

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on January 31, 1997, at
9:00 A.M., in ROOM 410

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. Debbie Bowman Shea (D)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Bea McCarthy (D)

Members Excused: None

Members Absent: None

Staff Present: Bart Campbell, Legislative Services Division
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 89; 1/13/97
SB 242; SB 243; 1/28/97
Executive Action: None

HEARING ON SB 89

Sponsor: SENATOR THOMAS BECK, SD 28, DEER LODGE

Proponents: REP. JOE QUILICI, HD 36, BUTTE
SEN. JOHN LYNCH, SD 19, BUTTE
REP. NORMAN MILLS, HD 19, BILLINGS
Keith Colbo, Contract Task Force Director
Patrick Hogan, Touch America
Bill Squires, General Counsel, MT Telephone Assoc.
John Alke, US West Communications
Danny Oberg, Public Service Commission
Earl Owens, Blackfeet, Missoula
Thelma M. Armstrong, Eastern MT Telemedicine
Network
David Espelin, Medical Complex, Baker
Cathy Brightwell, AT&T

Jeff Wilson, Clark Ct., Granite
 Lois Fitzpatrick, MT Library Assoc.
 James Exeaux, Director, Computer
 Systems/Telecommunications, Salish
 Kootenai College
 Michael Strand, Executive Vice-President, MT
 Independent Telecommunications System
 McCarthy Coyle, Missoula
 Mark Staples, Helena Attorney, MCI

Opponents: None

{Tape: 1; Side: A; Approx. Time Count: 9:02 AM; Comments: N/A.}

Opening Statement by Sponsor:

SENATOR THOMAS BECK, SD 28, DEER LODGE. I am presenting SB 89. I had the dubious privilege of serving as Chairman of the Blue Ribbon Task Force on Telecommunications during the last interim. This bill is the result of what we have worked hard on for the last 18 months. I have learned much about telecommunications and I only know a fraction of this field. There are many changes coming down in the industry. There is much technology in this industry and many companies competing and getting ready to compete. Consumers have large expectations of telecommunications. Montana has a golden opportunity to bring in entrepreneurs from all over the world to do their business through telecommunications in Montana. They also want affordable rates, quality services and they want them whether they live in a town or in the rural areas.

Last year in February, Congress passed a Telecommunications Act of 1996. That Act fueled the fire to increase the amount and the importance of the issues that need to be addressed in Montana. It changes the philosophy from the Public Service Commission setting the rate to a competitive rate. This is a major change. The local telephone markets have to open up for competition. The subsidies that have existed for decades won't serve the competitive market any more. We, as Legislators, have important decisions ahead of us. We must consider and pass policies to guide and implement these changes. We must also keep in mind the citizens of Montana as we pass new policies. Another goal is to make sure new companies can offer services and invest in Montana's telephone network and to allow the existing companies who have invested in the state to compete fairly.

As Chairman of the BRTF, I have one goal in mind. That is to produce an even playing field for all parties involved in this competitive market. The next several bills you will hear will be a start down this road. This bills will address some of the issues. They will help open up the telephone market to competition. They will implement parts of the federal act that we need to have to make this market work. They begin to change regulation so that the companies we regulate will be able to

compete. They offer us the opportunity to give the citizens affordable prices. Many of the issues were consensus issues and everyone gave a little in order to reach that consensus. However, there are some issues that were controversial and those deserve further debate. I have three amendments that I propose will add to this bill and they are items we did not reach consensus on during the interim. I will run through these amendments with you now (**EXHIBITS 1 AND 1A**). The amendments in **EXHIBIT 1A** are just clean up things, they should have been in the bill from the start.

Proponents' Testimony:

REP. JOE QUILICI, Vice Chairman of the BRTF, Chairman of the Consumer Council. This is a very important piece of legislation. I was fortunate to be on the BRTF. We tried to make this bill comprehensive since this technology touches school, libraries, etc. You will hear terms like resale, equal regulation, interconnection, etc. Please understand these and other terms before you take action on this bill. Ask questions. If though we are moving from a regulated, monopolistic environment into a non-regulated, competitive environment, this change is not going to happen overnight. We still need the Public Service Commission and the Montana Consumer Council. Section 8, Subsection 7 was discussed thoroughly. Even though two parties are in arbitration, the Montana Consumer Council will be there on behalf of the consumers in this state. This is one of the best sections of the bill. The Task Force worked hard and though there was not consensus on every issue, for the most part there was. The Committee will need to look closely at those issues of contention. There will still be changes due to the federal act, but I am hoping that this legislation will ease us into this transition period. Please make sure you understand the amendments and ask all the questions that come to your mind.

SEN. J. D. LYNCH, BRTF Member. This has been one of the most enlightening and most frustrating committees that I have ever served on over these past 18 months. We were constrained by the fact that you have to comply with the federal law, which should not have been passed to begin with. I did not endorse this bill in committee. My goal was to insure the lowest possible rates for the consumers that we represent. But at the same time, there are changes occurring as a result of the federal law that we have no control over. We must give the latitude to the PSC that there is a difference between business usage of a telephone and residential usage. We cannot, according to the federal law, continue this subsidy. The business must pay four times more than residential and that was a subsidy. They did not say that there can't be some disparity between residential and business rates. Because there is a difference--businesses make money via telephones, residents don't. This bill is the most important bill you will see for years to come. I would ask that you should study it thoroughly and try to keep the rates for the consumer as low as possible.

{Tape: 1; Side: A; Approx. Time Count: 9:21 AM; Comments: N/A.}

Keith L. Colbo, Contract Task Force Director. I served for the last 18 months as contract support staff for the Governor's Blue Ribbon Task Force. The task of the BRTF was a massive undertaking. The written summary of the BRTF was handed in (**EXHIBIT 2**). He also handed in a letter from Deaconess-Billings Clinic Health System in regard to universal access (**EXHIBIT 3**).

REP. NORM MILLS. I the honor of serving on this committee. I brought somewhat more experience to the committee because I have been involved in telecommunications since 1944, starting out in the Navy in radar research in MIT and from there to owning parts of three different telephone companies. I also was involved in cable TV and designed over 10,000 miles of line. I offer myself as a resource to you and hope that you will pass this bill because we need to do the best we can for the State of Montana. If we don't address this issue the federal government will do it for us. Also, in the interest of Montana consumers, we need a strong PSC and one who knows what they are doing. In the last 18 months I have come to have a great deal of respect for the PSC and their knowledge.

Patrick Hogan, Touch America. TA is an arm of the Montana Power Co. I would like to re-emphasize two points of this bill. Over 90% of what is contained in this bill had overwhelming consensus of the committee. We support the bill as is. (**EXHIBIT 4**)

Bill Squires, General Council, MT Telephone Assoc. We are here to support very strongly SB 89. I submit my written testimony (**EXHIBIT 5**).

{Tape: 1; Side: A; Approx. Time Count: 9:39 AM; Comments: N/A.}

John Alke, Helena attorney, US West. When you are talking about a fully regulated monopoly like gas, electric and telephone, regulation offers you some wonderful opportunities. You can minimize rates for one class by keeping rates artificially high for another, etc. When competition begins you cannot do that. In fact, with the federal government's decision to blast competition in all of the states, Montana now has to deal with making its regular infrastructure comply with the federal act. The bill that has been presented to you has done an admirable job of what Montana needs. I would like to focus on the three amendments of **EXHIBIT 1**. We are in total support of these three amendments and believe that these were the original intent of BRTF.

Danny Oberg, Public Service Commissioner from Northeastern Montana. I would like to hand in my written testimony (**EXHIBIT 6**). I must say that I am in opposition to the three amendments (**EXHIBIT 1**) and would like to state this for the record. If these three amendments are adopted, the Commission would have to withdraw its support for this bill.

{Tape: 1; Side: B; Approx. Time Count: 9:50; Comments: N/A.}

Earl Owens, General Manager, Blackfoot Telephone Cooperative, Missoula. I would like to comment on New Section 11, regarding eligible telecommunications status. The federal government has passed the telecommunications act of 1996. In the past, they have done other things that require action by Montana legislators. For many years we had a 55 mph speed limit so we could continue to get highway trust fund money. The net inflow to Montana was millions of dollars. Now the Legislature is called upon to do a very similar act which is to pass this legislation which will insure universal service fund monies continue to flow into Montana. If Section 11 is not passed, \$17 Million for 1997 will stop. This will seriously hurt the rural people of Montana. The new universal service fund that is being talked about at the federal level is going to replace several of the implicit subsidies that we are receiving and supporting low rates in Montana. The new universal service fund will be many times the \$17 Million. I hope you see the significance of Section 11. That is giving the PSC the right to designate eligible telecommunications carriers so that money can continue to flow into Montana and hold down rates for rural consumers.

Thelma M. Armstrong, Director, Eastern Montana Telemedicine Network. Through telemedicine, rural families that may only have a physician assistant, have the opportunity to be connected to the big hospitals and receive a medical diagnosis immediately. This is saving lives and much grief. In operation since Sep. 1993, the Eastern Montana Telemedicine Network is one of the most successful medically oriented video conference networks in the country. It is presently grant supported. In Sep 1997, we will no longer received funds. At that time the rural hospitals of Glasgow, Culbertson, Glendive, Sydney, Baker and Miles City will financial support this very expensive network. Our greatest threat to long-term viability is our telecommunications cost--\$150,000 a year. We support SB 89. We also support the new universal service fund.

David Ezpelund, Eastern MT Telemedicine Network. Our complex in Baker is rather small--120 people employed. We are remote--about 80 miles away from the next larger medical facility. This bill means access to services that we don't have at our fingertips. Federal law mandates dieticians and through telecommunications we can access their expertise. Another access is timely access. In an emergency, we can have immediate access to transmitting radiology data to the experts. Another feature is the cost savings. With managed care coming, we need to cut costs even more. This bill allows us to save money on the transmission costs which are approximately \$1300 a month.

Cathy Brightwell, AT&T's Assistant Vice President for Regulatory Affairs in Montana. I was a member of this Task Force and I represented long distance carriers. I was not aware of the amendments and am not prepared to address them. I will submit my

written testimony (EXHIBIT 7). We support this bill without the amendments.

Geof Wilson, Clark Fork Telecommunications Coop, Granite Co.
From the perspective in our area we support SB 89.

Lois Fitzpatrick, MT Library Assoc. I will submit my written testimony (EXHIBIT 7A)

James D. Ereaux, Director, Computer Systems/Telecommunications, Salish Kootenai College. I was a member of the BRTF and a good bill was produced for the issues that face Montanans. I submit my written testimony (EXHIBIT 8) and urge a Do Pass on SB 89.

Mike Strand, MT Independent Telecommunications Systems. We are here because the federal law is driving us to this point. The PSC has concerns about their regulatory authority, but new authority is given to them in this bill. We do support the amendments that have been offered.

The following people from independent telecommunications companies stood and offered their name in support of SB 89:

Independent Companies:

Wayne Vick, Sunburst, Northern Telephone

Curtiss Fleming, Range Telephone Coop

Art Isley, 3 Rivers Telephone Coop

Dan Seery, Blackfoot Telephone Coop

Conrad Eklund, Southern Montana Telephone Co.

Bob Orr, Lincoln Telephone Co

{Tape: 1; Side: B; Approx. Time Count: 10:10 AM; Comments: N/A.}

McCarthy Coyle, Missoula. I believe this bill should be modified. The rates should be the same for everyone operating in the same territory. Rural rate payers should be protected from unreasonable fees. I would like to submit amendments. I concur with Commissioner Oberg's statements on the amendments.

Mark Staples, Helena attorney representing MCI. We have argued the case for equal regulation and there is another bill in which to argue that. But I will say this, that if we get rid of this we are going to pick winners and losers. The fact is, equal regulation statute needs to be repealed if we are going to do that. As far as the "shalls and must", **REP. MILLS** says we have to give the PSC authority. **SEN. LYNCH** says we have to give them latitude. Let's not give them the authority without the latitude. The two go hand in hand. The BRTF was a masterful group. MCI supports this bill as considered, deliberated, negotiated, voted and written.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. STEVE BENEDICT asked for clarification on the two issues of universal access and universal service fund. The universal access will be paid for by the universal service fund. Is that correct. **Mr. Danny Oberg** replied that universal access was to make sure that there was a place in every community where the public could go to get access to them. This was a minimum level that we wanted Montana to have. It is minimal in its approach. The bill is designed around that concept--public access. Universal service is more delegated to keeping telephone rates to the end user at all levels especially basic service. That is not in this bill. Those bills will come later. This talks about using a funding mechanism that would insure local rates would remain affordable. **SEN. BENEDICT** asked if **Mr. Oberg** were not an opponent of any of **SEN. BECK'S** amendments or just on the equal regulation. **Mr. Oberg** said he was opposed only to the equal regulations and the changes of the "shall" to the "must".

SEN. BEA MCCARTHY asked **SEN. BECK** to re-explain his amendments. The first amendment on page 4, line 7, we would change "should" to "must" be used. You will need someone else to explain this to you. **Mr. John Alke** responded that the issue in depreciation life is huge. It is huge because if you don't have good depreciation, you don't have recovery power, and you reach a point where you cannot reinvest. Historically, the Commission has used very long depreciation life for all utilities. Technology is so rapidly advancing that you can use historical depreciation life. You have to use forward looking depreciation life. In fact, our competitors, AT&T, MCI and Sprint, they all have dramatically shorter depreciation lives in their cost structure. We don't get those shorter depreciation lives like US West unless the Commission says we get the new forward looking depreciation rate. The bill doesn't say the Commission has to accept our measure of forward looking depreciation rate, but the bill says that once they determine this rate, US West or any other incoming carrier should be able to use this rate. **SEN. MCCARTHY** stated that once the Commission determines the rate, then the carriers would have to use this rate. That covers the word change of "should" to "must".

SEN. MCCARTHY ask **Mr. Oberg** to respond. **Mr. Oberg** said that he didn't really have any disagreement with the fact that in the new environment the Commission would probably want to use forward looking depreciation lives. The Committee needs to realize that US West has picked out three places that would have substantial impacts on rates and have asked you to solidify it in law and not allow the Commission to have a proceeding to consider the merits.

SEN. MCCARTHY asked **SEN. BECK** about the second amendment. **SEN. BECK** asked the Committee to look on page 11, line 11. It is somewhat the same scenario. Read the whole section to see what it actually says. He asked **Mr. Alke** to explain this one. **Mr. Alke** asked the Committee to look at the first provision and it

isn't even kicked in until the Commission, again, first determines that there is a non-cost base, differential. For example, the basic rate for residential local/chain service right now is \$13.84. That is to pick up the phone and get a dial tone. The same rate in Montana for the business customer is \$35-\$38. The big argument is whether those things are cost-based or not. If the Commission agrees that part of this difference is cost-based but there is a \$10 difference that is not cost-based. We agree that \$10 of that difference is pure subsidy, but this amendment says that they must eliminate that subsidy and the bill specifies in another part of this bill that they would have up to three years to pay their (couldn't understand one word) if they choose to do so. The amendment doesn't say the Commission has to make any determination as to what the actual costs are, but if they do in their determinations discover that there is a non-cost based differential of subsidies, then they have to remove it within three years. "Must" says they have to do that. "May" says they could simply perpetuate that subsidy and that won't work in a competitive environment. **Mr. Oberg** stated that current residential rates are \$13.84 and business \$35 or so. I don't know if they are good after cost study but there is a vast difference between the two. And in over time, I believe these rates will move much closer. **SEN. MCCARTHY** asked **Mr. Oberg** to look at Section 3. With Section 3, does the "may" in Section 3 negate some of what we are talking about in Section 2 because that is the part that allowed for the massive rate increase. **Mr. Oberg** said that if you change "may" to "shall" in the Section 3 then you are saying we can faze it in over three years to lessen impacts.

SEN. CASEY EMERSON asked if there wasn't something in the federal law the prohibits the \$10 in there and don't we have to do something about it. **Mr. Oberg** replied that we have to have cost-based rates moving into a new environment. I believe that the law doesn't mandate exactly what we have to do. Rates should be based at cost.

SEN. BENEDICT asked again about the universal fund. **Mr. Oberg** stated that the next bill talks about benchmark affordable rates and if they exceed that, then funds will go in to help keep the rates down.

{Tape:2; Side: A; Approx. Time Count: 10:33 AM; Comments: N/A.}

SEN. BECK asked the Committee to look at page 24, line 25. This was stricken out of the law, but then we were asked to insert it back in so that all companies are on the same playing field. **Mr. Alke** asked to let AT&T respond. He said the current law in Montana is that when the PSC devises regulatory policy schemes for the telecommunications company, it must do so in an even-handed fashion. All they do must apply equally to all telecommunications providers. The proposal of the Commission just stripped this section out of the bill. They clearly want to have an asymmetrical system. The PSC wants the ability to say to

US West or someone else we don't like what your market share is so we are going to have one set of rules for you and another set for everyone else. They should not have the power to pick winners and losers. We are insisting that the law remain as it is and that is why we think this should be inserted back into the law. **Ms. Cathy Brightwell** responded that AT&T may be a large company but there are many new carriers that are coming into Montana and would like to have a choice other than the existing provider to serve them. They will not come if they, at the beginning, have to play on an equal footing with US West. We are trying to open up the local exchange industry to competition and consumers in this state may be hesitant to change companies especially at the beginning of this transition. We believe that the Commission can monitor the market and as that market changes, they can weigh that and then allow US West the flexibility it needs to be competitive in response to this new market. **Mr. Oberg** asked the Committee to look at the packet he had given them with the bill. The bottom line is the Commission serves only to protect against consumer abuse.

SEN. MCCARTHY asked **SEN. BECK** if these three amendments were presented to the BRTF? **SEN. BECK** replied that, yes, the issues were discussed but not the amendments per se. What these amendments are for, is mainly for the Committee to see what options were available and you can decide if they are worthwhile. He did stress that throughout the whole time his main concern was for an even playing field for all carriers.

Closing by Sponsor:

SEN. BECK closed. No one knows exactly where we are going to come out in the competitive market. There are things in this bill that in order to comply to federal regulations we have to have. I would ask you to consider the amendments, but ask for a Do Pass on SB 89.

{Tape: 2; Side: A; Approx. Time Count: 10:44 AM; Comments: AN 8 MINUTE BREAK BETWEEN BILLS.}

{Tape: 2; Side: A; Approx. Time Count: 10:52 AM; Comments: N/A.}

HEARING ON SB 242

Sponsor: SENATOR JOHN HERTEL, SD 47, MOORE

Proponents: REP. JOE QUILICI, HD 35, BUTTE
Mike Strand, MT Independent Telecommunications
Systems
Joan Mandeville, General Manager, MT Telephone
Assoc.
SEN. TOM BECK, SD 28, DEER LODGE

Opponents: Jay Preston, Ronan Telephone Co.

Larry Akey, representing AT&T
Robert Ekblad, Hot Springs Telephone Co.

Opening Statement by Sponsor:

SENATOR JOHN HERTEL, SD 47, MOORE. I present to you today SB 242. As the title states it is an act to establish a universal telecommunications service fund. You have heard from the previous bill how telecommunications industry has changed and how this bill will implement these changes. In February 1996, the US Congress introduced a federal telecommunications act which drastically changed our communications system as we have known it. It allows competition to be a big factor in the system. We hope that local competition will bring benefits to Montana--more services and lower overall rates. This Act eliminated the subsidies that have been built into the system for years and years. These subsidies were used to maintain affordable local rates. This has been an important factor to rural Montana. This universal telecommunication service must be implemented. There will be a certain amount of federal funding but not to the extent to what we have had. This Montana service fund must be implemented so Montana customers won't become losers in the reconstruction process. I will attempt to explain what a universal fund is. It is an internal industry mechanism that requires all telephone companies, including long distance companies, to contribute into a fund. These funds are then used to offset local rates in areas that are very expensive to serve. The question is asked, why does Montana need this program. This fund is a last resort safety net. It only becomes effective in the event restructuring results in significant local rate increases. This bill and the fund recognizes that we are moving to full competition in the local telephone business. New competitors will have access to this fund on the same basis as existing companies. Contributions will also be made on an equal basis, based on their total Montana revenues. The fund will be administered on a daily basis by a neutral third party hired through a competitive bid process requiring expertise in the industry. This third party will be governed by the PSC. Competition and restructuring are positive things; however, the local rate payer cannot be ignored. Thank you.

Proponents' Testimony:

REP. JOE QUILICI, HD 36, BUTTE. We looked at this universal service fund in the BRTF and found out that it is very important for Montana and especially for rural Montana. Let us make sure that we have this fund up and ready for the upcoming changes.

Mike Strand, MT Independent Telecommunications Systems. I will submit my written testimony (EXHIBIT 9).

{Tape: 2; Side: A; Approx. Time Count: 11:11 AM; Comments: N/A.}

Joan Mandeville, General Manager, MT Telephone Assoc. I do want to stress that the decision to enter into universal service fund for Montana was not done lightly. I will submit my written testimony (EXHIBIT 10).

SEN. THOMAS BECK, SD. 28, DEER LODGE. I just want to express to you that this piece of legislation must go hand in hand with SB 89. We need this for the smaller coops in the rural areas.

The following stood and stated their names in promoting SB 242:

Curtiss Fleming, Range Telephone Coop
REP. NORM MILLS, HD 19, BILLINGS.
Art Isley, 3 Rivers Telephone Co.
Barbara Ranf, US West (EXHIBIT 10A)
Bob Ward, telephone co.
Earl Owens, Blackfoot Telephone Coop
Dan Seery, Blackfoot Telephone Coop
Geof Wilson, Clark Fork Telecommunications Co.
Conrad Eklund, Southern MT Telephone Co.
John Gunnerson, PTI Communications
Wayne Vick, Northern Telephone, Sunburst

Opponents' Testimony:

Jay Preston, President, Ronan Telephone Co. I will submit my written testimony (EXHIBIT 11)

Larry Akey, representing AT&T. We know that this is one of the most important bills in front of this Legislature this session. If this Legislature erects barriers to competition that are unnecessary, other states will see the benefits of competition and Montana will not. We would be happy to make the resources of AT&T available to this committee in developing a universal service fund that really works for the needs of Montana. We do understand what it entails for companies to make transitions. We need to keep Montanans in mind, but we also need to keep in mind the children and grandchildren of Montanans. We will bring some ideas to the Committee on Tuesday, 2/4/97. Thank you.

{Tape: 2; Side: B; Approx. Time Count: 11:25; Comments: AT TURN OF TAPE, LOST A SENTENCE OF MR. AKEY'S TESTIMONY.}

Robert Ekblad, Vice President of the Board of the Hot Springs Telephone Co. We serve an area of approximately 100 miles. We are rural in nature and we support the basic concept of this bill. We have had the use of money from the universal service fund and our own earnings and we still owe money. We would like to recover some of this money for our debt. In thinking about this bill and hearing all the testimony I believe we are not ready for this bill. I would urge you not to pass a bill until you understand it very well and what the financial impact might be on Montanans.

Questions From Committee Members and Responses:

SEN. DEBBIE SHEA asked about Section 5, fiscal agents as a third party, and what is the procedure of hiring this third party as a fiscal agent? **Mr. Danny Oberg** replied that typically it would be done through a selection process, requesting proposals of who would do it. There is a national organization that has a similar type pool on the federal level, known as National Exchange Carriers Assoc. They would probably be a likely fiscal agent. There may be others in the state or county who might put in a proposal. The PSC would be the ultimate authority but we would not be doing the day to day mechanics.

SEN. BEA MCCARTHY asked to be worked through this process. **Joan Mandeville** replied that what would happen is the PSC would have some up-front time to do some rule making. They would then put together a Request for Proposal (RFP) that would require a fiscal agent be selected by competitive bid. It also says that a telephone company cannot bid. It says that they will have to get some input from everyone on what that RFP says and how it is structured and they will be in charge in letting the RFP. They will also keep track of the fiscal agent because the fiscal agent has give them audits.

SEN. MCCARTHY then asked if this individual is just an administrator and if the flow of the money is covered by the PSC. **Ms. Mandeville** stated that the fiscal agent would be the one receiving the funds and distributing the funds. The PSC would retain the high level authority over how the fund actually works. **SEN. MCCARTHY** followed on with the question of would they also set the rate at which this would be operating. **Ms. Mandeville** replied that the benchmark level is set in the bill at \$25 and tailors down for areas without a lot of local calling. But the Commission actually will determine the ultimate size of this fund because they are the ones that will determine what is a subsidy and how do you take it out of the system. This isn't a problem today, but depending on what the Commission decides is a subsidy and depending how they de-average US West rates, there could be a request that US West would sell lines to AT&T for about \$10 in an urban area and \$97 out of town. The Commission may decide that is not appropriate. They may say to charge \$20 in town and \$35 in rural areas.

SEN. CASEY EMERSON asked if the PSC has to do certain things for qualifying for the universal service fund for the federal government and once they have done that, does this same private entity handle the federal funds as these funds come into the state? **Ms. Mandeville** answered that the same fiscal agent would not necessarily handle both state and federal funds. Most states have a different administrator than the federal program. The Federal program uses the National Exchange Carrier Assoc. which is a stand alone corporation created just to do that. They have only started to bid on state programs. So states typically use an accountant or a consultant firm.

SEN. STEVE BENEDICT asked if by taking the two funds, federal and state, would the federal fund be the underlying fund and the state fund would kick in on top of it for whatever was necessary to complete the scenario. **Ms. Mandeville** replied that was correct. Small companies have really been advocating before the federal communications commission that they need to pick up the reins for the bulk of this requirement. They always have and that is what we believe the national policy states. It subtracts all the federal fund before you get anything from the state fund. Our stand is that the federal fund needs to be the primary one.

SEN. BENEDICT asked if she had been involved with the drafting of the bill and if so, on Page 2, line 14 the language says "should be created" then on Page 3, line 26, the language says "the commission shall establish the fund". Are these inconsistent even though the first is a statement of policy. **Ms. Mandeville** replied yes and continued that the original statement of policy was actually taken out of an AT&T proposal. So we took that and tailored it a little bit to this bill and under this bill the word will be "shall". We propose this as an amendment and will get it to the Committee as soon as possible.

SEN. BENEDICT asked if every telephone carrier in the State of Montana will pay into the universal service fund? **Ms. Mandeville** replied yes and vice versa if they operate in one of these high cost areas, some new wireless technologies could come in and apply to get this kind of funding. If these technologies offer equivalent telephone service then all competitors would be treated equally.

Closing by Sponsor:

SEN. HERTEL closed. I emphasized in the opening that this plan really has to be implemented. I realize there are still some questions but rural Montana needs this bill and we cannot wait until 1999. We need something workable now. I urge the Committee to weigh the facts carefully and do the best for all Montanans.

{Tape: 2; Side: B; Approx. Time Count: 11:45 AM; Comments: N/A.
A 3 MINUTE BREAK WAS TAKEN}

HEARING ON SB 243

Sponsor: SENATOR MIKE FOSTER, SD 20, TOWNSEND

Proponents: Rick Hays, US West Communications
Joan Mandeville, General Manager, Montana
Telephone Assoc.
Mike Strand, Executive Vice President, MT
Independent Telecommunication Systems

Opponents: Danny Oberg, Public Service Commissioner for
Northeastern Montana
Greg Allen, AT&T

Patrick Hogan, Montana Power Co.**Opening Statement by Sponsor:**

SENATOR MIKE FOSTER, SD 20, TOWNSEND. This is the last of the three telecommunication bills and as had been said earlier, this bill is similar in that it is a response to the Federal Telecommunications Act of 1996. The Act was a bipartisan effort in Congress. This Act was addressing our changing world. SB 243 addresses the aspect of pricing. The Federal Communications Commission set up some pricing mechanisms that can be used and they call these their default pricing. The first section of SB 243 says that the PSC is not allowed to use this default mechanism that was developed by the FCC. The FCC took about six different cities around the nation and took the cost of providing telephone service in those areas. When you have a huge metropolitan area and take the cost of that service, it is going to be lower than it is in rural Montana for the same service. What this section of SB 243 says is that we can't do that because it is not fair. The PSC of each state has the option to use the FCC default pricing.

The key here is that the telecommunications market is now going to be driven by competition. In Section 2 of this bill it says that the PSC shall set the prices at a level that is sufficient to recover the full cost of service. In Section 3 it says that the PSC may not subsidize the prices. Under a monopoly situation, the PSC could subsidize within different classes of customers. The PSC could grab the profits from one affiliate and put those into the calculations of rates and it would reduce the rates for others. The Federal Act disallows the subsidies for local service that artificially keeps rates low. Section 4 specifically eliminates the existing subsidy that the telephone directory service has been reflected by the PSC in the rates. This is something we have all benefitted from in the past. All this is changed now. The laws are changed and the corporate structures are changed. So, to take profits from a directory affiliate, the yellow pages, in order to reduce rates for customers just doesn't fly.

The Legislature needs to recognize the likelihood that if pricing safeguards are not put in place, the companies will cherry pick, thus leaving rural Montana in the precarious position of being heaped with high costs with nowhere to go. A term being applied to this is called "stranded costs". We don't want rural Montana to be stuck with these stranded costs; it isn't fair. SB 243 will minimize the impact of the Federal Act on rural Montana. All those involved in this have self-interest in what this Committee is hearing today. Some want competition, some want to provide local service regardless of investments already made, some want the status quo to be maintained and some want to just wait around and see what the feds do a bit later. Montanans want

high quality service at a reasonable rate and that is the bottom line. Thank you.

Proponents' Testimony:

Rick Hays, Montana Vice President of US West Communications. I rise in support of SB 243. I will hand in my written testimony (EXHIBIT 12).

Joan Mandeville, General Manager, MT Telephone Assoc. Rick mentioned that this bill does not have great impacts on smaller companies and I would agree with that. We do, philosophically, certainly agree that we want the opportunity to recover our actual costs of service. Our lenders will appreciate that opportunity as will our continuing ability to invest here. There is one except on Page 2 and I will take the blame for it if there are some shots over it. It says you need to do your own costs and then it says except that if another company has already established those here, you can use the costs that they have already established with the Commission if they are a similar type of company.

Mike Strand, MT Independent Telecommunications Systems. We rise in support of this bill. There is one area of the bill and that is on default pricing. It is a difficult area to understand but essentially it is that the Federal Communications Act requires that we and our competitors negotiate to a degree on rates to interconnect our facilities. Should we be unable to agree, regulators at the FCC will establish a default price that you will have to take if there is no agreement. For example, if I am selling my home for \$100,000 and the buyer will not agree to that price and he also knows that an arbitrator will step in if there isn't an agreement, the buyer will never agree to my price. He will wait till the arbitrator sets the price and it will always be lower than what I had wanted to sell it for. For this reason, we do not support this bill.

{Tape: 2; Side: B; Approx. Time Count: 12:07 PM; Comments: N/A.}

Opponents' Testimony:

Danny Oberg, Public Service Commissioner of Northeastern Montana. I will offer my written testimony (EXHIBIT 13).

{Tape: 2; Side: B; Approx. Time Count: 12:16 PM; Comments: MR. OBERG'S TESTIMONY IS CARRIED ONTO THE 3RD TAPE, SIDE A}

{Tape: 3; Side: A; Approx. Time Count: 12:16 PM; Comments: N/A.}

Greg Allen, Government Affairs Vice President, AT&T. I am here today to oppose SB 243. I will hand in my written testimony (EXHIBIT 14).

Patrick Hogan, Montana Power Co. We oppose this bill for the same reasons that **Mr. Oberg** and **Mr. Allen** have just explained. We feel that it is anti-competitive, self-serving and are opposed to pre-determining the outcome of a ball game before it is played.

Questions From Committee Members and Responses: None


Closing by Sponsor:

SEN. FOSTER closed. I thank all who have testified. It is important that all perspectives be heard and be listened to. Competition in the telephone business will bring additional choices to consumers. I am not sure how much competition will come from outside Montana, but if they come will they be interested in serving some of the outlying district. I am sure they will be interested in taking the commercial accounts in Billings and Missoula. If Montana telephone companies cannot recover what their costs are to provide those services, they won't be doing business here and we cannot afford that. The days of subsidies from business to residential simply cannot occur under the federal law. I have looked very hard at the issue about the subsidy from US West Directory affiliate and I am confident that this situation has changed dramatically and this subsidy cannot continue to exist under federal law. This requires the PSC to eliminate this cross subsidization.


In regard to **Mr. Oberg**, much of what he says makes sense under a monopoly situation. This does not exist anymore. Arbitration is provided by statute and I don't see how this bill is an effort to affect the outcome of that. I have considerable documentation, including an order from the FCC, that specifically said to a PSC in North Carolina or somewhere that money cannot be used to subsidize rates. I have a great deal of respect for AT&T, but as I listened to AT&T I thought perhaps they are one of the cherry pickers we have been talking about. If they are, of course, they would want the situation set up so that they can have the best shot at all those cherries. Finally, on MPC, I understand their concern there but I think MPC also well understands what stranded costs mean and what affect they have on a utility. If stranded costs work for one utility they should relate to another. Thank you for a good hearing.

ADJOURNMENT

Adjournment: 12:30 P.M.



SEN. JOHN R. HERTEL, Chairman



MARY GAY WELLS, Secretary

JH/MGW