

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

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RONAN TELEPHONE COMPANY,	)	
A Montana Corporation; and	)	UTILITY DIVISION
HOT SPRINGS TELEPHONE	)	
COMPANY	)	DOCKET NO. D2008.1.3
	)	
Complainants,	)	
	)	
vs.	)	
	)	
QWEST CORPORATION	)	
	)	
Respondent.	)	

**INITIAL BRIEF OF THE  
MONTANA TELECOMMUNICATIONS ASSOCIATION  
RELATED TO JURISDICTIONAL ISSUES**

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COMES NOW the Montana Telecommunications Association (“MTA”) by and through its undersigned counsel, and submits this Brief on Jurisdictional Issues raised by the Montana Public Service Commission (“Commission”) in its Notice of Filing of Petitions And Of Establishment of Intervention Deadline And Briefing Schedule On Jurisdiction Issues released January 30, 2008 (“Jurisdiction Notice”).

I. Procedural History

On January 30, 2008, the PSC issued a Jurisdiction Notice, which set an intervention deadline of February 21, 2008, and set a briefing schedule requesting parties to comment on one factual issue and three jurisdictional issues. Jurisdiction Notice at pp. 4-5. Initial briefs are due on March 3, 2008, and Response Briefs are due March 19, 2008.

On February 21, 2008, the MTA filed a Petition to Intervene in this Docket. In a Notice of Staff Action Granting Intervention, on March 3, 2008, MTA was granted intervention in this Docket. MTA now files its Initial Brief addressing only a portion of the jurisdictional issues raised in the Jurisdiction Notice. MTA's position in relation to the jurisdictional issues is discussed below.

II. Commission Jurisdiction Over Originating Carriers.

The Commission seeks input as to what extent it has jurisdiction over originating carriers such that it may order the joinder of those carriers to this Docket. Jurisdiction Notice at p. 5. As a general matter, the Commission is vested:

with full power of supervision, regulation, and control of such public utilities, subject to the provisions of this chapter and to the exclusion of the jurisdiction, regulation, and control of such utilities by any municipality, town, or village.

Mont. Code Ann. § 69-3-102. The term "public utility" includes any person or entity providing "regulated telecommunications service." Mont. Code Ann. § 69-3-101(f).

"Regulated telecommunications service" means:

two-way switched, voice-grade access and transport of communications originating and terminating in this state and

non voice-grade access and transport if intended to be converted to or from voice-grade access and transport.

Mont. Code Ann. §69-3-803(10)(a).

Based on these statutes, the Commission appears to have statutory authority to supervise, regulate and control any public utility that is providing regulated telecommunications service in the state of Montana. Accordingly, and notwithstanding other statutory exceptions<sup>1</sup>, the Commission has regulatory jurisdiction over any public utility providing regulated telecommunications in Montana. Since the Commission has regulatory jurisdiction overall such entities, it has the authority to join such parties to this Docket.

III. Authority of Commission to Order the Payment of Terminating Interstate Access Charges Pursuant to Mont. Code Ann. § 69-3-815.

Mont. Code Ann. § 69-3-815 places specific obligations on carriers providing services in Montana. First, subsection (1) requires an “originating carrier of local telecommunications” services to transmit all information necessary to enable a terminating carrier to appropriately charge the originating carrier for the termination of such local telecommunications. Mont. Code Ann. § 69-3-815(1). “Local telecommunications” means:

- (a) telecommunications originating in a wireline local calling area, including extended area service areas, and terminating in the same wireline local calling area or extended area service area; or
- (b) commercial mobile radio service that originates from or terminates to a commercial mobile radio service provider within the same major trading area as defined in 47 CFR 24.202(a).

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<sup>1</sup> The Commission does not have jurisdiction, for example, over telephone cooperatives as provided for in Mont. Code Ann. § 35-18-104.

This definition of “local telecommunications” appears to generally comport with the FCC’s notion of reciprocal compensation traffic, as governed by Section 251(b)(5) of the Telecom Act. More specifically, the FCC defines local telecommunications as:

telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access [citations omitted]; or

telecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter.

47 CFR § 51.701(b)(1) – (2).

On their face, neither the state nor the federal rules defining local telecommunications contemplate either intrastate or interstate switched access traffic. It is important to note, however, what Mont. Code Ann. § 69-3-815(1) does do—it requires all entities providing local telecommunications to transmit along with such telecommunications information sufficient for the terminating carrier to identify and appropriately bill the originating carrier for the termination of the originating carrier’s traffic. Thus, to the extent any issues in this Docket involve an originating carrier’s inability or failure to transmit such information, then this Commission has jurisdiction pursuant to Mont. Code Ann. § 69-3-815(1) to hear all issues related thereto.

Mont. Code Ann. § 69-3-815(2) requires all providers of “intralocal access transport toll service or any other carrier that provides nonlocal telecommunications

services in Montana” to transmit with its telecommunications traffic all information necessary for a terminating carrier to appropriately bill for terminating such telecommunications traffic. Mont. Code Ann. § 69-3-815(2). Similar to the requirements of Mont. Code Ann. § 69-3-815(1), this provision places an affirmative duty on certain providers of telecommunications services (i.e. intralocal access transport and “any other carrier” that provides nonlocal telecommunications) to transmit billing information necessary for the terminating carrier appropriately to charge for the termination of such traffic. On its face, Mont. Code Ann. § 69-3-815(2) does not address issues related to the payment of interstate access charges. That said, to the extent any issues in this Docket involve whether a provider of intralocal access transport toll service or any other carrier that provides nonlocal telecommunications services in Montana is properly transmitting information necessary for a terminating carrier to properly bill for the termination of telecommunications, then this Commission has jurisdiction to hear such issues.

Mont. Code Ann. § 69-3-815(3) requires all transiting carriers that deliver telecommunications traffic to terminating carriers to transmit with such telecommunications all information that the originating carrier transmits with such telecommunications to allow the terminating carrier to appropriately charge the originating carrier, or intralocal access transport area toll provider of nonlocal telecommunications traffic, for terminating such traffic. “Transiting carrier” is defined as:

a telecommunications carrier or carriers that transport transit traffic from an originating carrier to a terminating carrier and that do not originate or terminate telecommunications traffic. Mont. Code Ann. § 69-3-803(17).

This statute appears to be relevant in this Docket in that it places a statutory requirement on Qwest, acting as a transiting carrier, to transmit with all telecommunications that it transmits on behalf of an originating carrier all information necessary for a terminating carrier to “appropriately charge the originating carrier.” Mont. Code Ann. § 69-3-815(3). This section of the statute does not appear to confer, however, any jurisdiction on this Commission to make a determination as to which entity has to pay a local exchange carriers’ (“LEC’s”) terminating, switched interstate access charges. It merely requires a transiting carrier to transmit proper billing information. Thus, if any issue in this Docket involves whether Qwest or any other transiting carrier is properly transmitting billing information to terminating carriers, then the Commission has such jurisdiction over that issue under Mont. Code Ann. § 69-3-815.

Mont. Code Ann. § 69-3-815(4) places a requirement on transiting carriers to provide, upon request, billing records for its transit traffic to terminating carriers. Again, this section of the statute does not provide any guidance as to whether this Commission has jurisdiction to make a determination as to which party is responsible for paying a LEC’s terminating, switched interstate access charges. That said, if any issue in this Docket involves whether Qwest or any other transiting carrier is properly providing billing records for its transiting traffic, then this Commission has jurisdiction to hear, address and resolve such issues.

Mont. Code Ann. § 69-3-815(5) requires any LEC or CMRS provider that delivers “local telecommunications traffic to a terminating carrier” to, upon request of the terminating carrier, negotiate and enter into a reciprocal compensation agreement, as provided for in Mont. Code Ann. §§ 69-3-831 through 839. Mont. Code Ann. § 69-3-

815(5). The provisions of Mont. Code Ann. §§ 69-3-831 through 839 dictate processes and mechanisms by which telecommunications providers can interconnect their networks pursuant to Sections 251(a) through (c) of the Telecommunications Act of 1996 (“Telecom Act”). Mont. Code Ann. § 69-3-815(6) allows any telecommunications carrier that has requested interconnection pursuant to subsection (5) to file a complaint with the Commission requesting enforcement of Mont. Code Ann. § 69-3-815 or an interconnection agreement approved in accordance with MCA § 69-3-839. In other words, subsections (5) and (6) give the Commission the authority to enforce telecommunications carriers delivering local traffic in Montana to enter into interconnection agreements to carry-out the reciprocal compensation and interconnection provisions of Section 251 of the Telecom Act.

It is important to note that subsections (5) and (6) only apply to Section 251 (a) through (c) of the Telecom Act. Section 251(a) requires all telecommunications providers to interconnect their networks and to not install any network features, functions or capabilities that would unjustly discriminate or interfere with other providers.

Section 251(b) places five distinct obligations on all local exchange carriers: 1) the duty to resale; 2) the duty to provide number portability in accordance with FCC rules; 3) the duty to provide dialing parity; 4) the duty to afford access to certain rights-of-way; and 5) the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

Section 251(c)(1) places additional obligations on incumbent local exchange carriers, including the duty to negotiate in good faith the terms and conditions of

agreements to fulfill such ILEC's duties under Section 251(b) of the Telecom Act. This duty to negotiate in good faith was subsequently extended to CMRS providers by the FCC.<sup>2</sup> Section 251(c)(2) – (6) of the Telecom Act places additional obligations on ILECs, subject to limitations and exemptions found in 251(f), that require the ILEC to offer interconnection, access to unbundled network elements, the duty to resale at wholesale rates, collocation, and other related services.

This recital of the requirements of Sections 251(a) – (c) is important because nowhere in any of those provisions are interstate access charges discussed. Thus, Mont. Code Ann. § 69-3-815, the state statute that implements and expands on the mandates set forth in Sections 251(a) – (c) of the Telecom Act, appears to only extend to issues involving reciprocal compensation and interconnection (i.e. the requirements of Sections 251(a) – (c) of the Telecom Act) and issues involving the transmission of billing detail information.

Moreover, Section 251(g) of the Telecom Act is instructive in that it preserves any pre-Telecom Act orders, regulations or policies involving “exchange access, information access, and exchange services for such access to interexchange service providers . . . “ until such time as the FCC enacts regulations which supersede existing regulations and policies. In other words, Section 251(g) makes clear that the requirements of Sections 251(a) – (c) have nothing to do with switched, interstate “exchange access” or “exchange services for such access to interexchange providers.” Thus, the regulations and policies governing the treatment of interstate and intrastate

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<sup>2</sup> See *In the Matter of Developing a Unified Intercarrier Compensation Regime; T-Mobile, et al. Petition for*

switched access charges are not affected by either Mont. Code Ann. § 69-3-815 or Sections 251(a) – (c) of the Telecom Act.

In sum, it appears Mont. Code Ann. §69-3-815 is limited in scope in that it only authorizes the Commission to get involved with issues related to the transport and termination of telecommunications traffic pursuant to Section 251(b)(5)—i.e. local traffic, and issues related to the transmission of call detail information for billing purposes. There is nothing in Mont. Code Ann. § 69-3-815 that specifically authorizes this Commission to make a determination as to the proper payment of a LEC’s terminating switched access charges. Instead, Mont. Code Ann. § 69-3-815 is designed to fill a significant void in that it requires all carriers in Montana to transmit appropriate billing information for all telecommunications traffic in Montana to enable LECs to appropriately charge originating carriers that terminate telecommunications traffic on the LECs’ networks.

To summarize, this Commission has jurisdiction over local telecommunications traffic in that Mont. Code Ann. § 69-3-815 gives this Commission the ability to enforce any provider’s request to negotiate and enter into a reciprocal compensation agreement pursuant to Mont. Code Ann. §§ 69-3-831 through 839. Further, Mont. Code Ann. 69-3-815 gives this Commission jurisdiction over all issues related to the transmission of appropriate information that would allow a terminating carrier to bill an originating carrier for a variety of types of telecommunications, including local, interlocal access transport, intralocal access transport, and non-local traffic. Accordingly, to the extent issues in this

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*Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, (Declaratory Ruling and Report and Order), (CC Docket No. 01-92, released February 24, 2005) at Para. 16 (“*T-Mobile Order*”).

Docket involve whether any of the parties are properly transmitting sufficient information to allow a terminating carrier to bill an originating carrier, whether a transiting carrier is properly providing transiting billing records, or whether there are issues related to a request for the negotiation of reciprocal compensation agreement pursuant to Mont. Code Ann. §§ 69-3-831 through 831, then this Commission has jurisdiction to hear such issues pursuant to Mont. Code Ann. § 69-3-815.

IV. CONCLUSION

RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of March 2008.

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