

SENATE COMMITTEE ON NATURAL RESOURCES AND ENERGY
TESTIMONY OPPOSING S.B. 3

Mary Wright, Attorney
Montana Consumer Counsel
January 15, 2007

Mr. Chairman and Members of the Committee:

My name is Mary Wright, and I am an attorney with the Montana Consumer Counsel. As you know, the Montana Consumer Counsel (MCC) is the Constitutional agency charged with representing ratepayers of public utilities before the Public Service Commission and federal agencies and in the courts.

We oppose this legislation, as we did a similar bill in the 2005 Session. We also provided comments opposing this legislation before the Energy and Telecommunications Interim Committee. Those comments, which are attached to this testimony, outline the reasons for our opposition. To summarize:

- We support the development of competitive telecommunications markets in Montana, as well as the mechanisms now in Montana law that provide for regulatory flexibility and orderly deregulation as competition develops. It is premature to deregulate as this bill would do, and risk would be increased for residence and business customers.
- The market is not now sufficiently competitive to protect consumers. We know this because Qwest persistently earns many times its authorized rate of return, which would not be possible in a competitive market. It also retains about 80 percent market share in its service area. Cell phones are still predominantly a complement rather than a substitute for landline service, and cell service is not available everywhere. Cable companies that offer phone service are not ubiquitous in Montana, and they are less reliable. If the power goes out, so do your telephone service and internet connection.
- If Qwest is interested in meeting the competition that does exist, it should lower its rates to all customers, not just those that it chooses for a promotion. The promotions section of S.B. 3 would give Qwest the ability to discriminate against

customers or entire areas of Montana, which public utilities have never been permitted to do in Montana, and discrimination should not be allowed now.

- Qwest and other providers can come to the Public Service Commission for deregulation or detariffing of services under current law. If there is evidence that competition is present for a service, deregulation is appropriate. Deregulation should only take place based on evidence in a proceeding before the Commission.

The proposed amendments by Qwest and the Montana Telecommunications Association to the promotions section of S.B. 3 would conform it to a proposal by the Commission introduced as H.B. 244. MCC does not oppose that amendment. The other amendments do not help the remainder of S.B. 3, however. In addition to the standard economic arguments about market share and excess earnings I have described, and that are presented in more detail in our comments to the Interim Committee, I would like to describe what would actually happen if this bill were to pass.

The proposal is to deregulate features and services now regulated by the Commission under Montana law. There is a case pending before the Commission now in which Qwest has asked to deregulate many of these same features and services. A Qwest witness testified under oath in that case that all those services and features are profitable.

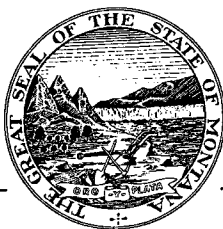
None of these features and services can be provided without Qwest's network – the connection from the home or business to the central office, the switches and the transport facilities. The network has been and is supported by the rates. If this bill passes, Qwest will take the profits from all those features and services and continue to provide them using the network for free, or practically for free. This will leave the residence and business ratepayers solely responsible for the cost of operating, maintaining and expanding the network, while Qwest simply removes the profits. This is a huge shift of money from the Qwest's customers to its shareholders. There are no benefits for the general body of ratepayers in S.B. 3, only increased risk and cost.

Montana Consumer Counsel is in full support of the testimony and analysis presented by Chairman Jergeson, and joins the Commission in asking the Committee for a do not pass vote on S.B. 3.

Respectfully submitted January 15, 2007.

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August 22, 2006

To: Energy and Telecommunications Interim Committee

From: Mary Wright, Attorney
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Subject: Comments on LC 0039

The Montana Consumer Counsel (MCC) respectfully provides its comments on LC 0039. The draft bill would deregulate all services and features offered by a regulated provider of telecommunications services except residence and business end users' access lines. It would also remove all restrictions on promotions, market trials and other promotional activity, and exempt providers of regulated telecommunications services from the otherwise applicable law preventing public utilities from giving rebates, concessions or special privileges to a customer. Finally, the draft bill would prohibit a provider from pricing service packages higher than the sum of individual elements in the packages, or lower than the rate for the access line. MCC opposes this draft legislation and, for the reasons stated below, asks that the Committee not approve it as a committee bill in the 2007 session.

I. GENERAL COMMENTS.

MCC supports the development of competition in Montana telecommunications markets, and has taken many actions in support of the development of competition. MCC also supports the mechanisms now in the Montana statutes that provide for regulatory flexibility and gradual, orderly deregulation of telecommunications as competition develops. Any premature deregulation, however, carries great risk to customers, businesses, and even the providers themselves, as Montanans learned when wholesale electric markets were deregulated before competition had developed.

The primary basis for this draft bill, as expressed by Qwest at past meetings of this Committee, is the emergence of competition in some portions of the Montana local telecommunications market, and Qwest's desire for this legislation to meet that competition. MCC questions whether there is sufficient competition in the markets affected by this legislation to replace regulation as the means to provide protection for businesses and individual consumers. In addition, Qwest has available to it in current law other ways to react to whatever competition may exist.

II. SPECIFIC COMMENTS.

A. The presence of a few alternative suppliers of service in the market does not equate to competitive markets robust enough to protect consumers. The latest statistics from the Federal Communications Commission (FCC) show that in Montana, only 10 percent of land lines are served by Competitive Local Exchange Carriers, as opposed to Incumbent Local Exchange Carriers (ILECs), such as Qwest, who maintain control of 90 percent of the market. These statistics reflect 2005 data, and as such have not been significantly impacted by the changes made by the FCC largely to remove the requirements for Qwest to lease its network to competitors. In other words, 10 percent is probably high, as competitors are leaving the market because of the change in the network leasing rules at favorable prices. The FCC's statistical report is available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-266595A1.pdf. See Table 7.

B. MCC does not dispute that customers have some available alternatives to services from Qwest and other ILECs in the form of wireless and other technologies. There is evidence, however, that customers who subscribe to cellular service also keep their land line service, and that cellular is a largely complementary, and not a substitute, service. The fact is that no one knows the state of local competition in Montana. MCC has asked the Montana Public Service Commission (PSC) to open a proceeding to investigate this issue. Before departing from the current statutory framework, which provides for gradual and targeted deregulation as actual market conditions permit, the PSC should conduct this investigation so that Montana proceeds on a rational and fact-based course.

C. Qwest has stated that it needs the ability to conduct unfettered promotions without prior notice or approval to meet competition. Qwest largely has the ability to conduct promotions today with little process, and MCC has supported that ability. It has a number of tools available to it without changing the law. It could ask the PSC for a protective order that would allow it to unveil promotions without prior notice to competitors. In addition, current law provides that

Qwest could seek an alternative form of regulation that would give it flexibility to meet competition if needed to retain market share, but it has chosen not to do that.

D. Qwest has claimed that it is losing market share to competitors. Yet according to its most recent annual report to the PSC, in 2005 it earned 66.917 percent on equity, while its lawful, authorized rate of return is 12 percent. This level of earnings alone, which is an increase of 41.63 percent from 2004, shows that the market is not competitive. If Qwest is interested in fending off competition, it should lower its rates to all customers, not just to those it chooses to include in promotions that it selects. In an effort to investigate Qwest's over-earning at the expense of its business and residence customers, the PSC opened a case and asked Qwest for information regarding its earnings. Rather than supply that information, Qwest challenged the PSC in court. The case is now pending before the Montana Supreme Court. A copy of the title page of Qwest's 2005 annual report to the PSC and the page from that report showing the Montana Intrastate Regulated Earned Rate of Return is attached to these comments. The complete report is available at

http://www.psc.state.mt.us/eDocs/AnnualReports/2005/Qwest_Tel_.pdf.

E. The unfettered promotions that the draft bill permits, especially taken together with deregulation of virtually all services offered, would allow Qwest and other regulated providers to discriminate among customers, engage in predatory pricing to drive competitors out of business, and then charge virtually any rate for any service to any customer. Regulated public utilities have never been able to do this, and Qwest and other ILECs should not now be permitted to do what LC 0039 would allow. Business and residence customers should not be subjected to this risk. Business and residence customers would be exposed to further risk because LC 0039 would strip the authority the Commission now has to make shareholders, not ratepayers, responsible for losses due to uneconomic promotions by a telecommunications provider, a protection that would remain for electric and natural gas customers. That is, if a promotion caused a provider to lose money, it could force customers who did not benefit from the promotion to make up the losses, and no entity would have the power to stop it.

F. The package pricing provisions would let Qwest and other ILECs add services to a customer's access line and not charge anything for them, and providers could lawfully do this in a discriminatory way. These provisions are not in the public interest and also conflict with the requirement in § 69-3-811, M.C.A., that telecommunications services must be priced above relevant costs.

III. CONCLUSION.

On August 15, 2006, the PSC provided the Committee with its comments on and analysis of LC 0039. MCC endorses and supports the PSC's comments and analysis. For the reasons stated in these comments and in the PSC's comments and analysis, MCC urges the Committee not to approve this draft legislation as a committee bill in the 2007 session.

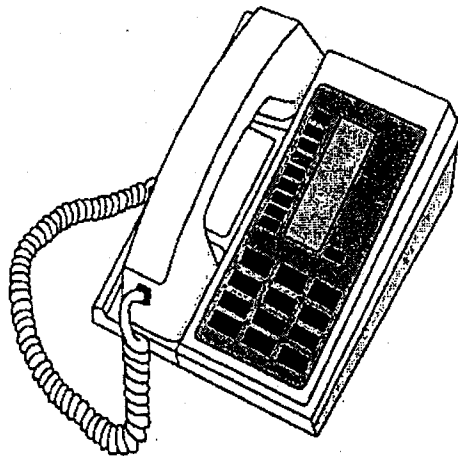
For more information, please contact MCC.

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YEAR ENDING 2005

ANNUAL REPORT
OF
Qwest Corporation

TELEPHONE UTILITY



TO THE
PUBLIC SERVICE COMMISSION
STATE OF MONTANA
1701 PROSPECT AVENUE
P.O. BOX 202601
HELENA, MT 59620-2601

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COMMISSION
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Montana Intrastate Regulated Earned Rate of Return

(Thousands of Dollars)

Year: 2005

Line No.	Description Rate Base (a)	This Year (b)	Last Year (c)	Percent Change (d)
1				
2	2001 Plant in Service	611,151	570,168	7.19%
3	2002 Prop. Held for Future Telecommunications Use	0	0	
4	3100-3200 (Less) Accumulated Depreciation	410,333	361,118	13.63%
5	NET Plant in Service	200,818	209,050	-3.94%
6				
7	<u>Additions</u>			
8	1220 Materials & Supplies	393	425	-7.37%
9	1280 Prepayments	0	0	
10	Other Additions	0	0	
11	TOTAL Additions	393	425	-7.37%
12				
13	<u>Deductions</u>			
14	4100 Current Deferred Operating Income Taxes	(566)	(458)	-23.69%
15	4320 Unamortized Operating Investment Tax Credits	1,155	1,510	-23.52%
16	4340 Noncurrent Deferred Operating Income Taxes	34,109	32,851	3.83%
17	Customer Advances for Construction			
18	Other Deductions	0	0	
19	TOTAL Deductions	34,697	33,903	2.34%
20	TOTAL Rate Base	166,514	175,572	-5.16%
21				
22	Net Earnings	36,007	37,441	-3.83%
23				
24	Rate of Return on Average Rate Base	21.624%	21.325%	1.40%
25				
26	Rate of Return on Average Equity	66.620%	47.064%	41.55%
27				
28	Major Normalizing Adjustments & Commission			
29	<u>Ratemaking adjustments to Utility Operations</u>			
30	Earnings from Docket 93.7.25 - () reduces earnings			
31				
32	Advertising	95	95	0.00%
33	Contributions/Legal Advocacy	8	8	0.00%
34	Miscellaneous Dues	18	18	0.00%
35	Uncollectibles Accrual To Write Off	(131)	(131)	0.00%
36	Interest on Customer Deposits	(37)	(37)	0.00%
37	Total Net Income Adjustments	(47)	(47)	0.00%
38	Rate Base Adjustments			
39	Customer Deposits	453	453	0.00%
40	Land Development Agreements	283	283	0.00%
41	Total Rate Base Adjustments	736	736	0.00%
42				
43	Adjusted Rate of Return on Average Rate Base	21.692%	21.388%	1.42%
44				
45	Adjusted Rate of Return on Average Equity	66.917%	47.247%	41.63%