

Service Date: April 30, 2004

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

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IN THE MATTER OF)	UTILITY DIVISION
Tariff Transmittal QCC03-01)	
by Qwest Communications Corporation)	DOCKET NO. D2003.10.153
Initial Tariff and Price List for Qwest)	
Communications Corporation)	ORDER NO. 6523e

ORDER ON MOTION FOR RECONSIDERATION

1. On February 20, 2004 the Commission issued Order No. 6523(c) Granting Motion For Reconsideration and Approving Tariff Transmittal QCC03-01 On Limited Interim Basis. On March 10, 2004 QCC filed its Motion For Reconsideration (“Motion” in the balance of this order) of Order No. 6523(c). In this order, the Commission both denies in part and grants in part QLD’s Motion For Reconsideration. The Commission also clarifies Order 6523(c). This order is issued along with the companion Order No. 6479(f) in D2002.12.153. As Commission findings in this order will reference findings in Order No. 6479(d) this order should be read in conjunction with Order No. 6479(d).

2. QCC’s Motion raises issues involving Customer Disclosure, Reporting, and Conditional Approval Requirements. QCC asks that the Commission clarify and, or, reconsider these and other aspects of Order 6523(c). QCC incorporates the arguments set forth in QLD’s Motion For Reconsideration filed in D2002.12.153 and requests that the Commission reconsider its decision to impose Customer Disclosure and Reporting Requirements on QCC. QCC asks that the Commission clarify its order with respect to OCC regulation. The Commission will take these requests in turn.

3. **Customer Disclosure and Reporting Requirements.** QCC’s Motion does not raise any new requests not already contained in QLD’s Motion. The Commissions findings in its Order on Motions For Reconsideration in Order No. 6479(e) apply equally here but with the following exceptions and modifications. First, as there is as yet no procedural schedule the findings of fact specific to QLD on record evidence are obviously not relevant to this QCC

docket. The Commission finds relevant to this docket, however, its findings establishing and then terminating these same requirements once QC's affiliates have satisfied the Commission's requirements that QC, QLD and QCC should offer a single statewide tariff through one long distance affiliate of QC, and phase out the separate offerings that are currently available through either QLD or QCC (Finding of Fact 15, QCC Order No. 5623(c)).

4. In regard to Reporting Requirements, the Commission modifies Order 5623(c). Whereas Order 5623(c) provided the initial date upon which reporting requirement filings must be filed, the Commission amends that order to make this Order's date the triggering date upon which both initial and subsequent reporting requirements must be filed (see Finding of Fact No. 11 of Order 5623(c)). Therefore, QCC is required to file its initial report within ten days of this Order's issuance. Subsequent reports shall be filed ninety days from the date of this Order, six months from the date of this Order, and every six months thereafter until QCC satisfies the requirements to be regulated as an OCC.

5. **Conditional Approval.** QCC's Motion first asks the Commission to clarify when QCC will be treated under the OCC regulatory regime. QCC's Motion next asks the Commission to clarify an asserted ambiguity contained in its order. QCC expands on and illustrates the asserted ambiguity as follows. First, QCC asks the Commission to

"...clarify its intent that, once QCC files tariffs which comply with the Commission's directive that all QCC/QLD products shall be made available to all Montana customers (either through a single, combined tariff or via a complementary set of QLD and QCC tariffs), the Commission will regulate QCC under the 'OCC' regime at least on an interim basis pending issuance of a final order in this docket." (emphasis added)

6. QCC's Motion continues by asserting that the ambiguity is significant as Order No 6523(c) must be read in conjunction with QLD Order No. 6479(d). QCC illustrates this asserted problem as follows:

"...assume that the entities elect to comply with the QLD Order via a process whereby both entities offer products and services to all Montana customers under some combination of separate, but complementary tariffs. If QLD has 'OCC' status and QCC does not, operational problems would surely arise. At the very least, the entities would be unable to simultaneously offer complementary plans due to the timing differences in the approval processes of the two regimes...In that case, the goal of the Orders in these Dockets would be thwarted; namely, until QCC gained approval of its complementary Plan, QLD would be offering a product to its customers that was not yet available to QCC's customers."

7. QCC's second illustration continues as follows:

"...assume that the entities elect to comply with the QLD Order by moving all QLD products into the QCC tariff. If QCC did not have interim 'OCC' approval upon such a filing, the provisions of the QLD Order granting QLD 'OCC' status would be nullified."

8. The Commission's findings on QCC's request for clarification are as follows.

First, the Commission reminds QCC that in adopting its conclusion from QLD Order No. 6479(d) the Commission intended that neither QLD nor QCC would receive OCC regulation until such time as both QLD and QCC satisfy the Commission's requirements. In turn, as for the Motion's question of when the OCC regulatory regime will be available, it is entirely in QC's (QLD's and QCC's) hands to decide when and how to comply with this requirement. Therefore, although QCC can manufacture hypothetical circumstances of when one or the other affiliate will have progressed further, creating incongruous circumstances, both QLD and QCC must be compliant with the Commission's conditions prior to being regulated within the OCC regime.

9. The Commission has found that it is in the interests of Montana consumers to have one long distance affiliate of QC offering service in Montana, that QC, QLD and QCC should offer a single statewide tariff through one long distance affiliate of QC, and that QLD and QCC should phase out the separate offerings that are currently available through either QLD or QCC. (Finding of Fact 15, QCC Order No. 6523(c)). Given that QLD offers all of its services exclusively to Qwest basic exchange customers and that QCC offers its residential services exclusively to non-Qwest basic exchange residential customers, QC, QLD and QCC should coordinate their efforts at mitigating the Commission's concerns. Absent coordination, one or the other affiliate may delay the time by which the other affiliate receives OCC regulatory authority. The Commission's final order (No. 6523(c)) contains no findings on the subject of "complementary" plans or tariffs as mentioned in QCC's Motion.

10. The Commission finds that a filing compliant with this order, in coordination with Order No. 6479(f), must be submitted to and approved by the Commission prior to the OCC regulatory regime being applied.

III. Conclusions of Law

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. QCC is a public utility offering regulated telecommunications services in the State of Montana. Sections 69-3-101, 803, MCA.

2. 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.

3. 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.

4. The regulatory regime the Commission will apply to QCC is that set out by the Commission in the OCC Orders. QCC shall be regulated according to the terms of the OCC regulatory regime, as specifically adopted in the Order Approving Tariff Transmittal QCC03-01 On Limited Interim Basis entered in this docket.

5. The Commission grants in part and denies in part QCC's Motion for Reconsideration of the Commission's Order Approving Tariff Transmittal QCC03-01 on Limited Interim Basis in this docket for the reasons set forth above.

VI. Order

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

QCC's Motion for Reconsideration is granted to the extent that the order is clarified and denied to the extent that the conditions imposed by the Commission's orders are retained as set forth in this Order.

DONE AND DATED this 13th day of April, 2004, by a vote of 4 to 1.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ROWE, Chairman

THOMAS J. SCHNEIDER, Vice Chairman

MATT BRAINARD, Commissioner

GREG JERGESON, Commissioner, Voting to Dissent

JAY STOVALL, Commissioner

ATTEST:

Commission Secretary
Connie Jones

(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.

