MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Senator Bob Brown, Chairman, on March 14, 1989, at 8:00 a.m.

ROLL CALL

Members Present: Senator Brown, Senator Hager, Senator Norman, Senator Eck, Senator Bishop, Senator Halligan, Senator Walker, Senator Gage, Senator Harp, Senator Severson, Senator Mazurek, Senator Crippen

Members Excused: None

Members Absent: None

Staff Present: Jill Rohyans, Committee Secretary
Jeff Martin, Legislative Council

Announcements/Discussion: None

HEARING ON SENATE BILL 460

Presentation and Opening Statement by Sponsor:

Senator Bob Brown, District 2, sponsor, said the bill imposes an excise tax on the privilege of originating or receiving telecommunications; provides for the administration and collection of the tax; and provides penalties and establishes an effective date. Senator Brown pointed out our tax policies were originally based on the taxation of land, land being the initial basis for all wealth. As we evolved into the machine or industrial age, taxation was based on production and consumption. However, in the last decade we appear to be entering into the information age and many of the states' tax policies have not keep pace with this latest trend. State tax policies need to recognize that valuable information and ideas are now transmitted via telecommunications. A concern with the constitutionality of taxing telecommunications across state lines was dealt with earlier this year in the case of Goldberg vs Johnson in which the Illinois Supreme Court upheld the 5% excise tax on interstate as well as intrastate long distance communications. That case was based on a bill in the Illinois legislature and is the basis for SB 460.

Senator Brown said the fiscal note indicates there could be up to $21.6 million of revenue generated per annum under the provisions of the bill.

Ten other states have similar taxes all of which have been upheld by the U.S. Supreme Court (including Illinois). Montana is one of only 1 states which impose no excise tax of any kind on long distance telephone calls. What we do have is a 1.725% gross receipts or franchise tax on the telecommunication industry in Montana.

Senator Brown indicated the Department of Revenue had prepared some amendments which would clear up some language and administrative problems which resulted from trying to adapt the Illinois legislation to Montana (see Exhibit #8).

In closing, Senator Brown indicated there is tremendous consternation about this bill. He said perhaps this is not the time for legislation such as this in Montana, however, in time to come this will be reflected in the tax policies of most states. If we don't enact it now, we will find it on the agenda in a future session and we should be looking ahead.

<u>List of Testifying Proponents and What Group they Represent:</u>

None

<u>List of Testifying Opponents and What Group They Represent:</u>

Ray Brandewie, Montana Innkeepers Association
Sonny Hanson, President, Tech Time, Billings
Dr. Jack Stephens, MARS, Inc., Missoula
Dennis Burr, Montana Taxpayers Association
Buck Boles, President, Montana Chamber of Commerce
Ben Havdahl, Montana Motor Carriers Association
Representative Betty Lou Kasten, District 28
Ted Neuman, Montana Council of Cooperatives and Rural Montana Telephone Systems, and those organizations who comprise the membership of the Montana Agriculture Coalition
Tom Harrison, Montana Cable Television Association
Bob Little, AT&T, Helena
Manuel Davila, AT&T Headquarters Tax Department, New Jersey
Peggy Duxbury, Senior Tax Manager, MCI
Laurie Shadoan, Bozeman Chamber of Commerce and the

Gallatin Development Corporation
Kay Foster, Billings Chamber of Commerce
Dennis Lopach, U.S. West Communications
Donald Murray, Northwestern Telephone Systems, Inc.
Tom Hopgood, GTE Northwest
Jack Pippo, Partner in Touch America
Les Hilliard, Cable Montana
Mike Meldahl, TRI

Testimony:

Ray Brandewei, Montana Innkeepers Association, said most innkeepers do not have computerized telephone systems which means all calls will have to be individually computed by hand. This will be a large burden and probably require more staff or the expense of converting to a computerized system. He also pointed out the unfairness of the bill when it is applied to rural Montana areas. He said it is six miles between Whitefish and Kalispell and all those calls are long distance.

Sonny Hanson, Tech Time, Billings, said telephone lines are their transportation system. Mr. Hanson said he has given some thought to leaving the state because of the tax base and should this bill pass he most assuredly would leave. He said in his business it is cheaper to pick up the electronic equipment and move out than it is to stay and pay.

Dr. Jack Stephens, MARS Inc., Missoula, said MARS is a total telecommunications firm. He said his employees number about 90 and they handle 30,000 to 40,000 long distance calls a month. The have 15,000 outgoing long distance calls month. He pointed out these calls are essentially his tools of the trade. He said this bill does not make good sense as it is destructive to new industries, particularly the telecommunications business.

Dr. Stephens submitted his business does not consume natural resources, it is locally owned, and it brings a great deal of money into the state without sending a lot back out.
Also, he contended the remoteness and sparse population in Montana are not drawbacks when working with telephones. The location is not a large consideration in that case. However, when the calls are taxed, it will affect at least one half of the outgo of his business every month.

Telecommunications businesses are very mobile. It is very easy to pick up the equipment and go and new developing businesses are being wooed every day by other states to relocate. He has had offers from Oklahoma, Boise, and Spokane in just the last month. Dr. Stephens is a Missoula native and wants to maintain his business in the state. He said his biggest asset is his excellent employees and he would hate to leave them. However, if it gets too expensive to do business in the state he will leave. He noted most of these companies are Sub S corporations and are already highly taxed. Dr. Stephens urged the committee to kill the bill.

Dennis Burr, Montana Taxpayers Association, submitted a table of comparative taxes paid by the telecommunications industry in the state (Exhibit #1). The second sheet (Exhibit #2) shows the total operating taxes compared to other states. Some will argue that property taxes are so high in Montana because there is no sales tax. However, the figures in Exhibit #2 show Montana's taxes going up more than other states on a total tax basis.

Buck Boles, President, Montana Chamber of Commerce, said he agreed with the previous testimony. He said over the past three years a lot of economic development people have come into the state and they have never failed to mention the telecommunications industry as one that is not tied to property and is very flexible. He urged the committee to see that the opportunity to attract this type of business to the state remains open and submitted it is not necessary to tax every successful business venture in the state.

Ben Havdahl, Montana Motor Carriers Association, said this bill would tax a vital income producing component of the industries in the state when what is needed is an improved business climate. He said 95% of the motor carriers do business interstate an use long distance extensively. He said this is an essential component of their business and it is not fair to tax them when you consider Montana has the second highest diesel fuel tax and one of the highest workers compensation taxes in the country.

Representative Betty Lou Kasten, District 28, said she represents the most sparsely settled area in Montana. That population relies heavily on long distance with the average monthly bill being $80. She urged the committee to give the bill negative consideration.

Ted Neuman, Montana Council of Cooperatives and the Rural Montana Telephone Systems, said the rural telephone systems serve about 85% of the geographical area of Montana. He said this bill sends the wrong signal to the businesses they want to attract to rural Montana. He felt it is not an equal tax as those who live in rural Montana will pay a disproportionate share due to the areas in which they live. Mr. Neuman said he also represents the organizations that comprise the membership of the Montana Agriculture Coalition and the Montana Jockey Club.

Tom Harrison, representing the Montana Cable Television Association, said the bill is so loosely drafted he is not sure it covers cable television. He said the Illinois bill does not affect cable but this language is so ambiguous as to make it questionable. He submitted an amendment to exempt cable television from the bill (Exhibit #3). He said one of the largest problems faced by the business community in Montana is remoteness. It is important to be able to contact markets and do business with people in those markets such as Minneapolis, Chicago, Seattle, Denver. Telecommunications and fax machines are impacting the people in the state in many important ways and the business community is becoming more and more dependent on the telecommunication industry. Rather than to discourage or exacerbate the problems of remoteness, we need to have tax incentives that draw us together with the marketplace and overcome the remoteness we experience.

Bob Little, AT&T, submitted his testimony in opposition to the bill (Exhibit #4). He also presented a letter in opposition to the bill from Americana Expressways (Exhibit #5).

Manuel Davila. AT&T Headquarters Tax Department, New Jersey, presented his testimony in opposition to the bill (Exhibit #6).

Peggy Duxbury, Senior Tax Manager for MCI Communications, Denver, presented her testimony in opposition to the bill (Exhibit #7).

Laurie Shadoan, Bozeman Chamber of Commerce and the Gallatin Development Corporation, said this bill would have an immediate adverse impact on the cost of doing business in Montana. It would but the state at an economic disadvantage in attracting new business an over the long term would threaten the economic viability of doing business in the state. It sends a negative message to companies such as Patagonia which recently located in Bozeman and who very well may leave if legislation such as this is enacted.

Kay Foster, Billings Chamber of Commerce, said Billings is the headquarters of an international corporation, the Kampgrounds of America. It was founded in Billings and continues in business there and would be directly impacted by this bill. The Billings Chamber of Commerce would prefer a comprehensive statewide sales tax and not targeted taxes such as this. She pointed out a recent news release by the Montana Commerce Department which said the Federal Communications Commission has finally allowed the development of a statewide cellular communications network in Montana. This will have a very positive economic impact on the state with a multimillion dollar investment required to develop and build the network. Construction, new employees, and a new source of tax revenue, and the newest and finest communications network available are benefits of this effort. Ms. Foster hoped this bill would not be the kind of welcome sign with which the state greets new businesses such as this.

Dennis Lopach, U. S. West Communications, said they are primarily the local telephone company as they do not carry interstate calls or traffic between eastern and western Montana except for certain toll traffic in specific areas. He pointed out that local telephone service would also be taxed under the provisions of this bill citing the language on page 5, line 25, which includes local transmission in the term "telecommunications". Mr. Lopach said the rules under which they operate allocate a large amount of the plant to the interstate jurisdiction and then U.S. West is compensated for the costs associated with that plant through interstate traffic. The amount to which they are able to do that is being drastically reduced. They are facing a phase-down of 44% to 25% which will translate into $3 million of cost coming back every year which the ratepayers must compensate U. S. West for in this state. In 1993 that will reach 25% and the FCC is now determining whether that will continue or if it should be reduced to 0%. The midwestern and northeastern states are lobbying heavily for the factor to move to 0% because they do not have the sparse populations and enormous equipment and do not want to subsidize Montana. He said rates will be going up as the FCC is under considerable pressure and this tax on local service will increase as the rates rise.

Mr. Lopach referred to the fiscal note and said the problem is that the preparers failed to account for the access charge exclusion on page 7, line 12, which would make the figure a lot closer to $14 million on the assumption that cable television is not included.

Donald Murray, Northwestern Telephone Systems Incorporated, said their service area is the northwestern corner of Montana. People who live in rural Montana pay on the basis of the distance their calls travel. This bill would essential punish those people who must rely on their long distance calls for essential services. It will also drive users of public networks toward the use of private networks which will be exempt from this tax. There are already a number of such networks in place and the tax difference will be significant. It will also encourage large corporations to develop their own private networks. He submitted this is a sales tax on one segment of the service industry. This is what was argued by the state of Illinois before the U.S. Supreme Court and the Court accepted the argument and said "the tax at issue has many of the characteristics of a sales tax". Mr. Murray said this bill will result in a rate increase from their company which will make them an "evil utility" when the state is the actual villain.

Tom Hopgood, GTE Northwest, said he agreed with the previous testimony as they are affected in the same way. He remarked he was fascinated by Dr. Stephen's testimony in which he said other states are trying to lure his business away from Montana. Mr. Hopgood said we are sending the wrong signals. We should be trying to lure businesses to Montana - not forcing them to leave.

Jack Pippo, General Manager and part owner of Touch America, said they oppose the tax as they have been trying for six years to bring the cost of telecommunications down by providing a good service for individuals and businesses in this state. He noted it has been proven that as cost goes down the usage goes up. Extra taxes drive prices up and those costs impact the consumer. He urged the committee members to vote negatively on the bill.

Les Hilliard, Cable Montana, The U. S. Supreme Court has found that cable television is a conveyor of first amendment rights. He asked for consideration of first amendment conveyors in the bill.

Mike Meldahl, Telecommunications Resources Inc., a wholly owned subsidiary of Entech, a Montana Power Corporation, pointed out that the last two telecommunications studies funded by the Montana legislature indicated Montana has a drastic need for improved telecommunication systems. Further, those systems need to be very innovative and cost effective and need to address rural and educational communities as well as the business community. He urged the rejection of the bill as it does not encourage growth of the industry.

Others Wishing To Speak To The Bill:

Jeff Miller, Department of Revenue, presented proposed amendments to the committee. He said they are strictly administrative in nature and do not change the substance of the bill. The amendments would simply serve to make the bill more workable for the taxpayers and the Department.

<u>Questions From Committee Members:</u>

Senator Crippen said he noticed that the penalty for violation is a felony in Section 14.

Jeff Miller, DOR, said the amendments do not address this and it is unusual for Montana. He said he assumes the provision is in there as this is the Illinois bill and they had an amnesty program after which they significantly strengthened their penalty provisions.

Senator Eck asked Dr. Stephens what the offset would be if this were included in HB 747 and the 4% sales tax and personal property taxes dropped as a result.

Dr. Stephens replied the benefits should reduce the income tax rather than the property tax. He said he does feel the property taxes on this equipment are onerous.

Sonny Hanson said HB 744 addresses data based management and therefore it would affect the telecommunication business. He felt if a sales tax is enacted, it should exclude everything outside the state. The equipment depreciates very quickly and he felt the property tax on personal property is not a significant factor.

Senator Norman asked if the provisions of page 5, line 23 include or exclude cable television.

Senator Brown said the intention is to include it.

Senator Eck asked Mr. Burr to address the balance of the sales tax versus the property tax.

Dennis Burr said he supports the sales tax because of the property tax reductions. He said his group has also asked that utilities be excluded from the sales tax partly because they do not get any of the property tax reductions in the bill.

Senator Eck asked if the telephone company license tax is taxing the same base as the 4% would.

Mr. Burr replied as it stands now, it would be more than under the tax in this bill.

Dennis Lopach said the telephone license tax applies to the transmission of messages by wire or by microwave. That is the base. Although the interpretation is constantly under discussion, he felt it is a broader base than 460.

Closing by Sponsor:

Senator Brown closed by saying one measure of fairness of the tax is its broad base. He said he would attempt to keep it as broad based as possible unless there is a first amendment problem which was indicated and should be addressed. He responded to the allegation that the bill would drive out fledgling businesses but asking what the effect of rate increase must be on these same businesses. He said he had asked the PSC for information on rate increases and the information he received indicated that local telephone rates have doubled on businesses in Montana since 1978. He said both AT&T and MCI are subject to the 6.75% corporate license tax which is flat rate as well as the 1.75% franchise tax which is also flat rate. PSC information indicates that in the case of AT&T the stock price per share has gone up 62% since 1984. In the case of MCI, the stock price per share has gone up 63% in the last five years.

Senator Brown indicated that the income per capita in the state has been very flat during this period of time and property values have also been flat if not in a decline. And yet the property tax burden on Montanans is great. What you are seeing is a shift of income and the production of income into the telecommunications industry and Montana is not keeping pace with it. It is a question of facing the reality of changing times. Regardless of whether this passes this session or not, the idea will not go away. This bill or a similar one will be back and ultimately it will pass.

EXECUTIVE SESSION

Senator Eck said there had been some discussion about the committee requesting a revenue bill. She wondered if some specific action needed to be made in light of the approaching deadline for introduction of revenue bills.

Senator Brown said he had been approached by the Governor's office regarding a situation that needs attention. In the 1986 special session the legislature diverted some of the coal tax money from three or four of the specialized accounts into the general fund. This also was done in the 1987 session. The Governor has inadvertently neglected to do this in 1989 and, therefore, Dave Lewis, Budget Director, may be appearing before the committee quite soon to explain what this involves and ask us to request a committee bill to address it. Senator Brown did not know how much money it involved, but thought it was in the neighborhood of $14 million.

Senator Severson asked the committee if they wanted to request a 25 cent gas tax bill.

Senator Harp said the gas tax is for maintenance of highways and would oppose any move to change it from a user tax to the general fund.

Senator Crippen expressed some frustration at not knowing where we stand as far as revenue projections.

Senator Norman said we are very close to balancing the budget but it will require some very lean and painful cuts to make the grade. He said this committee ultimately will have to decide whether there will be a tax increase. If we don't, Appropriations and Finance and Claims will have no choice but to start cutting. He said we know what the big ticket items are going to cost and we need to begin addressing them.

Senator Gage said it will be one to two years before income is derived from a sales tax if it passes, we need to have all the options for funding at hand that are possible, and we are still looking for one time funding sources. He felt Senator Severson's gas tax proposal would address all those needs and should be drafted.

SENATOR ECK MOVED TO HAVE THE SENATE TAXATION COMMITTEE REQUEST A BILL FOR A 25 CENT GAS TAX. Senator Brown pointed out the motion requires a 3/4 majority vote for passage. THE MOTION FAILED ON A ROLL CALL VOTE (Exhibit #9).

SENATOR GAGE MOVED TO REQUEST A COMMITTEE BILL TO MOVE THE SUNSET PROVISION AHEAD TWO YEARS ON THE 2% DEDUCTION OF FUNDS FROM THE SPECIALIZED COAL TAX FUNDS WHICH ARE DEPOSITED INTO THE GENERAL FUND. THE MOTION CARRIED ON A ROLL CALL VOTE (3/4 majority needed - see Exhibit #10).

ADJOURNMENT

Adjournment At: 10:00 a.m.

Bob Brown

SENATOR BOB BROWN, Chairman

BB/jdr

MIN314.jdr

ROLL CALL

TAXATION COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 3/14/89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BROWN	X		
SENATOR BISHOP	X		
SENATOR CRIPPEN	X		
SENATOR ECK	X		
SENATOR GAGE	X		
SENATOR HAGER	X		
SENATOR HALLIGAN	X		
SENATOR HARP	X		
SENATOR MAZUREK	X		
SENATOR NORMAN	X		
SENATOR SEVERSON	X		
SENATOR WALKER	X		

Each day attach to minutes.

Exhibit 1A
3-14-89
SB 460

(This sheet to be used by those testifying on a bill.)

NAME: Ray Brandewie DATE: 3-14-89

ADDRESS:

PHONE: 442-2052

REPRESENTING WHOM? MIKA (Innkeepers)

APPEARING ON WHICH PROPOSAL: SB 460

DO YOU: SUPPORT? ______ AMEND? ______ OPPOSE? X

COMMENT: Just another tax and bookkeeping expence that has to be passed on to customers.

a tax that discriminate against rural Montana because nearly all calls are long distance

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

EXHIBIT # 1
3/14/89 SB 460

Table 1. Property Taxes Per $1000 Average Plant Investment

	1981	1982	1983	1984	1985
Arizona	26.50	26.64	22.80	22.03	20.79
Colorado	17.32	16.84	15.28	15.71	14.32
Idaho	7.66	8.15	6.88	8.25	7.93
Montana	26.42	27.12	26.90	30.96	32.15
New Mexico	10.91	11.12	11.15	10.41	10.23
Utah	10.09	10.10	11.01	9.60	10.83
Wyoming	14.06	14.43	16.41	12.33	9.42
Company	17.57	17.64	16.38	16.16	15.44

EXHIBIT # 2
3/14/89 SB 460

Table 2. Operating Taxes Per $1000 Average Plant Investment

	1981	1982	1983	1984	1985
Arizona	32.99	33.12	29.94	28.98	28.10
Colorado	23.80	23.58	22.14	23.24	21.66
Idaho	13.58	13.58	10.62	13.72	16.34
Montana	36.32	32.32	33.94	39.97	41.89
New Mexico	19.42	18.18	19.63	19.32	19.74
Utah	18.09	17.07	17.87	17.84	19.28
Wyoming	15.41	16.14	18.06	14.02	10.87
Company	25.55	23.84	22.94	23.36	22.97

PROPOSED AMENDMENTS TO SENATE BILL 460
(Introduced Bill)

1. Section 2 (13)(b)
Line 19, after word "communications" change period to semicolon and add "or"
Insert new subsection (iii) , as follows:
(iii) purchase of cable television services.

EXHIBIT # 4
3/14/89 SB 460

SB460 Testimony of Robert Little - AT&T, before Senate Taxation Committee, Mar. 14, 1989.

Mr. Chairman and members of this committee, thank you for allowing me to present AT&T's views with regard to SB460.

This bill proposes a 5% tax on virtually all telephone service, local as well as long distance telecommunications messages, both intra-, and interstate in nature. Judging from the language in the bill, it is a result of a recent Supreme Court decision which upheld a similar law in Illinois by which that state imposed a tax on interstate telecommunications.

While this bill may appear to succeed as a revenue measure, its real impact will be to further repress Montana's economy, an economy which I believe you will all agree is in dire need of stimulation rather than repression. From a residential customer viewpoint, it will cause customers to reduce the number and duration of calls made. From a business customer viewpoint, it could be disastrous.

The Information Age has brought with it a veritable explosion in the use of telecommunications services; both voice and data transmission, between people, between people and computers, and between computers. Some of it may seem to be a little silly, like when a computer calls your answering machine and then hangs up because the answering machine cannot press "1" to hear details about a Hawaiian vacation, but nonetheless it is here, and entire new industries such as Telemarketing have sprung up because of it. Traditional businesses such as insurance, banking, mail order retailing, tourism, just to name a few, also exhibit a growing reliance upon telecommunications. And this explosion has just begun. Even for those working in the information industries, it is difficult to envision fully how the ways in which we live and do business will change in the near future.

In contrast to much of Montana's past and present industries, telecommunications based firms do not rely upon the extraction of resources such as forests, precious minerals, coal, oil or gas, which are either completely irreplaceable or replaceable only very slowly. Neither do they have to be located by a port, harbor, or major city to be successful. In fact, they can be located virtually anywhere a telephone can be located. Montana, with its highly educated labor force, unpolluted environment and overall quality of life, is ideal for these types of firms.

However, a selective excise tax such as this which singles out telecommunications will not only discourage such businesses from choosing to locate in Montana, but also will discourage expansion of existing businesses in the state, particularly if no such tax exists in neighboring states. Montana already is perceived as being "anti-business" in general. We Montanans may not agree with that perception, but it is reality to those who have it and it is up to us to change it. This tax will do nothing to change that perception, in fact it will only serve to further solidify it.

On the other hand, if our neighboring states choose to enact such a tax and we do not, then this will not only assist in changing the anti-business perception I mentioned earlier, but also will give Montana a needed advantage in competing for new business investment.

This proposed tax could go a long way towards killing the goose which is laying today's golden egg. I urge you to consider what is right for Montana. This tax is wrong.

EXHIBIT # 5
3/14/89 SB 460

Americana Expressways

Great Falls, Montana ICC-MC 138313

SERVICE...
Our Commitment to Excellence!

March 13, 1989

The Honorable Robert Brown
Chairman-Taxation committee

Dear Senator Brown:

There is a bill soon to come before the Senate, called the "Telecommunications Excise Tax Act". We question the wisdom of this bill, as we understand it. Of all the types of business that Montana currently has and or is attracting, those related to the communication industry would seem to be highly desirable.

Montanan's today have justifiable concerns about the negative impact that different types of industry have on our state as a whole. For example, mining, logging, recreational development, and gambling (to name some major areas), face public resistance due to their respective impacts on areas such as air and water quality, wise use of natural resources, impact on recreation, social and community concerns, and on the quality of life as a whole. These concerns lead to an increase in the time necessary to start up new business, and an increase in their operating costs. We can not afford to discourage those types of business that do not appear to have a negative impact.

Today, Montana is setting a climate that is discouraging to both new and existing businesses. We can ill afford to add one more factor to a situation that is already stressful to all of us who desire to build a future for our families in an otherwise exceptional state. The costs, related to business, that are incurred by both the state and ultimately the public, should be passed back in a weighted fashion to those businesses responsible for those costs. This excise tax will take us further in an anti-business direction. Let's reverse that direction.

Thank you.

Sincerely,

James W. Stewart

James W. Stewart
Director of Management
Information Systems

EXHIBIT # 6
3/14/89 SB 460

(This sheet to be used by those testifying on a bi

NAME: Manuel Davila DATE: ____________

ADDRESS: 412 MT Kemble Ave Morristown NJ

PHONE: 201-644-1808

REPRESENTING WHOM? AT&T

APPEARING ON WHICH PROPOSAL: SB 460

DO YOU: SUPPORT? ________ AMEND? ________ OPPOSE? ✓

COMMENT: ____________

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

TESTIMONY OF AT&T - MONTANA SENATE BILL 460

My name is Manny Davila and I am a District Manager for AT&T. I have responsibility for Customer and Revenue taxes in Montana. I am here today to discuss AT&T's views on Senate Bill 460. This bill would impose a 5% excise tax on local and long distance telephone calls that originate or are received in Montana and are billed to a service address here in Montana.

My colleague, Bob Little, has explained the impact that this bill would have on the state and on my company. As a member of AT&T's tax department I would like to expand on some of his thoughts and provide comments on this bill from a tax viewpoint.

As the Statement of Intent of this bill reads, Montana wishes to pattern an excise tax similar to the one enacted in Illinois and recently upheld by the U.S Supreme Court in Goldberg v. Sweet. This bill attempts to avoid constitutional challenges by mirroring all of the facets of the Illinois statute. I would like to take this opportunity to digress and compare the current Montana tax structure to that of Illinois with an emphasis on telecommunications.

Both states impose corporate income and property taxes. Montana is somewhat unique in that it imposes discriminatory property tax classification on our industry where Illinois does not. With regard to telecommunications, Montana imposes three discriminatory gross receipts taxes. It imposes a Telephone Company License tax, Consumer Counsel tax and a Public Service Commission tax. These taxes are "hidden" from the consumer but contribute to higher telephone rates for Montana consumers. In addition, Montana's License tax is especially onerous because it contains numerous elements of double taxation. If this bill were to pass, a situation would exist where there would be triple taxation of the same receipts. Montana does not currently have a general sales tax.

Illinois on the other hand, does impose a telecommunications excise tax. However, this excise tax is a compliment to their general sales tax. A general business in Illinois, as well as my company collects taxes from the consumer. One important factor is that Illinois did impose a discriminatory utility tax, similar to Montana's, prior to imposing the excise tax. This discriminatory tax was repealed upon adoption of the excise tax. In both states the Federal Government imposes a 3% excise tax on all telephone calls.

The mere fact that Illinois enacted a constitutional interstate telephone tax should not drive decision making in this area. There are a host of taxes that are available to a state, all of which are constitutional. Decision makers must decide what taxes are in the best interests of the state and its constituents. There are currently two bills before the legislature that are considering the levy of a broad based sales tax, Senate Bill 456 and House Bill 747. I believe that those bills would be the appropriate forum to consider the state's policy regarding the taxation of telecommunications. If the legislature were to decide that it wishes to tax our services then at least it would not be discriminatory but part of a general tax on goods and services.

AT&T is committed in providing the best quality long distance telephone service at the lowest possible cost. AT&T is opposed to any tax that would add yet another layer of taxation to its customers. In addition, we are opposed to this bill, because, once again the telecommunications industry is being singled out for special discriminatory tax treatment.

AT&T is not opposed to paying its "fair share" of taxes. As a matter of fact AT&T pays approximately $3 million in taxes to Montana annually. We are not opposed to any taxes that are levied on the entire business community such as Income taxes, Property taxes and Sales and Use taxes. We are opposed to discriminatory taxes. This excise tax would bring the total number of discriminatory taxes on telecommunications to four. In addition, this tax would cause triple taxation of certain telephone company receipts. The legislature must consider if this is appropriate given the important role that telecommunications plays in today's world.

This tax would also be difficult to police. Due to deregulation, technological advancement and relative ease of market entry, telephone services are provided by a host of non-traditional companies. If a tax is enforced only at the traditional telephone company level, such companies are put at a competitive disadvantage. This assumes that competitors will choose to offer services in this state.

Both U.S. West Communications and AT&T have a firm commitment to citizens of this state. Montana's large geographic area and small population make operating in this state more expensive than the national average. Adding additional layers of taxes can have disastrous effect on the state. Fewer options for your constituents will exist because many carriers will not find it cost effective to conduct business here. In addition, state of the art telecommunications will come slowly to the state because of reduced demand for the service as a result of the onerous tax burden on the carriers and the services they provide.

While AT&T is opposed to this bill in its entirety many sections of the bill pose serious problems. There are some services that would be taxed which we feel are unconstitutional and were not considered in the Goldberg case. In addition, this bill would create a tremendous compliance burden on my company. For example, we would be required to make remittances to the state on a weekly basis. No taxing jurisdiction that I am aware of, not even the Federal Government requires such an onerous burden.

In summary, it is AT&T's position that the imposition of a new telecommunications excise tax is not in the best interest of the state, its residents and businesses, or the telecommunications industry. It is our hope that it is realized that the imposition of this tax will seriously raise your constituents phone bills. In addition, while an additional tax on telephone service may provide some short-term revenues to the state, the long term effect of this measure on the Montana economy is not good.

Thank you very much for giving me the opportunity to express AT&T's views on this bill and I would be pleased to answer any questions you may have.

EXHIBIT # 6
3/14/89 SB 460

STATE OF MONTANA

TAXES AND FEES LEVIED ON TELECOMMUNICATIONS

REVENUE TAXES

MONTANA LICENSE TAX

CONSUMER COUNSEL TAX

PUBLIC SERVICE COMMISSION TAX

EXCISE TAXES

FEDERAL EXCISE TAX

MONTANA EXCISE TAX ?

Revenue taxes are "hidden" from the rate-payer in that they are buried within the cost of service. Double taxation of access charges occurs under the License tax.

Although the Federal Excise tax has been scheduled to expire numerous times, President Bush has indicated that it is his intention of making this tax permanent.

As any other corporation operating within Montana telecommunication companies must also pay Income taxes and property taxes.

STATE OF MONTANA - SENATE BILL 460

POTENTIAL TRIPLE TAXATION

CARRIER ACCESS CHARGES

Carrier access charges form the principle cost element in a long distance company's service pricing. It represents approximately one half of its service pricing. Access charges are the fees paid to local exhange companies for access by the long distance company to its customers. Although resold by the long distance company the Montana license tax is imposed on the local exchange company, it is later subject to tax to the long distance company creating both double and cumulative taxation as the local exchange company recovers the license tax they pay in the access pricing mechanism.

If the state were to impose an excise tax these receipts would again be subject to excise tax when the long distance company sells the service to the customer therefore creating a triple taxation scenario.

(This sheet to be used by those testifying on a bill.)

NAME: Peggy Duxbury DATE: 3/14/89

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REPRESENTING WHOM? MCI

APPEARING ON WHICH PROPOSAL: SB 460

DO YOU: SUPPORT? ______ AMEND? ______ OPPOSE? yes

COMMENT: see attached testimony

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

EXHIBIT # 7
3/14/89 SB 46

MCI Telecommunications Corporation
West Division
707 17th Street
Denver, Colorado 80202
303 294 0005

PEGGY DUXBURY
MCI COMMUNICATIONS INC
MARCH 14, 1989

Good morning. My name is Peggy Duxbury and I am Senior Tax Manager for MCI Communications. I am here today to testify in opposition to SB 640, a bill that would impose an excise tax on long distance telephone service.

MCI is committed to providing our customers with the best long distance service at the lowest possible cost. We do this by maintaining and operating one of the world's most extensive communication networks which utilizes state-of-the-art technology to transmit voice, data and video worldwide.

MCI's primary concern with SB 640 is that it will raise the cost of telecommunications service for both residential and commercial customers. In both circumstances the increased costs will create economic imbalances that may be harmful to both the State of Montana and its individual and business residents.

While on a state-wide basis the increase may not seem significant for some residential customers, certain individuals will be especially burdened by this type of tax. Those families and individuals on a fixed or limited income tend to be the most vulnerable to regressive taxes. In the case of a tax on long distance service, many elderly residents are likely to feel the impact of the new tax. Not only are senior citizens frequently on fixed incomes, they also tend to have relatively high long distance rates.

Commercial customers will also be harmed by this tax proposal. Nearly all businesses in Montana rely on affordable long distance costs in order to compete both state-wide and nationally. Since relatively few states throughout the United States impose interstate taxes on telecommunications service, Montana businesses will be at a competitive disadvantage compared to most states, including most of its western neighbors.

Certainly there will be some businesses that will be harmed more than others if this bill becomes law. Those most directly impacted will be firms involved in telemarketing or telephone sales and service activities. Since telemarketing relies entirely on the telephone to conduct business, this industry would see a dramatic increase in business costs under this bill.

Another likely target will be those businesses involved in information processing or highly technological ventures. Since these sectors rely heavily on reasonable priced telecommunication costs, the bill would harm this growing sector of the economy.

Many of these businesses, involved in service, high technology and research, are the same businesses that are important to the state of Montana as it attempts to diversify it economy. While there are certainly many factors considered by a company when it decides where it will locate, telecommunication costs are clearly an important factor. To the extent Montana has a tax system that is less favorable than other states throughout the West and across the country, businesses will be discouraged to locate new facilities in the state. Equally worrisome are those businesses already operating in the state and competing with other businesses outside of Montana and subject to lower telecommunication taxes.

MCI recognizes that economic development is a high priority for the state of Montana. Certainly one critical factor in economic development is attracting service and technological businesses into the state. This goal is one shared by MCI, since our success, both in Montana and the West, also relies on the business sector becoming more productive by utilizing telecommunication and informational services. Central to this goal is reasonable priced long distance costs.

EXHIBIT # 7
3/14/89 SB 460

A second concern MCI has with this legislation is that it targets one specific industry for a new form of taxation. While the bill is not identified as a sales tax but as an excise tax, it have basically the same characteristics of a sales tax. As such, it is our judgment that if the Committee choses to continue its consideration of a tax on telecommunication it should only be undertaken as part of the bigger debate on general sales tax issues. This is especially true since a tax on telecommunication services is likely to impact nearly all taxpayers in the state of Montana.

Finally, while MCI does oppose the legislation being considered by this Committee, we are please that the bill was drafted so that access fees would be exempt from the tax. To do otherwise would, in our view constitute a double taxation since ultimately the consumer would likewise be taxed. We are pleased the sponsor recognized this matter and included an exemption in his legislation. Should this legislature continue to consider this proposal MCI would like to continue to work with this Committee to insure that any legislation is crafted in such a way as to minimize it impact on both individuals and businesses in Montana.

[redacted]
EXHIBIT # 7
3/14/89 SB 460

I appreciate this opportunity to appear before the Committee today, and would be happy to answer any questions you may have.

EXHIBIT # 8
3/14/89 SB 460

AMENDMENT TO SENATE BILL NO. 460

1. Page 2, line 20.
Strike: "only when paid"

2. Page 3, line 4.
Insert: "(C) the fee imposed by Title 10, chapter 4, part 2;"
Renumber: subsequent subsections

3. Page 7, line 18.
Following: "tax"
Insert: "--registration of retailers--penalty and interest"

4. Page 8.
Following: line 5
Insert: "(2) Every retailer required to collect and remit the tax under [this act], shall apply to the department for a registration number on a form provided by the department. Upon completion and delivery of the application to the department, the department must assign a registration number to the retailer."
Renumber: subsequent subsections

5. Page 8.
Following: line 19.
Insert: "(5) If any retailer, without purposely or knowingly violating any requirement imposed by [this act], fails to file a return on or before its due date there shall be imposed a penalty of 5% of any balance of debt unpaid with respect to such return as of its due date, but in no event shall the penalty for failure to file a return by its due date be less than $5. The department may abate the penalty if the retailer establishes that the failure to file on time was due to reasonable cause and was not due to neglect on his part. If any retailer, without purposely or knowingly violating any requirement imposed by this chapter, fails to pay any debt on or before its due date, there shall be added to the debt a penalty of 10% of said debt, but not less than $5, and interest shall accrue on the debt at the rate of 12 % per annum for the entire period it remains unpaid. The department may abate the penalty if the retailer establishes that the failure to pay on time was due to reasonable cause and was not due to neglect on his part.

(6) If any retailer fails, purposely or knowingly violating any requirement imposed by [this act], to make a return or to pay a debt if one is due at the time required by or under the provisions of [this act], there shall be added to the debt an additional amount equal to 25 % thereof, but such additional amount shall in no case be less than $25, and interest at 1 % for each month or fraction of a month during which the debt remains unpaid."

6. Page 8, line 21.
Strike: "extensions."
Insert: "--estimation of the tax"

7. Page 8, line 22.
Strike: "15th"
Insert: "last"

8. Page 10, line 6.
Strike: subsections (4) and (5) in their entirety
Renumber: subsequent subsections

9. Page 12, line 7.
Following: "must"
Strike: "be issued, without charge, a permit to collect the tax"
Insert: "register with the department pursuant to [section 4]"

10. Page 12.
Following: line 13
Insert: " (6) If any retailer fails to make a return as required by [this act], the department is authorized to make an estimate based on any information available to the department of the debt due from such retailer together with an estimate of the penalty and interest due from such retailer."

11. Page 12.
Following: line 13
Insert: "**Section 6. Trust monies--officer or employee liability--warrant for distraint--lien.** (1) Every retailer who collects any tax under the provisions of [this act] shall hold the same in trust for the state of Montana.

(2) The officer or employee of a retailer whose duty it is to collect, truthfully account for, and pay over to the state the tax collected and who willfully fails to pay over the collections is individually liable to the state for the tax so collected together with any penalty and interest due on the debt.

(3) If the debt, tax, penalty or interest imposed under [this act] is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The priority date of the tax lien created by filing the warrant for distraint is the date the debt was due as indicated in the warrant for distraint.

(4) The tax lien provided for in subsection (3) is not valid against any third party owning an interest in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if the third party received from the most recent grantor of the interest an affidavit stating that the tax, debt, assessments, penalties, and interest due under [this act] from the grantor have been paid.

(5) A grantor who signs and delivers to the third party an affidavit as provided in subsection (4) is subject to the penalties imposed by 15-30-321(3) if any part of the affidavit is untrue. Notwithstanding the provisions of 15-30-321(3), the

department may bring an action as provided for in that subsection in the name of the state to recover the civil penalty and any delinquent debt, tax, penalty or interest."
Renumber: subsequent sections.

12. Page 12, line 19.
Strike: "25th"
Insert: "last day"

13. Page 14, line 2 through page 17, line 15.
Strike: section 8 in its entirety
Insert: "**Section 8. Period of limitation--refunds or credits.** (1) Whenever a return is required to be filed and the retailer files a fraudulent return or fails to file the return, the department may at any time assess the tax or begin a proceeding in court for the collection of the tax without assessment.

(2) Except as provided in subsection (1), no deficiency shall be assessed or collected with respect to the period for which the return is filed unless the notice of additional debt, penalty and interest is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing shall be considered as filed on such last day. Where, before the expiration of the period prescribed for assessment of the debt, the retailer consents in writing to an assessment after the time, the debt, penalty and interest may be assessed at any time prior to the expiration of the period agreed upon.

(3) No refund or credit shall be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires the later, unless before the expiration of such period the retailer files a claim therefor or the department has determined the existence of the overpayment and has approved the refund or credit thereof. If the retailer has agreed in writing under the provisions of subsection (2) of this section to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed in the event no claim is filed shall automatically be so extended."

14. Page 17.
Following: line 15
Insert: "**Section 9. Closing agreements.** (1) The director of revenue or any person authorized in writing by him is authorized to enter into an agreement with any retailer relating to the liability of such retailer in respect to the liability imposed by [this act] for any taxable period.

(2) Any such agreement is final and conclusive, and except upon a showing of fraud of malfeasance or misrepresentation of a material fact;

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under such agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, the agreement may not be annulled, modified, set aside, or disregarded."
Renumber: subsequent sections.

15. Page 17, line 22.
Following: "department"
Insert: "for 5 years."

16. Page 18, line 12.
Following: "examine"
Insert: "and subpoena"

17. Page 18. line 25.
Strike: subsection (2)
Insert: "(2) If the department determines that the amount of the debt due is greater than the amount disclosed by the return, it shall mail to the retailer a notice of the additional debt proposed to be assessed. Within 30 days after the mailing of the notice, the retailer may file with the department a written protest against the proposed additional debt, setting forth the grounds upon which the protest is based, and may request an oral hearing or opportunity to present additional evidence relating to its tax liability. If no protest is filed, the amount of the additional debt proposed to be assessed becomes final upon the expiration of the 30-day period. If such protest is filed, the department shall reconsider the proposed assessment and, if the retailer has so requested, shall grant the retailer an oral hearing. The hearing shall be informal and the rules of evidence do not apply to the hearing. The informality of the hearing or the manner of taking testimony may not invalidate an order or decision of the department. After consideration of the protest and the evidence presented in the event of an oral hearing, the department's action upon the protest is final when it mails notice of this action to the taxpayer.

(3) When a deficiency is determined and the debt becomes final, the department shall mail notice and demand to the retailer for the payment thereof together with penalty and interest, and the debt, penalty and interest shall be due and payable at the expiration of 10 days from the date of such notice and demand. A certificate by the department of the mailing of the notices specified in this subsection shall be prima facie evidence of the computation and levy of the deficiency and of the giving of the notices."

18. Page 19, line 10.
Strike: subsection (2) in its entirety
Renumber: subsequent subsections.

19. Page 20, line 3.
Strike: Section 12 in its entirety
Renumber: subsequent sections.

EXHIBIT # 9
3/14/89 SB 460

ROLL CALL VOTE

SENATE COMMITTEE TAXATION

Date 3/14/89 Bill No. Time 9:41 am

NAME	YES	NO
SENATOR BROWN	X	
SENATOR BISHOP		X
SENATOR CRIPPEN		X
SENATOR ECK	X	
SENATOR GAGE	X	
SENATOR HAGER	X	
SENATOR HALLIGAN	X	
SENATOR HARP		X
SENATOR MAZUREK		X
SENATOR NORMAN	X	
SENATOR SEVERSON	X	
SENATOR WALKER	X	

Jill Rohyans
Secretary

SENATOR BOB BROWN
Chairman

Motion: by Senator to request a committee bill be drafted for a 25¢ gas tax.

Failed (3/4 majority required)

1989

EXHIBIT # 10
3/14/89 SB 460

ROLL CALL VOTE

SENATE COMMITTEE TAXATION

Date 3/14/89 ______ Bill No. ______ Time 9:50 am

NAME	YES	NO
SENATOR BROWN	X	
SENATOR BISHOP		X
SENATOR CRIPPEN		X
SENATOR ECK	X	
SENATOR GAGE	X	
SENATOR HAGER	X	
SENATOR HALLIGAN	X	
SENATOR HARP	X	
SENATOR MAZUREK		
SENATOR NORMAN	X	
SENATOR SEVERSON	X	
SENATOR WALKER	X	

Jill Rohyans
Secretary

SENATOR BOB BROWN
Chairman

Motion: by Senator Gage to move the sunset provision ahead two years on the 2% deduction from the specialized coal tax funds for deposit to the general fund.

CARRIED

1989

DATE 3/14/89

COMMITTEE ON Taxation 1 of 2

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One Support	Check One Oppose
Ben Havdahl	Mt Motor Carriers Assn	SB460		X
Kenneth G. Watts	Mt. Cable TV Assoc.	SB460		X
[illegible]m Glendenning	TCI Cablevision of MT	SB460		X
Jon DeShaw	Cable T.V. of Havre	SB460		X
[illegible] "Sonny" Hanson	Tech Time	SB460		X
Charles Brooks	MT Retail Assoc.	SB460		X
Robert Little	AT&T	SB460		X
Manuel Davila	AT&T	SB460		X
Peggy Dunbar	MCI	SB460		
Dr. Jack Stephens	MARS, Inc	SB460		X
Sherry Robertson	BC & BS	SB460		X
Dennis Lopach	US West Comm	SB460		X
Mike Meldahl	TRT	SB460		X
Ken Williams	Entech	SB460		X
Tom Hopgood	GTE-Northwest	SB460		—
Dennis Burr	MONTAX	SB460		X
Ron Young	Cable Montana	SB460		X
Les Hilliard	Cable Montana	SB460		X
Lavrie Shadoan	Bozeman Chamber Gallatin Dev Corp	SB460		X
Mike Vaughn	Lee Newspapers	SB460		X
Kathy Doughty	American Showcom	SB460		X
Tom Harrison	MT Cable TV Assoc.	SB460		X
[illegible]ONALD MURRAY (For Gene Phillips)	Northwestern Telephone	SB460		X
Jim Paladichuk	MJ[illegible]	SB460		X
Kay Foster	Billings Chamber	SB460		X
Carolyn Lunebach	Helena Cable TV	SB460		X

DATE 3/14/89

COMMITTEE ON Taxation 2 of 2

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One Support	Check One Oppose
E.W. Sifton	TCI Cablevision of Mont.	460		X
Douglas Rice	TCI Cablevision	460		X
Bonnie Tippy	Montana Innkeepers	460		X
Jack W. Pippo	Touch America	460		X
Don Ingels	Mt Chamber of Commerce	460		X
Betty Lou Kasten	Dist 28	460		X