touch-tone);

38 (e) Access to emergency services (E911);

- 1 (f) Access to operator services;
- 2 (g) Access to interexchange services;
- 3 (h) Access to directory assistance and white pages directory; and
- 4 (i) Toll limitation services;

5 (5) Periodically recommend to the legislature that additional
6 services be designated as basic telecommunications services. In
7 determining whether additional services should be recommended to the
8 legislature for designation as basic services, the commission shall
9 take into account advances in telecommunications and information
10 technologies and services and shall consider the extent to which such
11 telecommunications services:

- 12 (a) Are essential to education, public health, or public safety;
- 13 (b) Have, through the operation of market choices by customers,
14 been subscribed to by a substantial majority of residential customers;
- 15 (c) Are being deployed in public telecommunications networks by
16 telecommunications carriers; and
- 17 (d) Are consistent with the public interest, convenience, and
18 necessity; and

19 (6) Establish by rule the criteria and method to be used by the
20 administrator for making distributions from the universal service
21 fund's basic telecommunications services account to eligible
22 telecommunications carriers serving high-cost locations.

23 NEW SECTION. **Sec. 9.** A new section is added to chapter 80.36 RCW
24 to read as follows:

25 The commission periodically shall audit, or contract for an audit
26 of, telecommunications carriers that receive universal service support
27 under section 8 of this act to ensure that the support is used only for
28 the purposes of the basic telecommunications services subprogram.

29 **Sec. 10.** RCW 80.36.610 and 1998 c 337 s 2 are each amended to read
30 as follows:

31 ~~((1))~~ The commission is authorized to take actions, conduct
32 proceedings, and enter orders as permitted or contemplated for a state
33 commission under the federal telecommunications act of 1996, P.L. 104-
34 104 (110 Stat. 56), ~~((but the commission's authority to either
35 establish a new state program or to adopt new rules to preserve and
36 advance universal service under section 254(f) of the federal act is
37 limited to the actions expressly authorized by RCW 80.36.600))~~ provided

1 that such actions, proceedings, and orders are consistent with the
2 legislative direction provided by this section, sections 1 through 9,
3 13, and 15 through 17 of this act, and RCW 43.163.010, 43.163.005, and
4 43.163.120. The commission may establish by rule fees to be paid by
5 persons seeking commission action under the federal act, and by parties
6 to proceedings under that act, to offset in whole or part the
7 commission's expenses that are not otherwise recovered through fees in
8 implementing the act(~~(, but new fees or assessments charged~~
9 ~~telecommunications carriers to either establish a state program or to~~
10 ~~adopt rules to preserve and advance universal service under section~~
11 ~~254(f) of the federal act do not take effect until the legislature has~~
12 ~~approved a state universal service program.~~

13 ~~(2) The legislature intends that under the future universal service~~
14 ~~program established in this state:~~

15 ~~(a) Every telecommunications carrier that provides intrastate~~
16 ~~telecommunications services shall contribute, on an equitable and~~
17 ~~nondiscriminatory basis, to the preservation and advancement of~~
18 ~~universal service in the state;~~

19 ~~(b) The contributions shall be competitively and technologically~~
20 ~~neutral; and~~

21 ~~(c) The universal service program to be established in accordance~~
22 ~~with RCW 80.36.600 shall not be inconsistent with the requirements of~~
23 ~~47 U.S.C. Sec. 254)).~~

24 PART 4

25 UNIVERSAL SERVICE SYSTEM--

26 TELECOMMUNICATIONS INFRASTRUCTURE PROGRAM

27 **Sec. 11.** RCW 43.163.005 and 1990 c 53 s 1 are each amended to read
28 as follows:

29 Economic development is essential to the health, safety, and
30 welfare of all Washington citizens by broadening and strengthening
31 state and local tax bases, providing meaningful employment
32 opportunities and thereby enhancing the quality of life. Economic
33 development increasingly is dependent upon the ability of small-sized
34 and medium-sized businesses and farms to finance growth and trade
35 activities. Many of these businesses face an unmet need for capital
36 that limits their growth. These unmet capital needs are a problem in
37 both urban and rural areas which cannot be solved by the private sector

1 alone. There presently exist some federal programs, private credit
2 enhancements and other financial tools to complement the private
3 banking industry in providing this needed capital. More research is
4 needed to develop effective strategies to enhance access to capital and
5 thereby stimulate economic development.

6 Economic development is also increasingly dependent upon the
7 existence of an advanced telecommunications and information
8 infrastructure. For a healthy economy, businesses located in rural,
9 insular, and other high-cost locations need access to advanced
10 telecommunications and information services at rates and standards of
11 quality that are reasonably comparable to rates and standards of
12 quality that are offered in urban and other low-cost locations.

13 It is the purpose of this chapter to establish a state economic
14 development finance authority to act as a financial conduit that,
15 without using state funds or lending the credit of the state or local
16 governments, can issue nonrecourse revenue bonds, and participate in
17 federal, state, and local economic development programs to help
18 facilitate access to needed capital by Washington businesses that
19 cannot otherwise readily obtain needed capital on terms and rates
20 comparable to large corporations, and can help local governments obtain
21 capital more efficiently. It is also a primary purpose of this chapter
22 to encourage the employment and retention of Washington workers at
23 meaningful wages and to develop innovative approaches to the problem of
24 unmet capital needs. An additional purpose of this chapter is to
25 provide guidance and direction in facilitating the development of an
26 advanced telecommunications and information services infrastructure in
27 rural, insular, and high-cost locations so that the benefits of
28 competition in telecommunications, advanced telecommunications, and
29 information services reach not only urban areas but also other areas of
30 the state on a reasonably comparable and timely basis. This chapter is
31 enacted to accomplish these and related purposes and shall be construed
32 liberally to carry out its purposes and objectives.

33 **Sec. 12.** RCW 43.163.010 and 1994 c 238 s 1 and 1994 c 92 s 498 are
34 each reenacted and amended to read as follows:

35 As used in this chapter, the following words and terms have the
36 following meanings, unless the context requires otherwise:

37 (1) "Advanced telecommunications provider" means any person,
38 corporation, partnership, or association that operates equipment and

1 facilities capable of distributing digital communications signals for
2 the transmission of voice, data, image, and video over distance for
3 either self use or the provision of such services to others;

4 (2) "Authority" means the Washington economic development finance
5 authority created under RCW 43.163.020 or any board, body, commission,
6 department or officer succeeding to the principal functions of the
7 authority or to whom the powers conferred upon the authority shall be
8 given by law;

9 ((+2)) (3) "Bonds" means any bonds, notes, debentures, interim
10 certificates, conditional sales or lease financing agreements, lines of
11 credit, forward purchase agreements, investment agreements, and other
12 banking or financial arrangements, guaranties, or other obligations
13 issued by or entered into by the authority. Such bonds may be issued
14 on either a tax-exempt or taxable basis;

15 ((+3)) (4) "Borrower" means one or more public or private persons
16 or entities acting as lessee, purchaser, mortgagor, or borrower who has
17 obtained or is seeking to obtain financing either from the authority or
18 from an eligible banking organization that has obtained or is seeking
19 to obtain funds from the authority to finance a project. A borrower
20 may include a party who transfers the right of use and occupancy to
21 another party by lease, sublease or otherwise, or a party who is
22 seeking or has obtained a financial guaranty from the authority;

23 ((+4)) (5) "Economic development activities" means activities
24 related to: Manufacturing, processing, research, production, assembly,
25 tooling, warehousing, pollution control, energy generating,
26 conservation, transmission, sports facilities, and industrial parks;

27 (6) "Eligible banking organization" means any organization subject
28 to regulation by the director of the department of financial
29 institutions, any national bank, federal savings and loan association,
30 and federal credit union located within this state;

31 ((+5)) (7) "Eligible export transaction" means any preexport or
32 export activity by a person or entity located in the state of
33 Washington involving a sale for export and product sale which, in the
34 judgment of the authority: (a) Will create or maintain employment in
35 the state of Washington, (b) will obtain a material percent of its
36 value from manufactured goods or services made, processed or occurring
37 in Washington, and (c) could not otherwise obtain financing on
38 reasonable terms from an eligible banking organization;

1 ~~((6))~~ (8) "Eligible farmer" means any person who is a resident of
2 the state of Washington and whose specific acreage qualifying for
3 receipts from the federal department of agriculture under its
4 conservation reserve program is within the state of Washington;

5 ~~((7))~~ (9) "Eligible person" means an individual, partnership,
6 corporation, or joint venture carrying on business, or proposing to
7 carry on business within the state and is seeking financial assistance
8 under RCW 43.163.210;

9 ~~((8))~~ (10) "Financing agreements" means a contractual arrangement
10 with an eligible person whereby the authority obtains rights from or in
11 an invention or product or proceeds from an invention or product in
12 exchange for the granting of financial and other assistance to the
13 person;

14 (11) "Financial assistance" means the infusion of capital to
15 persons for use in the development and exploitation of specific
16 inventions and products;

17 ~~((9))~~ (12) "Financing document" means an instrument executed by
18 the authority and one or more persons or entities pertaining to the
19 issuance of or security for bonds, or the application of the proceeds
20 of bonds or other funds of, or payable to, the authority. A financing
21 document may include, but need not be limited to, a lease, installment
22 sale agreement, conditional sale agreement, mortgage, loan agreement,
23 trust agreement or indenture, security agreement, letter or line of
24 credit, reimbursement agreement, insurance policy, guaranty agreement,
25 or currency or interest rate swap agreement. A financing document also
26 may be an agreement between the authority and an eligible banking
27 organization which has agreed to make a loan to a borrower;

28 ~~((10))~~ (13) "High-cost location" means a rural, insular, or other
29 location where the cost of providing telecommunications services is
30 greater than an appropriate price benchmark as provided in section 5 of
31 this act;

32 (14) "Plan" means the general plan of economic development finance
33 objectives developed and adopted by the authority, and updated from
34 time to time, as required under RCW 43.163.090. This plan is distinct
35 from the telecommunications infrastructure grants plan developed under
36 section 13(5) of this act;

37 ~~((11))~~ "~~Economic development activities~~" means ~~activities related~~
38 ~~to: Manufacturing, processing, research, production, assembly,~~

1 tooling, warehousing, pollution control, energy generating,
2 conservation, transmission, and sports facilities and industrial parks;

3 ~~((12))~~ (15) "Project costs" means costs of:

4 (a) Acquisition, lease, construction, reconstruction, remodeling,
5 refurbishing, rehabilitation, extension, and enlargement of land,
6 rights to land, buildings, structures, docks, wharves, fixtures,
7 machinery, equipment, excavations, paving, landscaping, utilities,
8 approaches, roadways and parking, handling and storage areas, and
9 similar ancillary facilities, and any other real or personal property
10 included in an economic development activity;

11 (b) Architectural, engineering, consulting, accounting, and legal
12 costs related directly to the development, financing, acquisition,
13 lease, construction, reconstruction, remodeling, refurbishing,
14 rehabilitation, extension, and enlargement of an activity included
15 under subsection ~~((11))~~ (5) of this section, including costs of
16 studies assessing the feasibility of an economic development activity;

17 (c) Finance costs, including the costs of credit enhancement and
18 discounts, if any, the costs of issuing revenue bonds, and costs
19 incurred in carrying out any financing document;

20 (d) Start-up costs, working capital, capitalized research and
21 development costs, capitalized interest during construction and during
22 the eighteen months after estimated completion of construction, and
23 capitalized debt service or repair and replacement or other appropriate
24 reserves;

25 (e) The refunding of any outstanding obligations incurred for any
26 of the costs outlined in this subsection; and

27 (f) Other costs incidental to any of the costs listed in this
28 section;

29 ~~((13))~~ (16) "Product" means a product, device, technique, or
30 process that is or may be exploitable commercially. "Product" does not
31 refer to pure research, but shall be construed to apply to products,
32 devices, techniques, or processes that have advanced beyond the
33 theoretic stage and are readily capable of being, or have been, reduced
34 to practice;

35 ~~((14))~~ "Financing agreements" means, and includes without
36 limitation, a contractual arrangement with an eligible person whereby
37 the authority obtains rights from or in an invention or product or
38 proceeds from an invention or product in exchange for the granting of
39 financial and other assistance to the person.) (17)

1 "Telecommunications infrastructure improvement" means the construction
2 or upgrade of real property or tangible personal property used to
3 distribute digital communications signals for the transmission of
4 voice, data, image, and video over distance. It includes, but is not
5 limited to, activities such as the laying of fiber optic cable, the
6 construction of terrestrial facilities to support digital
7 communications by satellite, and the construction of towers and other
8 facilities to support digital communications through nonwireline
9 technologies.

10 NEW SECTION. Sec. 13. A new section is added to chapter 43.163
11 RCW to read as follows:

12 (1) In implementing a telecommunications infrastructure program
13 established under section 2 of this act, the authority shall review
14 applications for business and occupation tax credits on a competitive
15 basis, in accordance with criteria adopted under the telecommunications
16 infrastructure plan under subsection (5) of this section.

17 (2) The authority shall recommend to the department of revenue
18 which tax credit applications should be approved, provided that each
19 year the total amount of tax credits recommended for approval does not
20 exceed the available amount of tax credits computed under section 15 of
21 this act. Each year the authority shall deliver to the department of
22 revenue a list of the telecommunications infrastructure tax credits
23 recommended for approval.

24 (3) The department of revenue shall approve applications for these
25 telecommunications infrastructure tax credits as provided in section 16
26 of this act.

27 (4) The authority shall allow a joint tax credit application to be
28 submitted under this section when two or more advanced
29 telecommunications providers intend to jointly construct a
30 telecommunications infrastructure improvement.

31 (5) As a guide for operating the telecommunications infrastructure
32 program, the authority shall prepare a telecommunications
33 infrastructure plan addressing, but not limited to, the following:

34 (a) The manner in which business and residential consumers located
35 in high-cost locations and advanced telecommunications providers will
36 be informed about the business and occupation tax credits available on
37 a competitive basis for telecommunications infrastructure improvements
38 made in high-cost locations;

1 (b) Criteria for evaluating and ranking tax credit applications.
2 At a minimum the criteria must include consideration of the following
3 factors:

4 (i) The number of jobs to be created or retained as a result of a
5 telecommunications infrastructure improvement in a high-cost location;

6 (ii) Comparability between rates generally charged for advanced
7 telecommunications and information services in urban and other low-cost
8 locations of the state to the rates that that tax credit applicant
9 indicates it will charge customers in the high-cost location where the
10 infrastructure improvement is to be made, if the applicant will provide
11 advanced telecommunications and information services to others;

12 (iii) The size of the telecommunications bandwidth that will be
13 made available to consumers in a high-cost location as a result of the
14 telecommunications infrastructure improvement;

15 (iv) The amount of money that an applicant will spend from its own
16 funds, in excess of the expenditure amount for which a tax credit
17 application is made, to make a telecommunications infrastructure
18 improvement in a high-cost location; and

19 (v) The geographical distribution of the tax credits to be
20 recommended for approval;

21 (c) Information that tax credit applicants shall be required to
22 provide with their applications. At a minimum a tax credit applicant
23 must attach to the application a list of the businesses that have
24 requested advanced telecommunications and information services which
25 cannot be supported by the existing telecommunications infrastructure
26 located in the area where the telecommunications infrastructure
27 improvement is to be made. The list shall indicate for each business
28 the number of jobs expected to be created or retained as a result of
29 the telecommunications infrastructure improvement.

30 (6) No more than fifteen percent of tax credits recommended for
31 approval in any one year shall be for telecommunications infrastructure
32 projects located in the same county.

33 (7) No more than fifteen percent of the tax credits recommended for
34 approval in any one year shall be for telecommunications infrastructure
35 projects to be constructed by the same advanced telecommunications
36 provider or its affiliates.

37 (8) The authority shall conduct at least one public hearing on its
38 telecommunications infrastructure plan before adoption. A plan shall
39 be adopted by resolution of the authority no later than one year after

1 the effective date of this act. The authority may periodically update
2 its telecommunications infrastructure plan as the authority deems
3 necessary, but changes shall take effect at the beginning of the
4 calendar year following adoption of the changes by resolution.

5 (9) This section expires December 31, 2005.

6 **Sec. 14.** RCW 43.163.120 and 1998 c 245 s 51 are each amended to
7 read as follows:

8 The authority shall receive no appropriation of state funds. The
9 department of community, trade, and economic development shall provide
10 staff to the authority, to the extent permitted by law, to enable the
11 authority to accomplish its purposes; the staff from the department of
12 community, trade, and economic development may assist the authority in
13 organizing itself and in designing programs, but shall not be involved
14 in the issuance of bonds ~~((or))~~, in making credit decisions regarding
15 financing provided to borrowers by the authority, or in reviewing and
16 recommending for approval application for telecommunications
17 infrastructure tax credits.

18 NEW SECTION. **Sec. 15.** A new section is added to chapter 82.04 RCW
19 to read as follows:

20 For purposes of the universal service telecommunications
21 infrastructure program established in section 2 of this act, each
22 calendar year the available amount of tax credits shall be determined
23 as follows:

24 (1) In Washington the average rate of growth in gross revenues for
25 telephone businesses during calendar years 1992 through 1996 was seven
26 percent. For purposes of this section, seven percent shall be the base
27 growth rate.

28 (2) Every October the department of revenue shall:

29 (a) Compute total tax paid under this chapter by businesses in
30 North American industry classification system code 5133 for the last
31 two calendar years. If at any time the United States office of
32 management and budget or a successor agency should change or replace
33 the present North American industry classification code system, the
34 department of revenue shall use the code system issued by the office of
35 management and budget or its successor agency to determine the code
36 corresponding to the one listed in this definition;

1 (b) Compute the rate of growth that occurred in taxes paid under
2 this chapter by telecommunications businesses by subtracting total
3 taxes paid from two calendar years ago from last calendar year's total
4 taxes paid and then dividing this amount by total taxes paid from two
5 calendar years ago;

6 (c) Compare the growth rate computed under (b) of this subsection
7 to the base growth rate. If the rate of growth computed under (b) of
8 this subsection exceeds the base growth rate, then the department of
9 revenue shall subtract the base growth rate from the growth rate
10 computed under (b) of this subsection and multiply this amount against
11 total taxes paid by telecommunications businesses for the last calendar
12 year. The product of this calculation or thirty million dollars,
13 whichever is less, shall be the amount of tax credits available for the
14 calendar year beginning on January 1st for the telecommunications
15 infrastructure program;

16 (d) If the rate of growth computed under (b) of this subsection is
17 less than the base growth rate, then no moneys shall be available for
18 tax credits; and

19 (e) By October 15th of each year the department of revenue shall
20 inform the Washington economic development finance authority of the
21 amount of tax credits available for the telecommunications
22 infrastructure program.

23 (3) This section expires December 31, 2005.

24 NEW SECTION. **Sec. 16.** A new section is added to chapter 82.04 RCW
25 to read as follows:

26 (1)(a) An advanced telecommunications provider may be allowed
27 credits against tax due under this chapter or chapter 82.16 RCW for
28 expenses incurred in constructing telecommunications infrastructure
29 improvements in high-cost locations. Credits approved by the
30 department under subsection (2) of this section may be claimed over a
31 three-year period but may not exceed the amount of tax that would
32 otherwise be due under this chapter and chapter 82.16 RCW during the
33 three-year period.

34 (b) The definitions in this subsection apply throughout this
35 section unless the context clearly requires otherwise.

36 (i) "Advanced telecommunications provider" means any person,
37 corporation, partnership, or association that operates equipment and
38 facilities capable of distributing digital communications signals for

1 the transmission of voice, data, image, and video over distance for
2 either self use or the provision of such services to others.

3 (ii) "High-cost location" means a rural, insular, or other location
4 where the cost of providing telecommunications services is greater than
5 an appropriate price as provided in section 5 of this act.

6 (iii) "Telecommunications infrastructure improvement" means the
7 construction or upgrade of real property or tangible personal property
8 used to distribute digital communications signals for the transmission
9 of voice, data, image, and video over distance. It includes, but is
10 not limited to, activities such as the laying of fiber optic cable, the
11 construction of terrestrial facilities to support digital
12 communications by satellite, and the construction of towers and other
13 facilities to support digital communications through nonwireline
14 technologies.

15 (2) The department shall approve a tax credit application and allow
16 a person to claim a tax credit under this section, if the Washington
17 economic development and finance authority has recommended the tax
18 credit application for approval to the department as provided in
19 section 13 of this act.

20 (3)(a) A person is required to repay any tax credits received plus
21 interest if the person who claims a tax credit under this section fails
22 to:

23 (i) Construct a telecommunications infrastructure improvement in
24 accordance with the specifications for bandwidth, rates, and other
25 criteria that the person indicated the improvement would meet in the
26 tax credit application; or

27 (ii) Complete the telecommunications infrastructure improvement
28 within three years of the tax credit application being approved by the
29 department.

30 (b) The Washington economic development finance authority shall be
31 responsible for informing the department of revenue when a tax credit
32 recipient must repay tax credits received plus interest.

33 (4) This section expires December 31, 2005.

34 NEW SECTION. **Sec. 17.** A new section is added to chapter 82.16 RCW
35 to read as follows:

36 (1) An advanced telecommunications provider may be allowed credits
37 against tax due under this chapter or chapter 82.04 RCW for expenses

1 incurred in constructing telecommunications infrastructure improvements
2 in high-cost locations, as provided in section 16 of this act.

3 (2) This section expires December 31, 2005.

4 **PART 5**

5 **NEW PRICE CAP REGULATORY OPTION**

6 NEW SECTION. **Sec. 18.** A new section is added to chapter 80.36 RCW
7 to read as follows:

8 (1)(a) Notwithstanding the provisions of RCW 80.36.135, an
9 incumbent local exchange carrier may elect to have the rates, terms,
10 and conditions for its noncompetitive telecommunications services
11 determined under the provisions of this section.

12 (b) Noncompetitive telecommunications services are
13 telecommunications services that have not been determined to be
14 competitive telecommunications services under RCW 80.36.330 and that
15 have not been presumed to be competitive under subsection (7) of this
16 section.

17 (c) For the purposes of this section, an "incumbent local exchange
18 carrier" as defined in 47 U.S.C. Sec. 251(h)(1), means, with respect to
19 an area, the local exchange carrier that:

20 (i) On February 8, 1996, provided telephone exchange service in
21 such area; and

22 (ii)(A) On February 8, 1996, was deemed to be a member of the
23 exchange carrier association under section 69.601(b) of the federal
24 communication commission's regulations (47 C.F.R. 69.601(b)); or

25 (B) Is a person or entity that, on or after February 8, 1996,
26 became a successor or assign of a member described in (c)(ii)(A) of
27 this subsection.

28 (2) An incumbent local exchange carrier shall file a notice of its
29 intent with the commission to be an electing company and to be
30 regulated under this section.

31 (3) Upon such a filing, all rates, terms, and conditions for
32 noncompetitive telecommunications services provided by the incumbent
33 local exchange carrier that were contained in the tariffs and end-user
34 contracts in effect on the date of election under this section shall be
35 deemed fair, just, and reasonable.

36 (4) Nothing in this section restricts any customer's right to
37 enforce any quality of service rules and standards. Not later than one

1 hundred eighty days from the effective date of this act, the commission
2 shall complete a proceeding to ensure that all such rules and standards
3 are applied equally to all telecommunications providers.

4 (5) Nothing in this section restricts any telecommunications
5 company's right to enforce wholesale rules and standards.

6 (6) The rates for telecommunications services that were in effect
7 on the date of filing of a notice of election by an incumbent local
8 exchange carrier under subsection (3) of this section shall be the
9 maximum amount that such incumbent local exchange carrier may charge
10 for such services. An electing company may adjust prices subject to
11 this subsection effective on ten days' notice, without commission
12 approval, so long as no price exceeds the maximum amount set by this
13 subsection.

14 (7)(a) Whenever an electing company offers a service that was not
15 available in a given exchange or wire center on the date that the
16 company elected to be regulated under this section, the subsequent
17 introduction of the service in the exchange or wire center shall be
18 presumed to be an offering of a competitive telecommunications service
19 if it is a new service. A new service is a service that provides a
20 significant difference in transmission speed, capability,
21 functionality, or reliability in comparison to the services that
22 existed in the exchange or wire center on the date that a company
23 elected to be regulated under this section.

24 (b) The provisions of (a) of this subsection shall not apply if the
25 service introduced into an exchange or wire center area after the date
26 that a company elected to be regulated under this section is a basic
27 telecommunications service. The total amount charged a consumer for
28 basic telecommunications services shall not exceed the price benchmarks
29 set for basic telecommunications services under section 5 of this act.

30 (8) Price cap regulation shall replace the current rate-base, rate-
31 of-return form of regulation by the commission of an electing company.
32 The commission shall not consider rate-of-return, rate-base, or
33 earnings of an electing company in connection with its oversight of an
34 electing company's operations.

35 (9) An electing company under this section shall not be subject to
36 the provisions of the following: RCW 80.04.130 (1) and (2), chapter
37 80.16 RCW, RCW 80.36.110, 80.36.140, and 80.36.150 (1) and (2).

1 **Sec. 19.** RCW 80.36.330 and 1998 c 337 s 6 are each amended to read
2 as follows:

3 (1) The commission may classify a telecommunications service
4 provided by a telecommunications company as a competitive
5 telecommunications service if the service is subject to effective
6 competition. Effective competition means that customers of the service
7 have reasonably available alternatives and that the service is not
8 provided to a significant captive customer base. In determining
9 whether a service is competitive, factors the commission shall consider
10 include but are not limited to:

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

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

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

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

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

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

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

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

1 (6) No losses incurred by a telecommunications company in the
2 provision of competitive services may be recovered through rates for
3 noncompetitive services. The commission may order refunds or credits
4 to any class of subscribers to a noncompetitive telecommunications
5 service which has paid excessive rates because of below cost pricing of
6 competitive telecommunications services.

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

10 (b) If the reclassification is for a service provided by a company
11 that has elected to be regulated under section 18 of this act, the
12 company shall not charge a price for the reclassified service exceeding
13 the amount charged for the service prior to its classification as a
14 competitive service.

15 (8) The commission may waive the requirements of RCW 80.36.170 and
16 80.36.180 in whole or in part for a service classified as competitive
17 if it finds that competition will serve the same purpose and protect
18 the public interest.

19 (9) In designating telecommunications services as competitive
20 telecommunications services for a company that has elected to be
21 regulated under section 18 of this act:

22 (a) The commission may make classifications apply to a particular
23 telephone exchange or wire center area and to a specific customer
24 class.

25 (b) In determining whether a service should be designated as a
26 competitive telecommunications service for a given telephone exchange
27 or wire center area, the commission shall give great weight to evidence
28 showing that other telecommunications companies are offering like or
29 similar services to a majority of customers located within the relevant
30 customer class and telephone exchange or wire center area.

31 **PART 6**

32 **INTERCONNECTION ENFORCEMENT AND PREVENTING OTHER**

33 **ANTICOMPETITIVE PRACTICES OR ACTS**

34 NEW SECTION. Sec. 20. A new section is added to chapter 80.36 RCW
35 to read as follows:

1 (1) The commission may handle on an expedited basis, as provided in
2 this section, any complaint that a telecommunications company has
3 violated:

4 (a) Any agreement approved by the commission under 47 U.S.C. Sec.
5 252(e); or

6 (b) Any act or practice which the commission may identify by rule
7 as serving as a barrier to competitive entry in the telecommunications
8 market.

9 (2) Before filing a complaint with the commission, the complainant
10 must serve notice to the respondent telecommunications company of its
11 intent to file a complaint with the commission alleging a violation
12 under subsection (1) of this section and provide a period of five
13 working days for the alleged violation to be corrected.

14 (3) If the respondent telecommunications company fails to cure the
15 alleged violation within the five-day period, the complainant may file
16 a complaint and application for expedited review with the commission
17 and serve the respondent with the same. The complainant shall attach
18 to the complaint a copy of the written notification that was served on
19 the respondent telecommunications company and any written response that
20 was received thereto.

21 (4) The respondent telecommunications company shall have five
22 working days to answer the complaint and shall file its answer and any
23 other responsive pleadings with the commission and serve the
24 complainant with the same.

25 (5) Within five working days after a complaint and application for
26 expedited review is filed with the commission, all parties shall serve
27 on each other any discovery requests for the production of data. Each
28 party shall have ten days to respond to the other party's requests.
29 Any objections to the discovery requests shall be served on the other
30 party and filed with the commission within five working days after
31 receipt of the discovery request.

32 (6)(a) Once the respondent files an answer to the complaint, the
33 commission or its designee shall determine within three working days
34 whether to:

35 (i) Approve the application for expedited review and begin an
36 expedited adjudicative proceeding under this section;

37 (ii) Deny the application and proceed with a regular adjudicative
38 proceeding under RCW 80.04.110; or

1 (iii) Dismiss the application as frivolous and advanced without
2 reasonable cause.

3 (b) If the commission or its designee dismisses the complaint as
4 frivolous and advanced without reasonable cause, the commission or its
5 designee shall require the complainant to reimburse the commission and
6 the respondent for costs incurred to the date of dismissal in
7 responding to the complaint.

8 (7) In determining whether to approve an application for expedited
9 review, the commission or its designee shall consider whether the
10 complainant is likely to suffer irreparable harm in its ability to
11 serve customers if the alleged violation under subsection (1) of this
12 section continues unabated.

13 (8) If an application for expedited review is approved:

14 (a) The commission shall designate a commissioner or other person
15 to preside over the expedited adjudicative proceeding;

16 (b) Within fourteen days of approving the application for expedited
17 review, the presiding officer shall schedule a prehearing conference
18 which may be conducted by telephone. During the prehearing conference
19 the presiding officer shall:

20 (i) Resolve all outstanding discovery disputes and establish a
21 schedule for completion of any additional discovery; and

22 (ii) Confirm that an attempt to resolve the dispute through
23 nonbinding mediation under section 21 of this act has been or is being
24 conducted;

25 (c) The presiding officer shall schedule a hearing to commence
26 within thirty-five days of the complaint being filed. During the
27 hearing evidence may be presented by the parties and commission staff
28 both orally and in written form. Any individual who testifies either
29 orally or in written form must be available for cross-examination;

30 (d) The presiding officer shall issue a recommended decision in
31 written form within sixty days of the complaint being filed. The
32 presiding officer's recommended decision shall be based on the facts
33 and no finding of an intent to impede market entry by a competitor
34 shall be necessary in order to determine that a violation has occurred.
35 The recommended decision shall set forth the reasoning for the decision
36 and, if the recommended decision finds that a violation under
37 subsection (1) of this section has occurred, directions and a deadline
38 for correcting the violation. The recommended decision shall state the
39 amount of any penalties imposed under section 22 of this act;

1 (e) The commission shall hear the arguments or comments of the
2 parties regarding the recommended decision at a regular or special open
3 public meeting. The parties may submit written comments to the
4 commission prior to the meeting under the schedule established in the
5 recommended decision. The commission shall conduct this session within
6 ten days after the date of the recommended decision;

7 (f) The commission shall serve a final decision on the parties, in
8 the form of a commission order, resolving the issues within ten days of
9 the hearing conducted under (e) of this subsection. The order shall be
10 based on the facts and no finding of an intent to impede market entry
11 by a competitor shall be necessary in order to determine that a
12 violation has occurred. The order shall set forth the reasoning for
13 the final decision and, if the final decision finds that a violation
14 under subsection (1) of this section has occurred, directions and a
15 deadline for correcting the violation. The final decision shall state
16 the amount of any penalties imposed under section 22 of this act;

17 (g) Within ten days after the commission serves its order under (f)
18 of this subsection, the parties may petition for reconsideration. A
19 petition for reconsideration is denied unless the commission by
20 separate decision grants the petition within ten days after it is
21 filed, or such longer time established by the commission secretary. If
22 a party files a petition for reconsideration, the commission may, in
23 its discretion, request that an answer be filed or call for additional
24 comments, briefing, evidence, or argument from the parties. Filing a
25 petition for reconsideration of the order does not stay the effect of
26 the order.

27 (9) In conducting an expedited review of a complaint under this
28 section, the commission may at any time issue an order granting
29 emergency relief for the complainant if the commission finds that:

30 (a) The respondent has failed to file a timely answer to a
31 complaint, has not met discovery deadlines, has failed to attend the
32 required mediation session under section 21 of this act, has failed to
33 attend required hearings, or has otherwise failed to comply with a
34 request made by the presiding officer or by the commission;

35 (b) The complainant is likely to suffer irreparable harm in its
36 ability to serve customers if emergency relief is not granted;

37 (c) The emergency relief sought is technically feasible; and

38 (d) An order granting emergency relief is in the public interest.

1 (10) An order for emergency relief shall direct the respondent
2 telecommunications company to act or refrain from acting as the
3 commission finds necessary to avoid, prevent, or mitigate the
4 complained of harm. An order for emergency relief shall set a deadline
5 for the respondent telecommunications company to comply with the order
6 before penalties are imposed under section 22 of this act. The order
7 granting emergency relief shall remain in effect until the commission
8 issues a final order deciding the complaint filed under subsection (3)
9 of this section.

10 NEW SECTION. Sec. 21. A new section is added to chapter 80.36 RCW
11 to read as follows:

12 (1) Whenever the commission or its designee approves an application
13 for expedited review of a complaint under section 20 of this act, the
14 commission or its designee shall conduct at least one mediation session
15 with the parties.

16 (2) The mediation session shall be held no later than the date
17 scheduled for a prehearing conference under section 20(8) of this act.
18 An individual with authority to negotiate and settle the matter shall
19 be present from each party.

20 (3) The mediation session shall be confidential and any verbal
21 statements made during the session shall not be disclosed.

22 (4) Any agreement of the parties resolving any disputed issue shall
23 be submitted to the mediator for approval. Approval shall be granted
24 unless the mediator finds that the agreement is based upon a mistake in
25 material fact or that the agreement is not in the public interest. The
26 approved agreement shall be deemed to constitute a final order of the
27 commission, unless the commission enters its own order within six
28 working days following the mediator's approval of the agreement.

29 (5) Any agreement or order resolving a dispute through mediation
30 shall be considered part of the public record and shall be made
31 available by the commission upon request.

32 (6) Willful or negligent failure to attend the mediation conference
33 or to comply with the mediator's directions shall be reported to the
34 mediator or the commission in writing.

35 NEW SECTION. Sec. 22. A new section is added to chapter 80.36 RCW
36 to read as follows:

1 (1) If the commission or its designee finds that a violation under
2 section 20(1) of this act has occurred, the commission may impose
3 penalties up to one hundred thousand dollars per violation.
4 Additionally, the commission or its designee may impose a penalty up to
5 one hundred thousand dollars for each day that a violation continues
6 beyond the deadline set in the final decision issued under section
7 20(8) of this act.

8 (2) If parties are able to resolve a dispute through mediation, as
9 provided in section 21 of this act, there shall be no initial
10 assessment of penalties. However, if a violation is not corrected by
11 the date specified in any mediation agreement, the commission or its
12 designee may impose a penalty up to one hundred thousand dollars for
13 each day beyond the specified date that a violation continues.

14 (3) If the commission issues an order granting emergency relief
15 under section 20(9) of this act and the respondent telecommunications
16 company fails to comply with the deadline set in that order, then the
17 commission or its designee may impose a penalty up to one hundred
18 thousand dollars for each day beyond the deadline that noncompliance
19 continues.

20 (4) In determining the amount of any penalties imposed under
21 subsections (1) through (3) of this section, the commission or its
22 designee shall take into account the appropriateness of the penalties
23 with respect to the gravity of the violation, the size of the
24 respondent telecommunications company's Washington operations, and the
25 respondent telecommunications company's history of previous violations.
26 In no case shall a penalty imposed per violation exceed one-half of one
27 percent of a respondent telecommunications company's gross revenues
28 from its Washington operations during the previous year. If a
29 respondent Washington telecommunications company had no Washington
30 operations during the previous year, then the penalty imposed per
31 violation under this section shall not exceed five thousand dollars.

32 (5) Any imposition of penalties shall be by order of the
33 commission, after providing for notice and a hearing.

34 (6) Penalties imposed under this section shall be in addition to
35 any monetary payments ordered by the commission under an
36 interconnection agreement and shall not restrict a complainant's
37 ability to recover damages under any other remedy that may be available
38 under any other provision of state or federal law.

1 (7) Payment of penalties imposed under this section shall be made
2 to the public service revolving fund within thirty days of issuance by
3 the commission of an order imposing penalties. The commission may
4 petition a court of competent jurisdiction for enforcement of its order
5 requiring payment of penalties imposed under this section.

6 NEW SECTION. **Sec. 23.** A new section is added to chapter 80.36 RCW
7 to read as follows:

8 (1) To the extent that the provisions of this section and sections
9 20 through 22 of this act may differ with the provisions of chapter
10 34.05 RCW, the administrative procedure act, the provisions of this
11 section and sections 20 through 22 of this act shall govern.

12 (2) In implementing the provisions of this section and sections 20
13 through 22 of this act, the commission may:

14 (a) Adopt rules as needed; and

15 (b) Obtain external resources and contract for outside persons to
16 serve as presiding officers, mediators, or consultants for the purposes
17 of facilitating the prompt disposition of expedited proceedings
18 authorized under section 20 of this act.

19 **PART 7**

20 **MISCELLANEOUS PROVISIONS**

21 NEW SECTION. **Sec. 24.** Part headings used in this act are not any
22 part of the law.

23 NEW SECTION. **Sec. 25.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

27 NEW SECTION. **Sec. 26.** The following acts or parts of acts are
28 each repealed:

29 (1) RCW 80.36.600 and 1998 c 337 s 1; and

30 (2) RCW 80.36.620 and 1998 c 337 s 3.

--- END ---