

Service Date: October 4, 2005

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

IN THE MATTER OF QWEST)	UTILITY DIVISION
SERVICES CORPORATION Tariff)	
Transmittal 04-013 Residence and Business)	DOCKET NO. D2004.8.135
"Competitive Response" Programs)	ORDER NO. 6615a

FINAL ORDER
Appearances

FOR THE APPLICANT:

JOHN ALKE, appearing on behalf of Qwest Services Corporation, Hughes, Kellner, Sullivan and Alke, P.L.L.P., 40 West Lawrence, Suite A, P.O. Box 1155, Helena, Montana 59624-1166.

FOR THE INTERVENORS:

MICHAEL GREEN, appearing on behalf of OneEighty Communications, Inc., Crowley, Haughey, Hanson, Toole, and Dietrich P.L.L.P., 100 North Park Avenue, Suite 300, P.O. Box 797, Helena, Montana 59624-0797.

MARY WRIGHT, appearing on behalf of the Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703.

APPEARING BEFORE:

CHAIRMAN GREG JERGESON, VICE-CHAIRMAN BRAD MOLNAR,
COMMISSIONER DOUG MOOD, COMMISSIONER TOM SCHNEIDER, and
COMMISSIONER BOB RANEY
Montana Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena,
Montana 59620-2601.

COMMISSION STAFF:

ROBIN MCHUGH, Staff Attorney
GARY DUNCAN, Rate Analyst
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Introduction

1. Qwest filed for a permanent "Competitive Response" tariff on August 18, 2004. Qwest proposed to offer, on a permanent basis, three Competitive Response Programs as follows:¹

Residence and Business Competitive Response Program

2. This program applies to residence and business customers who have terminated all or part of their Qwest service and established service with another telecommunications provider. If one of these customers is reestablishing some part of his or her service with Qwest, Qwest could choose to offer one of the following on selected products as determined by Qwest:

- (a) a waiver of an amount up to 100% of the nonrecurring charge(s);
- (b) a waiver of up to three months of the recurring charge(s);²
- (c) a combination of (a) and (b);
- (d) a benefit or consideration that is not associated with a service or product offered by the Company such as Customer Premise Equipment (CPE), merchandise or discounts on merchandise offered by others, gift certificates, gift cards, or other. The value of the benefit or consideration can not exceed the value of (c) above.

3. Business customers who receive the Competitive Response waivers are required to stay with Qwest for a minimum of one year. If the business customer terminates service early the customer is responsible for paying any nonrecurring or recurring charges previously waived. This early termination penalty does not apply to residence customers. A customer can receive the waiver(s) only one time from Qwest.

Residence and Business Competitive Inquiry Program

4. Potential new Qwest residence and business customers may be offered one of the following on selected products as determined by Qwest:

- (a) a waiver of an amount up to 100% of the nonrecurring charge(s);
- (b) a waiver of up to two months of the recurring charge(s);³
- (c) a combination of (a) and (b);

¹ These programs are available to resellers of Qwest services.

² The waiver of the recurring charges includes the tariffed rate for the service itself, the EAS increments, and any zone charges. The End User Common Line (EUCL) is not waived.

³ See Footnote 2

- (d) a benefit or consideration that is not associated with a service or product offered by the company such as CPE, merchandise or discounts on merchandise offered by others, gift certificates, gift cards, or other. The value of the benefit or consideration can not exceed the value of (c) above.

5. Business customers who receive the Competitive Inquiry waivers are subject to the same requirements as business customers who receive Competitive Response waivers, as described at paragraph 3, above.

Business and Residence Product Save Program

6. This program applies to current Qwest business and residence customers who request to have one or more products or services disconnected. After having been informed of the products benefits the customer may be offered one of the following on selected products as determined by Qwest:

- (a) a waiver of current nonrecurring charge(s);
- (b) a waiver of up to one month of the recurring charge(s);⁴
- (c) a combination of (a) and (b);
- (d) a benefit or consideration that is not associated with a service or product offered by the company such as CPE, merchandise or discounts on merchandise offered by others, gift certificates, gift cards, or other. The value of the benefit or consideration could not exceed the value of (c) above.

7. A customer can receive the waiver(s) only one time per product through the Product Save Program.

Procedural Background

8. The following is a chronology of the procedural events which have occurred in this docket:⁵

- a. Tariff Transmittal 04-013 was filed by Qwest on August 18, 2005. This tariff filing proposed to make permanent, effective November 27, 2004, the 90 day promotion proposed in N2004.8.123.
- b. A Notice of Filing and Opportunity to Comment was issued by the Commission on September 13, 2004. The filing deadline for comments was October 12, 2004.
- c. Qwest filed corrected cost information on September 14, 2004. This information corrected the original information filed on August 18, 2005.
- d. On September 27, 2004 Essen Communications filed comments in which it stated it could support the permanent tariffs if certain items were corrected.⁶

⁴ See Footnote 2

⁵ Please note discovery was issued by all parties in this docket in addition to the PSC staff. To keep the following chronology as brief as possible discovery dates (issuance and responses) were not noted.

- e. Essen Communications filed additional comments with the Commission on October 5, 2004.⁷
- f. OneEighty Communications (OneEighty) filed comments with the Commission on October 12, 2004 in response to the September 13, 2005 notice.⁸
- g. On November 15, 2004 Essen Communications sent an additional letter to the Commission withdrawing its objection to Qwest's Competitive Response tariff and urging the Commission to approve the tariff.
- h. On November 19, 2004 the docket number was changed from N2004.8.135 to D2004.8.135. On November 23, 2004 the Commission issued a Notice of Application and Intervention Deadline, and Procedural Order No. 6615. The intervention deadline was established as December 20, 2004.
- i. On December 14, 2004 Qwest filed the direct testimony of Scott McIntyre.
- j. OneEighty and MCC petitioned to intervene in this docket on December 20, 2004 and those interventions were granted on January 14, 2005.
- k. On January 5, 2005 the Commission received the first Competitive Response monitoring reports from Qwest for the promotional months of October and November 2004.
- l. On January 26, 2005 OneEighty filed the direct testimony of Christopher Dimock and the MCC filed the direct testimony of Allen Buckalew.
- m. On February 7, 2005 Qwest issued reformatted Competitive Response monitoring reports for the months of November and December 2004.
- n. On February 16, 2005 Qwest filed the rebuttal testimony of Scott McIntyre and OneEighty filed the response testimony of Christopher Dimock.
- o. On March 7, 2005 Qwest filed a motion for interim approval of its permanent tariff.
- p. On March 16, 2005 OneEighty filed a response to Qwest's March 7, 2005 request for interim approval.
- q. On March 22, 2005 Qwest filed objections to OneEighty's discovery responses to Qwest and a Motion to Strike a portion of Chris Dimock's response testimony.
- r. On March 22, 2005 Qwest filed amended tariff pages in Docket 2004.8.135 to ensure the tariff pages in this docket matched exactly the tariff pages currently in effect for the 90-day promotional filing approved in N2005.3.25.
- s. On March 25, 2005 Qwest filed a reply brief in support of its motion for interim approval.
- t. On March 28, 2005 OneEighty filed a response in opposition to the objections and motion to strike filed by Qwest on March 22, 2005.
- u. On March 29, 2005 the MCC filed its pre-hearing memorandum.
- v. At a work session on March 31, 2005 the Commission voted to overrule the Qwest objections to OneEighty discovery responses, and to hold in abeyance until

⁶ Essen stated the tariff requirement for Essen to provide to Qwest the original Purchase Order Number (PON) and the date of original establishment must be eliminated. In addition, Essen stated Qwest must clearly inform Essen which customers they take with the incentives of the Competitive Response Program and which customers they take without incentives.

⁷ Essen stated certain reservations regarding the program. In particular, if winback could only be used one time with a customer then Essen was concerned the program would not be of use to them and they would not be able to support the program.

⁸ OneEighty opposed Qwest's Competitive Response program citing reasons why it was anti-competitive.

- hearing a decision on whether to strike the disputed portion of the response testimony of Chris Dimock.
- w. On April 13, 2005 a public hearing was conducted in the Bollinger Room at the Public Service Commission.
 - x. On May 12, 2005 Qwest filed its opening brief.
 - y. On May 26, 2005 the MCC filed its answer brief.
 - z. On May 27, 2005 OneEighty filed its answer brief.
 - aa. On June 9, 2005 Qwest filed its reply brief.

Summary of Testimony

Qwest Direct Testimony, Filed December 14, 2004

9. Qwest's direct testimony was filed by Scott McIntyre. Mr. McIntyre is Staff Director – Public Policy, representing Qwest as a policy and pricing expert.

10. Mr. McIntyre states the purpose of his testimony is to explain Qwest's proposed Competitive Response tariffs. He asserts the incentives in the tariffs are designed to enhance customer choices for local phone service and that similar practices are commonplace in many other industries. The plans will allow customers to switch back and forth between providers without the "normal costs" of doing so. The three types of plans offered under the tariffs apply to both residence and business customers and include incentives for former Qwest customers to return to Qwest and for new customers to try Qwest for the first time. In addition, there are incentives for customers to keep a service they might be thinking about disconnecting. Qwest would market to these customers through a variety of means which could include direct mail and outbound telemarketing.⁹

11. Mr. McIntyre testifies that the residence and business incentives may be similar in concept, but the total incentive may be a higher dollar equivalent for business customers since the rates for business customers are higher than for residence customers.

12. Customers utilizing the Competitive Response and Competitive Inquiry programs can only utilize the program once. With the Product Save Program a customer can take advantage of the incentives once for each service. Each of the three programs is available to resellers.

13. Mr. McIntyre testifies that Qwest is willing to forego revenue to reacquire customers because it believes in the long run the customers will continue with Qwest and

⁹ Qwest Response to PSC DR 008.

purchase additional services to justify the effort and expense. He further testifies the proprietary cost support filed with the proposed tariff shows the programs will cover cost.

14. Regarding whether the Competitive Response Programs provide a competitive advantage to Qwest over other providers, Mr. McIntyre testifies that all providers have the same opportunity to provide incentives for former customers to return. These programs will allow customers to reduce the cost of switching providers, and long distance providers have long been offering incentives to customers for switching providers. These types of programs eliminate penalties for trying other providers and enhance competition. Regarding the Product Save Program, if a customer directly calls Qwest to disconnect a service, Qwest's service representatives may assist the customer in several ways. They may explain the service better, offer suggestions on how to use the service, adjust a billing problem, or as a final step, offer the customer a waiver of charges per the Competitive Response tariffs.

15. Mr. McIntyre testifies similar tariffs are in place in 11 of Qwest's 14 states.¹⁰ In Minnesota and New Mexico Qwest is currently offering competitive response programs on a 90-day promotional basis.

16. Qwest filed a similar tariff in Montana in 2000 (Docket No. D2000.2.21). However, the current tariff is more comprehensive because it contains incentives for potential new customers as well as incentives for retaining service. In addition, this current tariff filing is available to resellers. The Commission approved the previous tariff filing but included monitoring provisions Qwest was unable to meet. Mr. McIntyre testifies Qwest is now able to provide that information and will do so with the 90- day promotional tariffs.

Intervenor Testimony

Montana Consumer Counsel

17. The initial direct testimony of the MCC was filed by Allen Buckalew, an economist specializing in the telecommunications industry at J. W. Wilson and Associates, Inc. Mr. Buckalew states the purpose of his testimony is to present his analysis of Qwest's proposed Competitive Response Program in Montana.

¹⁰ Arizona, Colorado, Idaho, Iowa, Nebraska, N. Dakota, Oregon, S. Dakota, Utah, Washington, and Wyoming.

18. Mr. Buckalew testifies the programs have benefits to consumers because they are able to switch to the provider they prefer, without having to incur charges for changing telephone service providers. He uses an example of a customer who migrates from Qwest to another service provider but finds out he actually preferred Qwest. Without the waivers provided by the Qwest program, the customer may end up staying with the other service provider to avoid connection and disconnection fees. Buckalew testifies this also puts competitive pressure on CLECs to offer similar incentives. He states this program is another marketing tool for Qwest, which also curbs potential abuse by Qwest because these programs are only applicable to each customer once.

19. Mr. Buckalew testifies the Qwest programs are competitively neutral and appropriate as long the program is monitored and Qwest complies with Commission requirements. He supports the proposal that customer only receive waivers once and that the program applies to resellers.

20. Regarding limiting the exposure of Qwest's regulated ratepayers, Mr. Buckalew states he agrees with Qwest that incentive waivers must be funded by revenues generated by re-obtaining Qwest's original customers and that the competitive response program must be self sufficient.¹¹ He testifies Qwest must keep separate records of the customers that have benefited from the programs and these records need to be kept as long as Qwest is under rate of return regulation.

21. Mr. Buckalew testifies the MCC asked Qwest to provide additional data in MCC DR 002-009 on the development of the competitive market in Montana. However, very little data was provided. The witness suggests a separate docket to examine the state of competition for telecommunication services would be useful in future regulatory discussions.¹² However, Buckalew does not believe the tariff needs to be delayed until the data is gathered.

22. Regarding record keeping, Mr. Buckalew testifies Qwest should keep a database of all customers who have received waivers or bill credits as a result of the

¹¹ In response to PSC DR 023(a & b) the MCC stated it had examined the cost study material provided by Qwest and it had no concerns involving those studies.

¹² In response to PSC DR 022(c) the MCC stated "at a minimum the PSC should determine the level of competition for intrastate toll services and local exchange services in Montana."

Competitive Response programs. This database should include customer information¹³ separated by business and residence customers, the monthly value incentives given away,¹⁴ a list of services the waivers were applied to, the monthly revenues generated by the program, an annual summary of the net effect of the Competitive Response programs, and a tabulation of the success rate for winning back customers. Buckalew testifies it must be the Commission that monitors these programs, including any 90-day promotional programs, to ensure they are self sustaining.

OneEighty Communications

23. The initial testimony of OneEighty was filed by Christopher Dimock, the President and CEO of OneEighty. Mr. Dimock testifies that OneEighty is a “telecommunications carrier” as defined by the 1996 Telecommunications Act. The company provides local and long distance telephone service, voicemail, collocation, broadband and dial-up internet, as well as various ancillary services and features. The witness states OneEighty purchases various services from Qwest, the vast majority of which are wholesale services purchased under its interconnection agreement with Qwest.¹⁵ OneEighty also purchases a “handful” of retail products from Qwest.

24. Mr. Dimock asserts Qwest is using its promotions to obtain regulatory flexibility, including pricing flexibility, without making a formal request to the PSC, and that the Qwest Competitive Response tariff will have the effect of granting Qwest regulatory flexibility or *de facto* deregulation. Qwest would be allowed to change its products, pricing and the provisions of its offering without the oversight of the Commission.

25. Mr. Dimock testifies that Montana has nascent competitive telecommunications infrastructure and that inter-modal competition in Montana does not exist. Qwest remains the dominant provider in all of the larger communities in Montana, with OneEighty being one of the few facilities-based carriers competing with Qwest. The PSC has historically been asked to review broad-based rate increase requests in a rate of

¹³ Name, address, account number, phone number.

¹⁴ The incentives should be disaggregated by recurring and non-recurring charges.

¹⁵ Examples of services purchased are local trunking from the OneEighty switch to three Qwest switches, A-links to provide 911 and operator services, collocation space in three central offices, Special Access DS-1s, UNE loops, internet backbone access, and ATM services.

return context. The Telecommunications Act changed the playing field by enabling wholesale access, at wholesale cost based rates (TELRIC¹⁶), to the Bell infrastructure which had been built on the backs of captive ratepayers. Mr. Dimock testifies that OneEighty has started seeing Qwest utilizing the difference between wholesale and retail rates as a method of creating an economic monopoly¹⁷ where there is no longer a regulated monopoly. Mr. Dimock states that Qwest has now started to use this tactic with business services. He has observed Qwest aggressively dropping prices for business voice and data services through promotions. Since these promotions do not require an extended contract term commitment from the customer, it appears that Qwest's strategy is to push prices low enough to drive competitors out of the markets and then raise their rates for customers within 12 months.

26. Mr. Dimock testifies that Qwest is pursuing a similar strategy with residential services. He testifies the TELRIC loop rate in Montana is \$23.10 while the residential rate is \$16.11.¹⁸ The result of the differential is OneEighty cannot compete with Qwest in the residential market by buying Qwest loops. The only way historically for CLECs to deliver residential service was to use the UNE Platform (UNE-P). However, the FCC has eliminated the availability of UNE-P and such large providers as AT&T and MCI have halted new sales. Mr. Dimock observes that since the demise of UNE Qwest has announced an increase in residential rates in 10 states.¹⁹ He testifies Qwest will increase business rates if it is able to drive competition out of that market.

27. Mr. Dimock testifies that Qwest's Competitive Response Program targets Qwest's competitors' business customers and is not extended to Qwest's entire customer base. If Qwest's intentions were in the public interest it would file a tariff rate reduction applied to all customers and commit to contract terms of 1 to 5 years. Qwest reacts to the

¹⁶ Total Element Long Run Incremental Cost.

¹⁷ OneEighty in response to PSC DR 024(c) defined economic monopoly as "one in which the incumbent carrier has some control over the wholesale rates charged to competitors and the retail rate expectation set in the market. To the extent that the wholesale rate is relatively fixed, if the incumbent can drive the retail price down to near or below the wholesale price, then they can drive competitors (and potential competitors) away from the market."

¹⁸ The Qwest Montana residential rate for unlimited local usage is \$16.73, excluding the federal End User Common Line charge and Extended Area Service increment.

¹⁹ OneEighty in response to PSC DR 024 (e) cites as its source the Business Section of the Billings Gazette from January 12, 2005. The states where rates were raised were Colorado, Iowa, Idaho, Minnesota, North Dakota, New Mexico, Oregon, South Dakota, Washington, and Wyoming.

presence of competitors, and without competition it keeps rates high, reinvestment low, and responsiveness to customers lackluster. Mr. Dimock states if the proposed tariff is approved a broad range of discounts and terms would not be subject to further PSC approval. Qwest will drive competition out and then raise rates back to monopoly levels. It will be a fatal blow to competition in Montana and allows *de facto* deregulation of Qwest.

28. Mr. Dimock bases his conclusions on four factors. The first is Qwest does not define the specific products the promotions can be applied to. Therefore, it appears Qwest may apply the promotions to all products contained in its Exchange and Network Services tariff. Although Qwest provided a list of business and consumer products that the tariffs would apply to (in response to PSC 01-001) Mr. Dimock comments that the list contains “virtually every product” in Qwest’s tariff. The proposed tariffs would allow Qwest to offer incentive programs on every product in its tariff without Commission approval. This is a form of regulatory flexibility Qwest does not have today.

29. The second factor is that neither the Residence nor Business Competitive Response Program mentions which products a customer needs to reestablish with Qwest in order to qualify for the waiver(s). Mr. Dimock testifies that the problem with this is Qwest could apply this program even if the customer is reestablishing a service such as a premium or privacy listing. Mr. Dimock reviewed other tariffs in Qwest states²⁰ and found they had been modified to reflect that the service being reestablished needs to have been “some material part” of the customer’s previous service with Qwest, not just “some part.” Mr. Dimock testifies that a “material part” should be limited to a dial tone product rather than a feature or other product which is added to the dial tone product. In addition he testifies that reestablishing some material part would indicate the end-user is reestablishing not just service (dial tone) but the exact same type/class of service as the customer had with Qwest previously. Mr. Dimock also testifies that “DS1” should not be included since it is not a dial tone product or local exchange service and is not included in Qwest’s Local Exchange and Network Services Tariff.

30. The third factor is that OneEighty opposes section 5.2.A.2.i of the proposed tariff. That section states: “Periods and provisions of this offer will be

²⁰ Arizona, Colorado, Iowa, Nebraska, North Dakota, Oregon, and Wyoming

determined by the Company.” The witness testifies this provision has the effect of providing Qwest with regulatory and pricing flexibility without going through the proper procedure to obtain it. Combining that with the flexibility to pick the product is an end run around the regulatory process in place. Dimock further testifies that the section in question provides regulatory flexibility to determine the provisions and terms and conditions of offering a product. The witness states he has reviewed Qwest’s Competitive Response tariffs in other states and no such provision has been included.²¹ If it was originally included in the proposed tariff, it was not included in the approved versions.

31. The fourth factor supporting Mr. Dimock's conclusions is the “benefit or consideration” provision contained in the proposed tariff.²² He testifies this provision is anti-competitive and does nothing to improve the quality and breadth of services available. Dimock states that none of Qwest’s Business Competitive Response tariffs in any other state has this provision.²³ He further questions whether it is appropriate in any of the programs as § 69-3-305(c), MCA, prohibits a public utility from granting “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.” OneEighty is also concerned that Qwest could use its knowledge of a OneEighty facilities request to target a customer for “saving” before the customer notifies Qwest they plan to leave.

32. Mr. Dimock testifies that Qwest is requesting to offer pricing concessions to selected customers and not to its entire customer base. The witness states a free and fair marketplace is one in which customers have a choice of providers who compete based on products and service quality, and price. Allowing Qwest to permanently use price concession as a “blunt” instrument to regain customers does nothing to improve the quality and breadth of services available in Montana.

33. Mr. Dimock further testifies that promotional rates for some customers are subsidized by other customers. He states that because Qwest is guaranteed a rate of

²¹ OneEighty in response to PSC DR 28 stated it examined the tariffs in Arizona, Colorado, Northern and Southern Idaho, Iowa, Nebraska, North Dakota, Oregon, Utah, Washington, and Wyoming.

²² OneEighty in response to PSC DR 027(b) states that because of the size and buying power of Qwest and the discounts it can receive, OneEighty could not match those offers because it could not receive the discounts available to Qwest.

²³ OneEighty examined the Qwest tariffs in Arizona, Colorado, Northern and Southern Idaho, Iowa, Nebraska, North Dakota, Oregon, Utah, Washington, and Wyoming.

return in Montana, Qwest can price aggressively to reduce competition and subsidize those concessions by requesting rate increases where they maintain a monopoly.²⁴ Qwest can use its unique position to have ratepayers underwrite the cost of driving competition out of the market.

34. To conclude, Mr. Dimock testifies that providing Qwest *carte blanche* to name its own price and terms is tantamount to putting the six-hundred-pound gorilla and the mouse on a level playing field. The witness states that OneEighty is five one-hundredths of a percent (0.05%) of the size of Qwest on a revenue basis and is the only facilities-based competitor to Qwest in Montana that is not affiliated with a rural ILEC. Dimock concludes by testifying that suggesting it is time to level the playing field is substantially premature.

Qwest Rebuttal Testimony

35. Mr. McIntyre filed rebuttal testimony for Qwest, responding primarily to Mr. Dimock, but also clarifying some issues raised by Allen Buckalew for the MCC.

36. Mr. McIntyre challenges Mr. Dimock's assertion that the Qwest Competitive Response tariff is an attempt to gain regulatory pricing flexibility and *de facto* deregulation. He states the proposed tariff offers customers limited waivers of charges for a specific amount of time, are allowed only once per customer, and after the waiver period rates return to the rates prescribed in Qwest's PSC approved tariffs. He testifies this is a limited incentive program and is not pricing flexibility and does not even approach deregulation. He states that Qwest has filed for pricing flexibility and deregulation in other states and every such filing is far more flexible than this filing.²⁵ In addition, deregulation is the elimination of Commission oversight, and that is not the situation here. He testifies Qwest has Competitive Response tariffs in 11 other states²⁶ and he does not believe these provide true pricing flexibility or deregulation.

²⁴ OneEighty in response to PSC DR 028 stated that Qwest is pricing below cost levels represented to the Commission in previous dockets. OneEighty also stated the "relevant cost" for the Competitive Response Program should be fully burdened cost, including regulatory and legal expense, sales and marketing, G&A, etc. OneEighty did not examine that proprietary cost information presented by Qwest in this docket because Qwest indicated to OneEighty's counsel that they would object to access to the confidential cost information and confidential marketing information by an internal OneEighty employee witness.

²⁵ Qwest in response to PSC DR 030 (a) provided extensive documentation of pricing flexibility plans in other Qwest states.

²⁶ Qwest in response to PSC DR 030(b) lists the 11 states with Competitive Response tariffs as Arizona, Colorado, Idaho, Iowa, Nebraska, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

37. Mr. McIntyre testifies OneEighty's concerns about Qwest driving out the competition and raising rates is unfounded. Any waivers in these promotions are of limited scope and duration, and when the waivers are over the rates return to the authorized tariff level which cannot be increased without Commission approval.

38. Regarding OneEighty's testimony comparing the unbundled loop rate to the residential service rate, Mr. McIntyre states that the basic exchange rates in Montana were established and approved by the Montana Commission. The TELRIC-based unbundled loop rates were also established by the Montana Commission, and OneEighty was a party to that docket.²⁷ He testifies the proper comparison is to take the basic residence rate of \$16.73 plus the federal End User Common Line (EUCL) charge of \$6.50 plus the \$2.44 Extended Area Service (EAS) increment paid by most Qwest customers to arrive at a price for basic residential service of \$25.67, which should then be compared to the unbundled loop rate of \$23.10.²⁸ He states the reason for having unbundled rates lower than Qwest's retail rates is to allow competitors to enter markets and quickly generate a revenue stream. However, the use of unbundled rate elements is expected to be an entry strategy while competitors fund their own networks.

39. Mr. McIntyre takes issue with the implication by OneEighty that Qwest has raised rates in other states as the result of UNE-P elimination and announcements by AT&T and MCI that they are limiting sales activity. He testifies unbundled elements are still available under contract terms. AT&T and MCI have both negotiated commercial agreements for platform services and it remains to be seen if they will aggressively market their services or not. As far as increasing rates for residential services, the witness testifies that for years local prices have been artificially low and should be increased. Commissions are recognizing this. In some cases, revenue recovery has been shifting from switched access to local services. In other cases, regulators have created universal service funds to reduce the subsidies flowing from urban to rural areas.²⁹

It does not have permanent tariffs in Minnesota or New Mexico. However, Qwest is currently running promotions in those two states.

²⁷ D2000.6.89.

²⁸ The EUCL and EAS charges do not apply to the unbundled loop rate. Qwest witness McIntyre states CLECs do not have to charge these additional elements.

²⁹ Qwest in response to PSC DR 032(d) stated that, among the 14 Qwest states, Nebraska, Wyoming, and Colorado have state universal funds.

40. Mr. McIntyre testifies OneEighty is wrong when it says the proposed tariff will drive out competition and then Qwest will raise rates back to monopoly levels. He cites the testimony of Allen Buckalew for the MCC who pointed out the tariff is competitively neutral. Competitors can also take advantage of these tariff offerings. He states the rate paid by the customer after the waiver period is over is the exact same rate they pay now. He testifies that OneEighty continues to assert there is some increase in rates looming, but provides no basis for that speculation. Any rate increase would have to be approved by the Montana Commission.

41. Mr. McIntyre testifies that OneEighty's assertions about including language that provides that when a customer is reestablishing service a "material part" (meaning a dial tone) product must be included, are misplaced. He testifies Qwest cannot sell some adjunct service to a customer such as call waiting or speed dial without having first sold a dial tone line to establish the customer's account. Omitting non-dial tone services would mean those services would be omitted from the waiver, reducing customer benefit.

42. He also testifies about the assertion by OneEighty that, when a customer is reestablishing service with Qwest, it should be "the exact same type/class of service the customer had with Qwest previously." He states this would limit customers' options and deny them the opportunity to upgrade their service. If they wanted a waiver, they would have to sign up for the same service they had before, let the allotted time period pass, and then change service. They would incur the non-recurring charges they were expecting to avoid in the first place.

43. Regarding DS1 service, Mr. McIntyre explains it is not a dial tone service and has been deregulated since 1985. Qwest does not need the proposed tariff language to price or offer promotions on DS1s.³⁰

44. Mr. McIntyre testifies that the claims by OneEighty that the tariff filing bypasses the regulatory process and provides a form of detariffing are not correct. He states Qwest has filed a proposal for a tariff and asked the Commission for approval. This process allows OneEighty to comment and they have done so along with the MCC.

³⁰ Qwest in response to PSC DR 033(b) explained DS1s will be eligible for a competitive response program. Even though it is deregulated and not subject to the proposed tariff, it was included on the list of products for which Qwest will be offering the competitive response program.

He states this not a detariffing filing because the terms and conditions are spelled out in the tariff. McIntyre also testifies that Qwest does not intend to use the Competitive Response tariff for all future promotions. There will be other promotions filed and authorized separately.

45. Mr. McIntyre addressed OneEighty's challenges to the concept of providing a "benefit or consideration." He testified that the example of providing a free wireless phone was used because it is one Qwest used in the past under Competitive Response tariffs. He stated Qwest views future benefit and market plans as proprietary. Regarding OneEighty's statement that it is not appropriate to provide benefits that are not directly related to the service being provided, he testified he did not agree. He states the focus is on the customer and, if the customer finds value in the benefit, the customer will respond favorably. He testified it is a common practice in many industries. He cites receiving airline miles for credit card purchases as an example. He notes the value of the benefit or consideration cannot exceed the amount allowed by the tariff and that the value of the benefit is also available to resellers of Qwest's service. He testifies that OneEighty is correct that these benefits are not contained in Qwest's Competitive Response tariffs in other states and that Montana is the first Competitive Response tariff to contain this language. However, he further states Qwest has offered these benefits in competitive inquiry tariffs and product save tariffs in the eleven other states where the tariffs exist.

46. In response to OneEighty's concern that Qwest could use its knowledge of OneEighty's wholesale facility requests to target customers for saving, Mr. McIntyre testifies that federal law prohibits Qwest from using wholesale information for retail purposes. Qwest does not allow wholesale orders to be used for retail retention marketing.³¹ The only information Qwest is lawfully allowed to use for retention purposes is information coming directly from the customer.

47. Finally, regarding the testimony of OneEighty that Qwest competition should be limited to service quality, Mr. McIntyre testifies that Qwest should be able to compete using pricing and promotions, as well as service quality, and customers should be allowed to make their choices.

³¹ See "Qwest Code of Business Conduct" provided in response to PSC DR 033(d).

48. In response to the testimony of Allen Buckalew for the MCC, Mr. McIntyre notes that the Commission did approve a Competitive Response tariff in 2001 in Docket No. D2000.2.21. However, the PSC order required Qwest to provide certain monitoring information which Qwest was unable to provide. Therefore, Qwest never had a tariff in place and did not implement a Competitive Response program at that time. He testifies that Qwest is now providing monitoring information and has filed results for October through December 2004 for the 90-day promotion tariff.

49. Mr. McIntyre testifies that Qwest can, for the most part, comply with the monitoring requirements outlined by the MCC on pages eight and nine of Mr. Buckalew's testimony. However, he testifies that how Qwest will monitor success is unclear. The number of customers won back will be provided. However, a success rate based on the number of customer contacts would not be helpful since some customers are contacted more than once and Qwest does not have such information on a state-by-state basis. A success rate based on the number of access lines lost to competition would be confusing.

50. As far as submitting market share data, Mr. McIntyre testifies Qwest cannot provide such information. Competitors in telecommunications markets are the only ones that know how many customers they have and they are unwilling to share that information, particularly with Qwest. More and more customers exist who have never had Qwest service.

OneEighty Response Testimony

51. The response testimony of OneEighty was filed by Mr. Dimock. He indicates the purpose of his testimony is to respond to the MCC testimony filed by Allen Buckalew and to provide additional information in response to data requests by Qwest and Commission staff.

52. Mr. Dimock said he disagrees with MCC that the promotional tariff will be self sufficient and beneficial to customers. Rather, he states the program puts Qwest's small facility-based competitors at risk.

53. Mr. Dimock argues that whether or not the program is revenue neutral is not relevant and that an argument that revenue neutrality is somehow competitively neutral is a complete fallacy. Even though the program may be revenue neutral, there are

costs associated with the program are going to be subsidized by existing ratepayers, including regulatory and legal expenses, selling and marketing expenses, service installation costs, and the cost of operating the infrastructure. Mr. Dimock argues one can look at Qwest's financial statement in which Qwest continues to report massive quarterly losses and wonder if operating costs are already exceeding revenue.

54. Testifying about customer benefits, Mr. Dimock states the customers receiving direct waivers will see a short-term benefit but no long-term benefits. Meanwhile the other customers of Qwest and the customers of other telecommunications providers see absolutely no benefits and may ultimately suffer long-term harm. The promotion may allow Qwest to reduce competition.

55. Mr. Dimock next testifies about the term "monopoly" as used in his earlier testimony. He says that an economic monopoly is one in which the incumbent carrier has some control over the wholesale rates charged to competitors, and also some control over customers retail rate expectations. To the extent the wholesale rate is set, the incumbent can drive down the retail rate to near or below the wholesale rate driving out competitors from the market. He uses an example of the unbundled Qwest loop rate in Montana, which is \$23.10.³² He then states the Qwest residence measured service rate is \$9.56 per month flat rate plus a usage component. The business rate is \$19.85 flat rate per month plus usage. He asserts the flat rate approximates the carrying cost of the loop itself and points out the Qwest residential telephone bill is \$16.11. This economic monopoly has effectively kept OneEighty from offering residential service. He explains that a "regulatory" monopoly is one in which a national, state, or local government grants a single provider the right to be the only provider of a good or service.

56. Mr. Dimock also testifies that Qwest can price competition out of a market without violating predatory pricing prohibitions. He states Qwest can price a CLEC out of a market because Qwest controls not only its own prices but its competitor's costs. Therefore, he states Qwest can price below the cost it sells to a competitor without pricing below its own costs, thus avoiding predatory pricing. He testifies that the

³² OneEighty's response to PSC DR 035 (a) shows this loop rate is the highest of any state in the United States. The source for this data is "A Survey of Network Element Prices in the United States (Updated February 2005)" by Billy Jack Gregg, Director Consumer Advocate Division, Public Service Commission of West Virginia

Telecommunications Act provides access to the incumbent's network at TELRIC prices, which include costs plus a reasonable profit. Therefore, the TELRIC prices paid by a CLEC are higher than Qwest's cost by "a reasonable profit." He notes that the TELRIC prices are set in rate cases before state commissions and contesting these cases is very costly. He indicates that Avista Communications³³ participated in a contested case³⁴ in Montana in 2000 and the cost for Avista was in excess of \$400,000.³⁵ Mr. Dimock testifies that, in the end, the ILEC TELRIC rates are what the ILEC could justify absent any opposition, and from a resource perspective, it is impossible for a CLEC to challenge that rate.

57. Mr. Dimock contends that Qwest must allow competitors access to its system because its system in Montana was built with ratepayer funds as part of a national regulated monopoly under a guaranteed rate of return, and expanded and maintained more recently with substantial federal subsidies. The 1996 Telecommunications Act required the Bell companies to allow competitors access to that network to enable competition. The FCC designed a methodology called TELRIC to assign a price to the network elements which competitors would pay. He said Qwest makes money whether they sell a retail service to a customer or if they sell access to "their" network for OneEighty to deliver service. This is an advantage the competitors of Qwest do not have.

58. Regarding other competitive advantages Qwest has, Mr. Dimock asserts Qwest has the inherent advantage because they started with all the customers. A customer has to make a decision to move to a competitor. A default decision of a customer to take no action benefits Qwest.

59. Mr. Dimock states that the Commission has taken action relevant to this proceeding since OneEighty's initial testimony was filed. He claims the Commission's staff and individual Commissioners opposed House Bill (HB) 539. He says the proposed legislation would have granted Qwest some of what their proposed Competitive Response tariff would allow them. However, the proposed tariff actually provides them more than HB 539.

³³ OneEighty Communications bought Avista Communications' Montana and Wyoming markets in 2001.

³⁴ D2000.6.89.

³⁵ OneEighty in response to PSC DR 36(b) stated the bulk of this money was spent on attorneys and economists.

Commission Discussion and Decision

Qwest will utilize the difference between its wholesale and retail rates to create an economic monopoly.

60. The Commission finds the concerns of OneEighty unfounded. Nothing in the proposed tariffs allows for a 12-month decrease in rates. After a limited waiver period is over the tariffed rates are back in place and these cannot be increased without Commission approval. Secondly, the wholesale loop rate was approved by this Commission in a docket in which OneEighty participated.³⁶ The residence retail rate was also approved by this Commission. It is beyond the scope of this docket to reestablish or confirm the existing residence retail rate or the existing wholesale loop rate. The proper comparison within the scope of this docket is the proposed retail prices under these promotions versus the relevant costs.

Approval of these tariffs will be a fatal blow to competition in Montana.

61. Qwest has provided a specific list of products available for the program. OneEighty claims this list of products comprises almost every product contained in Qwest's existing tariffs. However, OneEighty has not substantiated that claim. Secondly, the Commission rejects the OneEighty argument that only a "material part" --meaning dial tone line -- should be eligible for the program. The Commission agrees with Qwest it cannot sell adjunct services such as features to customers to whom they have not first sold a dial tone line. Omitting waivers for features reduces the customer benefits of this program.

62. The Commission does agree with OneEighty that DS1 service should not be on the list of tariffed services available for waivers. A DS1 is a 1.544 Mbps digital service. DS1 capable channels for point to point non-switched communications in Montana can be ordered from the Qwest Montana Private Line Transport Services Catalog where DS1 type services are deregulated or from the Qwest Montana Access Services Tariff as regulated special access. In either case it is inappropriate for DS1s to be on the list of services eligible for the Competitive Response programs. The Commission finds that DS1s shall be removed from the list of eligible services.

³⁶ D2000.6.89.

63. The Commission disagrees with OneEighty regarding “benefits and considerations,” finding that incentives of this type are common practice and can produce benefits for customers.

Qwest could use its knowledge of OneEighty facilities to “save” a customer before the customer notifies Qwest he or she plans to leave.

64. The Commission finds there are safeguards provided under Federal Law and Qwest's own internal Code of Business Conduct that are sufficient to prevent the concern raised by OneEighty.

Promotional rates for some customers are subsidized by other customers

65. The Commission finds the OneEighty arguments are without merit. The proper cost test in this proceeding is whether the prices and revenues of the programs, including the impact of the incentives, still exceed relevant cost. Qwest has not requested any rate increase to recover lost revenues from waivers in this docket. OneEighty did not examine the Qwest Proprietary cost material filed in this docket. Without examination of this cost material, OneEighty cannot make any claim regarding promotional rates subsidized by other customers. Finally, regarding its argument about rate subsidization and Qwest being guaranteed a certain rate of return, that simply is not true under rate of return regulation. A regulated entity is afforded the "opportunity" to earn a fair rate of return but they are not guaranteed a certain rate of return.

Benefits to Consumers

66. The Commission agrees with the MCC and Qwest regarding customer benefits. The ability to try a different provider without charge is a consumer benefit. In addition, Qwest has stated it is willing to forego revenue to try and maintain a customer's service. Qwest is responding to competition with this filing and there will also be an economic benefit to Qwest's Montana customers.

Tariffs

67. The Commission finds the Competitive Response tariffs should be approved, as filed and amended on March 22, 2005, with the following changes.

Multiple Waivers or Other Benefits or Considerations

68. OneEighty is concerned about the possible anti-competitive aspects of customers being able to receive more than one waiver. The Commission shares that concern. Qwest itself has touted these promotional programs as not being anti-competitive because customers can only receive one incentive or waiver. At hearing, under cross examination by OneEighty, the Qwest witness stated that under the terms of the Product Save promotion, a waiver is available for each product.³⁷ That is, if a customer called Qwest to disconnect call forwarding, Qwest could offer that customer a limited waiver of the recurring charges for the call forwarding to encourage the customer to keep the product. If that same customer called Qwest a week later to disconnect his or her voice mail, Qwest could offer the same customer a limited waiver of the recurring charges for the voice mail to encourage the customer to keep that product. Therefore, under the Product Save program, theoretically a customer could receive multiple waivers. Qwest itself recognized this and said in its Reply Brief: “Qwest would not object to a reasonable limitation intended to prohibit pancaking of the three programs. For example, a provision that clearly prohibited multiple applications of Product Save, or the application of Product Save within 24 months of the application of either Competitive Response or Competitive Inquiry would not be objectionable to Qwest.”³⁸ The Commission finds the Product Save promotion shall be limited to one application per customer rather than one application per product. In addition, the Commission finds that the tariffs shall be revised such that a customer receiving a waiver or benefit of consideration from one of the three competitive response programs (Competitive Inquiry, Product Save, and Competitive Response) is not eligible for a waiver or other benefit or consideration from either of the other two programs.

69. Sections 5.2.11.A.3.c and 5.2.11.B.3.c of the proposed Competitive Response programs state: “The Company may also provide a reasonable reward after a period of time or on the anniversary date to recognize the continued retention of the customer.” This provision clearly represents multiple incentives or awards to a customer. Qwest, again in its Reply Brief, has recognized this and offers no objections to the

³⁷ See transcript, Page 37.

³⁸ Qwest Reply Brief, Page 14.

deletion of these sections of the proposed tariff.³⁹ The Commission finds those sections shall be deleted.

Incentive Uniformity

70. OneEighty had argued Qwest should always offer the maximum incentive to “avoid discrimination.” Qwest objects to this as they want to be able to change the value of the incentive to respond to market conditions. However, Qwest argues that on a practical basis they cannot mass market the competitive response programs on a customer-by-customer differentiated basis. The incentives are applied on a uniform basis to all customers. Qwest gives the example that during the third quarter 2005, if Qwest decides market conditions dictate the maximum waiver is warranted, then all qualifying customers would receive the maximum waiver. If Qwest decides, due to changing market conditions during the fourth quarter of 2005, that only a waiver of the non-recurring charges is warranted, then all qualifying customers would receive that waiver. Qwest states they have no objection to including a uniformity requirement in the proposed tariff. The Commission finds that such an incentive uniformity requirement shall be included in the proposed tariffs.

Product Save Tariff Modifications

71. The fourth change regards the proposed Business and Product Save tariffs. Section 5.2.11.E.3.a.(1) and Section 5.2.11.F.3.a.(1) both state the company may offer a waiver of 100% of the business or residence nonrecurring charges associated with the product being saved. Because these customers already are subscribing to the product and Qwest is “saving” the product by convincing the customer to not disconnect it, there can be no nonrecurring charge to waive. The Commission finds those sections should be deleted from the proposed tariffs. That, in turn, requires Sections 5.2.11.E.3.a.(3) and 5.2.11.F.b.(3) to be deleted also since they state Qwest can offer a waiver of the nonrecurring charges and a waiver of one-month recurring charges. Finally, Sections 5.2.11.E.3.(4) and 5.2.11.F.3.(4) shall be modified to state the maximum value of other benefits or considerations cannot exceed the value of a one-month recurring waiver.

³⁹ Qwest Reply Brief, Page 13.

Duration of Tariff

72. Qwest has proposed its Competitive Response tariffs be made “permanent.” OneEighty, in its Answer Brief, suggested a 90-day sunset provision was appropriate but if that was not adopted, that the one-year sunset provision included in the previous Competitive Response Docket D2000.2.21 was appropriate.⁴⁰ The MCC states no sunset provision is required because the Commission could sunset the tariffs at any time if the Commission found abuse based on the reported data.⁴¹ Qwest, in its Reply Brief, argues the 90-day sunset provision is “absurd” and the one year sunset provision is unreasonable.⁴² The Commission finds the Competitive Response programs and their impacts, if any, on competition need to be monitored closely and a review is necessary after one year. The Commission adopts the sunset provision ordered in Docket D2000.2.21, Order 6250b. The tariffs sunset one year from the service date of this Order. However, Qwest has the option of filing, no later than 90 days prior to the sunset date, to extend the tariffs beyond the sunset date. Qwest’s tariffs will remain in effect, at a minimum, for the duration of that proceeding.

Monitoring Reports

73. MCC, in its testimony, recommends a requirement for Qwest to continue filing monitoring reports with this Commission. The reports currently being filed by Qwest under its 90-day promotional tariff do meet the specifications defined by the MCC with the exception of the reporting of success rates.

74. The Commission believes these reports are a valuable tool for monitoring the programs. The Commission finds the monitoring reports, in their current format, are to be provided on a monthly basis until the sunset date. In addition to the current information contained in the report, the Commission adopts the MCC recommendation that Qwest also add data showing their “success rate” for each program and, for the Product Save promotion, information on how many of the Product Saves were access lines versus adjunct products or services.

⁴⁰ OneEighty Answer Brief, Page 16.

⁴¹ MCC Answer Brief, Page 3.

⁴² Qwest Reply Brief, Page 14.

Resellers

75. Qwest has stated the Competitive Response programs are available to resellers of Qwest's services. The Commission finds this is important for the development of competition in Montana. Language shall be included in the tariff stating the three Competitive Response programs are available to resellers.

Qwest's existing Competitive Response promotion tariffs (Docket No. N2005.3.25) will remain in effect until such time as Qwest has filed acceptable compliance tariffs implementing this order.

76. The Commission authorized Qwest to operate its Competitive Response tariffs on a promotional basis for 90 days. These tariffs were to expire on July 2, 2005. These tariffs will remain in effect until such time as Qwest has filed acceptable compliance tariffs to implement this order. This will allow Qwest and Qwest's customers to avoid the expense and confusion of taking down the promotion on July 2, 2005 and reactivating it several weeks later.

Policy Recommendation

77. This Commission order and approval of the Qwest Competitive Response tariffs does not establish a precedent for the consideration of any future competitive response tariff. It is also appropriate to note no services provided by Qwest's affiliates are available as services subject to the Competitive Response programs.

Legal Issues

80. In its Post-Hearing Response Brief One Eighty argues that Qwest has "failed to meet its burden of proof to establish the value of [the Competitive Response] programs_[,]" and that the programs "have the potential to destroy Montana's nascent competitive local exchange carrier ("CLEC") industry." p. 1. The Commission has addressed these arguments. OneEighty, however, makes two additional arguments that have not been addressed.

81. First, OneEighty contends that Qwest failed to comply with "procedural and information disclosure requirements" of § 69-3-807, MCA, and corresponding Commission rules; and, second, OneEighty contends that Competitive Response is

"flexible pricing" under Commission rules ARM 38.5.2720, et seq., and that Qwest has failed to comply with Commission requirements for flexible pricing.

82, These arguments are in limine in nature and should and could properly have been raised within a reasonable time after the Qwest filing. Because they do not raise an issue of Commission jurisdiction over the filing the Commission rejects them as untimely.

CONCLUSIONS OF LAW

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

2. The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. Section 69-3-103, MCA.

3. The Montana Public Service Commission is the state agency charged with regulating telecommunications carriers in Montana and properly exercises jurisdiction in this Docket pursuant to Title 69, Chapter 3, MCA.

4. Adequate public notice and an opportunity to be heard has been provided to all interested parties in this Docket, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

5. The Commission may lawfully approve the Qwest "Competitive Response" tariff, as modified by this Order. See § 69-3-807(1), MCA.

ORDER

THEREFORE, based on the foregoing, IT IS ORDERED

1. Qwest's Tariff Transmittal 04-013 "Residence and Business Competitive Response Programs" is approved, effective for one (1) year from the service date of this Order, subject to the following ordered revisions and conditions.

2. DS1 service shall be removed from the list of services eligible for the Competitive Response Programs.

3. The Residence and Business Product Save Programs shall be limited to one application per customer rather than one application per product.

4. The tariffs shall be revised such that a customer receiving a waiver or benefit of consideration from one of the three Competitive Response programs (Competitive Inquiry, Product Save, and Competitive Response) is not eligible for a waiver or other benefit or consideration from either of the other two programs.

5. Sections 5.2.11.A.3.c and 5.2.11.B.3.c, regarding anniversary awards, are rejected and shall be deleted from the tariffs.

6. An “incentive uniformity” requirement shall be included in the tariffs as discussed in ¶ 70 of this Order.

7. The Residence and Business Product Save Programs shall be modified as follows:⁴³ Sections 5.2.11.E.3.a.(1), 5.2.11.F.3.a.(1), 5.2.11.E.3.a.(3) and 5.2.11.F.b.(3) shall be deleted from the tariff. Sections 5.2.11.E.3.(4) and 5.2.11.F.3.(4) shall be modified to state the maximum value of other benefits or considerations cannot exceed the value of a one-month recurring waiver.

8. The tariffs sunset after one year. However, Qwest has the option of filing, no later than 90 days prior to the sunset date, to extend the tariffs beyond the sunset date. Qwest’s tariffs will remain in effect, at a minimum, for the duration of that proceeding.

9. Qwest shall provide monthly Competitive Response monitoring reports in the same format as the reports provided for the 90-day Competitive Response Promotions in Docket N2005.3.25, Notice of Commission Action, April 8, 2005. In addition, Qwest shall augment the existing report with data showing its “success rate” for each Competitive Response Program and, for the Product Save promotions, data on how many of the Product Saves were access lines as opposed to adjunct products or services.

10. Language shall be included in the tariffs stating clearly that Residence and Business Competitive Response Programs are available to resellers.

11. Qwest shall file tariffs for Commission approval which comply with the above ordering provisions by October 21, 2005.

DONE AND DATED this 27th day of September, 2005 by a vote of 5 to 0.

⁴³ See ¶ 84. of this Order.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

Greg Jergeson, Chairman

Brad Molnar, Vice Chairman

Tom Schneider, Commissioner

Doug Mood, Commissioner

Bob Raney, Commissioner

ATTEST:

Connie Jones
Commission Secretary

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days of the service date of this order. See ARM 38.2.4806.