

**RCW 80.36.330 Classification as competitive telecommunications companies, services—Effective competition defined—Minimal regulation—Prices and rates—Reclassification—Waiver of provisions during state of emergency.**

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

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

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

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

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

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

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

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

(c) Cooperate with commission investigations of customer complaints.

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

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

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

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

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

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

(9) During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 409; 2007 c 26 § 1; 2006 c 347 § 4; 2003 c 189 § 4; 1998 c 337 § 6; 1989 c 101 § 16; 1985 c 450 § 5.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.