

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *610*
 2 INTRODUCED BY *Bradley MEREZ* *David Mrazek*
 3 *Walter* *Wright* *HARF* *Bob Brown* *Jim Foubister*
 4 *Lee* *Severson* *Richard*
 5 A BILL FOR AN ACT ENTITLED; "AN ACT CLARIFYING THE
 6 AUTHORITY OF THE PUBLIC SERVICE COMMISSION TO APPROVE THE
 7 IMPLEMENTATION OF ALTERNATIVE FORMS OF REGULATION BY
 8 PROVIDERS OF REGULATED TELECOMMUNICATIONS SERVICES;
 9 AUTHORIZING THE COMMISSION TO PERMIT CERTAIN DETARIFFING;
 10 PROVIDING THE MANNER OF OFFERING AND WITHDRAWING SERVICES;
 11 AUTHORIZING PROVIDERS TO OFFER PROMOTIONAL REBATES; AMENDING
 12 SECTIONS 69-3-305, 69-3-802, 69-3-807, AND 69-3-808, MCA;
 13 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
 14
 15 WHEREAS, the Montana Telecommunications Act, which
 16 recognizes and encourages competition in the
 17 telecommunications industry to the extent consistent with
 18 maintaining universal telephone service, was intended to
 19 serve as a bridge between a regulated telecommunications
 20 industry and a fully competitive market environment; and
 21 WHEREAS, rapid technological and market changes within
 22 the telecommunications industry have prompted regulators
 23 nationwide to reexamine traditional regulation and adopt
 24 alternative regulatory systems; and
 25 WHEREAS, although the intent of the Montana
 Telecommunications Act was to allow substantial flexibility

1 to the Public Service Commission, the extent of the
 2 Commission's authority to implement alternative forms of
 3 regulation is uncertain and enactment of this legislation
 4 will clarify the Public Service Commission's authority.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6 **Section 1.** Section 69-3-802, MCA, is amended to read:
 7
 8 "69-3-802. Purpose. The legislature declares that it
 9 remains the policy of the state of Montana to maintain
 10 universal availability of basic telecommunications service
 11 at affordable rates. To the extent that it is consistent
 12 with maintaining universal service, it is further the policy
 13 of this state to encourage competition in the
 14 telecommunications industry, thereby allowing access by the
 15 public to resulting rapid advances in telecommunications
 16 technology. It is the purpose of this part to provide a
 17 regulatory framework that will allow an orderly transition
 18 from a regulated telecommunications industry to a
 19 competitive market environment, and it is further the
 20 purpose of this part to clarify that the commission has
 21 authority to implement alternative forms of regulation for
 22 providers of regulated telecommunications services."

23 **NEW SECTION. Section 2.** Alternative forms of
 24 regulation. (1) The commission may authorize a provider of
 25 regulated telecommunication services, as defined in



1 69-3-803, to implement alternatives to the ratemaking
2 practices required under parts 2, 3, and 9 of this chapter,
3 including but not limited to price caps and equitable
4 sharing of earnings or revenues between a provider of
5 regulated telecommunications services and its customers.

6 (2) A provider of regulated telecommunications services
7 may petition the commission to regulate the provider under
8 an alternative form of regulation. The provider shall submit
9 its plan for an alternative form of regulation with its
10 petition. The commission's order on the petition must be
11 issued no later than 9 months after the filing of the
12 petition. The commission shall review and may authorize
13 implementation of the plan if it finds, after notice and
14 hearing, that the plan:

15 (a) will not degrade the quality of or the availability
16 of efficient telecommunications services;

17 (b) will produce fair, just, and reasonable rates for
18 telecommunications services;

19 (c) will not unduly or unreasonably prejudice or
20 disadvantage a customer class;

21 (d) will reduce regulatory delay and costs;

22 (e) is in the public interest; and

23 (f) conforms to the purpose stated in 69-3-802 more
24 nearly than regulation under part 2, 3, or 9 of this chapter
25 conforms to the stated purpose.

1 (3) If the commission determines that the plan does not
2 satisfy the requirements of this section, it may either
3 reject the petition or issue a proposed order modifying the
4 plan as submitted by the provider.

5 (4) A proposed order modifying the plan submitted by a
6 provider of regulated telecommunications service may not be
7 final until 60 days after issuance. During that 60-day
8 period, the provider may withdraw its petition for
9 alternative regulation. If a petition for alternative
10 regulation is withdrawn, the provider:

11 (a) remains subject to the same regulation that applied
12 when the petition was filed; and

13 (b) may petition the commission to be regulated under a
14 revised alternative plan.

15 (5) Upon petition or upon its own motion, the
16 commission may rescind its approval or amend an alternative
17 form of regulation if, after notice and hearing, it finds
18 that the conditions in subsection (2) are no longer
19 satisfied.

20 (6) Nothing contained in this section may be construed
21 as limiting or otherwise affecting the commission's
22 authority to conduct investigations or hear complaints as
23 provided in part 3 of this chapter.

24 **Section 3.** Section 69-3-807, MCA, is amended to read:

25 "69-3-807. Regulation of rates and charges. (1) As to

1 that telecommunications service which that is provided under
2 regulation, the commission may establish specific rates,
3 tariffs, or fares for the provision of such the service to
4 the public. The rates, tariffs, or fares must be just,
5 reasonable, and nondiscriminatory.

6 (2) Alternatively, the commission may authorize the
7 provision of regulated telecommunications service under such
8 terms and conditions ~~as may~~ that best serve the declared
9 policy of this state. The commission is not required to fix
10 and determine specific rates, tariffs, or fares for the
11 service and in lieu thereof may:

12 (a) totally detariff the service;

13 (b) detariff rates for the service but retain tariffs
14 for service standards and requirements;

15 (c) detariff rates but require notice of price changes
16 to the commission and subscribers;

17 (d) establish only maximum rates, only minimum rates,
18 or permissible price ranges as long as the minimum rate is
19 cost compensatory; or

20 (e) provide such other rate or service regulation as
21 will promote the purposes of this part.

22 (3) ~~In~~ Except as provided in subsection (4), in
23 determining applications under subsection (2), the
24 commission shall consider the following factors:

25 (a) the number, size, and distribution of alternative

1 providers of service;

2 (b) the extent to which services are available from
3 alternative providers in the relevant market;

4 (c) the ability of alternative providers to make
5 functionally equivalent or substitute services readily
6 available;

7 (d) the overall impact of the proposed terms and
8 conditions on the continued availability of existing
9 services at just and reasonable rates; and

10 (e) such other factors as that the commission may
11 prescribe through rulemaking which that are appropriate to
12 fulfill the purposes of this part.

13 (4) ~~Nothing in this section shall authorize the~~
14 ~~application of subsection (2) to any services for which~~
15 ~~there are no alternative providers of such services~~
16 Notwithstanding the provisions of subsection (3), the
17 commission may exercise its power under subsection (2) with
18 respect to the services of a telecommunications provider if
19 the commission finds that action consistent with the
20 provisions of 69-3-802 and with the public interest. Carrier
21 access services may not be detariffed. Services detariffed
22 under this subsection must be priced above relevant costs.

23 (5) A provider of regulated message telecommunications
24 service and related services shall average its service rates
25 on its routes of similar distance within the state unless

1 otherwise authorized by the commission. Nothing contained in
 2 this subsection may be construed to prohibit volume
 3 discounts, other discounts as long as the discounts are not
 4 offered in a discriminatory manner, or other discounts in
 5 promotional offerings.

6 ~~(5)~~(6) All providers of comparable regulated
 7 telecommunications services within a market area must be
 8 subject to the same standards of regulation. For purposes of
 9 this section, regulated telecommunications services are
 10 comparable to the extent alternative providers can make
 11 functionally equivalent substitutes or substitute services
 12 readily available.

13 (7) The commission retains jurisdiction to consider
 14 complaints that prices charged for a service detariffed
 15 under this section are below relevant costs or violate a
 16 provision of this title."

17 **Section 4.** Section 69-3-808, MCA, is amended to read:

18 "69-3-808. Forbearance of rate regulation to facilitate
 19 competition. (1) In accordance with the provisions of this
 20 section, the commission shall forbear regulation as to
 21 rates, tariffs, fares, or charges to facilitate competition
 22 and shall authorize the provision of all or any portion of
 23 regulated telecommunications service under stated or
 24 negotiated terms to any person or entity that has acquired
 25 or is contemplating acquisition of, through construction,

1 lease, or any other form of acquisition, similar
 2 telecommunications service from an alternative source.

3 (2) At any time, the provider of regulated
 4 telecommunications service may file a verified application
 5 with the commission for forbearance of regulation to
 6 facilitate competition. The application ~~shall~~ must describe
 7 the telecommunications service to be offered, the customer
 8 to be served, and the party or parties offering similar
 9 service, together with ~~such~~ other information and in ~~such a~~
 10 form as that the commission may prescribe. ~~Such~~ The
 11 additional information must be reasonably related to the
 12 determination of the existence of an alternative offer but
 13 may not require information relating to the cost of
 14 providing ~~such the~~ service.

15 (3) The commission shall approve or deny ~~any--such an~~
 16 application for forbearance of regulation to facilitate
 17 competition within ~~10~~ 15 days after the filing of the
 18 application~~7--except--that--the--commission--may--by--order--defer~~
 19 ~~action--for--an--additional--5--day--period.~~ If the commission has
 20 not acted on ~~any an~~ application within the permitted time
 21 period, the application is considered granted. The
 22 commission shall deny the application only upon a finding
 23 that the application is incomplete or that the subject or
 24 similar service is not being offered to the customer by
 25 parties other than the applicant. If a customer of the

1 provider seeking forbearance requests a quotation of prices
 2 from another provider of telecommunications service having
 3 tariffs or price lists for similar services on file with the
 4 commission, the commission shall presume the existence of
 5 competition.

6 (4) The provisions of 2-4-601, relating to notice and
 7 hearing, do not apply to this section.

8 (5) Upon approval of the application, the provider of
 9 telecommunications service may negotiate with such a person
 10 or an entity for the provision of such the service without
 11 regard to its tariffs on file and approved by the
 12 commission.

13 (6) Within 10 days after the conclusion of such the
 14 negotiations, the provider of regulated telecommunications
 15 service shall file with the commission the final contract or
 16 other evidence of the service to be provided, together with
 17 the charges and other conditions of the service. Thereafter,
 18 the provider of regulated telecommunications service may
 19 provide such the service to the customer without regard to
 20 its tariffs on file and approved by the commission.

21 (7) Services provided pursuant to subsection (1) remain
 22 subject to the regulatory powers of the commission."

23 **NEW SECTION. Section 5. New service -- withdrawal of**
 24 **services.** (1) A provider of regulated telecommunications
 25 service shall provide the commission with notice of its

1 intent to offer a new service to its customers at least 14
 2 days before the service is to be made available and shall
 3 provide a description of the service and the terms and
 4 conditions under which it will be offered. If the
 5 commission, either on its own motion or in response to the
 6 objection of an interested person, finds that the offering
 7 may not meet the requirements of this title or of commission
 8 rules, it may, after hearing, require the provider to submit
 9 a proposed tariff for the service. If the commission has not
 10 acted at the end of 14 days, the provider may proceed to
 11 offer the service.

12 (2) A new service may be offered on a detariffed basis,
 13 and must be priced above relevant costs. A price list
 14 containing the price of the new service must be filed with
 15 the commission at the time the service is offered to the
 16 public. The commission may require the filing of supporting
 17 cost information.

18 (3) A provider of regulated telecommunications service
 19 may withdraw a service upon 30 days' notice to the
 20 commission and to the users of the service. The commission
 21 may, however, suspend the withdrawal of the service, either
 22 on its own motion or at the request of an interested person,
 23 and shall then proceed to hearing. The withdrawal must be
 24 permitted if the commission finds that the service is not
 25 required by public convenience and necessity.

1 **Section 6.** Section 69-3-305, MCA, is amended to read:

2 *69-3-305. Deviations from scheduled rates, tolls, and
3 charges. (1) ~~It shall be unlawful for any~~ A public utility
4 to may not:

5 (a) charge, demand, collect, or receive a greater or
6 less compensation for any a utility service performed by it
7 within the state or for any service in connection ~~therewith~~
8 with a utility service than is specified in such the printed
9 schedules, including schedules of joint rates, as that may
10 at the time be in force;

11 (b) demand, collect, or receive any a rate, toll, or
12 charge not specified in such the schedules; or

13 (c) grant any a rebate, concession, or special
14 privilege to any a consumer or user, ~~which that~~, directly or
15 indirectly, shall or may have the effect of changing the
16 rates, tolls, charges, or payments.

17 (2) The rates, tolls, and charges named ~~therein--shall~~
18 be in the printed schedules are the lawful rates, tolls, and
19 charges until the same rates, tolls, and charges are
20 changed, as provided in this chapter.

21 (3) The commission may order refunds or credits of
22 rates, tolls, or charges collected in violation of this
23 section and may ~~in-its-discretion~~ order payment of interest
24 at a reasonable rate on the refunded amount.

25 (4) The provisions of this section do not prohibit the

1 sharing of profits or revenues with customers in conjunction
2 with an alternative form of regulation approved under
3 [section 2]. Additionally, a provider of regulated
4 telecommunications service may offer either rebates or
5 reductions or waivers of installation charges in conjunction
6 with promotions, market trials, or other sales-related
7 activities that are common business practices. The
8 commission has jurisdiction to consider whether a particular
9 sales activity under this subsection is unfairly
10 discriminatory or is not cost-effective. The commission may
11 define the appropriate scope of promotions, rebates, and
12 market trials, either by rule or in response to complaints.

13 (5) A public utility violating the provisions of this
14 section is subject to the penalty prescribed in 69-3-206.
15 This, however, does not have the effect of suspending,
16 rescinding, invalidating, or in any way affecting existing
17 contracts."

18 NEW SECTION. Section 7. Severability. If a part of
19 [this act] is invalid, all valid parts that are severable
20 from the invalid part remain in effect. If a part of [this
21 act] is invalid in one or more of its applications, the part
22 remains in effect in all valid applications that are
23 severable from the invalid applications.

24 NEW SECTION. Section 8. Codification instruction.
25 [Sections 2 and 5] are intended to be codified as an

1 integral part of Title 69, chapter 3, part 8, and the
2 provisions of Title 69, chapter 3, part 8, apply to
3 [sections 2 and 5].

4 NEW SECTION. **Section 9.** Effective date. [This act] is
5 effective on passage and approval.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 610

INTRODUCED BY BRADLEY, MERCER, DRISCOLL, MAZUREK,
KELLER, WYATT, HARP, B. BROWN, CRIPPEN, FORRESTER,
STRIZICH, LEE, SQUIRES, STICKNEY, COCCHIARELLA,
T. NELSON, DARKO, BECKER, R. JOHNSON, WHALEN,
LYNCH, WILLIAMS, KEATING, HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE
AUTHORITY OF THE PUBLIC SERVICE COMMISSION TO APPROVE THE
IMPLEMENTATION OF ALTERNATIVE FORMS OF REGULATION BY
PROVIDERS OF REGULATED TELECOMMUNICATIONS SERVICES;
AUTHORIZING THE COMMISSION TO PERMIT CERTAIN DETARIFFING;
PROVIDING THE MANNER OF OFFERING AND WITHDRAWING SERVICES;
AUTHORIZING PROVIDERS TO OFFER PROMOTIONAL REBATES; AMENDING
SECTIONS 69-3-305, 69-3-802, 69-3-807, AND 69-3-808, MCA;
AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the Montana Telecommunications Act, which
recognizes and encourages competition in the
telecommunications industry to the extent consistent with
maintaining universal telephone service, was intended to
serve as a bridge between a regulated telecommunications
industry and a fully competitive market environment; and

WHEREAS, rapid technological and market changes within
the telecommunications industry have prompted regulators

nationwide to reexamine traditional regulation and adopt
alternative regulatory systems; and
WHEREAS, although the intent of the Montana
Telecommunications Act was to allow substantial flexibility
to the Public Service Commission, the extent of the
Commission's authority to implement alternative forms of
regulation is uncertain and enactment of this legislation
will clarify the Public Service Commission's authority.

STATEMENT OF INTENT

A STATEMENT OF INTENT IS NECESSARY FOR THIS BILL BECAUSE
[SECTION 8] GRANTS THE PUBLIC SERVICE COMMISSION GENERAL
RULEMAKING AUTHORITY AND [SECTION 6] GRANTS THE COMMISSION
AUTHORITY TO ADOPT RULES RELATING TO THE APPROPRIATE SCOPE
OF PROMOTIONS, REBATES, AND MARKET TRIALS. THE LEGISLATURE
INTENDS THAT IF RULES ARE ADOPTED BY THE COMMISSION, THE
RULES SHOULD PERMIT REASONABLE FLEXIBILITY TO PROVIDERS OF
REGULATED TELECOMMUNICATIONS SERVICES IN THE MARKETING OF
THEIR SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-3-802, MCA, is amended to read:

"69-3-802. **Purpose.** The legislature declares that it
remains the policy of the state of Montana to maintain
universal availability of basic telecommunications service

SECOND READING

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1 at affordable rates. To the extent that it is consistent
 2 with maintaining universal service, it is further the policy
 3 of this state to encourage competition in the
 4 telecommunications industry, thereby allowing access by the
 5 public to resulting rapid advances in telecommunications
 6 technology. It is the purpose of this part to provide a
 7 regulatory framework that will allow an orderly transition
 8 from a regulated telecommunications industry to a
 9 competitive market environment, and it is further the
 10 purpose of this part to clarify that the commission has
 11 authority to implement alternative forms of regulation for
 12 providers of regulated telecommunications services."

13 NEW SECTION. Section 2. Alternative forms of
 14 regulation. (1) The commission may authorize a provider of
 15 regulated telecommunication services, as defined in
 16 69-3-803, to implement alternatives to the ratemaking
 17 practices required under parts 2, 3, and 9 of this chapter,
 18 including but not limited to price caps and equitable
 19 sharing of earnings or revenues between a provider of
 20 regulated telecommunications services and its customers.

21 (2) A provider of regulated telecommunications services
 22 may petition the commission to regulate the provider under
 23 an alternative form of regulation. The provider shall submit
 24 its plan for an alternative form of regulation with its
 25 petition. The commission's order on the petition must be

1 issued no later than 9 months after the filing of the
 2 petition. The commission shall review and may authorize
 3 implementation of the plan if it finds, after notice and
 4 hearing, that the plan:

5 (a) will not degrade the quality of or the availability
 6 of efficient telecommunications services;

7 (b) will produce fair, just, and reasonable rates for
 8 telecommunications services;

9 (c) will not unduly or unreasonably prejudice or
 10 disadvantage a customer class;

11 (d) will reduce regulatory delay and costs;

12 (e) is in the public interest; and

13 (F) WILL ENHANCE ECONOMIC DEVELOPMENT IN THE STATE;

14 (G) WILL RESULT IN THE IMPROVEMENT OF THE TELEPHONE
 15 INFRASTRUCTURE IN THE STATE; AND

16 ~~(f)~~(H) conforms to the purpose stated in 69-3-802 more
 17 nearly than regulation under part 2, 3, or 9 of this chapter
 18 conforms to the stated purpose.

19 (3) If the commission determines that the plan does not
 20 satisfy the requirements of this section, it may either
 21 reject the petition or issue a proposed order modifying the
 22 plan as submitted by the provider.

23 (4) A proposed order modifying the plan submitted by a
 24 provider of regulated telecommunications service may not be
 25 final until 60 days after issuance. During that 60-day

1 period, the provider may withdraw its petition for
 2 alternative regulation OR THE CONSUMER COUNSEL MAY OBJECT TO
 3 THE PROPOSED ORDER. If a petition for alternative regulation
 4 is withdrawn OR THE CONSUMER COUNSEL OBJECTS TO THE PROPOSED
 5 ORDER, the provider:

6 (a) remains subject to the same regulation that applied
 7 when the petition was filed; and

8 (b) may petition the commission to be regulated under a
 9 revised alternative plan.

10 (5) Upon petition or upon its own motion, the
 11 commission may rescind its approval or amend an alternative
 12 form of regulation if, after notice and hearing, it finds
 13 that the conditions in subsection (2) are no longer
 14 satisfied.

15 (6) Nothing contained in this section may be construed
 16 as limiting or otherwise affecting the commission's
 17 authority to conduct investigations or hear complaints as
 18 provided in part 3 of this chapter.

19 **Section 3.** Section 69-3-807, MCA, is amended to read:

20 **"69-3-807. Regulation of rates and charges.** (1) As to
 21 ~~that~~ telecommunications service ~~which~~ that is provided under
 22 regulation, the commission may establish specific rates,
 23 tariffs, or fares for the provision of ~~such~~ the service to
 24 the public. The rates, tariffs, or fares must be just,
 25 reasonable, and nondiscriminatory.

1 (2) Alternatively, the commission may authorize the
 2 provision of regulated telecommunications service under ~~such~~
 3 terms and conditions ~~as may~~ that best serve the declared
 4 policy of this state. FOR A SERVICE DETARIFFED UNDER THIS
 5 SUBSECTION, THE PROVIDER SHALL MAINTAIN A CURRENT PRICE LIST
 6 ON FILE WITH THE COMMISSION AND SHALL PROVIDE NOTICE OF
 7 CHANGES IN THE PRICE LIST AS PRESCRIBED BY THE COMMISSION.

8 The commission is not required to fix and determine specific
 9 rates, tariffs, or fares for the service and in lieu thereof
 10 may:

11 (a) totally detariff the service;

12 (b) detariff rates for the service but retain tariffs
 13 for service standards and requirements;

14 ~~(c) detariff rates but require notice of price changes~~
 15 ~~to the commission and subscribers;~~

16 ~~(d)~~ (C) establish only maximum rates, only minimum
 17 rates, or permissible price ranges as long as the minimum
 18 rate is cost compensatory; or

19 ~~(e)~~ (D) provide such other rate or service regulation as
 20 will promote the purposes of this part.

21 (3) ~~In~~ Except as provided in subsection (4), in
 22 determining applications under subsection (2), the
 23 commission shall consider the following factors:

24 (a) the number, size, and distribution of alternative
 25 providers of service;

1 (b) the extent to which services are available from
2 alternative providers in the relevant market;

3 (c) the ability of alternative providers to make
4 functionally equivalent or substitute services readily
5 available;

6 (d) the overall impact of the proposed terms and
7 conditions on the continued availability of existing
8 services at just and reasonable rates; and

9 (e) such other factors as that the commission may
10 prescribe through rulemaking which that are appropriate to
11 fulfill the purposes of this part.

12 ~~(4) Nothing in this section shall authorize the~~
13 ~~application of subsection (2) to any services for which~~
14 ~~there are no alternative providers of such services~~
15 Notwithstanding the provisions of subsection (3), the
16 commission may exercise its power under subsection (2)(C)
17 with respect to the ANY services of a telecommunications
18 provider if the commission finds that action consistent with
19 the provisions of 69-3-802 and with the public interest.
20 Carrier NONCOMPETITIVE LOCAL EXCHANGE ACCESS TO END-USERS
21 AND CARRIER access services may not be detariffed. Services
22 detariffed under this subsection must be priced above
23 relevant costs.

24 (5) A provider of regulated message telecommunications
25 service and related services shall average its service rates

1 on its routes of similar distance within the state unless
2 otherwise authorized by the commission. Nothing contained in
3 this subsection may be construed to prohibit volume
4 discounts, DISCOUNTS IN PROMOTIONAL OFFERINGS, OR other
5 discounts as long as the discounts are not offered in a
6 discriminatory manner, or other discounts in promotional
7 offerings.

8 ~~(5)~~(6) All providers of comparable regulated
9 telecommunications services within a market area must be
10 subject to the same standards of regulation. For purposes of
11 this section, regulated telecommunications services are
12 comparable to the extent alternative providers can make
13 functionally equivalent substitutes or substitute services
14 readily available.

15 ~~(7) The commission retains jurisdiction to consider~~
16 ~~complaints that prices charged for a service detariffed~~
17 ~~under this section are below relevant costs or violate a~~
18 ~~provision of this title."~~

19 **Section 4.** Section 69-3-808, MCA, is amended to read:

20 "69-3-808. Forbearance of rate regulation to facilitate
21 competition. (1) In accordance with the provisions of this
22 section, the commission shall forbear regulation as to
23 rates, tariffs, fares, or charges to facilitate competition
24 and shall authorize the provision of all or any portion of
25 regulated telecommunications service under stated or

1 negotiated terms to any person or entity that has acquired
2 or is contemplating acquisition of, through construction,
3 lease, or any other form of acquisition, similar
4 telecommunications service from an alternative source.

5 (2) At any time, the provider of regulated
6 telecommunications service may file a verified application
7 with the commission for forbearance of regulation to
8 facilitate competition. The application ~~shall~~ must describe
9 the telecommunications service to be offered, the customer
10 to be served, and the party or parties offering similar
11 service, together with ~~such~~ other information and in ~~such a~~
12 form ~~as that~~ the commission may prescribe. ~~Such~~ The
13 additional information must be reasonably related to the
14 determination of the existence of an alternative offer but
15 may not require information relating to the cost of
16 providing ~~such the~~ service.

17 (3) The commission shall approve or deny ~~any-such an~~
18 application for forbearance of regulation to facilitate
19 competition within ~~10~~ 15 days after the filing of the
20 application, ~~except that the commission may by order defer~~
21 ~~action for an additional 5-day period.~~ If the commission has
22 not acted on ~~any an~~ application within the permitted time
23 period, the application is considered granted. The
24 commission shall deny the application only upon a finding
25 that the application is incomplete or that the subject or

1 similar service is not being offered to the customer by
2 parties other than the applicant. If a customer OR POTENTIAL
3 CUSTOMER of the provider seeking forbearance requests a
4 quotation of prices from another provider of
5 telecommunications service having tariffs or price lists for
6 similar services on file with the commission, the commission
7 shall MAY presume the existence of competition.

8 (4) The provisions of 2-4-601, relating to notice and
9 hearing, do not apply to this section.

10 (5) Upon approval of the application, the provider of
11 telecommunications service may negotiate with ~~such a~~ a person
12 or an entity for the provision of ~~such the~~ service without
13 regard to its tariffs OR PRICE LISTS on file ~~and-approved-by~~
14 WITH the commission.

15 (6) Within 10 days after the conclusion of ~~such the~~
16 negotiations, the provider of regulated telecommunications
17 service shall file with the commission the final contract or
18 other evidence of the service to be provided, together with
19 the charges and other conditions of the service. Thereafter,
20 FOR THE TERM OF THE CONTRACT, the provider of regulated
21 telecommunications service may provide ~~such the~~ a service to
22 the customer without regard to its tariffs OR PRICE LISTS on
23 file ~~and-approved-by~~ WITH the commission.

24 (7) Services provided pursuant to subsection (1) remain
25 subject to the regulatory powers of the commission."

1 NEW SECTION. Section 5. New service -- withdrawal of
 2 services. (1) A provider of regulated telecommunications
 3 service shall provide the--commission-with notice, IN THE
 4 FORM PRESCRIBED BY THE COMMISSION, of its intent to offer a
 5 new service to its customers at-least-14-days-before-the
 6 service-is-to-be--made--available--and--shall--provide. THE
 7 NOTICE MUST INCLUDE a description of the service, A MINIMUM
 8 PRICE, and the terms and conditions under which it will be
 9 offered. If--the-commission, either-on-its-own-motion-or-in
 10 response-to-the-objection-of--an--interested--person,--finds
 11 that--the--offering--may--not--meet-the-requirements-of-this
 12 title-or-of-commission-rules, it-may, after-hearing, require
 13 the-provider-to-submit-a-proposed-tariff-for-the-service. AT
 14 THE END OF A 10-DAY COMMENT PERIOD FOR INTERESTED PARTIES,
 15 THE COMMISSION MAY IMMEDIATELY APPROVE, SUSPEND, OR
 16 DISAPPROVE THE NEW SERVICE OFFERING OR IT MAY ALLOW THE
 17 INTERIM INTRODUCTION OF THE SERVICE PENDING A HEARING AT A
 18 LATER DATE. If the commission has not acted at the end of 14
 19 30 days FOLLOWING ISSUANCE OF NOTICE, the provider may
 20 proceed to offer the service.

21 (2) A new service may be offered on a detariffed basis,
 22 and--must--be--priced--above--relevant--costs. A price list
 23 containing the price of the new service must be filed with
 24 the commission at the time the service is offered to the
 25 public. ~~The-commission-may-require-the-filing-of--supporting~~

1 ~~cost-information.~~

2 (3) FOR PURPOSES OF THIS SECTION, "NEW SERVICE" MEANS
 3 ANY SERVICE THAT IS INTRODUCED SEPARATELY OR IN COMBINATION
 4 WITH OTHER SERVICES AND THAT IS NOT FUNCTIONALLY REQUIRED TO
 5 PROVIDE LOCAL EXCHANGE SERVICE OR THAT IS NOT A REPACKAGED
 6 CURRENT SERVICE OR A DIRECT REPLACEMENT FOR A REGULATED
 7 TELECOMMUNICATIONS SERVICE.

8 ~~(3)~~(4) A provider of regulated telecommunications
 9 service may withdraw a service upon 30 days' notice to the
 10 commission and to the users of the service. The commission
 11 may, however, suspend the withdrawal of the service, either
 12 on its own motion or at the request of an interested person,
 13 and shall then proceed to hearing. ~~The-withdrawal-must-be~~
 14 ~~permitted-if-the-commission-finds-that-the--service--is--not~~
 15 ~~required-by-public-convenience-and-necessity.~~

16 **Section 6.** Section 69-3-305, MCA, is amended to read:

17 "69-3-305. Deviations from scheduled rates, tolls, and
 18 charges. (1) ~~it-shall-be-unlawful-for-any~~ A public utility
 19 ~~to may not:~~

20 (a) charge, demand, collect, or receive a greater or
 21 less compensation for any a utility service performed by it
 22 within the state or for any service in connection therewith
 23 with a utility service than is specified in such the printed
 24 schedules, including schedules of joint rates, as that may
 25 at the time be in force;

1 (b) demand, collect, or receive any a rate, toll, or
2 charge not specified in such the schedules; or

3 (c) grant any a rebate, concession, or special
4 privilege to any a consumer or user, which that, directly or
5 indirectly, shall or may have the effect of changing the
6 rates, tolls, charges, or payments.

7 (2) The rates, tolls, and charges named therein--shall
8 be in the printed schedules are the lawful rates, tolls, and
9 charges until the same rates, tolls, and charges are
10 changed, as provided in this chapter.

11 (3) The commission may order refunds or credits of
12 rates, tolls, or charges collected in violation of this
13 section and may in-its-discretion order payment of interest
14 at a reasonable rate on the refunded amount.

15 (4) The provisions of this section do not prohibit the
16 sharing of profits or revenues with customers in conjunction
17 with an alternative form of regulation approved under
18 [section 2]. Additionally, a provider of regulated
19 telecommunications service may offer, FOR A LIMITED PERIOD
20 OF TIME, either rebates or reductions or waivers of
21 installation charges in conjunction with promotions, market
22 trials, or other sales-related activities that are common
23 business practices. The--commission--has--jurisdiction--to
24 consider-whether-a-particular--sales--activity--under--this
25 subsection---is---unfairly---discriminatory---or---is---not

1 ~~cost-effective~~ PROMOTIONAL PRICING OF SERVICES THAT REMAIN
2 FULLY TARIFFED REQUIRES ADVANCE APPROVAL OF THE COMMISSION.
3 NO PROMOTIONAL OFFERING MAY COMBINE MONOPOLY SERVICES WITH
4 COMPETITIVE SERVICES. The commission may define the
5 appropriate scope of promotions, rebates, and market trials,
6 either by rule or in response to complaints. THE COMMISSION
7 MAY DETERMINE WHETHER A PARTICULAR SALES ACTIVITY UNDER THIS
8 SUBSECTION IS UNFAIRLY DISCRIMINATORY OR IS NOT
9 COST-EFFECTIVE. COSTS AND EXPENSES INCURRED OR REVENUE
10 FOREGONE WITH RESPECT TO SALES ACTIVITIES THAT THE
11 COMMISSION DETERMINES ARE UNFAIRLY DISCRIMINATORY OR NOT
12 COST-EFFECTIVE ARE THE RESPONSIBILITY OF THE PROVIDER'S
13 SHAREHOLDERS IN RATES SET BY THE COMMISSION.

14 (5) A public utility violating the provisions of this
15 section is subject to the penalty prescribed in 69-3-206.
16 This, however, does not have the effect of suspending,
17 rescinding, invalidating, or in any way affecting existing
18 contracts."

19 NEW SECTION. SECTION 7. COSTS FOR SERVICES PROVIDED --
20 JURISDICTION OVER COMPLAINTS. (1) PRICES CHARGED FOR A
21 REGULATED TELECOMMUNICATIONS SERVICE MUST BE ABOVE RELEVANT
22 COSTS UNLESS OTHERWISE ORDERED BY THE COMMISSION. IF THE
23 COMMISSION DETERMINES THAT A PRICE IS BELOW RELEVANT COSTS,
24 IT MAY ENSURE THAT SHAREHOLDERS AND NOT RATEPAYERS ARE
25 RESPONSIBLE FOR ANY RELEVANT COSTS NOT RECOVERED THROUGH

1 PRICES.

2 (2) WITH REGARD TO COMPETITIVE SERVICES, THE TERM
 3 "RELEVANT COSTS" INCLUDES THE PRICE FOR ANY COMPONENTS THAT
 4 ARE USED BY THE TELECOMMUNICATIONS PROVIDER AND THAT WOULD
 5 BE ESSENTIAL FOR ALTERNATIVE PROVIDERS TO USE IN PROVIDING
 6 THE COMPETITIVE SERVICES PURSUANT TO COMMISSION-APPROVED
 7 METHODOLOGY.

8 (3) THE COMMISSION HAS JURISDICTION TO CONSIDER
 9 COMPLAINTS AND INITIATE INVESTIGATIONS TO DETERMINE WHETHER
 10 THE PRICE CHARGED BY A PROVIDER OF REGULATED
 11 TELECOMMUNICATIONS SERVICE IS ABOVE RELEVANT COSTS. THE
 12 COMMISSION MAY ALSO CONSIDER COMPLAINTS THAT A PRICING OR
 13 PROMOTIONAL PRACTICE VIOLATES ANY PROVISION OF THIS TITLE.

14 NEW SECTION. SECTION 8. RULEMAKING AUTHORITY. THE
 15 COMMISSION MAY ADOPT RULES TO IMPLEMENT THIS PART.

16 NEW SECTION. Section 9. Severability. If a part of
 17 [this act] is invalid, all valid parts that are severable
 18 from the invalid part remain in effect. If a part of [this
 19 act] is invalid in one or more of its applications, the part
 20 remains in effect in all valid applications that are
 21 severable from the invalid applications.

22 NEW SECTION. Section 10. Codification instruction. (1)
 23 [Sections 2 and, 5, AND 7] are intended to be codified as an
 24 integral part of Title 69, chapter 3, part 8, and the
 25 provisions of Title 69, chapter 3, part 8, apply to

1 [sections 2 and, 5, AND 7].

2 (2) [SECTION 8] IS INTENDED TO BE CODIFIED AS AN
 3 INTEGRAL PART OF TITLE 69, CHAPTER 3, PART 3, AND THE
 4 PROVISIONS OF TITLE 69, CHAPTER 3, PART 3, APPLY TO [SECTION
 5 8].

6 NEW SECTION. Section 11. Effective date. [This act] is
 7 effective on passage and approval.

-End-

HOUSE BILL NO. 610

INTRODUCED BY BRADLEY, MERCER, DRISCOLL, MAZUREK, KELLER, WYATT, HARP, B. BROWN, CRIPPEN, FORRESTER, STRIZICH, LEE, SQUIRES, STICKNEY, COCCHIARELLA, T. NELSON, DARKO, BECKER, R. JOHNSON, WHALEN, LYNCH, WILLIAMS, KEATING, HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE AUTHORITY OF THE PUBLIC SERVICE COMMISSION TO APPROVE THE IMPLEMENTATION OF ALTERNATIVE FORMS OF REGULATION BY PROVIDERS OF REGULATED TELECOMMUNICATIONS SERVICES; AUTHORIZING THE COMMISSION TO PERMIT CERTAIN DETARIFFING; PROVIDING THE MANNER OF OFFERING AND WITHDRAWING SERVICES; AUTHORIZING PROVIDERS TO OFFER PROMOTIONAL REBATES; AMENDING SECTIONS 69-3-305, 69-3-802, 69-3-807, AND 69-3-808, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the Montana Telecommunications Act, which recognizes and encourages competition in the telecommunications industry to the extent consistent with maintaining universal telephone service, was intended to serve as a bridge between a regulated telecommunications industry and a fully competitive market environment; and

WHEREAS, rapid technological and market changes within the telecommunications industry have prompted regulators

nationwide to reexamine traditional regulation and adopt alternative regulatory systems; and WHEREAS, although the intent of the Montana Telecommunications Act was to allow substantial flexibility to the Public Service Commission, the extent of the Commission's authority to implement alternative forms of regulation is uncertain and enactment of this legislation will clarify the Public Service Commission's authority.

STATEMENT OF INTENT

A STATEMENT OF INTENT IS NECESSARY FOR THIS BILL BECAUSE [SECTION 8] GRANTS THE PUBLIC SERVICE COMMISSION GENERAL RULEMAKING AUTHORITY AND [SECTION 6] GRANTS THE COMMISSION AUTHORITY TO ADOPT RULES RELATING TO THE APPROPRIATE SCOPE OF PROMOTIONS, REBATES, AND MARKET TRIALS. THE LEGISLATURE INTENDS THAT IF RULES ARE ADOPTED BY THE COMMISSION, THE RULES SHOULD PERMIT REASONABLE FLEXIBILITY TO PROVIDERS OF REGULATED TELECOMMUNICATIONS SERVICES IN THE MARKETING OF THEIR SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-3-802, MCA, is amended to read:

"69-3-802. Purpose. The legislature declares that it remains the policy of the state of Montana to maintain universal availability of basic telecommunications service

THIRD READING



1 at affordable rates. To the extent that it is consistent
 2 with maintaining universal service, it is further the policy
 3 of this state to encourage competition in the
 4 telecommunications industry, thereby allowing access by the
 5 public to resulting rapid advances in telecommunications
 6 technology. It is the purpose of this part to provide a
 7 regulatory framework that will allow an orderly transition
 8 from a regulated telecommunications industry to a
 9 competitive market environment, and it is further the
 10 purpose of this part to clarify that the commission has
 11 authority to implement alternative forms of regulation for
 12 providers of regulated telecommunications services."

13 NEW SECTION. Section 2. Alternative forms of
 14 regulation. (1) The commission may authorize a provider of
 15 regulated telecommunication services, as defined in
 16 69-3-803, to implement alternatives to the ratemaking
 17 practices required under parts 2, 3, and 9 of this chapter,
 18 including but not limited to price caps and equitable
 19 sharing of earnings or revenues between a provider of
 20 regulated telecommunications services and its customers.

21 (2) A provider of regulated telecommunications services
 22 may petition the commission to regulate the provider under
 23 an alternative form of regulation. The provider shall submit
 24 its plan for an alternative form of regulation with its
 25 petition. The commission's order on the petition must be

1 issued no later than 9 months after the filing of the
 2 petition. The commission shall review and may authorize
 3 implementation of the plan if it finds, after notice and
 4 hearing, that the plan:

5 (a) will not degrade the quality of or the availability
 6 of efficient telecommunications services;

7 (b) will produce fair, just, and reasonable rates for
 8 telecommunications services;

9 (c) will not unduly or unreasonably prejudice or
 10 disadvantage a customer class;

11 (d) will reduce regulatory delay and costs;

12 (e) is in the public interest; and

13 (F) WILL ENHANCE ECONOMIC DEVELOPMENT IN THE STATE;

14 (G) WILL RESULT IN THE IMPROVEMENT OF THE TELEPHONE
 15 INFRASTRUCTURE IN THE STATE; AND

16 ~~(F)~~(H) conforms to the purpose stated in 69-3-802 more
 17 nearly than regulation under part 2, 3, or 9 of this chapter
 18 conforms to the stated purpose.

19 (3) If the commission determines that the plan does not
 20 satisfy the requirements of this section, it may either
 21 reject the petition or issue a proposed order modifying the
 22 plan as submitted by the provider.

23 (4) A proposed order modifying the plan submitted by a
 24 provider of regulated telecommunications service may not be
 25 final until 60 days after issuance. During that 60-day

1 period, the provider may withdraw its petition for
 2 alternative regulation OR THE CONSUMER COUNSEL MAY OBJECT TO
 3 THE PROPOSED ORDER. If a petition for alternative regulation
 4 is withdrawn OR THE CONSUMER COUNSEL OBJECTS TO THE PROPOSED
 5 ORDER, the provider;

6 (a) remains subject to the same regulation that applied
 7 when the petition was filed; and

8 (b) may petition the commission to be regulated under a
 9 revised alternative plan.

10 (5) Upon petition or upon its own motion, the
 11 commission may rescind its approval or amend an alternative
 12 form of regulation if, after notice and hearing, it finds
 13 that the conditions in subsection (2) are no longer
 14 satisfied.

15 (6) Nothing contained in this section may be construed
 16 as limiting or otherwise affecting the commission's
 17 authority to conduct investigations or hear complaints as
 18 provided in part 3 of this chapter.

19 **Section 3.** Section 69-3-807, MCA, is amended to read:

20 "69-3-807. Regulation of rates and charges. (1) As to
 21 ~~that~~ telecommunications service ~~which~~ that is provided under
 22 regulation, the commission may establish specific rates,
 23 tariffs, or fares for the provision of ~~such~~ the service to
 24 the public. The rates, tariffs, or fares must be just,
 25 reasonable, and nondiscriminatory.

1 (2) Alternatively, the commission may authorize the
 2 provision of regulated telecommunications service under such
 3 terms and conditions ~~as may~~ that best serve the declared
 4 policy of this state. FOR A SERVICE DETARIFFED UNDER THIS
 5 SUBSECTION, THE PROVIDER SHALL MAINTAIN A CURRENT PRICE LIST
 6 ON FILE WITH THE COMMISSION AND SHALL PROVIDE NOTICE OF
 7 CHANGES IN THE PRICE LIST AS PRESCRIBED BY THE COMMISSION.

8 The commission is not required to fix and determine specific
 9 rates, tariffs, or fares for the service and in lieu thereof
 10 may:

11 (a) totally detariff the service;

12 (b) detariff rates for the service but retain tariffs
 13 for service standards and requirements;

14 ~~(c) detariff rates but require notice of price changes~~
 15 ~~to the commission and subscribers;~~

16 ~~(d)~~ (C) establish only maximum rates, only minimum
 17 rates, or permissible price ranges as long as the minimum
 18 rate is cost compensatory; or

19 ~~(e)~~ (D) provide such other rate or service regulation as
 20 will promote the purposes of this part.

21 (3) ~~In~~ Except as provided in subsection (4), in
 22 determining applications under subsection (2), the
 23 commission shall consider the following factors:

24 (a) the number, size, and distribution of alternative
 25 providers of service;

1 (b) the extent to which services are available from
2 alternative providers in the relevant market;

3 (c) the ability of alternative providers to make
4 functionally equivalent or substitute services readily
5 available;

6 (d) the overall impact of the proposed terms and
7 conditions on the continued availability of existing
8 services at just and reasonable rates; and

9 (e) such other factors as that the commission may
10 prescribe through rulemaking which that are appropriate to
11 fulfill the purposes of this part.

12 (4) ~~Nothing--in--this--section--shall---authorize---the~~
13 ~~application--of--subsection--(2)--to--any-services-for-which~~
14 ~~there--are--no--alternative--providers--of--such---services~~
15 Notwithstanding the provisions of subsection (3), the
16 commission may exercise its power under subsection (2)(C)
17 with respect to the ANY services of a telecommunications
18 provider if the commission finds that action consistent with
19 the provisions of 69-3-802 and with the public interest.
20 Carrier NONCOMPETITIVE LOCAL EXCHANGE ACCESS TO END-USERS
21 AND CARRIER access services may not be detariffed. Services
22 detariffed--under--this--subsection--must--be--priced--above
23 relevant costs.

24 (5) A provider of regulated message telecommunications
25 service and related services shall average its service rates

1 on its routes of similar distance within the state unless
2 otherwise authorized by the commission. Nothing contained in
3 this subsection may be construed to prohibit volume
4 discounts, DISCOUNTS IN PROMOTIONAL OFFERINGS, OR other
5 discounts as long as the discounts are not offered in a
6 discriminatory manner,--or--ether--discounts--in--promotional
7 offerings.

8 (5)(5) All providers of comparable regulated
9 telecommunications services within a market area must be
10 subject to the same standards of regulation. For purposes of
11 this section, regulated telecommunications services are
12 comparable to the extent alternative providers can make
13 functionally equivalent substitutes or substitute services
14 readily available.

15 ~~(7)--The--commission--retains--jurisdiction--to--consider~~
16 ~~complaints--that--prices--charged--for--a--service--detariffed~~
17 ~~under--this--section--are--below--relevant--costs--or--violate--a~~
18 ~~provision--of--this--title."~~

19 **Section 4.** Section 69-3-808, MCA, is amended to read:
20 "69-3-808. Forbearance of rate regulation to facilitate
21 competition. (1) In accordance with the provisions of this
22 section, the commission shall forbear regulation as to
23 rates, tariffs, fares, or charges to facilitate competition
24 and shall authorize the provision of all or any portion of
25 regulated telecommunications service under stated or

1 negotiated terms to any person or entity that has acquired
2 or is contemplating acquisition of, through construction,
3 lease, or any other form of acquisition, similar
4 telecommunications service from an alternative source.

5 (2) At any time, the provider of regulated
6 telecommunications service may file a verified application
7 with the commission for forbearance of regulation to
8 facilitate competition. The application ~~shall~~ must describe
9 the telecommunications service to be offered, the customer
10 to be served, and the party or parties offering similar
11 service, together with such other information and in such a
12 form as that the commission may prescribe. Such The
13 additional information must be reasonably related to the
14 determination of the existence of an alternative offer but
15 may not require information relating to the cost of
16 providing such the service.

17 (3) The commission shall approve or deny any-such an
18 application for forbearance of regulation to facilitate
19 competition within ~~10~~ 15 days after the filing of the
20 application, ~~except that the commission may by order defer~~
21 ~~action for an additional 5-day period.~~ If the commission has
22 not acted on any an application within the permitted time
23 period, the application is considered granted. The
24 commission shall deny the application only upon a finding
25 that the application is incomplete or that the subject or

1 similar service is not being offered to the customer by
2 parties other than the applicant. If a customer OR POTENTIAL
3 CUSTOMER of the provider seeking forbearance requests a
4 quotation of prices from another provider of
5 telecommunications service having tariffs or price lists for
6 similar services on file with the commission, the commission
7 shall MAY presume the existence of competition.

8 (4) The provisions of 2-4-601, relating to notice and
9 hearing, do not apply to this section.

10 (5) Upon approval of the application, the provider of
11 telecommunications service may negotiate with such a person
12 or an entity for the provision of such the service without
13 regard to its tariffs OR PRICE LISTS on file ~~and approved by~~
14 WITH the commission.

15 (6) Within 10 days after the conclusion of such the
16 negotiations, the provider of regulated telecommunications
17 service shall file with the commission the final contract or
18 other evidence of the service to be provided, together with
19 the charges and other conditions of the service. Thereafter,
20 FOR THE TERM OF THE CONTRACT, the provider of regulated
21 telecommunications service may provide such the service to
22 the customer without regard to its tariffs OR PRICE LISTS on
23 file ~~and approved by~~ WITH the commission.

24 (7) Services provided pursuant to subsection (1) remain
25 subject to the regulatory powers of the commission."

1 NEW SECTION. Section 5. New service -- withdrawal of
 2 services. (1) A provider of regulated telecommunications
 3 service shall provide the--commission-with notice, IN THE
 4 FORM PRESCRIBED BY THE COMMISSION, of its intent to offer a
 5 new service to its customers at-least-14-days-before-the
 6 service-is-to-be--made--available--and--shall--provide. THE
 7 NOTICE MUST INCLUDE a description of the service, A MINIMUM
 8 PRICE, and the terms and conditions under which it will be
 9 offered. If--the-commission, either-on-its-own-motion-or-in
 10 response-to-the-objection-of--an--interested--person,--finds
 11 that--the--offering--may--not--meet-the-requirements-of-this
 12 title-or-of-commission-rules, it-may, after-hearing, require
 13 the-provider-to-submit-a-proposed-tariff-for-the-service. AT
 14 THE END OF A 10-DAY COMMENT PERIOD FOR INTERESTED PARTIES,
 15 THE COMMISSION MAY IMMEDIATELY APPROVE, SUSPEND, OR
 16 DISAPPROVE THE NEW SERVICE OFFERING OR IT MAY ALLOW THE
 17 INTERIM INTRODUCTION OF THE SERVICE PENDING A HEARING AT A
 18 LATER DATE. If the commission has not acted at the end of 14
 19 30 days FOLLOWING ISSUANCE OF NOTICE, the provider may
 20 proceed to offer the service.

21 (2) A new service may be offered on a detariffed basis
 22 and--must--be--priced--above--relevant--costs. A price list
 23 containing the price of the new service must be filed with
 24 the commission at the time the service is offered to the
 25 public. The-commission-may-require-the-filing-of--supporting

1 cost-information.

2 (3) FOR PURPOSES OF THIS SECTION, "NEW SERVICE" MEANS
 3 ANY SERVICE THAT IS INTRODUCED SEPARATELY OR IN COMBINATION
 4 WITH OTHER SERVICES AND THAT IS NOT FUNCTIONALLY REQUIRED TO
 5 PROVIDE LOCAL EXCHANGE SERVICE OR THAT IS NOT A REPACKAGED
 6 CURRENT SERVICE OR A DIRECT REPLACEMENT FOR A REGULATED
 7 TELECOMMUNICATIONS SERVICE.

8 ~~(3)~~(4) A provider of regulated telecommunications
 9 service may withdraw a service upon 30 days' notice to the
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 11 may, however, suspend the withdrawal of the service, either
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 14 ~~permitted if the commission finds that the--service--is--not~~
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 18 charges. (1) ~~It shall be unlawful for any A~~ public utility
 19 to may not:

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 21 less compensation for any a utility service performed by it
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 24 schedules, including schedules of joint rates, as that may
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1 (b) demand, collect, or receive any a rate, toll, or
2 charge not specified in such the schedules; or

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4 privilege to any a consumer or user; which that, directly or
5 indirectly, shall or may have the effect of changing the
6 rates, tolls, charges, or payments.

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8 be in the printed schedules are the lawful rates, tolls, and
9 charges until the same rates, tolls, and charges are
10 changed, as provided in this chapter.

11 (3) The commission may order refunds or credits of
12 rates, tolls, or charges collected in violation of this
13 section and may in-its-discretion order payment of interest
14 at a reasonable rate on the refunded amount.

15 (4) The provisions of this section do not prohibit the
16 sharing of profits or revenues with customers in conjunction
17 with an alternative form of regulation approved under
18 [section 2]. Additionally, a provider of regulated
19 telecommunications service may offer, FOR A LIMITED PERIOD
20 OF TIME, either rebates or reductions or waivers of
21 installation charges in conjunction with promotions, market
22 trials, or other sales-related activities that are common
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15 section is subject to the penalty prescribed in 69-3-206.
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17 rescinding, invalidating, or in any way affecting existing
18 contracts."

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24 IT MAY ENSURE THAT SHAREHOLDERS AND NOT RATEPAYERS ARE
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HOUSE BILL NO. 610

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WHEREAS, the Montana Telecommunications Act, which recognizes and encourages competition in the telecommunications industry to the extent consistent with maintaining universal telephone service, was intended to serve as a bridge between a regulated telecommunications industry and a fully competitive market environment; and

WHEREAS, rapid technological and market changes within the telecommunications industry have prompted regulators

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REFERENCE BILL

HB 610



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 4 telecommunications industry, thereby allowing access by the
 5 public to resulting rapid advances in telecommunications
 6 technology. It is the purpose of this part to provide a
 7 regulatory framework that will allow an orderly transition
 8 from a regulated telecommunications industry to a
 9 competitive market environment, and it is further the
 10 purpose of this part to clarify that the commission has
 11 authority to implement alternative forms of regulation for
 12 providers of regulated telecommunications services."

13 **NEW SECTION. Section 2.** Alternative forms of
 14 regulation. (1) The commission may authorize a provider of
 15 regulated telecommunication services, as defined in
 16 69-3-803, to implement alternatives to the ratemaking
 17 practices required under parts 2, 3, and 9 of this chapter,
 18 including but not limited to price caps and equitable
 19 sharing of earnings or revenues between a provider of
 20 regulated telecommunications services and its customers.

21 (2) A provider of regulated telecommunications services
 22 may petition the commission to regulate the provider under
 23 an alternative form of regulation. The provider shall submit
 24 its plan for an alternative form of regulation with its
 25 petition. The commission's order on the petition must be

1 issued no later than 9 months after the filing of the
 2 petition. The commission shall review and may authorize
 3 implementation of the plan if it finds, after notice and
 4 hearing, that the plan:

5 (a) will not degrade the quality of or the availability
 6 of efficient telecommunications services;

7 (b) will produce fair, just, and reasonable rates for
 8 telecommunications services;

9 (c) will not unduly or unreasonably prejudice or
 10 disadvantage a customer class;

11 (d) will reduce regulatory delay and costs;

12 (e) is in the public interest; and

13 **(F) WILL ENHANCE ECONOMIC DEVELOPMENT IN THE STATE;**

14 **(G) WILL RESULT IN THE IMPROVEMENT OF THE TELEPHONE**
 15 **INFRASTRUCTURE IN THE STATE; AND**

16 ~~(f)~~**(H)** conforms to the purpose stated in 69-3-802 more
 17 nearly than regulation under part 2, 3, or 9 of this chapter
 18 conforms to the stated purpose.

19 (3) If the commission determines that the plan does not
 20 satisfy the requirements of this section, it may either
 21 reject the petition or issue a proposed order modifying the
 22 plan as submitted by the provider.

23 (4) A proposed order modifying the plan submitted by a
 24 provider of regulated telecommunications service may not be
 25 final until 60 days after issuance. During that 60-day

1 period, the provider may withdraw its petition for
 2 alternative regulation OR THE CONSUMER COUNSEL MAY OBJECT TO
 3 THE PROPOSED ORDER. If a petition for alternative regulation
 4 is withdrawn OR THE CONSUMER COUNSEL OBJECTS TO THE PROPOSED
 5 ORDER, the provider:

6 (a) remains subject to the same regulation that applied
 7 when the petition was filed; and

8 (b) may petition the commission to be regulated under a
 9 revised alternative plan.

10 (5) Upon petition or upon its own motion, the
 11 commission may rescind its approval or amend an alternative
 12 form of regulation if, after notice and hearing, it finds
 13 that the conditions in subsection (2) are no longer
 14 satisfied.

15 (6) Nothing contained in this section may be construed
 16 as limiting or otherwise affecting the commission's
 17 authority to conduct investigations or hear complaints as
 18 provided in part 3 of this chapter.

19 **Section 3.** Section 69-3-807, MCA, is amended to read:

20 "69-3-807. Regulation of rates and charges. (1) As to
 21 that telecommunications service which that is provided under
 22 regulation, the commission may establish specific rates,
 23 tariffs, or fares for the provision of such the service to
 24 the public. The rates, tariffs, or fares must be just,
 25 reasonable, and nondiscriminatory.

1 (2) Alternatively, the commission may authorize the
 2 provision of regulated telecommunications service under such
 3 terms and conditions ~~as may~~ that best serve the declared
 4 policy of this state. FOR A SERVICE DETARIFFED UNDER THIS
 5 SUBSECTION, THE PROVIDER SHALL MAINTAIN A CURRENT PRICE LIST
 6 ON FILE WITH THE COMMISSION AND SHALL PROVIDE NOTICE OF
 7 CHANGES IN THE PRICE LIST AS PRESCRIBED BY THE COMMISSION.
 8 The commission is not required to fix and determine specific
 9 rates, tariffs, or fares for the service and in lieu thereof
 10 may:

11 (a) totally detariff the service;

12 (b) detariff rates for the service but retain tariffs
 13 for service standards and requirements;

14 ~~(c) detariff rates but require notice of price changes~~
 15 ~~to the commission and subscribers;~~

16 ~~(d) (C)~~ establish only maximum rates, only minimum
 17 rates, or permissible price ranges as long as the minimum
 18 rate is cost compensatory; or

19 ~~(e) (D)~~ provide such other rate or service regulation as
 20 will promote the purposes of this part.

21 (3) ~~In~~ Except as provided in subsection (4), in
 22 determining applications under subsection (2), the
 23 commission shall consider the following factors:

24 (a) the number, size, and distribution of alternative
 25 providers of service;

1 (b) the extent to which services are available from
2 alternative providers in the relevant market;

3 (c) the ability of alternative providers to make
4 functionally equivalent or substitute services readily
5 available;

6 (d) the overall impact of the proposed terms and
7 conditions on the continued availability of existing
8 services at just and reasonable rates; and

9 (e) such other factors as that the commission may
10 prescribe through rulemaking which that are appropriate to
11 fulfill the purposes of this part.

12 ~~(4) Nothing in this section shall authorize the~~
13 ~~application of subsection (2) to any services for which~~
14 ~~there are no alternative providers of such services~~
15 Notwithstanding the provisions of subsection (3), the
16 commission may exercise its power under subsection (2)(C)
17 with respect to the ANY services of a telecommunications
18 provider if the commission finds that action consistent with
19 the provisions of 69-3-802 and with the public interest.
20 Earlier NONCOMPETITIVE LOCAL EXCHANGE ACCESS TO END-USERS
21 AND CARRIER access services may not be detariffed. Services
22 ~~detariffed under this subsection must be priced above~~
23 ~~relevant costs.~~

24 (5) A provider of regulated message telecommunications
25 service and related services shall average its service rates

1 on its routes of similar distance within the state unless
2 otherwise authorized by the commission. Nothing contained in
3 this subsection may be construed to prohibit volume
4 discounts, DISCOUNTS IN PROMOTIONAL OFFERINGS, OR other
5 discounts as long as the discounts are not offered in a
6 ~~discriminatory manner, or other discounts in promotional~~
7 ~~offerings.~~

8 ~~(5)(6)~~ All providers of comparable regulated
9 telecommunications services within a market area must be
10 subject to the same standards of regulation. For purposes of
11 this section, regulated telecommunications services are
12 comparable to the extent alternative providers can make
13 functionally equivalent substitutes or substitute services
14 readily available.

15 ~~(7) The commission retains jurisdiction to consider~~
16 ~~complaints that prices charged for a service detariffed~~
17 ~~under this section are below relevant costs or violate a~~
18 ~~provision of this title."~~

19 **Section 4.** Section 69-3-808, MCA, is amended to read:

20 "69-3-808. Forbearance of rate regulation to facilitate
21 competition. (1) In accordance with the provisions of this
22 section, the commission shall forbear regulation as to
23 rates, tariffs, fares, or charges to facilitate competition
24 and shall authorize the provision of all or any portion of
25 regulated telecommunications service under stated or

1 negotiated terms to any person or entity that has acquired
2 or is contemplating acquisition of, through construction,
3 lease, or any other form of acquisition, similar
4 telecommunications service from an alternative source.

5 (2) At any time, the provider of regulated
6 telecommunications service may file a verified application
7 with the commission for forbearance of regulation to
8 facilitate competition. The application ~~shall~~ must describe
9 the telecommunications service to be offered, the customer
10 to be served, and the party or parties offering similar
11 service, together with such other information and in such a
12 form as that the commission may prescribe. Such The
13 additional information must be reasonably related to the
14 determination of the existence of an alternative offer but
15 may not require information relating to the cost of
16 providing such the service.

17 (3) The commission shall approve or deny ~~any-such an~~
18 application for forbearance of regulation to facilitate
19 competition within ~~10~~ 15 days after the filing of the
20 application, ~~except that the commission may by order defer~~
21 ~~action for an additional 5-day period.~~ If the commission has
22 not acted on any an application within the permitted time
23 period, the application is considered granted. The
24 commission shall deny the application only upon a finding
25 that the application is incomplete or that the subject or

1 similar service is not being offered to the customer by
2 parties other than the applicant. If a customer OR POTENTIAL
3 CUSTOMER of the provider seeking forbearance requests a
4 quotation of prices from another provider of
5 telecommunications service having tariffs or price lists for
6 similar services on file with the commission, the commission
7 shall MAY presume the existence of competition.

8 (4) The provisions of 2-4-601, relating to notice and
9 hearing, do not apply to this section.

10 (5) Upon approval of the application, the provider of
11 telecommunications service may negotiate with such a person
12 or an entity for the provision of such the service without
13 regard to its tariffs OR PRICE LISTS on file and-approved-by
14 WITH the commission.

15 (6) Within 10 days after the conclusion of such the
16 negotiations, the provider of regulated telecommunications
17 service shall file with the commission the final contract or
18 other evidence of the service to be provided, together with
19 the charges and other conditions of the service. Thereafter,
20 FOR THE TERM OF THE CONTRACT, the provider of regulated
21 telecommunications service may provide such the service to
22 the customer without regard to its tariffs OR PRICE LISTS on
23 file and-approved-by WITH the commission.

24 (7) Services provided pursuant to subsection (1) remain
25 subject to the regulatory powers of the commission."

1 NEW SECTION. Section 5. New service -- withdrawal of
 2 services. (1) A provider of regulated telecommunications
 3 service shall provide the--commission-with notice, IN THE
 4 FORM PRESCRIBED BY THE COMMISSION, of its intent to offer a
 5 new service to its customers at-least-14-days-before-the
 6 service-is-to-be--made--available--and--shall--provide, THE
 7 NOTICE MUST INCLUDE a description of the service, A MINIMUM
 8 PRICE, and the terms and conditions under which it will be
 9 offered. If--the-commission,-either-on-its-own-motion-or-in
 10 response-to-the-objection-of--an--interested--person,-finds
 11 that--the--offering--may--not--meet-the-requirements-of-this
 12 title-or-of-commission-rules,-it-may,-after-hearing,-require
 13 the-provider-to-submit-a-proposed-tariff-for-the-service: AT
 14 THE END OF A 10-DAY COMMENT PERIOD FOR INTERESTED PARTIES,
 15 THE COMMISSION MAY IMMEDIATELY APPROVE, SUSPEND, OR
 16 DISAPPROVE THE NEW SERVICE OFFERING OR IT MAY ALLOW THE
 17 INTERIM INTRODUCTION OF THE SERVICE PENDING A HEARING AT A
 18 LATER DATE. If the commission has not acted at the end of 14
 19 30 days FOLLOWING ISSUANCE OF NOTICE, the provider may
 20 proceed to offer the service.

21 (2) A new service may be offered on a detariffed basis,
 22 and--must--be--priced--above--relevant--costs. A price list
 23 containing the price of the new service must be filed with
 24 the commission at the time the service is offered to the
 25 public. ~~The commission may require the filing of supporting~~

1 ~~cost-information.~~

2 (3) FOR PURPOSES OF THIS SECTION, "NEW SERVICE" MEANS
 3 ANY SERVICE THAT IS INTRODUCED SEPARATELY OR IN COMBINATION
 4 WITH OTHER SERVICES AND THAT IS NOT FUNCTIONALLY REQUIRED TO
 5 PROVIDE LOCAL EXCHANGE SERVICE OR THAT IS NOT A REPACKAGED
 6 CURRENT SERVICE OR A DIRECT REPLACEMENT FOR A REGULATED
 7 TELECOMMUNICATIONS SERVICE.

8 ~~(3)(4)~~ (4) A provider of regulated telecommunications
 9 service may withdraw a service upon 30 days' notice to the
 10 commission and to the users of the service. The commission
 11 may, however, suspend the withdrawal of the service, either
 12 on its own motion or at the request of an interested person,
 13 and shall then proceed to hearing. ~~The withdrawal must be~~
 14 ~~permitted if the commission finds that the service is not~~
 15 ~~required by public convenience and necessity.~~

16 **Section 6.** Section 69-3-305, MCA, is amended to read:

17 "69-3-305. Deviations from scheduled rates, tolls, and
 18 charges. (1) ~~it shall be unlawful for any~~ A public utility
 19 ~~to may not:~~

20 (a) charge, demand, collect, or receive a greater or
 21 less compensation for any a utility service performed by it
 22 within the state or for any service in connection therewith
 23 with a utility service than is specified in such the printed
 24 schedules, including schedules of joint rates, as that may
 25 at the time be in force;

1 (b) demand, collect, or receive any a rate, toll, or
 2 charge not specified in such the schedules; or

3 (c) grant any a rebate, concession, or special
 4 privilege to any a consumer or user, ~~which that~~, directly or
 5 indirectly, shall or may have the effect of changing the
 6 rates, tolls, charges, or payments.

7 (2) The rates, tolls, and charges named ~~therein--shall~~
 8 be in the printed schedules are the lawful rates, tolls, and
 9 charges until the same rates, tolls, and charges are
 10 changed, as provided in this chapter.

11 (3) The commission may order refunds or credits of
 12 rates, tolls, or charges collected in violation of this
 13 section and may ~~in-its-discretion~~ order payment of interest
 14 at a reasonable rate on the refunded amount.

15 (4) The provisions of this section do not prohibit the
 16 sharing of profits or revenues with customers in conjunction
 17 with an alternative form of regulation approved under
 18 [section 2]. Additionally, a provider of regulated
 19 telecommunications service may offer, FOR A LIMITED PERIOD
 20 OF TIME, either rebates or reductions or waivers of
 21 installation charges in conjunction with promotions, market
 22 trials, or other sales-related activities that are common
 23 business practices. ~~The--commission--has--jurisdiction--to~~
 24 ~~consider-whether-a-particular-sales-activity-under--this~~
 25 ~~subsection---is---unfairly---discriminatory---or---is---not~~

1 ~~cost-effective;~~ PROMOTIONAL PRICING OF SERVICES THAT REMAIN
 2 FULLY TARIFFED REQUIRES ADVANCE APPROVAL OF THE COMMISSION.
 3 NO PROMOTIONAL OFFERING MAY COMBINE MONOPOLY SERVICES WITH
 4 COMPETITIVE SERVICES. The commission may define the
 5 appropriate scope of promotions, rebates, and market trials,
 6 either by rule or in response to complaints. THE COMMISSION
 7 MAY DETERMINE WHETHER A PARTICULAR SALES ACTIVITY UNDER THIS
 8 SUBSECTION IS UNFAIRLY DISCRIMINATORY OR IS NOT
 9 COST-EFFECTIVE. COSTS AND EXPENSES INCURRED OR REVENUE
 10 FOREGONE WITH RESPECT TO SALES ACTIVITIES THAT THE
 11 COMMISSION DETERMINES ARE UNFAIRLY DISCRIMINATORY OR NOT
 12 COST-EFFECTIVE ARE THE RESPONSIBILITY OF THE PROVIDER'S
 13 SHAREHOLDERS IN RATES SET BY THE COMMISSION.

14 (5) A public utility violating the provisions of this
 15 section is subject to the penalty prescribed in 69-3-206.
 16 This, however, does not have the effect of suspending,
 17 rescinding, invalidating, or in any way affecting existing
 18 contracts."

19 NEW SECTION. SECTION 7. COSTS FOR SERVICES PROVIDED --
 20 JURISDICTION OVER COMPLAINTS. (1) PRICES CHARGED FOR A
 21 REGULATED TELECOMMUNICATIONS SERVICE MUST BE ABOVE RELEVANT
 22 COSTS UNLESS OTHERWISE ORDERED BY THE COMMISSION. IF THE
 23 COMMISSION DETERMINES THAT A PRICE IS BELOW RELEVANT COSTS,
 24 IT MAY ENSURE THAT SHAREHOLDERS AND NOT RATEPAYERS ARE
 25 RESPONSIBLE FOR ANY RELEVANT COSTS NOT RECOVERED THROUGH

1 PRICES.
 2 (2) WITH REGARD TO COMPETITIVE SERVICES, THE TERM
 3 "RELEVANT COSTS" INCLUDES THE PRICE FOR ANY COMPONENTS THAT
 4 ARE USED BY THE TELECOMMUNICATIONS PROVIDER AND THAT WOULD
 5 BE ESSENTIAL FOR ALTERNATIVE PROVIDERS TO USE IN PROVIDING
 6 THE COMPETITIVE SERVICES PURSUANT TO COMMISSION-APPROVED
 7 METHODOLOGY.
 8 (3) THE COMMISSION HAS JURISDICTION TO CONSIDER
 9 COMPLAINTS AND INITIATE INVESTIGATIONS TO DETERMINE WHETHER
 10 THE PRICE CHARGED BY A PROVIDER OF REGULATED
 11 TELECOMMUNICATIONS SERVICE IS ABOVE RELEVANT COSTS. THE
 12 COMMISSION MAY ALSO CONSIDER COMPLAINTS THAT A PRICING OR
 13 PROMOTIONAL PRACTICE VIOLATES ANY PROVISION OF THIS TITLE.
 14 NEW SECTION. SECTION 8. RULEMAKING AUTHORITY. THE
 15 COMMISSION MAY ADOPT RULES TO IMPLEMENT THIS PART.
 16 NEW SECTION. Section 9. Severability. If a part of
 17 [this act] is invalid, all valid parts that are severable
 18 from the invalid part remain in effect. If a part of [this
 19 act] is invalid in one or more of its applications, the part
 20 remains in effect in all valid applications that are
 21 severable from the invalid applications.
 22 NEW SECTION. Section 10. Codification instruction. (1)
 23 [Sections 2 and, 5, AND 7] are intended to be codified as an
 24 integral part of Title 69, chapter 3, part 8, and the
 25 provisions of Title 69, chapter 3, part 8, apply to

1 [sections 2 and, 5, AND 7].
 2 (2) [SECTION 8] IS INTENDED TO BE CODIFIED AS AN
 3 INTEGRAL PART OF TITLE 69, CHAPTER 3, PART 3, AND THE
 4 PROVISIONS OF TITLE 69, CHAPTER 3, PART 3, APPLY TO [SECTION
 5 8].
 6 NEW SECTION. Section 11. Effective date. [This act] is
 7 effective on passage and approval.

-End-