Service Date: November 3, 2000

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA
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IN THE MATTER of the Application of Qwest Corporation for Authority to Detariff its Toll and Operator Services.	)))	UTILITY DIVISION DOCKET NO. D99.8.205 ORDER NO. 6198b

FINAL ORDER

Introduction

1. On August 26, 1999 Qwest Corporation (Qwest) filed to detariff its toll and operator services in Montana.[1] In its filing Qwest proposes to detariff several of its services, including message telecommunications service (toll), 800 Service and "800 Service Line," and operator services. Message telecommunications service (MTS), also called intraLATA long distance or local long-distance service, refers to direct-dialed toll calls within the intraLATA boundary.[2] Included in this proposal is the calling card, 1-800-4US West Calling Service, customers can use to make local and intraLATA calls, or access directory assistance or operator services. The rates for the 1-800-4US West Calling Service card do not reflect time of day, day of week, or distance called. "800 Service" is a long distance service employing a separate dedicated line for inbound only calling.[3] "800 ServiceLine" lets customers use their basic exchange line to receive inbound calls.[4]

2. Qwest also proposes detariffing operator services under this application. These services include operator-assistance for Station-to-Station and Person-to-Person calls, the surcharge for operator

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[1] The filing was made by U S WEST Communications, Inc., which subsequently merged with Qwest and is now Qwest. Therefore, the subject of this order is Qwest, and will be referred to as such throughout.

[2] Within this category of service are a number of plans, including volume discounts, and other options consumers can pick. The optional service plans include Business Daytime Connections, Volume Calling Connection, Super Savings Calling Plan, City Connection. Also affected are Account Code Billing, Guaranteed Rate Calling Connection Service, and Ancillary WATS Service.

[3] The calling party dials in the number which starts with either "800", "877" or "888". Unlike regular service where the calling party pays for the call, with "800" service the party receiving the call pays.

[4] 800 Serviceline is an option served over an exchange access facility or trunk and is not a separate access line.

assistance with calling card calls, and operator assistance to verify if a line is in use or to break into an on-going conversation at the request of a customer.

Procedural Background

3. On September 21, 1999 the Montana Public Service Commission (Commission) issued a notice of the Qwest application. AT&T Communications of the Mountain States, Inc. (AT&T) , the Montana Consumer Counsel (MCC), the Telecommunications Resellers Association (TRA), and Sprint intervened and, along with Qwest, are parties to this docket. Procedural Order No. 6198a was issued on October 28, 1999, which contemplated a February 2000 hearing. Qwest, AT&T and MCC prefiled testimony in support of their positions.

4. On March 8, 2000 the Commission granted a Qwest motion, agreed to by all parties, to decide the issues in this docket on briefs and a stipulated record, without the necessity of a hearing. Notice of Commission Action, March 30, 2000. The stipulated record consists of all prefiled testimony and all data requests and responses. Briefing on the record was completed on July 12, 2000.

Statutory Framework

5. "Detariffing" a service means that instead of filing a tariff with the Commission for approval, a utility files a price list. Changes to the price list go into effect with 7 days notice and do not need Commission approval. The detariffing Qwest proposes applies to prices, terms and conditions.

6. Pursuant to § 69-3-807, MCA, the Commission has authority to establish rates, tariffs or fares for the provision of regulated telecommunications service, which must be just, reasonable, and nondiscriminatory. Alternatively, the Commission can authorize the provision of regulated telecommunications service under terms and conditions that best serve the declared policy of the state to maintain universal availability of basic telecommunications service at affordable rates and, consistent with maintaining universal service, encourage competition in the telecommunications industry and allow access by the public to advances in telecommunications technology. Instead of fixing and determining specific rates, tariffs or fares, the Commission can either:

- totally detariff the service;
- detariff rates for the service but retain tariffs for service standards and requirements;
- establish only maximum rates, only minimum rates, or permissible price ranges as long as the minimum rate is cost compensatory; or

- provide other rate or service regulation as will promote the purposes of the Montana Telecommunications Act (MTA).

Detariffing services differs from deregulating services. For detariffed services, the provider must maintain a current price list with the Commission. In determining if alternative regulation such as detariffing can be granted, § 69-3-807, MCA, requires the Commission to take into account:

- the number, size and distribution of alternative providers of service;
- the extent to which services are available from alternative providers in the relevant market;
- the ability of alternative providers to make functionally equivalent or substitute services readily available;
- the overall impact of the proposed terms and conditions on the continued availability of existing services at just and reasonable rates; and
- other factors that the Commission may prescribe through rulemaking that are appropriate to fulfill the purposes of the MTA.

Summary of Testimony and Arguments

Qwest Direct

7. Testifying for Qwest were James Hayhurst and David Teitzel. Mr. Hayhurst proposes that Qwest is entitled to detariff toll and operator services because they are "highly competitive" and it is in the public interest to allow all competitors to compete on an equal basis. He testifies that with implementation of 1+intraLATA equal access on Feb. 4, 1999, the market is now fully competitive.[5] Because of this change to a competitive environment, Qwest is entitled to alternative regulatory oversight under § 69-3-807, MCA. According to Mr. Hayhurst, detariffing is consistent with the purpose of the legislature as stated in § 69-3-802, MCA, which reads in part, "…it is the policy of the state of Montana to encourage competition in the telecommunications industry.…"

[5] Prior to February 4, 1999 a US West customer who wanted to use a carrier other than US West for intraLATA long distance had to dial the seven extra digits that make up the preferred carrier's access code. After February 4, 1999 customers were able to preselect a carrier for intraLATA service and to complete an intraLATA call by dialing 1 plus the phone number. Changing providers during the first three months was free. After May 5, 1999 the cost to customers to switch carriers is $5.00 per change.

Mr. Hayhurst recounts the factors the Commission may consider in determining whether to detariff intraLATA long distance service (see Statutory Framework above). He believes that the convenience of 1+intraLATA equal access dialing may encourage customers to change providers for intraLATA calling, especially if the competitor can offer interLATA service and discounts based upon combined usage. Mr. Hayhurst argues that Qwest is the only carrier operating at a significant disadvantage in the market, because it cannot offer interLATA long distance within its local service territory.[6] The disadvantage comes from Qwest's inability to offer service packages comparable to those offered by competitors. Competitors like AT&T can attract customers who use higher volumes of long distance service and other services by offering discounts on bundles or packages of services.

Mr. Hayhurst asserts that 12 states served by Qwest have recognized the need for "pricing flexibility" for intraLATA long distance[7, 8] and five commissions have "deregulated" Operator Services.[9]

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[6] Qwest must receive approval under section 271 of the 1996 Telecommunications Act before it can offer interLATA long distance inside its traditional service territory.

[7] Detailed in the response to PSC 01-06, Attachment B. Broadly summarized:

Changes can be made with little or no notice to the Commission	North Dakota, South Dakota, Wyoming, Iowa
Changes require 5 days notice to Commission.	Utah
Changes require 10 days notice to Commission.	Idaho, Nebraska, Washington
Prices are flexible within a range set by the Commission.	New Mexico, Arizona, Colorado
Price decreases can be effective immediately, increases require 20 days notice to PUC and customers.	Minnesota

[8] Montana was not cited as one of the twelve states that have provided "pricing flexibility" for intraLATA long distance in Mr. Hayhurst's testimony. In Docket No. D90.12.86 Qwest was granted flexibility in reducing prices, but cannot raise them without Commission approval. Order No. 5535g, ¶ 265, November 23, 1992. Nowhere in Qwest's testimony, briefs or data responses is there any acknowledgement of existing price flexibility or its impact.

[9] Based upon the information contained in the response by Qwest to PSC 01-006, Nebraska has deregulated operator services; South Dakota classifies them as fully competitive (Order Approving Settlement Agreement TC 99-055, December 8, 1999); Utah has approved pricing flexibility subject to Qwest submitting a plan for deregulation for review by the Commission (Docket 98-049-24); Wyoming has quality of service regulation only; and North Dakota has only complaint authority.

8. Mr. Teitzel testifies in support of the Qwest proposal to detariff toll and operator services and attempts to show how the proposal is in the best interest of Montana consumers by describing the following:

- the number and other characteristics of alternative providers,
- the extent to which services are available from alternative suppliers in the relevant market,
- the ability of alternative suppliers to make functionally equivalent or substitute services readily available,
- and the overall impact of the proposed terms and conditions on the continued availability of existing services at just and reasonable rates.

9. He states that if the petition to detariff is approved by the Commission, Qwest does not intend to deaverage rates within the state for these services.[10]

IntraLATA Long Distance

10. Mr. Teitzel lists the following options consumers can choose for intraLATA long distance calls including:

- dialing 1 plus the desired phone number (after selecting an alternative vendor for intraLATA service),
- dialing 0 plus the phone number,
- using additional numbers to “dial-around” the default/chosen carrier that normally carries the call,
- pay phones, paying at the time of the call,
- prepaid calling cards and credit cards or standard calling cards that charge the calls through selected vendors,
- wireless phone service, or using the Internet to carry a conversation.

11. **1+ intraLATA equal access**. Mr. Teitzel describes the impact of 1+ intraLATA equal access on the intraLATA long distance market. In December 1998, 25 carriers announced they would provide intraLATA service to Montana customers when 1+ equal access became effective. Qwest

[10] However in its response to data request PSC 01-010, Qwest indicates it is concerned about instances where toll traffic exchanged with independent telephone companies in Montana is priced below the access charges Qwest pays independents for exchange of traffic. Qwest expresses willingness, absent

records show that as of April 1999 almost 50 carriers were furnishing 1+ intraLATA long distance in Montana. Mr. Teitzel states that the impact of the February 1999 introduction of intraLATA 1+ option has been dramatic for Qwest. The company's share of "switched minutes" has declined from xx to xx percent (proprietary). He contends the real decline in Qwest's share of intraLATA service is understated because some minutes of service are not measured by the company's system. These minutes are not measured because they are carried entirely over other companies' networks or by dedicated and non-switched facilities.

12. Mr. Teitzel notes that 35 agreements between Qwest and CLEC's (competitive local exchange carriers) have been approved by the PSC. He provides information on offers made by some of these companies[11] and argues these competitive services are well known to Montana customers. He cites the millions of dollars spent by such companies as AT&T, Sprint and MCI on multimedia advertising and includes copies of newspaper and internet based advertising as support.[12] He cites the efforts by alternative providers since February 1999 to sign up customers often using promotional devices, such as ice cream coupons or free airline miles and that customers in Montana can use smaller companies, not just the largest companies like MCI or Sprint.

13. **Dial-around service.** Mr. Teitzel believes that continued use of "dial-around" services by consumers should not be underestimated. Dial-around service is where a consumer dials a 7-digit access code and then the phone number. Mr. Teitzel contends there are many dial-around providers that Montanans can use and some of these are both dial-around providers and 1+ intraLATA service providers in Montana. He notes that some dial-around providers are owned by large companies like MCI Worldcom and AT&T, although the dial-around providers may have different names.

14. **1-800 and 1-888 type service.** Mr. Teitzel asserts that there are a number of providers offering 800 number services. He lists AT&T, MCI, Sprint, Mid-Rivers, Touch America. He states that Qwest has seen a decline in the number of 800 service lines it provides customers.

15. **Calling cards.** Calling cards are another means consumers can use to make long distance calls. Mr. Teitzel lists Frontier Communications, Eclipse Telecommunications, and Touch

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future adjustments to Independent's access charges, to use "surcharges" in order to recover Qwest's cost of service.

[11] Id., Schedule DLT-16, pp. 3-7.

[12] Id., Schedule DLT-6.

America as providing in-state long distance service to Montana, with calling cards as part of their product line. He states that calling cards are also available from AT&T, MCI and Sprint.

16. **Non-traditional means–Wireless and Internet-based alternatives.** Mr. Teitzel states that in 1998 wireless subscription levels increased by 25 percent over 1997 levels, with revenues increasing by 16 percent.[13] He attributes growth in wireless service use to lower costs and cites reports in the popular press predicting large increases in worldwide phone traffic via wireless services. He cites an interview in which a high-level IXC official[14] describes how it is packaging wireless service as an alternative to traditional phone service. He lists several Montana wireless service providers as alternatives to Qwest. According to Mr. Teitzel's testimony, Internet or IP Telephony is a newly emerging alternative that competes with long distance service-both intrastate and interstate.[15]

17. Mr. Teitzel testifies that there are a large number of viable competitive providers in the Montana intraLATA long distance market and they have made themselves known to Montana consumers. The largest companies–AT&T, MCI, Sprint and Touch America–offer service to both residential and business customers and many smaller providers also serve both types of customers. He contends that companies providing intraLATA 1+ service, 800, and calling card services have the technical capability and the authority from the PSC, to offer service anywhere within Qwest's Montana service territory. The only limitation he is aware of is the availability of facilities and tariff billing provisions. Mr. Teitzel asserts that there are no technological differences between Qwest intraLATA service and the services of 1+ equal access providers. He concludes that the services are comparable, although not identical, in price, terms and conditions.[16]

18. Mr. Teitzel argues that the alternatives to Qwest service are functionally equivalent to, or better than, Qwest service because some alternative providers offer both intraLATA and interstate long distance services in one package. He asserts some competitors, such as AT&T and MCI, require that consumers subscribe to their intraLATA service before they can take advantage of low interstate

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[13] No source given. See p. 7, Teitzel Direct Testimony.

[14] Report by the Yankee Group, described in *USA TODAY Tech Report*, July 7, 1998.

[15] Exhibits of David Teitzel, Schedule DLT-8.

[16] Id.

rates. Also consumers are discouraged from using Qwest for intraLATA service because of the need to pay two monthly minimum fees, one to Qwest and one to the interLATA long distance carrier.

19. Mr. Teitzel believes that the requirement to use tariffs for these services holds Qwest back from implementing discounts for customers, and provides competitors additional time to prepare for and respond competitively to Qwest proposals. The tariff process gives competitors the opportunity to intervene in Qwest filings and delay implementation of Qwest's marketing strategies. Tariff filings are costly for Qwest because of the documentation required to support the filing. This burden is not shared by competitors, and according to Mr. Teitzel, is not fair.

20. Mr. Teitzel asserts that it is imperative that Qwest compete to the extent that detariffing allows. Detariffing would create an environment encouraging all intraLATA long distance providers to respond creatively and effectively to the needs of the Montana consumer. Mr. Teitzel points to the recent wave of mergers, takeovers and partnerships in telecommunications as evidence that providers are responding creatively. He contends that Qwest needs to be able to compete aggressively in the intraLATA long distance market to dissuade AT&T, Sprint and MCI from maintaining artificially high prices for Montanans. Montanans use long distance discount plans at a lower rate than Americans do as a whole.[17] According to Mr. Teitzel Qwest's detariffing would facilitate competition and exert pressure to reduce rates in Montana. In support he points to MCI's reduction of rates on several of its residential intraLATA call plans on February 4, 1999, the same day 1+intraLATA equal access was implemented. He suggests that the lack of competition results in higher rates for Montana customers than for customers in other states such as Utah. Mr. Teitzel concludes that the impact of detariffing of intraLATA service would be beneficial for consumers in Montana.

Operator Services

21. Qwest also requests detariffing of all operator services used with both local and long distance calls. Operator services fees are charges applied when a customer dials "0" when making a call or when the customer uses an operator to help them interrupt an ongoing call or verify a line is in use. Current fees are:

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[17] An example of such a plan is Sprint's "Nickel Nights" plan. In this plan, out-of-state calls cost five cents per minute from 7 p.m. to 7 a.m. and in-state calls cost ten cents per minute for the same period. Daytime rates are 10 cents per minute for calls between 7 a.m. to 7 p.m.. There is an additional monthly fee of $5.95.

- A $2.00 surcharge is collected by Qwest for Station-to-Station calls (collect calls or calls billed to another phone number).
- A $4.00 surcharge is collected in addition to long distance usage charges by Qwest on Person-to-Person calls.
- A surcharge of $0.60 per local call is collected by Qwest on "Mechanized Calling Cards" where the consumer dials 0, the phone number desired and the calling card number. The surcharge is $0.80 per call if the call is long distance.
- The charge for Verification service is $2.25 (a customer asks an operator to check if a line is in use).
- The fee for Interruption Service is $2.90 (where a customer requests an operator to interrupt an on-going call between other parties).

22. Mr. Teitzel states that operator services are offered by alternative providers of intraLATA long distance services. According to Mr. Teitzel, AT&T, MCI, Sprint, Allnet, Frontier, and Touch America have tariffs on file at the Commission with charges for operator-assisted calls and tariffs filed by CLEC's have charges for operator assistance for local calls.[18] He asserts these services are easily accessible for customers and are comparable, although not identical, to existing Qwest services. He is less certain about price comparability, although he notes that AT&T is considered the price leader for operator services and AT&T's tariff price list contains maximum prices that are higher than Qwest's maximum charge.[19]

[18] According to the response to PSC 01-026 (d.), all approved wireline interconnection and resale agreements filed with the Commission as of 11/26/99 provided for operator services from Qwest. As of that date there were 17 wireline interconnections agreements and 23 resale agreement approved by the Commission.

[19] Charges in the AT&T tariffs, effective April 10, 2000, are in the table below. The current Qwest fees are included for ease of comparison.

Operator assistance charges	**AT&T**	**Qwest**
Station-to-station calls	$2.10-5.50	$2.00
Person-to-person calls	$8.48	$4.00
Mechanized calling card, long distance	$3.45	$0.80
Busy line, verification	$9.95	$2.25
Busy line, interrupt	$9.95	$2.90

23. Mr. Teitzel states that customers in Montana have options for operator service that are functionally equivalent and substitutable for Qwest's services. Mr. Teitzel concludes that detariffing Qwest operator services will not have a negative impact on Montana customers and will foster competition. He concludes that in both operator services and intraLATA toll service, competition has advanced to the stage that detariffing is in the public interest.

AT&T Direct Testimony

24. AT&T witness Cathy Brightwell testified on how the regulatory treatment of different telecommunications providers developed in Montana. She states that interexchange carriers like AT&T were accorded pricing flexibility about 10 years ago by the Commission. This flexibility was developed in phases, including a three-year trial period in which interexchange carriers could raise or lower rates without regard to a cap. After the trial period ended, price flexibility was made permanent. Now interexchange carriers can implement price changes, new services, and promotions with seven days notice to the Commission. However, Commission approval of tariffs is needed for non-price changes such as to terms and conditions of offerings.[20]

25. Ms. Brightwell testifies that AT&T has four objections to the Qwest detariffing proposal. First, if Qwest's proposal for detariffing is approved by the Commission, Qwest will have the ability to change, with 7 days notice to the Commission, all elements of these services including prices, terms and conditions. Qwest would have more freedom to make changes to services in Montana than the interexchange carriers, including AT&T. AT&T believes that if Qwest's petition to detariff is granted, then the Commission must give the same ability to all carriers to make changes to terms and conditions on 7 days notice. Ms. Brightwell contends Qwest's suggestion that each interexchange carrier make its own application for similar treatment would not be an efficient use of resources for either the carriers or the Commission.[21] Instead she suggests the Commission withhold approval of flexibility for terms and conditions for Qwest until the issue has been resolved for all carriers.

26. Second, since Qwest is a monopoly provider of access service in Montana, AT&T believes safeguards are needed to assure the Commission and competitors that Qwest does not

[20] P. 4 of Brightwell testimony, the cite is the Final Order No. 5548a, Docket 88.11.49.

[21] Response by James Hayhurst to ATT-004 a. and c.

jeopardize competition by pricing its services below cost. As long as access is priced above cost, Qwest must be required to impute the price charged competitors when setting its own prices.

27. Third, safeguards are needed so Qwest cannot use revenues from its monopoly services to subsidize its competitive services. The safeguard she suggests is a requirement that Qwest file an imputation study for review by the Commission and competitors. She argues that if Qwest is able to cross-subsidize its competitive services with revenues generated by its monopoly services, it would violate § 69-3-806, MCA, and ARM 38.5.2709.

28. Last, if Qwest is granted pricing flexibility for these services there will be no way for other carriers, including AT&T, to know when filings have been made. The remedy Ms. Brightwell recommends is for the Commission to create a new section in the weekly agenda for detariffed filings where any Qwest filings would be noticed with a description of the filing. Competitors would be alerted to the need to review the filing and possibly file a complaint with the Commission. Alternatively, Qwest could be required to serve copies of its filing via regular mail on its four major competitors in the same manner required of the interexchange carriers. AT&T prefers the first option.

MCC Direct

29. Montana Consumer Council (MCC) witness Allen Buckalew testifies that Qwest's proposal to detariff toll and operator services should be denied. He relies on his interpretation of the criteria in § 69-3-807, MCA, allowing alternative regulatory treatment. Mr. Buckalew interprets the criteria as meaning the Commission must look for "workable competition" in the markets or exchanges that Qwest serves before detariffing services. Mr. Buckalew's definition of "workable competition" is a large number of sellers with none of the sellers able to influence prices.

30. One indication of competition in a market is market share. In response to data requests, Mr. Buckalew suggests that 30 percent or less market share by any one competitor is a measure of workable competition.[22] According to Mr. Buckalew the markets in which intraLATA long distance and operator assistance are offered are not workably competitive. Qwest retains more that 50 percent of the market (the exact percentage is proprietary) and remains the dominant carrier in all exchanges. In Mr. Buckalew's opinion the February 1999 effort to open markets by implementing 1+intraLATA equal access was the right thing to do, but was only a start.

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[22] Buckalew responses to PSC 051 c. and others.

31. According to Mr. Buckalew, Qwest has shown there are alternative providers, but has not provided sufficient evidence on the size, distribution, or number of alternative providers. He contends that Qwest should have analyzed every exchange it wants detariffed to show there are choices available to customers. The evidence provided by Qwest shows that the availability of providers varies widely between exchanges, and consequently the variety of choice also probably varies widely. Mr. Buckalew suggests that competition tends to move first into metropolitan areas, then more rural areas. Mr. Buckalew argues that Qwest must provide evidence that all the exchanges it wants detariffed have workable competition.

32. Mr. Buckalew believes granting Qwest's request to detariff will likely reduce the small market shares competitors have earned since opening up the market. Also, there is no guarantee that rates will not be deaveraged with resulting higher rates for rural consumers.

33. Concerning operator services, Mr. Buckalew argues that while Qwest claims there are alternative providers and equivalent service, these claims do not rise to the level of evidence. According to Mr. Buckalew, several of the competitors Qwest points to as alternatives are small rural companies that obtain their services from Qwest.[23] Mr. Buckalew's view is that Qwest has not provided the Commission with the evidence necessary to support its contention that the market is competitive in the services or areas Qwest wants detariffed.

Rebuttal Testimony: Qwest

34. David Teitzel submitted rebuttal testimony in response to AT&T and MCC. Consistent with what is permitted under Montana law, § 69-3-807(2) and (3), MCA, Qwest does not request full deregulation, but argues that toll and operator services be administered on a detariffed basis in recognition of the existing level of competition in these markets. According to Mr. Teitzel, Qwest would find it acceptable if the Commission granted AT&T the same treatment as Qwest. Qwest would not object to an expedited process whereby the Commission puts in place detariffing guidelines for other providers.

35. Mr. Teitzel interprets AT&T's description of current detariffed treatment of IXCs by the Commission (AT&T response to USWC-022) as meaning the Commission considers the intraLATA market competitive. As to the cross-subsidization or pricing issues cited by Brightwell in her

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[23] See p. 10 of Buckalew and Qwest response to MCC 01-021.

testimony, Mr. Teitzel testifies that Qwest is in compliance with those statutes and will continue to comply with them after detariffing.

36. Mr. Teitzel contends that Mr. Buckalew has done very little independent analysis. According to Mr. Teitzel, the MCC and Qwest disagree on the degree to which markets are competitive, the comparability of services offered by alternative providers, and the availability of competitive services in each Qwest exchange in Montana. Mr. Teitzel characterizes Mr. Buckalew's definition of workably competitive as vague and subject to interpretation.[24] He agrees with Mr. Buckalew that market share is one indicator of the degree of competition in a particular market, but he reiterates the problems he sees with the market share data submitted in the data requests. In support of his position that there is already sufficient competition, Mr. Teitzel points to the FCC decision on a petition by AT&T to be granted 'non-dominant' carrier status in the interstate, interexchange long distance market when its market share declined from 90 percent in 1984 to 58.6 percent in 1994.[25] Mr. Teitzel notes the Wyoming PSC determined in 1999 that Qwest's services in that state were "fully competitive" with market shares similar to that supplied to the Montana Commission.[26] He takes issue with Mr. Buckalew's opinion that the Commission should not find intraLATA and operator services competitive until Qwest's market share is 30 percent or below. He quotes from testimony filed by another member of Buckalew's firm to illustrate the disagreement between economists concerning the use and value of market share as a measurement of dominance. He notes that this witness refers to 60 percent as one of the possible thresholds for classifying a market as competitive.[27] Mr. Teitzel proposes that Mr. Buckalew's recommended benchmark of 30 percent be rejected.

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[24] "Workably competitive means a large number of sellers with none of the sellers able to influence prices", from p. 5, ll. 18-19, testimony of Allen G. Buckalew.

[25] Order FCC 95-427, released Oct. 23, 1995, p. 37, ¶ 67; see p. 5 of Teitzel Rebuttal Testimony.

[26] See Qwest response to PSC 01-006 which includes the text of the Order and Dissenting Opinion of Commissioner Furtney, Wyoming Public Service Commission, Docket No. 70000TA-98-442, issued April 20, 1999.

[27] Dr. Douglas F. Greer of J. W. Wilson & Associates, Washington, DC in his direct testimony, September 1991, Docket Nos. D99.12.86, 89.8.28, 89.8.29, 89.9.29, 90.5.32, before the Montana PSC. The quote of Dr. Greer's that Mr. Teitzel cites is:

> Hence, market share is often used by economists as a rough measure of firm dominance, but the threshold share indicating dominance is not something about which everyone has agreed. Oliver Williamson suggests a share of over 60 percent typically establishes dominance. Shepherd and Utton use a threshold of 50 percent. Stigler, Scherer, Pascoe, Weiss and Geroski all favor 40 percent…

37. However, Mr. Teitzel does believe the Commission should look at what is happening with new customer service. He points to the lower proportion of both residential and business new connect customers presubscribing to Qwest versus other carriers. In December 1999, the proportion of new business connect customers was xx percent and residential new connects was xx percent (the percentages are proprietary).[28] Mr. Teitzel rejects Mr. Buckalew's conclusion that Qwest's application for detariffing should be rejected until it can demonstrate that similar services are available in each exchange. He argues that with the advent of intraLATA long distance dialing parity, differences between exchanges is not an issue. According to Mr. Teitzel, Mr. Buckalew's point would have merit if he had been discussing competitive alternatives for local exchange service. Mr. Teitzel notes that between April 1999 when the Wyoming Commission approved detariffing and December 1999, Qwest lost 4 percent of the switched intraLATA long distance market in that state.

Operator services

38. Operator services are just as competitive as intraLATA long distance, according to Mr. Teitzel. Mr. Teitzel responds to what he calls an error by Mr. Buckalew concerning operator services. According to Mr. Teitzel, Buckalew suggested that Qwest was counting several of the small rural telephone companies that use Qwest to provide their operator service as competitors. Mr. Teitzel states that nowhere in Qwest's response was it stated that any of the nine independent companies is a competitor of Qwest. According to Mr. Teitzel it was correctly stated by Qwest that 12 carriers are purchasing wholesale operator service from Qwest and that nine of these are independent companies.

Findings of Fact and Commission Decision

Local Toll

39. The MCC contends that the information supplied by Qwest to support its proposal is deficient. One major deficiency the MCC identifies is the lack of evidence on the size, number or distribution of alternative suppliers. Another is whether customers in all exchanges where Qwest wants detariffing have access to alternatives to Qwest's intraLATA toll services. AT&T did not address this issue.

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[28] Proprietary Exhibit DLT-1. Mr. Teitzel corrected an omission in the data originally supplied in response to data requests MCC 01-003 and MCC 09-004.

40. The Commission agrees in part with the MCC. The alternatives Qwest listed to its intraLATA toll service include service provided by long distance carriers such as AT&T, Sprint, WorldCom, Touch America and others through either a customer using the 1+ intraLATA presubscription option or “dialing-around” codes to access a carrier; prepaid calling cards or credit cards; pay phones; wireless service; and internet telephony. The information provided on several of the alternatives in the state, such as wireless service and internet telephony, is thin, relying on reports in the popular press covering national or global trends, especially for business customers, discussions by industry executives based in New York, and copies of company website information. While this evidence is helpful, it does not demonstrate thoroughly the impact in Montana of these alternatives. The scarcity of data on the impact of these alternatives on Qwest’s intraLATA service in Montana as a whole or by exchanges makes the Commission’s job of ascertaining whether detariffing is consistent with state legislative policy more difficult. Accordingly the Commission gives less weight to this information because the facts concerning the impact in Montana are unknown.

41. However the Commission disagrees with the MCC in some respects regarding the deficiencies in the information submitted in support of Qwest’s proposal concerning intraLATA toll service. In its responses to various data requests, Qwest did provide information on revenues, minutes of use, and detailed information on customers by class, exchange and CIC (the carrier identification code of the + 1 intraLATA presubscribed carrier). This information will be discussed in more detail below.

42. The MCC also argues that to meet the requirements in the statutes for detariffing, there must be workable competition. He argues that workable competition is the important guideline for the Commission to use when considering detariffing or other forms of relaxation of regulation. Workable competition is defined by the MCC as “a large number of sellers with none of the sellers able to influence prices.” In numerical terms the MCC recommends using a market share of no greater than 30 percent.

43. Qwest, on the other hand, argues that it has shown evidence of sufficient competition and satisfied the requirements of state statutes. To support its position Qwest also cites the 1996 FCC decision to reclassify AT&T as a non-dominant carrier when it had a market share of 58.6 percent. Qwest cites the Wyoming PSC decision in 1999 to detariff local toll and operator services with what Qwest characterizes as a similar market share. Qwest argues that workable competition is a vague

concept, economists have been shown in testimony before this Commission in an earlier case to not be in perfect agreement as to the exact percentages that justify reduced regulation, and the MCC's position represents the more extreme end of the spectrum.

44. The Commission agrees with MCC that Qwest retains a significant share of the market for intraLATA service, based upon presubscribed customer lines. The remaining customers are largely shared by a few companies. Qwest is the local calling area service monopoly provider in these exchanges. As such it has a level of customer name recognition and strategic position available to few of its rivals in the intraLATA toll market. The existing level of market share, as measured by subscriber lines, coupled with Qwest's long-held position as the local service provider makes it difficult to approve the full detariffing requested by Qwest.

45. However, movement to greater competition has occurred, notably because of implementation of the 1+ intraLATA presubscription dialing option which makes using an alternative carrier for intraLATA service much easier for consumers. Qwest's share of minutes of use, as measured by its switched system, declined from implementation to the end of calendar year 1999. Qwest's data concerning new customers' selection of alternative providers also shows slow progress towards a competitive market, especially for business customers. While there are the shortcomings discussed above in Qwest's information on wireless service and internet-based telephony, these alternatives are also developing.

46. In recognition of the factors discussed above, the Commission approves reduction of regulation for intraLATA toll service. The Commission approves full detariffing of prices for business customers. For changes in prices for intraLATA long distance or 800 numbers, for business customers, Qwest may make price filings instead of tariff filings. New service offerings will be treated in the same manner for Qwest's business services as new service offering made by the IXCs. Currently all IXCs are required to make tariff filings for changes in terms and conditions as determined in Docket No. 94.2.8, Order 5778f. In that order, the Commission ruled that introduction of new services by any of the IXCs deemed regulated utilities over which the Commission exercises jurisdiction pursuant to Title 69, Chapter 3, MCA, would be handled the same as price increases and decreases. All filings for price changes and new service introductions become effective seven days after filing, unless challenged. In addition to filing price lists with the Commission, the IXCs deemed under the Commission's jurisdiction are required to notify all the other IXCs of the price list changes. Qwest will

be treated on parity with the IXCs concerning terms and conditions of services. The Commission does not approve Qwest's proposal to detariff terms and conditions in this proceeding.

47. For residential customers the Commission approves establishing a range in which the company can file price list changes, with the minimum rate being above relevant incremental costs as required by § 69-3-806 and 811, MCA, and ARM 38.5.2709 and 2713. The maximum of the range is set at current tariffed rates. If Qwest chooses, it may make a tariff filing to establish a different range. This reduction in regulation is less than what is approved for business services, but appropriate considering the Commission's obligation to protect the public interest. Competition tends to develop more quickly in the business to business sector in part due to their higher per capita spending and ability to write off business expenses. Qwest's exhibits, such as Teitzel Exhibit DLT-3, its data concerning new subscriber lines and other information are supportive of the view that there is more rapid development of competition for the business customer class. The MCC's testimony warns of the impact on consumers of compete detariffing without more significant data indicating competition is workable in Montana. The arguments presented by the MCC and the data provided by Qwest regarding its share of subscriber lines and other relevant market information support going more slowly with detariffing than Qwest proposes, especially with residential customers. The Commission's decision seeks to balance the goals of legislative policy, as set forth in § 69-3-802, MCA, to encourage competition, yet safeguard the universal availability of basic telecommunications service at affordable rates.

OPERATOR SERVICES

48. The MCC argues that Qwest's proposal to detariff operator services does not show that the market for such services is workably competitive. Unlike intraLATA toll service, the information provided is not sufficient to make an assessment concerning the possible impact of detariffing operator services. According to its responses to data requests MCC-01-008 and PSC 01-012, Qwest does not track operator service volumes by exchange and does not actively market operator services. Operator services are provided as a convenience to customers when they cannot direct dial a phone call (Qwest response to PSC 01-012). Use of operator services is derived from the type of service (intraLATA–1+ presubscribed or dial-around, interLATA, or local calls) used. The data supplied on the share of subscriber lines shows that Qwest retains a high percentage of those lines for intraLATA service,

higher than the percentage in the FCC Decision on AT&T, cited by Qwest as supporting its proposal to detariff. The Commission denies Qwest's proposal to detariff operator services.

49. If Qwest's request for detariffing were granted by the Commission, it could change its prices, terms and conditions with seven days notice to the Commission. Interexchange carriers (IXCs) such as AT&T can implement price changes, promotions and introduce new services with seven days notice to the Commission and competitors, but still must get Commission approval for changes in terms and conditions. Implementation of reduced regulation for interexchange carriers was accomplished in several stages starting more than a decade ago. Price flexibility has been made permanent for IXCs, but that did not include terms and conditions (Docket No. 94.2.8). AT&T argues that the Commission should not detariff Qwest's service terms and conditions without providing the equivalent for AT&T and other IXCs. AT&T suggests that similar filing requirements for all intraLATA and interLATA carriers would be consistent with the Montana Telecommunications Act's encouragement of an orderly transition from monopoly to competition in telecommunications. Qwest did not oppose this proposal. The MCC did not address the issue.

50. In this instance, the Commission agrees that the incumbent carrier should not have a greater degree of flexibility in changing its terms and conditions than the interexchange carriers. However, since the Commission is not approving a greater degree of flexibility for Qwest than for interexchange carriers in this docket, the issue is moot.

51. If Qwest's detariffing proposal is granted, it will have greater flexibility in changing prices and other aspects of its intraLATA toll and operator services. AT&T suggests this flexibility leaves the door open for cross-subsidization of Qwest's competitive services by its regulated or monopoly services (prohibited by § 69-3-806, MCA, and ARM 38.5.2709). Also § 69-3-811, MCA, and ARM 38.5.2713 require prices be above costs, protecting competitors from predatory pricing. Even though AT&T says it has no reason to believe that Qwest is engaging in these anticompetitive strategies, it notes there can be disagreement over what constitutes legitimate costs. To remedy these concerns, AT&T testifies the Commission should require Qwest to file an imputation study for review by staff and competitors. Qwest opposes this suggestion, arguing that it is in compliance with existing state statutes and there is no need to institute any additional safeguards. MCC did not comment on this issue.

52. AT&T raises a credible issue; however, it was not explored in any detail in this case. As AT&T discusses in its testimony, the Commission already has the ability under existing statutory language to investigate these issues, either on its own initiative or in response to a complaint. These issues have been dealt with in other proceedings.[29] If Qwest chooses to file for a price range different from what is granted in this proceeding, it must include an analysis of relevant incremental costs, including imputed costs, and other information necessary for the Commission to ensure that the statutory requirements discussed above are satisfied.

53. AT&T is also concerned that competitors will not have a way to know when price list filings have been made by Qwest and will not be able to quickly review the filings and file a complaint with the Commission if they consider a complaint to be necessary. AT&T suggests that either a new section be added to the Commission's weekly agenda for detariffed filings or that Qwest be required to serve copies of its filings on its competitors, similar to the requirements imposed upon interexchange carriers. AT&T prefers the first option. Qwest does not oppose the proposal. MCC did not comment on the issue.

54. Price list changes are filed with the Commission and are normally served on competitors by the carrier making the change. For detariffed filings, the same requirements will apply to Qwest.

55. The Association of Communication Enterprises, or ASCENT, (formerly known as the Telecommunications Resellers Association), did not file testimony or data requests in the case, but did file a brief. In its Initial Brief, filed June 9th, ASCENT argues that Qwest should not be granted any deregulation until it has been shown to comply with the checklist for interLATA market entry pursuant to § 271(c)(2)(B) of the Telecommunications Act of 1996. ASCENT argues in its brief that granting the regulatory parity Qwest seeks would "weight heavily in favor of a former monopolist who retains tight control over a ubiquitous network." ASCENT takes issue with much of what Qwest has provided in terms of alternatives to its service, characterizing it as "potential rather than actualized competition." ASCENT argues that reducing current regulatory safeguards risks Qwest using its majority market share to engage in anti-competitive behavior, especially vis-a-vis small competitors, all the while reducing the quality and raising costs of its existing service offerings to the public.

[29] Final Order No. 5965c, Docket No. D96.12.220, issued September 2, 1998.

56. The Commission acknowledges that when Qwest receives approval of its 271 application by the Commission and the FCC, a critical step in opening up local markets to competition will have been taken. However the Commission disagrees with ASCENT that detariffing and regulatory approval of the 271 application should be tied together. 271 approval is not a guarantee of competition everywhere, nor does it mean local markets will be fully competitive when 271 approval is granted. It means that Qwest has satisfied the fourteen point checklist contained in the Telecommunications Act of 1996 and as a result will be able to provide interLATA long distance within its local service territory if it chooses. On the other hand, it may not be necessary for Qwest to gain 271 approval before competition in the local long-distance market is sufficient to grant Qwest addition detariffing.[30] As to the other contentions contained in ASCENT's brief, the Commission notes that the evidence that was filed with respect to the issues raised by parties has been discussed above and that ASCENT did not file testimony to support the contentions made in its brief.

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 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. 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.

4. The Commission may authorize the provision of regulated telecommunications service under terms and conditions that best serve the policy of the state of Montana, and may authorize the detariffing of telecommunications services totally, or in part. Section 69-3-807, MCA.

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[30] Qwest has filed an application for review of its compliance with the 271 checklist criteria with the Commission in Docket D2000.5.70. The 14 checklist items include collocation, resale, access to ducts, poles, and conduits, and other issues important to ensuring the local telephone service market is opened up to competition. Montana is participating along with several other states in a multi-state proceeding. If the current schedule is maintained and no unforeseen problems arise, Qwest may receive determination on 271 approval within the coming year.

Order

THEREFORE, based upon the foregoing, it is ORDERED that Qwest's filing to detariff its toll and operator services in Montana is granted in part and denied in part as discussed and described herein.

It is further ordered that the stipulation reached by the parties to have all data requests entered into the record is approved.

It is further ordered that regarding rates charged to rural and urban customers, Qwest must continue to comply with § 69-3-807(5), MCA, 47 U.S.C. § 254(g), and 47 C.F.R. § 64.1801(a).

DONE AND DATED this 31st day of October, 2000, by a vote of 5 to 0.

BY THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. <u>See</u> ARM 38.2.4806.

CONCURRING OPINION OF COMMISSIONER ROWE
DOCKET No. D99.8.205
Qwest Detariffing of IntraLATA Toll

The Montana Public Service Commission has moved very quickly to reduce price regulation of intraLATA toll, and has completely eliminated price regulation of business customers' intraLATA toll. The Commission now has Qwest on a much faster path toward complete toll price deregulation than was accomplished for AT&T in the interLATA market as competition developed there during the 1980s and 1990s. This opinion merely suggests some possible guideposts which Qwest might consider in making future proposals for reduced toll regulation.

The intraLATA toll market has become more competitive more quickly than did the intrastate interLATA toll market. This is a real success of the Montana Commission's pro-competitive policies concerning toll (especially "1+ presubscription"), a credit to the parties in that market, and ultimately a benefit to customers.

Although data produced in this docket did not demonstrate that the intraLATA market was yet workably competitive (based on standard economic measurements taking into account, for example, the market share of the four or five largest firms) the rapid progress is very encouraging. The Commission is reducing regulation as fast as, or faster than, competition develops within this market. As competition continues to develop, additional reduction in regulatory requirements will likely follow.

The next step, based upon Commission precedent in detariffing the interexchange carriers and options contained in the statutory language, could be detariffing of Qwest toll prices completely, putting Qwest at complete parity with the IXCs. Benchmarks that could be used include:

1. **Detariff residential prices, based upon review of market share data.** According to the data filed in this case, Qwest retains a high percentage of the business and residence lines presubscribed to intraLATA service. The data on minutes of use (MOU) showed a trend over time of a declining share of presubscribed lines. MOU data, which may be particularly important for residential customers was not split by class, so there is no way to know if the decline was similar between classes or if one class is more competitive in terms of volume used than the other.[1]

2. **Coordinate further reductions in regulation with Section 271 approval.** Under this approach, Qwest might be granted the same flexibility for all services as interexchange carriers operating in Montana when Qwest receives from the Federal Communication Commission Section 271 approval to offer interLATA long distance, based on a showing that its local market is open to competition, and it begins to offer interLATA service in the state.

[1] Information of the minutes of use by residential and business customers was requested in PSC 03--050. Qwest's response was that the system capturing minutes of use captures total minutes and does not differentiate between residence and business customers.

Qwest filed with the Montana Commission to open a docket for Section 271 approval in Montana and five other states in May, 2000. The Montana Commission took the lead in proposing an innovative, multi-state collaborative approach to working through these complex local competition issues. If the workshops and Operations Support Systems tests go as planned, the proceeding could be completed in 2001. Qwest will go before the Commission for its recommendation, and will then file with the FCC for its review and approval. FCC action is required within ninety days. Action by the FCC will be on the basis of whether Qwest has satisfied the requirements of the 1996 Telecommunications Act. These requirements are designed to open up the local market to competition. If Qwest receives FCC approval, it can offer interLATA long distance service to its customers in Montana. Its local markets will have been certified to be open to competition, mitigating concern over its position as the dominant local service provider.

This opinion is not intended to prejudge any future application. It is intended to suggest to Qwest some possible guideposts for future filings, and perhaps to help focus those applications so that they may be conducted as efficiently and expeditiously as possible.

Respectfully submitted this 31st day of October, 2000.

BOB ROWE, Commissioner