

PRC Commissioner Jason Marks

Legislative Update 2011

Senate Bill 4: Qwest Deregulation

For the third year in a row (and at least the fourth time overall), Qwest is back with a deregulation bill. This year's version will result in deregulation of Qwest's prices for all telephone services throughout New Mexico after the company demonstrates "effective competition" in just 50% of its New Mexico service territory (i.e., Albuquerque + Las Cruces). The PRC will no longer have any control over Qwest prices. Qwest could charge whatever it thought the market would bear. Qwest has added language to the bill requiring it to offer the same prices across the state. The need for Qwest to stay competitive in the Albuquerque market should prevent extreme price gouging; however, my expectation is that deregulation will result in significant price increases for basic residential service, which is priced significantly below alternative phone plans, and some small business services.

It is not completely clear what will happen to the PRC's ability to regulate quality of service and investment if Qwest meets the criteria in SB 4. Language in the bill says that the current Alternative Form of Regulation (AFOR) plan covering these areas remains in effect, but it requires the PRC to relax quality of service and investment regulation in the current AFOR consistent with its findings of competition in urban areas. SB 4 is vague on what happens after the current AFOR expires at the end of 2012. Without the PRC's quality of service regulation, Qwest customers would not have any regulatory remedy if the company made them wait weeks for new service connections or they

suffered frequent outages because of a poorly maintained network, or were forced to wait lengthy periods to have services restored because Qwest further reduced its ranks of technicians. These are all real quality of service issues with Qwest under the existing level of regulation.

SB 4 poses a big risk to customers in rural areas, which are likely to stay functional Qwest monopolies long after bigger and denser markets like Albuquerque and Las Cruces. If SB 4 becomes law, there door is open for the company to reduce its commitment to service quality and investment in the non-competitive areas. Service and investment deficits could also affect parts of Albuquerque that are less affluent or harder to serve due to network geography. The company's past conduct unfortunately shows that it has short-changed New Mexico on service quality and investment when left to its own choices. (I am referring to the \$220 million investment shortfall under the first AFOR plan, and over \$30 million in customer credits the PRC ordered for service quality deficiencies during my first term on the PRC.)

Absent this bill, the PRC can continue to manage the evolution of the regulatory burdens on Qwest in a manner proportionate the actual competitive status of each geographic and service-based market. The PRC understands that Qwest faces growing competition and has already granted it significant flexibility to reduce prices.

HB 17 - Recovery of Relocation Costs From Telephone Customers

Another repeat from 2009 and 2010, this bill allows Qwest and other regulated telephone companies to impose a surcharge on customers' bills to recover costs of relocating lines and other infrastructure due to road construction projects. While this sounds somewhat reasonable on the surface, this bill is effectively an unjustified rate increase for Qwest, Windstream, and other monopoly telephone companies.

Facilities relocation costs are not new, and have always been reflected one or another in the companies' rates. In 2000, Qwest and Windstream chose to stop having their rates set based on their costs. Instead, we have "alternative forms of regulation" (AFOR) plans. Since 2000, Qwest has dramatically reduced many of its costs, for example, it has unfortunately laid off a huge part of its New Mexico workforce. Because we now have price regulation, not cost regulation, Qwest has not shared any of these cost reductions with customers – in fact, rates are going up. Now, they want to get a special surcharge so customers will (double) pay this one category of costs, without the PRC considering how their overall costs have changed. Another problem with this bill is that it would allocate all the relocate all the relocations costs to retail regulated rates, even though the same phone networks carry a lot of unregulated and wholesale traffic. On the positive side, the maximum any company could recover in a year has been limited to one million dollars. And in order to get the support of new PRC Commissioner Ben Hall, an amendment was placed on the bill limiting customer payments to 50% of the total .

SB 57 – Utility Rate Riders for Transmission Costs

This legislation would allow electric utilities to charge retail customers a rider for the costs of new transmission, without going through a rate case. Traditionally, utilities have recovered their infrastructure costs through period rate cases. Giving them the ability to assess rate riders would allow them to recover one category of increasing costs (transmission), while avoiding PRC scrutiny of other costs that could be declining (such as the effects of depreciation on older investments).

Pro-Consumer Bills:

SB 50 (Fischmann) Limits on Utility Litigation Cost Recovery: Today, ratepayers pay utilities' costs for litigating cases at the PRC without any firm limits. As a result, the lawyers and experts on the utilities' side usually far outnumber the resources that the public and consumer parties can marshal. This bill limits the allowable cost recovery of a public utility's legal and administrative costs to \$500,000 in any rate case and to \$200,000 in renewable and energy efficiency cases, absent unusual circumstances.

SB 137 (Wirth) Net Metering: Among other things, this bill would reverse last year's legislation allowing utilities to assess surcharges on their customers for the privilege of generating their own electricity using renewable energy systems.

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