SENATE NATURAL RESOURCES
EXHIBIT NO. 11
DATE 1-15-07
BILL NO. SB 3
Gray bill

SENATE BILL NO. 3

INTRODUCED BY J. ESSMANN

BY REQUEST OF THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING TELECOMMUNICATIONS LAWS; CLARIFYING THE USE OF PROMOTIONAL ACTIVITIES BY A REGULATED TELECOMMUNICATIONS SERVICE PROVIDER; CLARIFYING AND DEFINING CERTAIN TERMS; CLARIFYING ~~PRICING FOR COMBINING VERTICAL SERVICE AND PRIMARY ACCESS LINES;~~ AMENDING SECTIONS 69-3-305, 69-3-330, 69-3-803, AND 69-3-807, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-3-305, MCA, is amended to read:

"69-3-305. Deviations from scheduled rates, tolls, and charges. (1) (a) ~~A~~ Except as ~~part of a promotion offered pursuant to~~ provided in subsection (5)(a), a public utility may not:

~~(a)~~(i) charge, demand, collect, or receive a greater or less compensation for a utility service performed by it within the state or for any service in connection with a utility service than is specified in the printed schedules, including schedules of joint rates, that may at the time be in force;

~~(b)~~(ii) demand, collect, or receive a rate, toll, or charge not specified in the schedules; or

~~(c)~~(iii) grant a rebate, concession, or special privilege to a consumer or user that, directly or indirectly, has or may have the effect of changing the rates, tolls, charges, or payments.

(b) The provisions of this section do not prohibit a provider of regulated telecommunications services from granting a rebate, concession, or special privilege to an end user as a part of a promotion.

(2) The rates, tolls, and charges named in the printed schedules are the lawful rates, tolls, and charges until the rates, tolls, and charges are changed, as provided in this chapter.

(3) The commission may order refunds or credits of rates, tolls, or charges collected in violation of this section and may order payment of interest at a reasonable rate on the refunded amount.

(4) The provisions of this section do not prohibit the sharing of profits or ~~revenues~~ revenue with customers in conjunction with an alternative form of regulation approved under 69-3-809.

(5) (a) (i) A provider of regulated telecommunications service may offer, for a limited period of time, rebates, price reductions, or waivers of charges in conjunction with promotions, market trials, or other

sales-related activities that are common business practices. ~~Promotional pricing for services other than basic local exchange access to end users does not require advance approval of the commission.~~

(3) (ii) ~~The commission may not require advanced approval of promotional activities provided for in subsection (5)(a)(i).~~ Promotional pricing for services to end users does not require advanced approval of the commission.

(iii) Informational price lists must be filed with the commission on or before the date that the promotion begins. ~~Promotional offerings for basic local exchange access to end users and packaged services that include basic local exchange access to end users require advance approval of the commission. The commission shall approve, deny, or upon a showing of good cause set for hearing an application for a promotional discount within 30 days of the filing of the application. If the commission has not acted on the application within the permitted time period, the application is considered granted.~~

(b) A public utility providing electricity or natural gas may offer grants and subsidized loans to install energy conservation and nonfossil forms of energy generation systems in dwellings.

(4) (c) ~~The~~ ~~For a public utility providing electricity or natural gas, the~~ The commission may define the appropriate scope of promotions, rebates, market trials, and grants and subsidized loans, either by rule or in response to complaints. The commission may determine whether a particular sales activity or grant or subsidized loan program under this subsection is unfairly discriminatory or is not cost-effective. Costs and expenses incurred or revenue foregone with respect to sales activities and grant and subsidized loan programs that the commission determines are unfairly discriminatory or not cost-effective are the responsibility of the provider's shareholders in rates set by the commission.

(6) A public utility violating the provisions of this section is subject to the penalty prescribed in 69-3-206. However, this does not have the effect of suspending, rescinding, invalidating, or in any way affecting existing contracts."

Section 2. Section 69-3-330, MCA, is amended to read:

"69-3-330. Decision by commission. (1) If, upon ~~such~~ hearing and ~~due~~ investigation, the rates, tolls, charges, schedules, or joint rates are found to be unjust, unreasonable, or unjustly discriminatory or to be preferential or otherwise in violation of the provisions of this chapter, the commission may fix and order substituted ~~therefor such~~ rates, tolls, charges, or schedules ~~as~~ that are just and reasonable.

(2) If the commission determines that a rate, toll, or charge has been collected in violation of ~~69-3-305(1)(b)~~ 69-3-305(1)(a)(ii), the commission may order refunds or credits as specified in 69-3-305(3).

(3) If the commission finds that any regulation, measurement, practice, act, or service complained of is unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise in violation of the provisions of this chapter or that the service is inadequate or that any reasonable service cannot be obtained, the commission may substitute ~~therefor~~ other regulations, measurements, practices, services, or acts and make ~~such~~ an order relating ~~thereto as~~ to the substitution that is just and reasonable.

(4) In any decision ordering a change in the rates ~~which~~ that may be charged for electricity or natural gas, the commission shall list each expenditure submitted by the utility for allowance as an operating cost ~~which~~ that is disallowed by the commission as an element of operating costs. The list of disallowed expenditures ~~shall~~ must appear in the written decision of the commission and ~~shall~~ must itemize each expenditure by amount, category, and purpose."

Section 3. Section 69-3-803, MCA, is amended to read:

"69-3-803. Definitions. As used in this part, the following definitions apply:

(1) "Commercial mobile radio service" means commercial mobile radio service as defined in 47 CFR 20.9.

(2) "Commission" means the public service commission.

(3) "Eligible telecommunications carrier" means a telecommunications provider designated by the commission under 69-3-840.

(4) "Fund" means the universal service fund established in 69-3-842.

(5) "Incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that:

(a)(i) on February 8, 1996, provided telephone exchange service in the area; ~~and~~ and

~~(b)~~ (ii) on February 8, 1996, was considered to be a member of the exchange carrier association pursuant to 47 CFR 69.601(b) or is a person or entity that, after that date, became a successor or assign of a member of the exchange carrier association; ~~and~~ or

~~(c)~~ (b) is designated by the federal communications commission as an incumbent local exchange carrier under 47 U.S.C. 251(h)(2).

(6) "Local telecommunications" means:

(a) telecommunications originating in a wireline local calling area, including extended area service areas, and terminating in the same wireline local calling area or extended area service area; or

(b) commercial mobile radio service that originates from or terminates to a commercial mobile radio service provider within the same major trading area as defined in 47 CFR 24.202(a).

(7) "Nonlocal telecommunications" means:

(a) wireline telecommunications traffic carried by either an interlocal access transport area carrier or an intralocal access transport area toll provider that originates in one wireline local calling area and terminates in another wireline local calling area; or

(b) commercial mobile radio service that originates in a major trading area and terminates in a different major trading area as defined in 47 CFR 24.202(a).

10 (8) "Optional services" means any service other than:

(a) voice grade access to the public switched network;

(b) local usage;

(c) dual tone multifrequency signaling or the functional equivalent;

(d) single-party service or the functional equivalent;

(e) access to:

(i) emergency services;

(ii) operator services;

(iii) local directory assistance;

(iv) telephone relay services;

(v) interexchange services; and

(f) toll limitation and lifeline service for qualifying low-income consumers.

(8) "Originating carrier" means a telecommunications carrier from whose network a customer originates telecommunications traffic.

(9) "Private telecommunications service" means a system, including the construction, maintenance, or operation of the system, for the provision of telecommunications service or any portion of the service, by a person or entity for the sole and exclusive use of that person or entity and not for resale, directly or indirectly. For purposes of this definition, the term "person or entity" includes a corporation and all of its affiliates and subsidiaries if the corporation, affiliates, and subsidiaries have a common ownership or control of 80% of the outstanding voting shares.

11 (10)(a) "Regulated telecommunications service" means ~~a residential or business end user's access line that permits~~ two-way switched, voice-grade access and transport of communications originating and terminating in this state and nonvoice-grade access and transport if intended to be converted to or from voice-grade access and transport.

12 (b) Except as provided in 69-3-815, the term does not include ~~vertical service~~ optional services, the

provision of terminal equipment used to originate or terminate the regulated service, private telecommunications service, one-way transmission of television signals, cellular communication, or provision of radio paging or mobile radio services.

(11) "Retail revenue" means the gross Montana revenue from telecommunications services that originate or terminate in Montana and are billed for a service address in Montana, excluding revenue from the resale of telecommunications services to another telecommunications services provider that uses the telecommunications services to provide telecommunications services to the ultimate retail consumer who originates or terminates the transmission.

(12) "Rural telephone company" means a local exchange carrier operating entity to the extent that the entity:

(a) provides common carrier service to any local exchange carrier study area that does not include either:

(i) all or any part of an incorporated place of 10,000 inhabitants or more based on the most recently available population statistics of the United States bureau of the census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the United States bureau of the census as of August 10, 1993;

(b) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(c) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(d) has less than 15% of its access lines in communities of more than 50,000 on February 8, 1996.

(13) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing without a change in the form or content of the information upon receipt.

(14) (a) "Telecommunications carrier" or "carrier" means any provider of telecommunications services. A person providing other products and services in addition to telecommunications services is considered a telecommunications carrier only to the extent that it is engaged in providing telecommunications services.

(b) The term does not mean aggregators of telecommunications services as defined in 47 U.S.C. 226.

(15) "Terminating carrier" means a telecommunications carrier upon whose network telecommunications traffic terminates.

(16) (a) "Transit traffic" means telecommunications traffic that an originating carrier delivers to a transiting carrier or carriers for delivery to a terminating carrier.

(b) The term does not mean traffic carried by interlocal access transport area carriers or providers of intralocal access transport area toll services.

(17) "Transiting carrier" means a telecommunications carrier or carriers that transport transit traffic from an originating carrier to a terminating carrier and that do not originate or terminate telecommunications traffic.

13 ~~(18) "Vertical service" means options that a customer can add to the customer's basic service.~~"

Section 4. Section 69-3-807, MCA, is amended to read:

"69-3-807. Regulation of rates and charges. (1) The commission may establish specific rates, tariffs, or fares for the provision of regulated telecommunications service to the public. The rates, tariffs, or fares must be just, reasonable, and nondiscriminatory.

(2) Alternatively, the commission may authorize the provision of regulated telecommunications service under terms and conditions that best serve the declared policy of this state. For a service detariffed under this subsection, the provider shall maintain a current price list on file with the commission and shall provide notice of changes in the price list as prescribed by the commission. The commission is not required to fix and determine specific rates, tariffs, or fares for the service and in the alternative may:

(a) totally detariff the service;

(b) detariff rates for the service but retain tariffs for service standards and requirements;

(c) establish only maximum rates, only minimum rates, or permissible price ranges as long as the minimum rate is cost compensatory; or

(d) provide other rate or service regulation as will promote the purposes of this part.

(3) Except as provided in subsection (4), in determining applications under subsection (2), the commission shall consider the following factors:

(a) the number, size, and distribution of alternative providers of service;

(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;

(d) the overall impact of the proposed terms and conditions on the continued availability of existing services at just and reasonable rates; and

(e) other factors that the commission may prescribe through rulemaking that are appropriate to fulfill the purposes of this part.

(4) Notwithstanding the provisions of subsection (3), the commission may exercise its power under

subsection (2)(c) with respect to any services of a telecommunications provider if the commission finds that action consistent with the provisions of 69-3-802 and with the public interest. Noncompetitive local exchange access to end-users and carrier access services may not be detariffed.

(5) A provider of regulated message telecommunications service and related services shall average its service rates on its routes of similar distance within the state unless otherwise authorized by the commission. This subsection may not be construed to prohibit volume discounts, discounts in promotional offerings, or other discounts as long as the discounts are not offered in a discriminatory manner.

(14) (6) ~~The price of a package combining an access line with one or more vertical services may not be higher than the sum of the highest prices of the package's individually priced services. The standard price of a package may not be less than the price of an access line.~~ The price of a package combining regulated telecommunications service with one or more optional services may not be higher than the sum of the highest prices of the package's individually priced services. The price of those packages may not be less than the price of the regulated telecommunications services that are part of the package."

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

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