

SENATE BILL REPORT

EHB 2881

As Reported By Senate Committee On:
Energy, Technology & Telecommunications, February 24, 2000

Title: An act relating to new procedures for alternative forms of regulation of telecommunications companies.

Brief Description: Allowing new forms of regulation of telecommunications companies.

Sponsors: Representatives Crouse, Poulsen and Eickmeyer; by request of Governor Locke.

Brief History:

Committee Activity: Energy, Technology & Telecommunications: 2/22/2000, 2/24/2000 [DP].

SENATE COMMITTEE ON ENERGY, TECHNOLOGY, & TELECOMMUNICATIONS

Majority Report: Do pass.

Signed by Senators Brown, Chair; Goings, Vice Chair; Fraser, Hochstatter and Roach.

Staff: William Bridges (786-7424)

Background: The Washington Utilities and Transportation Commission (commission) regulates incumbent local exchange carriers (ILECs) under a "rate of return" system. Under this system, a company is basically allowed to charge rates that cover its costs, plus an opportunity to make a fair profit. Since the late 1980s, ILECs have had the option to be regulated under a negotiated alternative to traditional rate of return called "alternative form of regulation" (AFOR).

The commission may authorize AFOR on its own motion or at a company's request. Before approving an AFOR plan, the commission must adopt findings that address a number of policy goals and other criteria, such as the extent to which the plan promotes reasonable rates. The commission may modify a proposed plan, and it may waive certain regulatory requirements under a proposed plan.

After the commission approves an AFOR plan, a company has 60 days to withdraw from the approved plan. The company may also appeal the plan to a court, but that does not extend the 60-day period. The commission may rescind an AFOR plan on its own motion or at the request of any person.

In addition to AFOR, a company may achieve effective deregulation by asking the commission to classify it as a competitive telecommunications company. A company may also seek to have any of its services classified as a competitive telecommunications service.

Summary of Bill: Revising approval criteria. The approval criteria for AFOR plans are revised. The commission must consider the following goals when evaluating an AFOR plan:

(1) deploying advanced services to underserved areas or customer classes; (2) improving the efficiency of the regulatory process; (3) enhancing competition; (4) enhancing service quality; (5) providing for fair and just rates; and (6) preventing undue or unreasonable prejudice or disadvantage to any particular customer class. The commission no longer needs to make written findings that the AFOR plan meets each goal.

Changing AFOR petitioning requirements. A company's AFOR petition must state the duration of the plan and include a plan for ensuring and enforcing carrier to carrier service quality, including standards and performance measures for interconnection.

Establishing deadlines for approval. The commission has up to nine months to accept, modify, or reject an AFOR plan, although it may extend that time for good cause.

Creating a legal presumption in favor of an AFOR plan. The commission must order implementation of an AFOR plan unless it finds that, on balance, an alternative plan as proposed or modified fails to meet the new policy goals.

Changing withdrawal provisions. The 60-day withdrawal period following the commission's approval of an AFOR plan is limited to plans initiated by the commission.

Removing judicial appeal language. Language concerning the judicial appeal of a proposed AFOR plan is removed.

Expanding commission's authority to grant waivers. The commission's authority to grant regulatory waivers is expanded, but it may not waive any legal right contained in specified chapters of the Revised Code of Washington.

Removing authority to rescind AFOR plans on commission's motion. The commission's authority to rescind AFOR plans on its own motion is removed. The commission may only rescind or modify AFOR plans at the request of the company operating under the plan. The commission must hold a hearing before rescinding or modifying a plan.

Preserving the right to file complaints. The commission or any person may file a complaint against a company operating under an AFOR. The complaint must be filed according to a specified process and must allege a violation of the terms and conditions of the AFOR. Complainants bear the burden of proving their allegations.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This bill will encourage competition and investment. While the AFOR statute has been in the books since 1989, it has only been used once. This bill will give incumbents the incentive to use the process and develop plans for definite terms. The WUTC prefers nine months to consider a plan, not the shorter six months in the Senate bill. The WUTC will consider all the policy goals when looking at an AFOR plan; there is no need to require specific findings for each goal. In addition, an AFOR plan can always be

challenged in court for being arbitrary and capricious. The improved AFOR process will encourage job growth by increasing investment in advanced telecom networks. This bill is a baby step towards price cap regulation and occupies the middle ground between regulated monopolies and full competition.

Testimony Against: The bill should be changed to include the following: (1) include rate-payer service quality as an AFOR requirement; (2) require the WUTC to make findings for each policy goal; (3) permit partial deregulation only where there is effective competition; (4) provide for the review and modification of an AFOR if it is not functioning correctly; and (5) preserve the right to file a complaint regarding violations of an AFOR or to challenge rates under an AFOR. By removing findings, small consumers may have to pay more for poorer quality phone service. Price cap regulation is preferable.

Testified: Marilyn Showalter, UTC (pro); Simon ffitich, Public Counsel (concerns); Jerri Wood, Communications Workers of American (pro); Gary Smith, Ind. Bus. Assn. (con); David Danner, Governor's Office (pro); Gary Strannigan, Citizens for a Sound Economy (pro).