

Service Date: December 17, 2003

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF)	UTILITY DIVISION
Tariff Transmittal QLDC03-01)	
by Qwest Communications Corporation)	DOCKET NO. D2003.10.153
Initial Tariff and Price List for Qwest)	
Communications Corporation)	ORDER NO. 6523a

ORDER DENYING MOTION FOR INTERIM RELIEF

Background and Findings of Fact

1. On December 9, 2002 Qwest Long Distance Corporation (d/b/a Qwest Long Distance or QLD) (“QLD”) filed an initial tariff and price list pages for QLD, applying to the provision of interexchange telecommunications service as provided by QLD in the State of Montana.

2. The Public Service Commission authorized QLD to offer service on an interim basis, with modifications, the December 9, 2002 filing (Order No. 6479a in D2002.12.153) pending the final hearing and decision in D2002.12.153.

3. On November 12, 2003, a hearing was held and testimony taken in D2002.12.153 for purposes of developing a record on which the Commission will enter a final decision setting just and reasonable rates pursuant to which QLD may offer service in Montana.

4. In D2002.12.153, QLD’s current rates are in place on an interim basis only, subject to Commission decision based on the hearing held on November 12, 2003.

5. On October 21, 2003, Qwest Communications Corporation (“QCC”) filed with the Commission an initial tariff and price list applying to the provision of interexchange telecommunications service in Montana as provided by QCC, requesting service to become effective on November 3, 2003.

6. In its October 21, 2003 filing, QCC stated that the entry of QCC into the Montana market would allow Qwest to “complete the offering of long distance service allowed the by the 271 approval of the FCC in December 2002. With this tariff, Qwest will offer long distance service to

the full market in Montana through its 272 subsidiaries.”¹

7. On November 5, 2003, QCC filed a motion for interim relief requesting the Commission permit its tariffs to go into effect as filed on October 21, 2003. In its motion, QCC states that QCC’s tariffs “reflect the changes QLD made to its tariffs prior to the time QLD’s motion for interim relief was filed and granted.” (See Motion for Interim Relief, filed on November 5, 2003 in D2003.101.53.)

8. QCC is capable of providing service to all toll and interexchange customers in the state of Montana. (See Motion for Interim Relief, paragraph 6, filed on November 5, 2003 in D2003.101.53.)

9. QCC and QLD are Qwest subsidiaries, providing interexchange telecommunications service in the State of Montana. QCC may eventually merge and absorb QLD.

10. In D2002.12.153, QLD chose not to file initial testimony but stood on the initial tariffs as filed on December 9, 2002, in lieu of its opening testimony.

11. The absence of initial testimony from QLD presented complications in the discovery process in D2002.12.153, and created a situation in which QLD’s opening testimony was presented as rebuttal testimony.

12. The absence of initial testimony from QLD placed the Commission and intervenors in the position of determining the costing basis for rates, and interpreting the implications of QLD’s filing, through the discovery process. The normal procedural course at the Commission is to have such information first in the form of testimony filed by the utility, with any necessary clarification taking place through the discovery process.

13. In D2002.12.153, QLD declined to produce evidence related to issues identified as relevant by the Commission and stated that it would rely upon its rebuttal testimony with respect to those issues.

14. On December 5, 2003, the Commission entered a Procedural Order in D2003.10.153 setting December 18, 2003 as the deadline for QCC to file its opening testimony.

15. The PSC statutes and rules that contemplate interim ratemaking do so for the purpose of allowing temporary rate increases and decreases for a utility that has an approved rate structure in place. § 69-3-304; ARM 38.2.501 et seq.

¹ Letter of Cheryl Gillespie to Kate Whitney, dated October 21, 2003, submitting Tariff Transmittal QCC03-01 in D2003.10.153 to the PSC.

16. QCC has no approved rate structure in place.
17. QCC is a fully regulated utility under Montana law.

Conclusions of Law

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA.
2. QCC is a public utility offering regulated telecommunications services in the State of Montana. Sections 69-3-101, 803, MCA.
3. QLD is a public utility offering regulated telecommunications services in the State of Montana. Sections 69-3-101, 803, MCA.
4. Every public utility shall file with the Commission tariffs (schedules) that are in force at the time any service is to be performed by it within the State of Montana. Section 69-3-301, MCA.
5. The rates that QCC is entitled to charge for service in Montana must be just and reasonable, and QCC has the burden of showing that the rates it proposes charging in Montana are just and reasonable. MCA § 69-3-201.
6. The rates that QLD is entitled to charge for service in Montana must be just and reasonable, and QLD has the burden of showing that the rates it proposes charging in Montana are just and reasonable. MCA § 69-3-201.
7. Interim rates are contemplated for utilities that have an approved rate structure in place, and are based on a temporary increase or decrease being necessary upon a proper showing. MCA § 69-3-304; ARM 38.2.501.

Order

THEREFORE, based upon the foregoing, it is ORDERED that:

1. QCC's motion for interim relief is denied.
2. Nothing in this Order represents a prejudgment on the merits of any issue that may arise as a result of the QCC filing.

DONE AND DATED this 25th day of November by a vote of 3 to 2.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ROWE, Chairman, voting to dissent

THOMAS J. SCHNEIDER, Vice Chairman

MATT BRAINARD, Commissioner

GREG JERGESON, Commissioner

JAY STOVALL, Commissioner, voting to dissent

ATTEST:

Connie Jones
Commission Secretary

(SEAL)

NOTE: You may be entitled to judicial review in this matter. Judicial review may be obtained by filing a petition for review within thirty (30) days of the service of this order. Section 2-4-702, MCA.

DISSENT OF CHAIRMAN ROWE

Jurisdiction exercised without judgment can easily be abused. After all was stripped away, one main reason proffered for denying the prompt implementation of the QCC tariffs was the jejune notion that *we can, therefore we should*.

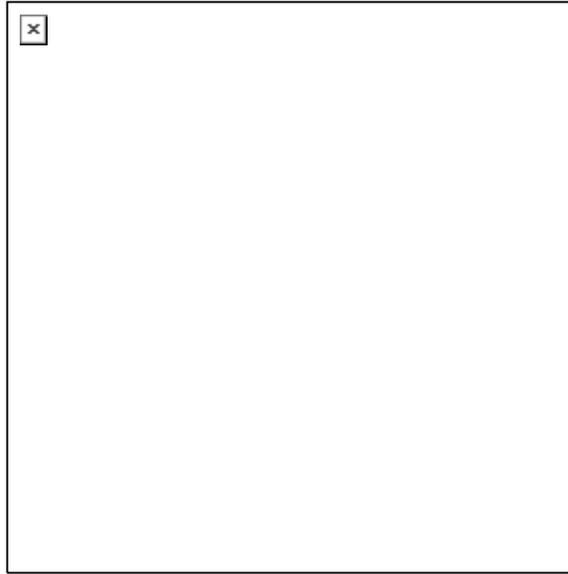
This filing, which involves using Qwest's own facilities rather than resale, resolves the Commission's QLD-related complaints about requiring Qwest affiliate long distance customers to take Qwest local service and about restrictions on use of the "unlimited" resold product. It is fully compliant with the requirements of Section 272 (about which there seems to be far too little interest or understanding).

Technology, markets and telecommunications law have changed dramatically in the last ten years, especially in the market for long distance service. Regulation so fundamentally out of step with the observable conditions in a market begins to look like Rumpelstiltskin-omics. The market participants the Commission seems concerned to protect in this and the QLD docket have not intervened. They are busy fighting more relevant, forward-looking battles. They have voted with their feet. The animating *bette noir*, access rates, which led the Commission to a legally ungrounded position in the Section 271 review, should be addressed by initiating a proceeding focused squarely on that topic.

The Commission's self-inflicted marathon, now entering its second year, is the purest conceivable example of a regulatory dead weight loss. We are wasting very limited resources that could appropriately be put to much better purpose. Worse, packages of services that customers appear to want (as evinced by the rates at which customers in other states purchase them) are not available in Montana.

A filing by any other long distance carrier would be made in the same form as was this filing. Such a filing would promptly go into effect in Montana. QCC's service, like QLD's, appears to be available in every other state Qwest where Qwest has sought to offer it, both within the fourteen state Qwest territory and outside it. Based on the information provided, *only* a filing made by Qwest, and *only* one made in Montana would be treated as have been these filings. *Only* the Montana Commission is determined to protect customers from low rates and packages of service options. Nothing has been identified that justifies the disparate treatment of declining immediate implementation on an interim basis.

Assuming we still have that most human characteristic, the capacity to blush, the Commission should reconsider and reverse its decision to deny interim relief to QCC, and should promptly schedule a parties' conference to identify and resolve any relevant issues that might exist.



BOB ROWE, Chairman