

**PUBLIC SERVICE COMMISSION  
STATE OF MONTANA**

Greg Jergeson, Chairman  
Brad Molnar, Vice-Chairman  
Doug Mood, Commissioner  
Robert H. Raney, Commissioner  
Thomas J. Schneider, Commissioner



1701 Prospect Avenue  
PO Box 202601  
Helena, MT 59620-2601  
Voice: 406.444.6199  
Fax #: 406.444.7618  
<http://www.psc.mt.gov>  
E-Mail: [psc@mt.gov](mailto:psc@mt.gov)

January 18, 2006

To: Energy & Telecommunications Interim Committee Members

From: Montana Public Service Commission

Re: Preliminary draft of Qwest/MTA/MITS bill (LC 4144)

The draft bill in its present form is substantively the same as HB 539, the Qwest bill the PSC opposed in the 2005 legislative session. The only significant difference between the failed 2005 bill and the draft bill now being considered by ETIC is that the proposed definition of "regulated telecommunications service" in the 2005 bill had the effect of eliminating PSC regulation of all telecommunications services except business and residential primary access lines, while the new bill draft appears to eliminate PSC regulation of everything but primary and additional access lines.

Attached for your information is the analysis of HB 539 that the PSC provided to legislators in 2005. The 2005 analysis is relevant to the current draft bill, with the exception noted above regarding the differing revisions to the definition of regulated telecommunications service in the two bills.

The Commission anticipates the opportunity to comment if and when the ETIC has a final version of this bill under consideration.

cc: Casey Barrs

Attachment (PSC Analysis of HB 539)

Energy & Telecommunications Committee Meeting  
January 19, 2006

Exhibit #5

## PSC ANALYSIS OF HB 539

- HB 539 effectively almost entirely deregulates telecommunications service in Montana. This bill is unnecessary, given the steps the PSC has taken and continues to take to reduce regulation and to deregulate services as competition develops and markets warrant it. Under existing law, Qwest or any regulated local exchange carrier may submit to the PSC its plan for alternative regulation that could result in the same deregulation of services proposed by HB 539.
- This bill is before the Legislature not because competition is killing Qwest in Montana (look at their earnings, which show Qwest has collected from Montana ratepayers almost \$90 million more than it was authorized to collect). It is in front of the Legislature because if this legislation passes, the PSC will be powerless to require Qwest to quit overcharging its Montana customers by millions of dollars.

### **Section 1, amendments to 69-3-305, MCA: Promotions**

The major change in this section is to eliminate the current statutory requirement that providers of regulated telecommunications services obtain PSC approval in advance of promotional offerings for basic local exchange access to customers and service packages that include basic local exchange access. (Telecom providers are already free under existing law to offer promotional pricing for non-basic services without PSC approval.) Additionally, HB 539 would no longer allow the PSC, in the case of a telecommunications service provider, to define the appropriate scope of promotions, rebates, market trials, or to determine whether a sales activity is unfairly discriminatory. Another change would exempt regulated telecom providers from the statutory provision that prohibits public utilities from granting rebates, concessions, or special privileges to a customer.

Comments: The net effect of this section, in concert with the proposed amendment to 69-3-803(10)(a) which limits the definition of a regulated service to “primary residence and business access lines,” is to allow a telecom provider to use promotions to offer any of its services, including the only remaining regulated services under this bill, at a discounted price at any time. Even though the first sentence of 69-3-305(5)(a)(i) in this bill provides that promotions, market trials and other promotional activities may be offered for a limited period of time, there is no definition of “limited period of time” and, under (5)(c), the PSC no longer has the authority to define it because the PSC would not be able to define the appropriate scope of the promotional activities of telecom providers.

The danger is that Qwest or other dominant local telcos would be able to practice predatory pricing under this scenario in order to capture or to keep customers. Because of its resources, it could simply offer prices no competitors could possibly match. HB 539 has potentially serious adverse impacts on the Montana wholesale market and Qwest’s local service competitors.

HB 539 conflicts with other sections of Title 69, such as 69-3-811 (prices must be set above costs), 69-3-806 (prohibition against cross-subsidies). Those conflicts are not resolved in the bill.

Possible amendment: The PSC does not believe there is a need or that there are any good reasons to amend 69-3-305. However, if the Legislature is persuaded by Qwest’s arguments that it needs to be able to conduct promotions for basic local service without getting prior PSC approval, the PSC offers an amendment to Section 1 of HB 539 that would allow providers of

regulated telecommunications services to file an application for a basic local service promotion that would be effective upon the provider's requested date on an interim basis, pending PSC action on the promotion application that must occur within 30 days. A promotion offered on an interim basis that is denied by the PSC on a final basis would be subject to the remedies set forth in 69-3-305 and any other penalties allowed by law.

### **Section 3, amendment to 69-3-803(10)(a) & (b): Definition of "regulated telecommunications service"**

This section is the most critical part of the bill. The (10)(a) amendment adds the phrase "a residential or business end user's single, primary access line" to the definition of regulated service. If the changed definition at (10)(a) did not make it clear enough, the proposed change at (10)(b) explicitly states that additional lines and vertical features are not regulated services. "Vertical features" are not defined, but are commonly understood to be services like call forwarding, call waiting, and the CLASS services like Caller ID.

Comments: This section limits PSC regulatory jurisdiction to an end user's single primary access line. This small addition effectively deregulates all other services currently regulated. Examples of currently regulated services that will or may be deregulated under HB 539 include:

- All N11 services, which include 911 emergency reporting; 711 telephone relay service for hearing impaired; 511 road information; 411 directory assistance; 211 community services referral.
- Customer deposits
- Installation charges and ongoing rates for additional residential & business lines
- Operator services and directory assistance rates
- Wholesale carrier access and special access charges
- Vertical services (call forwarding, call waiting, caller ID, call trace, etc.)
- Late payment charges
- Construction charges for line extensions
- Intrastate long distance service
- Centrex (central office substitute for a PBX)
- Public access lines (used by pay telephone providers)

There is no basis for deregulating everything but the primary line. If a market for access lines is fully competitive, it should be entirely deregulated. If a market for access lines is not competitive then access lines should remain regulated. Bifurcating regulation into primary and other access lines doesn't make sense. It is premature to deregulate all telecommunications service except the primary line until the telecommunications market is effectively competitive. Mechanisms exist in current law for reducing or eliminating regulation when circumstances warrant it. Deregulation of telecommunications services should occur only when it has been determined to be appropriate in a PSC proceeding open to interested parties, where evidence is presented, deliberately considered, and acted upon.

The argument that wireless telecom service (or voice-over-internet) is a substitute for wireline service and is an unregulated competitor that is able to compete unfairly with regulated wireline carriers is not persuasive. Wireless service is certainly a widely available complement to a wireline service, but, based on consumer behavior, as well as the stated positions of certain Montana small telcos in PSC proceedings, wireless is not a substitute for wireline service at this time.

The amended definition of “regulated telecommunications service” would eliminate terms, conditions and service quality regulation for non-primary line services. The PSC’s authority to enforce its existing customer service rules regarding billing, disconnection, and deposits, and to respond to complaints from Montana consumers about their telephone services would be eliminated with respect to the services HB 539 deregulates. For example, the PSC resolved 348 complaints in 2004 concerning various problems with consumers’ long distance service, such as billing, inability to reach a carrier representative at the carrier’s customer service number, and other service-related questions. Under HB 539, long distance service is one of the many non-primary-line services that would be deregulated and therefore outside of PSC jurisdiction. HB 539 does not require any consumer protections such as advance notification of rate changes or withdrawal of the service offering for customers who use services deregulated by this bill.

**Section 4, amendments to 69-3-807(6): Pricing of combined services**

This proposed new provision prohibits a telecom provider from pricing a service package that combines a residential customer’s primary line and one or more vertical services below the residential primary access line rate.

Comment: This provision would allow Qwest, as an example, to add features to a residential customer’s primary line and not charge for them. It does not take into account the requirement in 69-3-811 that prices for telecom services must equal or exceed the relevant cost.