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**SUBSTITUTE SENATE BILL 5888**

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**State of Washington**

**60th Legislature**

**2007 Regular Session**

**By** Senate Committee on Water, Energy & Telecommunications (originally sponsored by Senators Poulsen and Morton)

READ FIRST TIME 02/26/07.

1       AN ACT Relating to competitive classification of telecommunications  
2 services; amending RCW 80.36.330; and adding a new section to chapter  
3 80.36 RCW.

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

5       **Sec. 1.** RCW 80.36.330 and 2006 c 347 s 4 are each amended to read  
6 as follows:

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

15       (a) The number and size of alternative providers of services,  
16 including those not subject to commission jurisdiction;

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

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

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

7 (2) Competitive telecommunications services are subject to minimal  
8 regulation. The commission may waive any regulatory requirement under  
9 this title for companies offering a competitive telecommunications  
10 service when it determines that competition will serve the same  
11 purposes as public interest regulation. The commission may waive  
12 different regulatory requirements for different companies if such  
13 different treatment is in the public interest. A company offering a  
14 competitive telecommunications service shall at a minimum:

15 (a) Keep its accounts according to rules adopted by the commission;

16 (b) File financial reports for competitive telecommunications  
17 services with the commission as required by the commission and in a  
18 form and at times prescribed by the commission; and

19 (c) Cooperate with commission investigations of customer  
20 complaints.

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

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

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

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

1 service which has paid excessive rates because of below cost pricing of  
2 competitive telecommunications services.

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

6 (8) The commission may waive the requirements of RCW 80.36.170 and  
7 80.36.180 in whole or in part for a service classified as competitive  
8 if it finds that competition will serve the same purpose and protect  
9 the public interest.

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

12 (1) A noncompetitive telecommunications company may petition to  
13 have packages or bundles of telecommunications services it offers be  
14 subject to minimal regulation. The commission shall grant the petition  
15 where (a) each noncompetitive service in the packages or bundle is  
16 readily and separately available to customers at fair, just, and  
17 reasonable prices; (b) the price of the package or bundle is equal to  
18 or greater than the cost for tariffed services plus the cost of any  
19 competitive services as determined in accordance with RCW 80.36.330(3);  
20 and (c) the availability and price of the stand-alone noncompetitive  
21 services are displayed in the company's tariff and on its web site  
22 consistent with commission rules.

23 (2) For purposes of this section, the term "minimal regulation" has  
24 the same meaning as in RCW 80.36.330(2). The commission may waive any  
25 regulatory requirement under this title with respect to packages or  
26 bundles of telecommunications services if it finds those requirements  
27 are no longer necessary to protect public interest.

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