(Decision No. 81320)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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IN THE MATTER OF THE PROPOSED INCREASED RATES AND CHARGES CONTAINED IN TARIFF REVISIONS FILED BY MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY UNDER ADVICE LETTER NO. 743, AND THE LEVEL AND QUALITY OF TELEPHONE SERVICE PROVIDED BY MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY IN THE STATE OF COLORADO.	)	INVESTIGATION AND SUSPENSION DOCKET NO. 717 ORDER OF THE COMMISSION ESTABLISHING NEW RATES

September 19, 1972

Appearances: Laurence W. DeMuth, Esq., Denver, Colorado, T. M. Ledingham, Esq., Denver, Colorado, Denis Stack, Esq., Denver, Colorado, and David Hansen, Esq., Denver, Colorado, for Respondent;
Leonard M. Campbell, Esq., Denver, Colorado, and Howard J. Beck, Esq., Denver, Colorado, and Kenneth Bueche, Esq., Boulder, Colorado, for Colorado Municipal League;
Max P. Zall, City Attorney and
Brian H. Goral, Asst. City Attorney, Denver, Colorado, for City and County of Denver and Hon. William H. McNichols, Jr.;
Benjamin F. Stapleton, Esq., Denver, Colorado, United Airlines, Inc.,
D. Monte Pascoe, Esq., and William G. Imig, Esq., Denver, Colorado, for Colorado Project/Common Cause;
Daniel H. Israel, Esq., Boulder, Colorado, for Colorado Rural Legal Services, Inc.;
Carl Wolfgang Drescher, Esq., and
Curtis L. Wagner, Jr., Chief Regulatory Law Office Department of the Army, Washington, D. C., and
Richard A. Peterson, Esq., Denver, Colorado, for Department of Defense and all other Executive Agencies of the United States;
James M. Lyons, Esq., Ira C. Rothgerber, Esq.,
William P. Johnson, Esq., Denver, Colorado, for Sears, Roebuck and Co., and Montgomery Ward & Co.;
John J. Wilkinson, Esq., Monument, Colorado,
R. J. Moses, Esq., Boulder, Colorado, and
John J. Conway, Esq., for The Woodmoor Corporation

Harlan Steintjes, Esq., Boulder, Colorado, for the Regents of the University of Colorado and the Trustees of the State Colleges in Colorado;
James M. Davison, Jr., pro se;
William Himmelmann, Esq., Denver, Colorado, for Communications Workers of America, Local 8412;
Eldridge Burnham, Denver, Colorado, pro se;
John P. Thompson, Esq., and Lynn J. Ellins, Esq., Denver, Colorado, for J. C. Penney Co., Inc.,
Jeffrey C. Pond, Esq., Holland & Hart, Esqs., Denver, Colorado, for Telephone Answering Services of The Mountain States, Inc.,
L. G. Gaskins, Esq., Denver, Colorado, for Amoco Production Company;
J. Stewart Jackson, Vice President/General Manager, Denver, Colorado, for Denver Burglar Alarm Company, Inc.;
Girts Krumins, Esq., Denver, Colorado, for the Staff of the Commission.

PROCEDURE AND RECORD

On January 27, 1972, The Mountain States Telephone and Telegraph Company (hereinafter sometimes referred to as Respondent, or Mountain Bell, or the Company), filed with the Commission, under Advice Letter No. 743, certain revisions of its tariffs to become effective on March 1, 1972.

On February 7, 1972, the Commission, upon its own motion, pursuant to CRS 1963, 115-6-11, as amended, entered Decision No. 79540 suspending the effective date of said tariff revisions until June 29, 1972, or until further order of the Commission. Said Decision No. 79540, which is hereby incorporated by reference, more fully describes the tariff sheets under suspension and investigation herein. By said decision, the matter was also set for hearing commencing March 27, 1972, at Denver, Colorado.

The following filed appropriate pleadings for leave to intervene or to be designated a party, all of which were granted by the Commission:

City and County of Denver;
Colorado Municipal League;
Colorado Project/Common Cause;
United Airlines, Inc.;
Colorado Rural Legal Services, Inc.;

Secretary of Defense on behalf of the
consumer interest of the Department
of Defense and all other executive
agencies of the United States;
Sears Roebuck and Company;
Montgomery Ward & Co.;
Woodmoor Corporation;
J. C. Penney Co., Inc.;
Colorado Music Network, Inc.;
Eldridge G. Burnham;
Telephone Answering Service of the
Mountain States, Inc.;
Denver Burglar Alarm Company, Inc.;
Regents of the University of Colorado
and the Trustees of the State Colleges
in Colorado;
Amoco Production Company.

Upon motion of the Colorado Municipal League, the Commission, by Decision No. 79617, Commissioner Zarlengo dissenting, expanded the instant docket to include the matter of the level and quality of telephone service provided by Respondent and also set additional hearings, to facilitate public attendance, in Grand Junction, Colorado Springs, Lamar, Greeley, Alamosa, and Durango.

On February 25, 1972, Decision No. 79679 was entered by the Commission denying Application for Reconsideration of Decision No. 79540 (the original suspension order), filed by Respondent.

On March 23, 1972, Colorado Rural Legal Services, Inc., filed a pleading entitled "In the Matter of Proposed Changes in Rules 11 and 13 of the Telephone Utilities". On March 24, 1972, the Commission, by Decision No. 79859, determined that matters raised in said pleading regarding customer deposits and discontinuances of service were included in this Docket as far as service by Respondent was concerned, but that this Docket could not be used as a rulemaking proceeding affecting all telephone utilities in the State.

Close to five thousand letters of protest to the rate increase proposed by Mountain Bell were received. Many of these letters were signed by more than one person, thus the total number of signatures approached 8,000.

After due and proper notice to all interested parties, the matter was duly heard by the Commission on March 27, 28, 29, 30 and 31, and April 3, 4, 5, 6 and 7, 1972, at Denver, Colorado; on April 10, 1972, at Grand Junction; April 11, 1972, at Colorado Springs; April 12, 1972, at Lamar; April 14, 1972, at Greeley; April 19, 1972, at Alamosa; April 20, 1972, at Durango.

In the meantime, several procedural motions were filed, and the Commission, following its customary practices of continuances in major cases, ordered, by Decisions No. 79899 and No. 80052, continued hearings commencing May 30, 1972, for the purpose of cross and redirect examination of Respondent's witnesses, and commencing June 19, 1972, for the purpose of direct, cross and redirect examination of Protestants', Intervenors' and Staff witnesses as well as rebuttal by Respondent. Pursuant to said Decisions, notice of which was duly given to all parties, additional hearings were held in Denver, Colorado, on May 30 and 31; June 1, 2, 5, 6, 7, 8, 9, 19, 20, 21, 22, 23, 26, 27, 28, 29 and 30; July 5, 6, 7, 10, 11, 12, 13 & 14, 1972. Hearings in this matter consumed a total of 43 days, and produced a like number of transcript volumes. On June 20, 1972, the Commission by Decision 80560, extended the suspension of the tariff revisions under investigation herein to September 27, 1972, or until further Order of the Commission.

Exhibits numbered 1 through 80, 82, 83, 63-A, 70-A, and A through K were offered and admitted into evidence. Exhibits 81, 81-A, 84, 85 and 86 were offered by Respondent but not admitted; however, Respondent was permitted to, and did, make an offer of proof with respect to the said exhibits in this record.

Official notice was taken of Rule 25 of the Commission's Rules of Service for Telephone Utilities, and Section 8 of Respondent's General Exchange Tariff as effective October 31, 1971, and immediately prior thereto, as more completely designated in the record.

During the hearings, oral rulings were made denying a motion by the Colorado Municipal League that the Commission hire a rate of return expert in addition to its own Staff (Commissioner Zarlengo dissenting), and denying Respondent's motion for interim relief at the close of Respondent's direct case and after Staff testimony regarding the motion.

At the conclusion of the hearings on July 14, 1972, the matter was taken under advisement. Briefs or statements of position were permitted, on an optional basis, to be filed by noon on August 8, 1972.

FINDINGS OF FACT

After carefully reviewing the entire record herein, the Commission finds as fact from such record that:

1. The Company is a public utility engaged in the business of providing telephone utility service both intrastate and interstate within the State of Colorado and other states. The Company's intrastate telephone business within the State of Colorado is under the jurisdiction of the Commission, and the Commission has jurisdiction over the subject matter herein.

2. The Company is a subsidiary of the American Telephone and Telegraph Company which owns in excess of 86% of the Company's outstanding common stock. The American Telephone and Telegraph Company has a number of other operating subsidiaries similar in nature to Mountain Bell and, in addition, has a manufacturing subsidiary, the Western Electric Company, and a research subsidiary, the Bell Telephone Laboratories. The entire group of companies, including American Telephone and Telegraph Company, Mountain States Telephone and Telegraph Company, Western Electric Company, Bell Telephone Laboratories, and other operating companies, which are subsidiaries of the American Telephone and Telegraph Company, comprise what is known and generally referred to herein as the Bell System.

3. The separation of revenues, expenses, plant and investment of the Company located in the State of Colorado between interstate and intrastate use is determined by the use of the Separations Manual promulgated by the Federal Communications Commission and the National Association of Regulatory Utility Commissioners. This Separations Manual, for the purposes of this proceeding, is approved by the Commission as the proper method of determining the proportionate share of intrastate revenue, expenses, plant and investment, and the actual accounting data presented in this proceeding correctly reflect the application of said Separations Manual to determine the amounts applicable to intrastate telephone service.

4. The proper test year for determination of revenue requirements for the Company in this proceeding is the calendar year 1971, with adjustments as listed in Findings below.

5. The rate base of the Company for the test year, for the purposes of this proceeding, properly consists of:

a. Average plant in service of $535,344,000.

b. Average property held for future use of $400,000.

c. Average materials and supplies of $4,924,000.

d. Average plant under construction of $50,327,000.

e. Deduction of the average accumulated reserve for depreciation of $104,871,000.

f. Deduction of the average accumulated deferred income taxes of $1,903,000.

6. The total value, for the purposes of this proceeding, of the Company's property devoted to intrastate telephone service in the State of Colorado consists of all the rate base items listed in Finding No. 5, above, and is $484,221,000.

7. The actual revenue of the Company derived from its intrastate telephone operations in the State of Colorado during the test year is $179,286,000, less uncollectible revenue of $936,000, or $178,350,000. The actual expenses, including taxes, of the Company applicable to its intrastate telephone operations in the State of Colorado for the same period are $146,667,000.

After deducting the actual expenses, including taxes, from the total actual operating revenues, the Company's net operating income derived from its intrastate telephone operations in the State of Colorado in the test year is $31,683,000.

8. The interest charged to construction during the test year and applicable to the Company's Colorado intrastate operation is $3,893,000, which must be added to the net operating income of the Company if telephone plant under construction is included in the rate base. Miscellaneous deductions as calculated by Respondent for the test year were $156,000. Therefore, the actual net operating earnings applicable to the rate base found in above Finding No. 6 are $35,420,000.

9. The net operating earnings of the Company derived from its Colorado intrastate operations for the test year must be further adjusted for the effect on net operating earnings of certain items, as follows:

	Item	Add	Subtract
a.	1971 General rate increase annualization	$1,472,000	
b.	1971 Wage increase annualization (Note (1))		$1,424,000
c.	1971 Mobile rate increase annualization (including 1/1/72 change)	$ 71,000	
d.	Postage increase annualization		$ 28,000
e.	1/1/72 Social Security Tax increase, annualized for 1971		$ 93,000
f.	Normalize special expenses in connection with regulatory cases (Note (2))	$ 53,000	
g.	Annualize 1971 directory advertising price increase (Note (1))	$ 96,000	
h.	Eliminate overaccrual in account #523.03 (Note (2))		$ 2,000
i.	Miscellaneous deductions adjustment to eliminate donations, charitable contributions and certain club dues with a social connotation for rate making purposes (Note (2))	$ 65,000	

Notes: (1) From Respondent's Exhibit 3, Appendix A, Page 3, as corrected in Staff Exhibit 59

(2) Staff Exhibit 59, after income taxes

10. After making the necessary and proper adjustments, as listed in Finding No. 9 above, the adjusted net operating earnings of the Company derived from its Colorado intrastate operations on the test year basis are $35,630,000, or a rate of return on rate base of 7.36%, which, while not confiscatory, is below a fair and reasonable rate of return in the context of other findings with respect to test year, revenues, expenses and rate base.

11. No out-of-period adjustments, except as noted, are warranted in this proceeding, as no quantification of cost increases in comparison with expected productivity gains that would offset such increases has been made by Respondent.

12. In addition to normal in-period adjustments, special regulatory expenses during 1971 were unusually high and must be adjusted as indicated under Item (f) in Finding 9 above, to reflect normal conditions.

13. Donations and charitable contributions are made purely at management discretion, accrue to the benefit of the corporation and its owners, and should be borne by stockholders rather than ratepayers, and therefore the adjustment in item (i) of Finding 9 above is appropriate.

14. The prices charged to the Company for telephone equipment by the Western Electric Company, affiliated manufacturer, are and have been fair and reasonable.

15. The fair rate of return applicable to the rate base and valuation of property of the Company devoted to intrastate telephone service in the State of Colorado is eight and five-eighths (8-5/8%), which rate of return, when applied to such rate base, is, and will be, necessary and adequate to cover the costs of debt capital of the Company and to provide for a reasonable return on the equity capital of the Company.

16. The fair and reasonable requirement of net operating earnings, after applying the fair rate of return of 8-5/8% to the value of the Company's property devoted to intrastate telephone service in the State of Colorado in the test year, is $41,764,000.

17. The difference between the required net operating earnings based upon the fair and reasonable rate of return as applied to the Company's Colorado intrastate telephone operations in the test year and the actual net operating earnings, as adjusted for the same period, amounts to an earnings deficiency of $6,134,000. In order to produce $1 of net operating earnings, a revenue increase of $2.0866 is required considering the applicable franchise and corporate income tax rates. Therefore, an increase in revenue in the amount of $12,799,000 is required to offset the net operating earnings deficiency stated.

18. For the test year the actual average common equity of the Company applicable to its Colorado intrastate operations was $254,379,000.

19. The net fixed charges (interest on debt and related expenses of issuance) applicable to the Company's Colorado intrastate operations during the test year were $12,763,000.

20. Of the net operating earnings of $41,764,000 found to be fair, reasonable and necessary in above Finding No. 16, after subtraction of fixed charges as stated in above Finding No. 19, the amount available for the common equity applicable to the Company's Colorado intrastate operations for the 12 months ended October 31, 1970, would be $29,001,000, resulting in a rate of return on common equity of 11.4% which is a fair, just and reasonable return and is sufficient and necessary to cover dividend requirements, to accumulate a reasonable surplus, to enable the Company to maintain its credit and to raise capital on reasonable terms, and to assure the financial integrity of the Company; and such return is commensurate with returns on investments in other enterprises having corresponding risks.

21. The total revenue requirements, excluding interest charged construction and including uncollectible revenue, of the Company to be derived from its Colorado intrastate telephone operations on the basis of test year conditions are $194,593,000.

22. The Company pays to American Telephone and Telegraph Company a general service and license fee equal to one percent of revenues except uncollectible and miscellaneous revenues, which license fee is a fair and reasonable charge for services furnished to the Company by American Telephone and Telegraph Company, including the use of its patents, and said fee is a necessary and proper business expense of the Company.

23. The rates of return found to be proper for rate making purposes in this proceeding, to-wit: 8-5/8% on rate base and 11.4% on common equity are compatible with and can be applied only to the other conditions as found herein. Any material change in the rate base found proper herein would of necessity involve a change in the fair rate of return; otherwise, the end result of equity earnings would be in error. Likewise, a fair return on equity as found herein applies only to the conditions of risk applicable to the common equity under the test year conditions and any change in the capital structure by way of increased or decreased debt ratio, all other factors being equal, could necessitate an adjustment to the 11.4% rate of return to equity found to be fair and reasonable in this proceeding. Furthermore, such rates of return, viewed in the context of past test year operating results as used herein, are not by way of a guarantee of earnings to the Respondent; any rate increase based on such rates of earnings on a past test year basis as used herein will result in no more than the minimum rate of return as defined in Rule 31 D (3) of the Commission's Rules of Practice and Procedure.

24. The rates and charges as proposed by the Company and under investigation herein (proposed rates) would, under the test year conditions, produce additional revenue of $39,644,000 or a total annual revenue (including uncollectible revenue) of $221,438,000. To the extent that revenue produced by such rates and charges would therefore exceed the Company's revenue requirements as found in above Findings Nos. 17 and 21, respectively, such rates and charges are not just and reasonable.

25. The rates proposed by Respondent involve a general across-the-board increase of 18-1/2% (except for mobile service and local coin telephone rates), plus additional increases on the following service items:

(a) PBX Trunks - Increase the in-only trunk rate from 1.0 times to 1.6 times the one-party business rate.

(b) Centrex - Increase secondary station rate to principal location station rate; provide for a charge for trunks in excess of a formula involving a predetermined "average" station-to-trunk ratio, or in the alternative, increase station rates to reflect a lesser station-to trunk ratio (or higher trunk-to-station ratio).

(c) Installation and service charges - Combine present two-level rate structure; add charges for certain items, such as number changes, now done at no charge; provide for a substantial increase in all installation and service charges.

(d) Rural Service (outside base rate areas) - Provide for a "zone" rather than "mileage" basis rate structure for urban service grades in all areas*;raise monthly service rates in "urban" zone rate areas to the same level as in "rural" zones, resulting in substantial increases; substantially increase all rural (8-party) incremental rates depending on distance from base rate area; impose a rural incremental charge of up to $4 a month for 8-party service within 6 miles of the applicable rural measuring point, where no such charge is now applicable.

(e) Construction charges and extension policy outside base rate areas - Completely revamp existing extension policy and institute a uniform predetermined "construction charge" per air mile on a statewide basis, depending upon grade of service (1-party, 2-party, 4-party or 8-party)

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* Present tariffs designate certain areas outside the base rate areas as "urban zone rate areas" where no 8-party service is available and urban grades of service are charged on a zone basis.

and whether or not the area has been designated an "urban" or "rural" zone, and without regard to actual construction costs or location of existing available facilities.

(f) Toll Service - The overall increase of 18.5% is not uniformly distributed. Rate periods (but not levels) are restructured to conform with interstate rate periods; extra charges for collect and third-number calls are eliminated.

26. There are three types of flat PBX trunks: in-only, out-only and two-way. Out-only and two-way trunks are now charged at 1.6 times the applicable flat business rate while in-only trunks are charged at 1.0 times the flat business rate. A just and reasonable rate for in-only trunks is the same as for other flat rate trunks. The additional revenue from this change amounts to $665,000, on the test year basis.

27. Centrex service at the present time is provided on the basis of the number of stations only, without regard to the number of trunks required for access to and from the network. Inherently, such a method of charging is unjustly discriminatory when customer usage is widely different, as evidenced by the station-to-trunk ratios actually existing for specific customers. It is hardly fair or reasonable to charge the same number of dollars for a 1,000 station installation regardless whether the number of trunks required to provide adequate network access is 100 or 300.* Obviously, aside from the fact that a larger number of trucks requires a larger truck investment, the usage of central office switching and the balance of the network is much higher. The increased requirement for switching and other network facilities,incidentally, is not linear; due to the fact that a largernumber of trunks will result in a more efficient use of each trunk, calling volume increases faster than the mere number of trunks.

* The example is merely illustrative and does not reflect the conditions for any particular Centrex service.

The original Mountain Bell proposal was to provide for a charge for "excess trunks", i.e., the number of trunks over a predetermined station to trunk formula. This proposal does not solve the problem in a reasonable manner, as there is no decrease in charges if the number of trunks is below that permitted by the formula, and is unjustly discriminatory.

During the proceeding, Mountain Bell advanced an alternate proposal that does not consider excess trunks, or for that matter, consider the number of trunks for a specific customer at all, but is an attempt to "update" the station-to-trunk ratio from the one considered in the original rate development to one allegedly more appropriate at this time. This proposal has basically the same deficiencies as the present rate structure as it uses an averaging concept not used in other PBX service, where customers are charged on the basis of actual number of trunks. The use of any assumed station-to-trunk ratio to develop station rates that include trunk use, however developed, is not reasonable, as it does not even remotely reflect network use by individual customers, and therefore gives a preferential rate to customers with high network usage. Considerable testimony and cross-examination has taken place on this record regarding the fallacies in developing appropriate station-to-trunk ratios. It is perfectly evident that the propriety of ratios used by Respondent in this original rate development is highly doubtful as to their applicability to Respondent's Colorado Centrex customers. The same is true of the "updated" ratios contained in Respondent's alternate proposal.

The only reasonable and non-discriminatory rate treatment for Centrex service has been proposed by the Commission Staff (Exhibit 66). In this proposal all trunks for Centrex users would be charged at the same rates as other PBX users. Station rates are adjusted to remove the trunk

component originally contained in the station rates. The fact that the trunk component may have been based upon an erroneous station-to-trunk ratio is immaterial; whatever was added, must be removed, and it does not matter if the wrong amount was originally added.* In addition the resulting station rates under the Staff proposal are just and reasonable in comparison to other PBX station rates. Centrex service provides the additional service of direct in-dialing and automatic number identification on toll calls, is a premium service, and the station rates should reflect an appropriate premium over other PBX station rates.

The number of Centrex trunks required for adequate service can be determined by telephone company measurements, the customer, of course, retaining the right to make independent measurements. Such measurements by the telephone company are necessary for a two-fold purpose; the customer should be advised if the number of trunks is excessive, and should be required to add more trunks if the number of trunks is inadequate. An inadequate number of trunks will result in not only poor service to the customer, but will also cause backing up of incoming calls within Respondent's central offices and deteriorate service to other customers.

This problem is the same in case of Centrex service as other PBX service. If present tariff provisions are inadequate to prevent a customer from subscribing to an inadequate number of trunks, Mountain Bell should file appropriate changes. To simply add trunks at no charge if usage increases as at present constitutes an undue preference to Centrex customers over other PBX customers.

Centrex-CO service is completely different from Centrex-CU service which has been discussed above. The PBX switcher is located at telephone company central office, and no trunks are provided as such. Every main station on a Centrex-CO system is terminated in the central office.

* As an analogy, if a purchase were returned to a department store, one would expect a refund equal to the price paid, even though the clerk at the time of purchase rang up the wrong price on the cash register.

Essentially, the service provided is that of an individual business line and the same rates should apply.

The Air Force Academy service is neither a Centrex CU or Centrex CO service. It has some of the features of Centrex; the switching equipment is located at telephone company central office and no trunks are provided as such; the use is similar to special school Centrex, which considers the business use of the college as well as residential dormitory use. In other words, it is neither fish nor fowl; it is a special rate for a special customer. The only reasonable rate treatment, considering all these factors, would be to increase the rate on the basis of the average increase for all Centrex users of 7.8%.*

Airport Dial is Centrex CO service and is properly charged at the same rate as individual business service.

Both Respondent and Staff propose that Centrex stations at secondary locations be charged at the same rate as at primary locations. We perceive no difference because of location and find that these proposals are just and reasonable.

In the case of Special School Centrex, the rate for dormitory stations should be equal to the lower block rate for administrative (or business) stations. There is no cogent reason why dormitory stations, having residential use characteristics, should have a higher rate than business stations, and the Staff proposal is found to be just and reasonable in this respect.

Considering that all trunks will be charged at 1.6 times the applicable business rate, the additional revenue resulting from the rate changes found proper in this finding amounts to $378,000* based on the test year.

* Computed on the assumption that Centrex customers will subscribe to the number of trunks shown to be necessary by Mountain Bell's traffic studies, shown as "engineered trunks" in Exhibit 16, which is a reasonable assumption in this regard.

28. Present installation and service charges do not even remotely approach the expense associated with the service performed. Residential prewiring costs an average of $18, and is performed at no charge. Failure to charge reasonably in line with the expense incurred is unjustly discriminatory as to those customers that do not require the service, or at least require such services infrequently. The increased mobility of some customers, if installation costs far exceed installation charges, results in an undue burden upon other customers. Respondent's proposed rates in this regard are insufficient. The Staff proposal is to establish differential rates based on the amount of installation service performed, and to require a $15 charge for residential prewiring to the person requesting the prewire (Exhibit 61; see also ordering paragraph 5 (e), <u>infra</u>). The Staff proposal is the minimum required at this time, and would result in just and reasonable and not unjustly discriminatory charges for this service. The other related charges as proposed by Respondent, when modified in accordance with the Staff proposal, are just and reasonable and not unjustly discriminatory. Changes in installation charges as found proper in this finding would result in additional revenue of $5,817,000 on the test year basis.

Expenses in the neighborhood of $12 are incurred by Respondent in case of a service termination. No termination charge is now made for basic services. The Colorado Municipal League suggests that such a charge be instituted. It would appear that the necessity for a charge of this nature would not be understood by the bulk of subscribers, and it may be completely unacceptable to the public. If such be the case, a more proper way to recoup this expense is to spread it over the monthly charges for service as it is now done, in effect. However, the duration of service must be sufficiently long to permit this to actually occur.

In addition, installation charges will also not cover the installation expense completely, and a portion of such expense must be recovered through monthly charges - again, the service must continue for a reasonable period of time. This indicates that the present minimum contract period for most services of 30 days is too short. The Commission would not be adverse to a lengthening of the minimum contract period.

29. Rural service rates proposed by Mountain Bell are not reasonable. 8-party service is becoming obsolete, and Respondent's avowed purpose in such wholesale revision of rural service rates is the eventual termination of 8-party service. From a value of service point of view, 8-party service is of extremely limited value. A substantial increase in rural 8-party rates to existing customers, who are not necessarily 8-party customers by choice, is completely unreasonable. Regardless of cost of service considerations, no good purpose would be served by an increase in rates for an obsolete service which is expected to be discontinued. As to new customers, investment costs can be covered either by monthly charges, or by a contribution towards the construction cost, or a combination thereof. In densely settled areas, monthly charges only may be adequate, as costs to serve individual customers do not necessarily vary a great deal, and the averaging concept is not unjustly discriminatory. In outlying or rural areas, costs to provide service will vary substantially depending upon distance, terrain and subscriber density. Customers five or ten miles from the base rate area cannot expect the same service at the same cost as within the base rate area. In areas of subscriber concentration outside base rate areas, special rate treatments are available which are discussed in the Findings below.

In order to give proper weight to the varying factors of distance, route and terrain, as well as density, a combination of construction charges and monthly rates is essential to avoid unjust discrimination.

The addition of new customers should not be at the expense of the old; likewise, new customers should not be discouraged where capacity exists to extend service, as the existing customers are already paying for all plant in service, and any incremental revenue will lighten this load. Accordingly, a proper extension policy should consider two factors: additional revenue and additional investment.

Respondent's existing extension policy is deficient in these respects to some extent. First, construction charges for extensions of 8-party service are unrelated to and below cost; for regrades, all revenue, including existing revenue, is considered. The 8-party extension policy might have been applicable in times when rural areas were unserved and efforts to obtain universal service could benefit existing customers by making more people accessible by telephone. Currently, telephone service is nearly universal; extension of service is necessary because of growth, which does not need to be subsidized by existing customers.

Respondent's proposals are unreasonable in several respects. A construction charge would be applied on an average basis which defeats the basic purpose of such a charge, i.e., to equalize differences in cost of service for different customers. The indiscriminate application of such a policy, necessary under tariff provisions, would require uneconomic extensions that would be a burden upon the general body of ratepayers, while discouraging additional revenue-producing customers where unused facilities already exist. Furthermore, all customers would be treated alike, regardless of toll usage, thus unjustly discriminating against the high toll user who helps to support part of exchange plant. An extension policy based on actual cost of new construction, with an allowance for actual additional revenue to be gained thereby, would result in construction charges that would be treated as contributions-in-aid of construction, and deducted from plant accounts, thus lowering capital costs.

Respondent's proposed construction charges, being unrelated to actual construction costs, must be treated as revenue, thus incurring a revenue surplus in the first year and a built-in revenue deficiency in future years.* Additionally, if construction costs increase in the future, a further revenue deficiency would occur unless construction charges were continually revised.

While perfection is difficult to achieve, a reasonable and not unjustly discriminatory extension policy can be formulated by correcting the deficiencies of the present extension policy as noted above.

30. The message toll schedule proposed by Respondent is deficient only to the extent that no extra charge is made for collect and third-number calls; in all other respects, it is just and reasonable (subject to the finding below regarding contiguous toll calling). Collect and third-number calls involve considerable additional operator time and an additional charge of 30¢ per call is reasonable. The proposed toll schedule would result in additional revenue of $6,165,000, and a 30¢ charge for collect and third-number calls would amount to an additional $881,000, for a total of $7,046,000 on the test year basis.

31. Proposed revisions of Respondent's Private Line Service Tariff would result in an 18-1/2% increase, the same as the overall increase in message toll rates. Private line service is an option that can be used in lieu of message toll service. Present mileage rates for private line are below the mileage rates for 1-party service outside base rate areas. The proposed increase in private line service rates would follow the increase in message toll rates, and result in charges comparable as to other mileage rates, and is just and reasonable. This increase would result in additional revenue of $775,000 based on test year conditions.

* It should be noted that adoption of Respondent's proposal regarding construction charges would necessitate a reduction in other rates and charges in the amount of nearly $1,800,000 a year. If such construction charges did not reoccur from other customers in following years, there would be a revenue deficiency of $1,800,000 without any reduction in costs.

32. WATS and Mobile Telephone rates have recently been revised and generally increased, and no further increase is just and reasonable at this time.

33. Metropac is a very limited and optional service intended to minimize discrimination because of exchange boundary problems. Recently, a considerable diminution of Metropac customers has occurred. Because of the nature of this rate option, and the possible further diminution if increased, no increase is justified and reasonable at this time.

34. The Staff proposes a special tariff provision denoted as "Emergency Foreign Exchange Service." This proposal recognizes that exchange boundaries do not, and cannot, coincide with the service area boundaries of certain public entities providing emergency services such as fire and police protection, public hospitals and ambulance services, and schools. There is a public need that these services, wherever feasible, be accessible on a toll-free basis. Not only does the requirement for a toll charge deter telephone access, but even more importantly, delay in getting the operator where necessary to complete a toll call is a factor to be considered. Any public entity that serves areas outside its local calling area can, of course, even now obtain foreign exchange service but often at prohibitive mileage charges. The Staff proposal, as described in Exhibit 17, is a just, reasonable and not unjustly discriminatory method of making such public services accessible on a toll-free basis at a reasonable rate. Under such a tariff provision, a Sheriff's Office in a county served by two or more exchanges could obtain a local telephone line to each exchange contiguous to the exchange in which the office is located without mileage charges. The decision of whether or not to subscribe to such additional telephone lines to improve communications with its constituency, would be up to the particular local governmental unit. The estimated revenue deficiency from implementation of this tariff provision is $388,000, based on the test year.

35. Another aspect of exchange boundaries that may now or in the future cut across communities of interest is covered by the Staff proposal regarding contiguous toll calling. The problem of exchange boundaries resulting in toll calls within an area having a community of interest has been a subject of interest, complaint, and consideration for some time. Particularly in an atmosphere of growth and development in relatively more outlying areas, exchange boundaries determined to be appropriate in the past can quickly become obsolete. To revise exchange boundaries is not an easy process; once distribution plant has been designed and installed in a particular manner, revising an exchange boundary becomes an economically undesirable and costly proposition. In the past the tendency has been to eliminate the necessity for toll calls by combining exchanges in an "extended area service"or "EAS" arrangement. EAS now exists in many areas of the State, the most notable being the Denver Metro area, or "Metro 65". In size, albeit not in population or number of telephones, similar areas exist in other parts of the State such as the Grand Junction area, Greeley area and many others. In many areas, however, no EAS is provided. An example might be Alamosa - no toll free calling is provided from or to this exchange. A number of public witnesses have commented on this phenomenon. The problem is also particularly acute in the small exchanges adjoining the Denver Metro '65 area, such as Erie. While the present situation appears to be somewhat discriminatory as between various areas of the State, continued general expansion of EAS is inconceivable. The record is clear that some of the revenue requirements problems today have been created by expansion of EAS in the past. On a flat rate basis, expansion of EAS eliminates toll revenues, stimulates calling, requires additional facilities, and creates revenue deficiencies. As an approach, Metropac service has been previously offered by Mountain Bell. The initial offering was on a flat rate basis and highly unsuccessful because of the undue stimulation of calling due to

the flat rate concept. The current offering is on a measured basis in selected exchanges. It does not appear to be successful because (1) it is optional rate and (2) the discount from regular toll rates is slight and in some cases, non-existent.

The Staff approach is a simplistic, shot-gun approach applicable to the entire State. The effect is that the immediate exchange boundary will lose its importance. Application of this concept throughout the State, in the present configuration of exchanges, is not reasonable. As an example, Colorado Springs and Pueblo are two metropolitan areas that also happen to be contiguous exchanges. Obviously, no "community of interest" or other requirement exists to provide preferential toll treatment between these two metropolitan areas. The anomalous result, however, is not because of the concept of contiguous exchange toll calling, but the nomenclature that says that Colorado Springs exchange includes areas such as Fountain, which should probably be a separate "exchange" rather than "locality rate area".

The simplistic approach, however, may have its merits. It is non-optional and it is non-judgmental in the context that we do not presume to determine whether or not the two contiguous exchanges have, in fact, a community of interest, and we do not impose the condition of a general non-community of interest upon the minority who may indeed - for a particular reason - have a community of interest with areas in the adjoining exchange. The non-optional feature alone is worthy of consideration. Optional rates favor the customer sophisticated in telephone rate matters. A non-optional rate treatment in this respect is basically less discriminatory.

The effects of this Staff proposal cannot even remotely be estimated from this record. The stimulation is unknown, the costs are unknown. The effects can only be measured by a trial. Considering that present rate schemes such as EAS and Metropac cannot solve this problem of discrimination among different areas of the State, the proposal is worthy of experiment.

A reasonable experiment in this area should involve calls to and from at least one exchange in each of the following areas:

San Luis Valley
Arkansas Valley
Northeastern Colorado
The area adjoining Denver Metro '65
Western Slope

The Staff proposal that beyond the 7¢ charge for the initial 3-minute period, regular toll rates with additional charges for conversations over 10 minutes would apply, may be unworkable. The experimental rate should consider only one rate schedule after the initial period, and the initial 3-minute period rate should be not less than 7¢ nor more than 10¢.

The Staff proposal, at current calling patterns would involve a revenue reduction of about $1,500,000 annually. The experimental service should be based upon a revenue decrease, on the same basis, of approximately $150,000.

36. At the present time, rates in the Denver Metro calling area, as well as in other EAS areas, are uniform for each class and grade of service regardless of geographic location. This arrangement tends to benefit the areas towards the outer edge of the local calling area, as the potential for calls over a longer distance and involving more switching centers increases. Additionally, the growth rates are higher and densities lower in outlying areas than in the central core area. Thus from both cost-of-service and value-of-service points of view, a rate differential is indicated. This, however, cannot be quantified in this record, and, indeed, rates based on full cost of service could possibly result in the dismemberment of certain EAS areas, especially Denver Metro. It is therefore just and reasonable at this time to impose a nominal rate differential in the Denver Metro area, as follows:

Type of Service	Rate Differential - per month additional over zone 1*	
	Zone 2 (Littleton, Parker, Lafayette, Louisville, Broomfield, Golden, Lookout Mtn., Evergreen and Morrison)	Zone 3 (Boulder, Brighton, Castle Rock & Coal Creek Canyon)
Residential, flat	10¢	20¢
Business, flat	25¢	50¢
PBX Trunks, flat	40¢	80¢
Semi-public (1SP)	15¢	30¢

The same approach may be appropriate in other EAS situations, for instance, Colorado Springs metropolitan area. A reasonable approach therefore, in order not to create undue discrimination, is to institute only this nominal differential on what may be considered a trial basis. This rate change would result in additional revenue of $167,000 on the basis of the test year.

37. Staff also proposes that additional locality rate areas be established in certain incorporated towns where service is offered only on a rural basis. Analyzing the existing locality rate areas, no pattern emerges. The following incorporated towns are <u>at least</u> as qualified for locality rate area treatment as the <u>existing areas</u>, and should be afforded such treatment to eliminate unjust discrimination:

Alma
Coal Creek
Crowley
Empire
Jamestown
Log Lane Village
Rockvale-Williamsburg
Severance
Silver Cliff
Silver Plume
Starkville
Timnath
Vilas

* Denver, Lakewood, Southwest, Englewood, Sullivan, Aurora, Northeast and Arvada.

Considering the additional investment, a revenue deficiency of $106,000 would arise from this change under test year conditions.

38. The net effect of all the rate changes found proper in Findings 26 through 37, would be to increase Respondent's Colorado intrastate revenues by $14,204,000 on the test year basis. Additionally, Respondent has already received revenue increases of $856,000 pursuant to Decision No. 80092 and No. 80636, for a total revenue increase of $15,060,000, which exceeds the additional overall annual revenue requirement as found in Finding No. 17 by $2,261,000.

39. The additional locality areas found to be reasonable and necessary to minimize discrimination consist solely of incorporated towns. While the fact that an area is incorporated provides definite boundaries, identification, and reasonable expectation of continued or increased density, obviously there must be certain unincorporated communities that should be accorded similar treatment. While it is impossible to set forth definite criteria, as all these factors are judgment factors, and the status of incorporation is a definite factor, nevertheless, the solution to the problems of rural service lies in part in identifying such areas of concentration. Additionally, the fact that a large percentage (31%) of the "rural" customers are located within one mile of base rate areas and another 34%, within 1 to 3 miles,* indicates that areas of concentration of subscribers exist which

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* Of 8-party subscribers only, 20% are located within 1 mile and another 40% within 1 to 3 miles from base rate areas.

are possibly not afforded equal treatment with other areas. As found in Finding No. 38 above, correction of rate discrepancies would result in excess revenue of $2,261,000. As all other existing rates, in the absence of a showing to the contrary, must be presumed reasonable, this revenue excess should be used to correct and minimize whatever discrimination may exist in this area. The expansion of base rate areas, establishment of suburban rate areas, and establishment of additional locality rate areas* result in (1) a rate reduction for 1, 2 and 4-party customers, and (2) additional construction to convert 8-party customers to a higher grade of service rates for the higher grade of service being slightly higher and producing additional revenue. Such changes in rate area boundaries create revenue deficiencies on an incremental basis. This does not mean that the customers involved are being subsidized; if sufficient concentrations exist they may now be subsidizing other customers, particularly through mileage rates.

Accordingly, we find that such excess revenue should be used for this purpose, as rate reductions and/or to cover carrying charges of 25% on any new construction required. In case of existing urban zone rate areas that qualify, only a revenue loss would occur if included in either a suburban or base rate area; in case of establishment of a new suburban or locality rate area, both factors would be present. In any event, this program would eliminate the rural service problems in those areas that are "rural" only by definition, but suburban in fact, and further result in reducing line fills in the remainder of the rural area.

* Basic exchange rates apply in base rate areas; suburban rate areas adjoin base rate areas and have a slight rate differential; locality rate areas are areas of customer concentration not contiguous to either a base rate area or suburban rate area and have twice the rate differential as suburban rate areas. These rate treatments are intended to recognize density and distance from the exchange.

40. Allegations of discrimination in Respondent's deposit practice have not been sustained; however, it is obvious that a potential for discrimination exists because of the subjective tests used. A deposit requirement is justifiable only to the extent that a potential for non-payment of charges for service exists. Unavoidably, utility service, including telephone service, must be provided on credit rather than cash basis. The potential of non-payment, however, can best be measured only on the basis of previous experience as to a particular subscriber regarding telephone service. There is no evidence that delinquency in other areas, employment, or income have a measurable impact upon the propensity for non-payment of telephone bills. After all, telephone service will be discontinued, without alternatives, if bills are not paid. A proper deposit requirement policy for Respondent is as follows:

(a) Customers with previous telephone service: require a deposit only if previous payment record includes recent or substantial delinquencies;

(b) Customers with no previous telephone service: require a deposit from all customers based upon two months' local service and three months' toll service, the latter as estimated by the customer; a deposit requirement may be increased at any time if toll usage exceeds the customer's estimate;

(c) Deposits with respect to toll service may be recomputed, and an additional deposit required, if toll usage increases; but in any event, such deposit shall be based upon average toll use by the customer over a period of at least six months, unless the customer has had telephone service in Colorado for a period of less than six months.

(d) Customers from whom a deposit is required must be advised how the deposit is computed, and that an additional deposit may be required if toll exceeds customer's estimate.

41. Respondent's employment practices are not discriminatory and an affirmative action program is underway to remedy past deficiencies in the makeup of the employee body.

42. Good business practice would seem to dictate that Respondent employ more bilingual customer contact personnel in offices where substantial numbers of present and potential subscribers served do not speak English well.

43. Other Mountain Bell service problems are concentrated in two areas: switching service in Denver Metro area and rural service.

44. Switching service in the Denver Metro area is from time to time deficient in one area or another. The evidence is clear that the problems are not present in all central offices at the same time; however, this is obviously not evident to the customer who experiences difficulties placing a call to Boulder one month, and the same problem calling Aurora the next month. In some ways, the problem is inherent in the complexities of the network itself; the actual call completion capability as to the total network is indeterminable. Only the capability of individual switching offices or trunk groups can be measured. Respondent is engaged in a program of adding additional capacity throughout the system; spare capacities of switching equipment are expected to substantially increase by the end of 1972. Accordingly, we are unable to order any specific service improvements which are not already underway.

45. Rural service is poor in a number of areas, caused by the inherent nature of 8-party service itself and open wire circuits of old vintage. These problems can only be solved by a program of replacing 8-party service with higher grades of service where appropriate and the installation of more modern plant associated with such a program. Rural service now is subsidized

to some extent by urban customers. While present 8-party rates cannot be increased considering the service provided, neither can service be much improved at present 8-party rates. The extension policy as modified herein, together with the expansion of base, suburban and locality rate areas as found appropriate herein, should improve the situation.

DISCUSSION

The concept of a past test year, with adjustments, as being representative of future relationships of revenues, expenses, and rate base, has been discussed by the Commission in numerous previous decisions and particularly in the last two major rate orders involving Respondent (1969 and 1971 rate cases). Nevertheless, a "future", "projected", or "budgetary" test year is again urged upon us by the Company in this case. In support of this position, budgetary figures are compared with actual results in the past to assert their reliability; forceful arguments are made that revenue-expense-rate base relationships of the past cannot be maintained for a variety of reasons.

In historical perspective, however, it must be observed that even though past test years have been utilized to determine revenue requirements, utility rate cases have not been annual occurrences. In case of the Respondent, rate levels were stable for a remarkable period of almost 16 years between 1953 and 1969. The rate increase in 1969, based on a 1967 test year, produced very close (and slightly in excess) of the determined fair rate of return in 1969, even though the new rates were not in effect the entire year. Like results could be observed for other utilities.

(It might be noted that prior to 1953, the only full scale rate cases involving Mountain Bell were in 1918 and 1952; however, during the intervening period, most of Mountain Bell's service--that within home rule cities--was outside Commission jurisdiction).

The most persuasive argument that can be made against the use of a past test year as we have again done is that the 8.9% rate of return used in determining revenue requirements in the last case--early 1971--did not materialize and another substantial increase in a period of about a year is necessary to come close to it.

Obviously, inflation in the last few years has been at a much higher rate than before, which may account in part for this phenomenon. If that were the only reason, the fact that inflation has been slowed somewhat would alone eliminate or minimize these concerns.

The real answer, however, lies elsewhere, in our opinion. The concept of the past test year requires that rate structures be properly designed. In other words, it is not enough to determine revenue requirements and distribute such revenue requirements at random--improper rate design may doom the expectation of maintaining revenue-expense-rate base relationships ab initio. For example:

Let us assume that there is a type of service provided for $5 a month whereas it actually costs $10 a month to provide; obviously, if revenue requirements are to be met, there is another service or services that provide an excess revenue to offset for this loss. But let us assume further, that the service that is provided at a loss grows twice as fast as those services that provide the excess--the obvious result is an immediate and growing revenue deficiency.

It must be recognized that items of this nature are the basic responsibility of management. With the proliferation of telephone services offered, the thousands of tariff items on hundreds of tariff pages cannot be reevaluated in detail by the Commission in every rate case; in other words, we cannot and should not undertake to manage the business.

The importance of proper rate design is evident when we analyze the factors that appear to be responsible for the alleged destruction of revenue-expense-rate base relationships.

In examining the data in this record, it becomes obvious that it is the growth in rate base, or capital that is out of line with the increase in revenues. As testified by Mr. Leake, the additional investment per telephone added exceeds the imbedded investment per telephone by a very large margin, and the additional revenues do not keep up with this increase in investment.

Before agreeing to the conclusion of Respondent that the only solution is a rate increase based on a projected 1972 budget year--the acceptance of which simply means another rate increase in 1973 and at least annually thereafter, if not more often, as there is no other hope--let us first analyze the possible reasons for this situation.

The term "additional investment per telephone added", simply means that the figure is obtained by dividing total new investment by the number of telephones gained during the year. One cannot possibly conclude that if no new telephones were added, no new investment would be necessary.

The new investment required could be categorized as follows:

(1) Incremental new investment required to serve new customers.

(2) New investment required because of additional usage of present services by existing customers.

(3) New investment required to provide additional or new services to existing customers.

(4) New investment required to modernize the equipment used to serve existing customers.

(5) New investment required to provide necessary spare capacity or adequate plant margins to assure adequate service.

(6) New investment required to replace existing equipment serving existing customers and services but at higher construction costs than the original plant.

May we suggest that proper rate design would alleviate the problems posed but unanswered by Respondent.

(1) The actual new incremental investment to serve new customers can be, at least in part, covered by a realistic extension policy that relates incremental investment to incremental revenue, and requires a contribution from the new customer who "doesn't carry his own weight".

The record is clear that until October of 1971, Mountain Bell did not really have an extension policy. Service was generally extended without construction charges. Since October of 1971, Mountain Bell's extension policy has required contributions in certain cases--The Woodmoor Corporation, intervenor herein, being a prime example. A similar situation prior to October 1971 could have well resulted in Mountain Bell investing nearly $1 million while any meaningful revenue production would have been far in the future.

Respondent maintains that the present, or October 1971, policy is inadequate as it results in virtually no construction charges being collected. If in fact additional revenue were sufficient to cover the carrying charges on the additional investment, we perceive no inadequacy. However, our Findings are that in case of upgraded service, present extension policy improperly considers existing as well as additional revenue.

(2) The problem of additional usage can only be met by increased use of usage-sensitive rates. By this statement, we do not intend to imply a predisposition that flat rates are "out". Usage-sensitive rates mean many things. For instance, the concern in the instant proceeding regarding Centrex service results from the fact that in the past no separate charge was made for the trunks required--number of trunks being the only indication of the amount of usage of the network. Likewise, the entire PBX pricing scheme could use a reevaluation to assure that trunk charges have a closer relationship to network usage.

(3) A general rate increase is obviously not the proper remedy to recover costs associated with additional investment to provide new services.

(4) Modernization costs should be offset by savings in operating and maintenance expenses, or if resulting in availability of additional services, by proper rates for such additional services available.

(5) Revenue deficiencies created by new investment for spare capacity should be self-correcting. Obviously, temporary distortions will occur if necessary spare capacity is sharply increased over a short period of time, as has occurred in 1971 and has been further planned for 1972 (Exhibit 1, page 48, lines 9, 10 and 11 are illustrative).

(6) Higher replacement costs of equipment to provide existing services to existing customers, not offset by savings in maintenance costs, can, of course, be only met by a general increase in rates. There is, however, no indication in this record, what, if any, portion of the increase in investment per telephone is accounted for by this factor.

In summary, maintaining revenue-expense-rate base relationships, based on the test year, poses a problem not only in cost control but rate design and development as well.

These, however, are areas of primarily management control rather than regulatory responsibility. The rate of return found reasonable and necessary in this proceeding by the Commission, and the context in which the authorized revenue requirements and rates are based thereon, provides only an opportunity, not a guarantee, to earn it. The determination of an appropriate rate of return, as has been said, is finally a matter of judgment based on the data in the record. Might we add that all the experts who have testified on this subject use basically the same data, with different interpretations, judgments and opinions. Some of the witnesses qualified their suggested rates of return by stating that they "should actually be earned".

The rate-making process cannot, and should not, determine what will actually be earned. In the final analysis, it is management ingenuity and resourcefulness that will provide the earnings which the regulatory authority finds reasonable and necessary.

Any other regulatory approach would disregard the public interest by guaranteeing an adequate return at all times and thus rewarding any and all inefficiencies with an absolute cost-plus arrangement. On the other hand, the public interest is not served by treading the line of constitutional confiscation of property; the primary public interest in good telephone service cannot be satisfied by refusing to provide the supporting revenues that have been demonstrated to be necessary by past performance.

CONCLUSIONS

Based upon the findings of fact herein, the Commission concludes that:

1. The tariff revisions filed by Respondent on January 27, 1972, and under investigation herein, if permitted to become effective, in toto, would result in excessive, unjust, unreasonable and unjustly discriminatory rates and charges for intrastate telephone service rendered by the Respondent in the State of Colorado;

2. Respondent's existing Colorado intrastate rates are, in the aggregate, insufficient and not just or reasonable; however, no general rate increase is necessary or warranted, as the indicated deficiency in Respondent's intrastate revenues may be eliminated by selected rate adjustments necessary to prevent unjust discrimination;

3. The tariff revisions prescribed in the following Order will result in rates and charges that are necessary, sufficient, just, reasonable and not unjustly discriminatory and further result in reasonable and necessary improvements in service not already underway;

4. The following Order should be entered.

O R D E R

THE COMMISSION ORDERS THAT:

1. The revisions of Respondent's Long Distance Telecommunications Service Tariff filed on January 27, 1972, under Advice Letter No. 743 be, and hereby are, permitted to become effective on the effective date of this Order, or at such later date as Respondent may elect because of necessary changes in billing procedures.

2. Respondent shall file appropriate tariff revisions to impose a charge of 30¢ for each collect or third number intrastate toll call, such tariff change to become effective on or before November 1, 1972, upon not less than 1 day's notice.

3. Respondent shall file an experimental tariff providing for reduced initial period rate contiguous exchange toll calling as described in Finding No. 35. This tariff shall (a) apply to toll calls to and from at least five exchanges distributed throughout the State in accordance with Finding No. 35; (b) apply only to toll calls between Mountain Bell exchanges; (c) involve an initial period charge of not less than 7¢ nor more than 10¢, and a single schedule thereafter; (d) on the basis of November, 1971, calling patterns and volumes, and the message toll rates provided for in this Order, result in revenue reduction of approximately $150,000 annually. This tariff provision shall, unless subsequently extended, automatically expire 12 months from the effective date thereof. Any modifications of this plan shall be made only upon the express approval of the Commission. This tariff revision shall be filed to become effective on or before January 1, 1973, upon not less than 15 days' notice.

4. The revised Local Service Tariff of Respondent filed on January 27, 1972, under Advice letter No. 743, be, and hereby is, rejected, and the existing tariff provisions shall remain in effect until changed pursuant to law and the Rules of the Commission, except that Respondent shall file the following tariff revisions:

(a) To institute Denver Metro zone differential rates in accordance with Finding No. 36 effective on or before November 1, 1972, upon not less than 5 days' notice;

(b) To establish additional locality rate areas in accordance with Finding No. 37 to become effective on or before April 1, 1973, on not less than 30 days' notice, with written notice to each customer within such proposed locality rate area;

(c) To revise base rate and suburban rate area boundaries and establish further locality rate areas in accordance with Finding No. 39 herein, as follows:

(i) All boundary changes requiring only tariff changes but no additional investment for implementation (e.g. convert urban zone rate area or suburban rate area to base rate area) shall be filed to become effective on or before November 1, 1972;

(ii) Extensions of base rate or suburban rate areas, requiring only minor plant rearrangements, extensions or improvements shall be filed to become effective on or before January 1, 1973;

(iii) All other changes requiring more extensive plant construction shall be filed to become effective on or before April 1, 1973;

(iv) All changes hereunder resulting in an increased charge to any customer shall be filed to become effective on not less than five days' notice; all changes hereunder resulting in increased charges to any customer

because of withdrawal of 8-party service shall be filed to become effective upon not less than thirty days' notice, with individual written notice to each such customer.

(v) The advice letters accompanying the tariff filings hereunder shall contain continued accounting of revenue changes and carrying charges on required construction in order that the status of the disposition of the $2,261,000 excess revenues can readily be determined.

5. The revisions of Respondent's General Exchange Tariff filed on January 27, 1972, under Advice Letter No. 743, be, and hereby are rejected, and the existing tariff provisions shall remain in effect until changed pursuant to law and Rules of the Commission, except that Respondent shall file the following tariff revisions to become effective on or before November 1, 1972, upon not less than 5 days' notice:

(a) To increase the rate for in-only flat rate PBX trunks to 1.6 times the applicable flat 1-party business rate;

(b) To provide for a charge for Centrex trunks in the same manner and at the same rates as for PBX service;

(c) To establish revised monthly main Centrex station rates as follows:

(i) Centrex I CU:

First 100 stations at any location	$11.73
Next " " " " "	6.83
All additional stations	4.61

(ii) Centrex II CU:

First 100 stations at any location	$12.58
Next 100 " " " "	7.68
All additional stations	5.46

(iii) Centrex CO and Airport dial - the same rates as applicable to 1-party flat business service

(iv) Air Force Adademy: First 1000 stations $ 8.10
" " " All additional stations 7.45

(v) Special school Centrex

First 100 stations at any one location $ 6.53

All additional stations 4.61

Dormitory stations 4.61

(vi) Mileage rates shall remain at present levels.

(d) To establish monthly rates for Centrex CO and Airport Dial extension stations at the same level as applicable to one-party flat business service.

(e) To establish installation and service charges as follows:

(1) Residential prewire $15

(2) Residential installation:

Reinstall or reconnect, no interior wiring change* $10

Install, reinstall or reconnect, with change in interior wiring $25

New install, no existing interior wiring $40

(3) Business installation--a schedule of charges based upon the following charge for a basic one-line, one nonbutton telephone:

Reinstall or reconnect, no change in interior wiring $25

Reinstall or reconnect, with change in interior wiring $40

New install, no existing interior wiring $55

Charges for installation of other than the basic one business line, one non-button telephone shall be proportional to the above charges in the same manner as proposed by Respondent in the tariff filing under Advice Letter No. 743; e.g., line only--one-half of the above charges; six-button telephone instead of nonbutton--$5 additional, etc.

* Interior wiring change means extension or relocation of existing interior wiring at customer's request, but does not include repair or replacement of such wiring.

(4) All other service charges as provided in the revisions of Section 15 filed under Advice Letter #743.

6. Respondent shall file, to become effective on or before January 1, 1973, upon not less than 30 days' notice, a revised extension policy as follows:

(a) To provide that all investment for new construction required to provide the service requested from the nearest available facility having spare capacity, regardless of whether located within or outside the base rate area, shall be considered in determining the applicable construction charge;

(b) To provide that in case of regrade of an existing customer to a higher grade of service, only the additional revenue over and above the revenue under the existing grade of service shall be considered towards the cost of construction; provided, however, that any non-refunded construction charge paid by the customer within a previous five-year period towards extension of a lower grade service shall be applied to reduce the construction charge otherwise applicable;

(c) To provide that extension of 8-party service be made on the same basis of revenue - cost relationships as urban grades of service;

(d) To provide for appropriate refunds in all cases where due to the original contribution spare capacity has been provided, and additional customers are connected within a five-year period to such extension.

7. The revisions of Respondent's Private Line Service Tariff filed on January 27, 1972, under Advice Letter No. 743, be, and hereby are, permitted to become effective on the effective date of this Order, or such later date as necessitated by Respondent's billing procedures.

8. The revisions of Respondent's Mobile Telephone Service Tariff, Intercity Services Tariff (Metropac) and Wide Area Telecommunications Service Tariff (WATS) filed on January 27, 1972, under Advice Letter No. 743, be, and hereby are, rejected and the existing tariff provisions shall remain in effect until changed pursuant to law and the Rules of the Commission.

9. Respondent shall file appropriate tariff sheets to provide an "Emergency Foreign Exchange Service" as shown in Exhibit 17 in this proceeding, subject to the limitation that not more than one line per foreign exchange per eligible customer shall be provided thereunder. This tariff provision shall be filed to become effective on or before January 1, 1973, on not less than 30 days' notice.

10. Respondent shall adopt a proper deposit requirement policy in accordance with Finding No. 41 herein. The appropriate tariff revisions shall be filed to become effective on or before January 1, 1973, upon not less than 30 days' notice.

11. Except as specified herein, notice of tariff changes pursuant to this Order shall be given in the manner provided for in CRS 1963, 115-3-4, as amended, with additional notice only to the parties hereto.

12. Respondent shall also refile such tariff sheets as may be necessary to comply with this Order for the sole purpose of indicating correct effective dates and authority under this Decision.

13. This Order shall become effective forthwith.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

HOWARD S. BJELLAND

EDWIN R. LUNDBORG

Commissioners

COMMISSIONER HENRY E. ZARLENGO
DISSENTING.

COMMISSIONER HENRY E. ZARLENGO DISSENTING:

I respectfully dissent.

In the majority decision an increase in the amount of $12,800,000 (rounded) is authorized. In my judgment and for the following reasons no increase in rates or charges should be authorized.

A.

CAPITAL STRUCTURE

The capital structure of a utility is of utmost importance to the ratepayers as it is the ratepayers who must pay for the cost of capital, and the cost of equity capital is so much greater than the cost of debt capital that the issue demands the closest scrutiny by the Commission.

Management seems to have lost sight of the fundamental principle that a utility must provide satisfactory service at the least cost to the ratepayers.

The taxable income of a corporation is taxed under the federal law at 48%* and under the state law at 5%.** Because of reciprocal inter se deductions allowed by said laws the composite tax is at least 50%. As the money used to pay dividends for equity financing comes from income which is taxed at such composite rate of at least 50%, for every dollar required to pay dividends the company must collect from the ratepayers $1 to pay the dividend and $1 to pay the income tax. As the presently authorized rate of return on equity is 11.4%, because of the doubling effect of income tax, the ratepayers for every dollar of equity capital acquired will actually be made to pay at the rate of 22.8%. If we assume a current cost of debt capital at 8% (a high estimate) the ratepayers for every dollar of capital acquired will actually be made to pay only 8%. So, we find by simple arithmetic the fact to be that any new currently

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* Section 11 of the Internal Revenue Code (1971).

** Section 138-1-3 (2), 1963 CRS.

acquired equity capital costs the ratepayers 14.8% more than for debt capital. Yet, in the face of this arithmetical fact, with a debt ratio of only approximately 45%, and being fully aware of the extreme difference in cost to the ratepayers, management of Mountain Bell, nevertheless, saw fit to acquire one hundred eighty and one-half million dollars (rounded) of equity capital recently and even while this proceeding for an increase in revenues was pending. By such acquisition of equity rather than debt capital the customers of Mountain Bell henceforth will be penalized for an indefinite period in the future the sum of $26,664,000 annually.* To justify this flagrant injustice to the ratepayers, the record discloses only opinions based on self-serving speculations, conjectures and fine-spun rationalizations, leaning one upon another.

The foregoing illustrative factual analysis clearly exemplifies the indifference of management to the best interests of the ratepayers and to its duty under the law to avoid exercise of arbitrary and capricious managerial discretion and judgment.

B.

OPPORTUNITY TO AVOID AUTHORIZED INCREASE

In the majority decision an increase in revenues of $12,800,000 (rounded) is authorized. AT&T owns at least 86% of the outstanding capital stock of Mountain Bell. The management of AT&T is the alter ego of, and controls, the management of Mountain Bell and it is within their power to have Mountain Bell purchase with borrowed funds $87 million, or more if desirable, of the common stock held by AT&T. The sale and purchase of said stock could be at market value, or book value, depending on feasibility, and proper arrangements could be made to provide the holders of Mountain Bell stock, other than AT&T, with equal opportunity to participate on at least a pro-rata basis, or otherwise, in such sale and purchase. With the consummation of such sale and purchase, the debt

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* 14.8% X $180,500,000 = $26,664,000.

ratio would still be at approximately 50% and within the zone of reasonableness advocated.

No reason is apparent, nor is there evidence of any kind in the record, that Mountain Bell cannot borrow $87 million at not to exceed 8%.** By so doing, $87 million of equity would be replaced by debt, which at the rate of return on equity of 11.4% authorized in the majority decision is costing the ratepayers at least at the rate of 22.8%,*** or 14.8% more than the cost of debt assumed at 8%.**** This would result in a savings of $12,876,000, or slightly more than the amount of increase in revenues being authorized, would avoid the authorized increase of $12,800,000 annually required of the customers, and still provide a rate of return of 11.4% on common equity as authorized.

If $87 million of Mountain Bell's stock be replaced by debt the resulting capital structure would be as follows, to wit:

	*As of 12-31-71	%		Pro Forma	%
Equity	$1,054,850,027	54.80	- $87,000,000	$967,850,027	50.28
Debt	869,995,355	45.20	- $87,000,000	$956,995,355	49.72
	$1,924,845,382			$1,924,845,382	

A debt ratio of approximately 50% debt and 50% equity is well within the bounds of reasonableness.

A Staff witness testified:

> "Q But you feel that 50 percent would be a safe percentage of debt to have in the financial structure?
>
> A I don't think it would represent a real problem to them. I am sure the company would disagree with me, because they don't seem to want to get that high, but I don't really feel that it would represent a problem to be as high as 50 percent."

(Transcript Volume XL, Page 9.)

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* From Mountain States Tel. & Tel. Annual Report for 1971.

** To be conservative this estimate on the high side in the present market.

*** Due to the impact of income taxes.

**** 22.8% - 8% = 14.8%

To reject without reason an opportunity so beneficial, feasible, and clearly available to the management of AT&T and the management of Mountain Bell whereby the authorized increase in revenues can so easily be avoided, constitutes an abuse of managerial discretion to the detriment of its customers.

The Commission and management both have their mandate, In the case of Colorado Municipal League, et al, vs. PUC, et al, 172 Colo. 188, 473 P.2d 960, the management failed to take advantage of accelerated depreciation for the benefit of its customers. In this case the management is failing to take advantage of higher debt ratios.

The Court said:

> "However, no matter how much deference we have and should have for highly-trained management, when that management abuses its managerial discretion to the detriment of its customers, our regulatory commissions have a duty to declare the abuse and make such orders as will give to ratepayers the advantage of those economies of which management has failed to avail itself."

C.

HIGHER DEBT RATIOS -- FINANCIAL INTEGRITY

It is contended that higher debt ratios increase "risk", "jeopardize" the Company's "financial integrity", and in turn will increase the cost of capital. This contention wholly disregards the fact (a) that the Company is a legally protected monopoly providing a service which is as essential and necessary to the public as are our police, fire, medical, and hospital services, for without telephone service these other services cannot function; (b) that the Commission must under the law authorize a reasonable rate of return on investment; and (c) that the public cannot maintain an acceptable standard of living without the service. Informed investors know this. As a matter of fact, investment in the Company's bonds is, for all practical purposes, as devoid of risk as investment in good municipal bonds; and, what investor inquires as to the equity of the municipality? As to any increase in

the cost of debt capital with higher debt ratios, even assuming that the cost of debt capital will increase, and even assuming that such cost in the future should equal the cost of equity capital, an inconceivable concept, the customers even at that point would still be saving at least 100% in the cost of capital because of income taxes.

It is important to note the record contains no evidence that at any point in the future because of high debt ratios debt capital will not be available, or it will cost the ratepayers as much, or more, for debt than for equity capital, or, and this is most important, that higher debt ratios will actually not be immensely beneficial to the customers. The emphasis is on detriment to stockholders. It is obvious the primary purpose of advocating low debt ratios is to provide opportunity for better investment to stockholders rather than to provide service at the lowest possible cost to customers. Clearly, management has lost sight of proper priorities.

Rather than rely on opinions of highly paid experts employed by the Company whose testimony and exhibits are replete with vague objections, conjectures, speculations, and rationalizations as to what might happen should the Company continue to increase its debt ratio, common sense, considering the interests of the ratepayers, dictates that the debt ratio should continually be increased until testing in the market place provides facts, not opinions,* indicating that the cost to the customers of increasing debt capital would be more costly to the ratepayers than the cost of increasing equity capital.

D.

RETURN ON EQUITY

The return on an investment should be in proportion to the risk. Mountain Bell had a rate of return on equity for the test year 1971 of 9.15%** for Colorado.

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* 170 Colo. 556 - 463 P.2d 465.
** Staff Exhibit 59.

As is pointed out on page 45 hereof, the risk to Mountain Bell investors is practially nil; i.e. (a) the risk of loss of capital investment and (b) the risk of loss of a fair return thereon. Its stock is listed on the Exchange and for the year 1972 to September 14, 1972, was quoted "High 23-1/2 -- Low 19-5/8." The book value as of December 31, 1971, was $21.38.* Over the years the difference in book value and market value has been so close as to be negligible. The investor thus has the opportunity at any time to convert his investment to cash without loss and holds securities pledgeable at high value. The investor has an investment in a company with a bond rating of triple A,** the highest, and with a stock rating of A,** next to the highest; has an investment in a business which is a legally protected monopoly providing service indispensable to the public; and has a legally assured fair rate of profit subject only to the exercise of prudent judgment and efficient operation by management.

The fact that AT&T has invested in and holds Nine Hundred Fifteen Million Dollars (rounded)*** of Mountain Bell stock, controls Mountain Bell, and over the years has continuously increased its holdings to the point of holding in excess of 86% thereof, attests to the security, and quality in all respects, of investment in Mountain Bell stock.

The rate of return on equity for Colorado for the test year 1971 was 9.15%.**** AT&T, nevertheless and only very recently, purchased additional stock in the amount of approximately $168,228,110***** with full knowledge of such rate of return. As an informed investor in

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* Mountain States Tel. & Tel. Annual Report for 1971.

MST&T	Equity 12-31-71		$1,054,850,027
MST&T	Shares outstanding 12-31-72	49,342,772	
	Book Value	$21.38	

** Bond Ratings - Standard & Poor and Moody
Stock Rating - Standard & Poor

*** Mountain States Tel. & Tel. Annual Report for 1971.

AT&T owns 86.75% of Common Stock X $1,054,850,027
= $915,082,398 (equity ownership Book Value as of 12-31-71.)

**** Staff Exhibit 59

***** AT&T Co. subscribed to $168,228,110 representing 8,561,227 shares of the common stock offer in July 1972. (Information from Company to Staff 9-15-72.)

Mountain Bell stock AT&T is without parallel. This very substantial investment on the part of so knowledgeable an investor attests to the desirability of investing in Mountain Bell stock at such rate of return on equity. Some Company testimony was proffered to the effect that some small part of the stock of recent offer was not purchased by the public and was shortly thereafter withdrawn by management, implying the cause to be inadequacy of the rate of return. The withdrawal may have been premature as the stock is listed on the Exchange. More likely, however, the temporary hesitancy on the part of the investors, if such was the case, was due to the common knowledge prevalent of the widespread inadequacies of telephone service being rendered and the general clamor on the part of the public.

A rate of return on equity for Colorado of 9.15% is within the zone of reasonableness. If comparisons must be made, as urged, the return on average equity for AT&T and Mountain Bell is shown to be as follows:

	* Year	Div.	Average Book Value	Average Market Price	Return On Average Equity
AT&T					
	1967	2.20	39.44	56.25	9.61
	1968	2.40	40.84	53.19	9.18
	1969	2.40	42.07	53.31	9.51
	1970	2.60	43.53	47.12	9.17
	1971	2.60	44.97	47.31	8.87
MST&T					
	1967	1.21	18.66	24.00	8.90
	1968	1.24	19.07	23.12	8.60
	1969	1.24	19.60	22.81	9.95
	1970	1.36	20.27	21.56	10.01
	1971	1.36	21.00	22.75	10.14

* Staff Exhibit No. 60

The record does not disclose competent and sufficient evidence to support a finding that the return on equity for Mountain States for Colorado should be 11.4% or 2.53% higher than it was for AT&T in 1971, or 1.26% higher than for the whole of Mountain States for 1971.

E.

AUTHORIZED INCREASE

The majority decision authorizes an increase in revenues of $12,799,000 to be derived from increase of rates for certain specific types of service, to wit: PBX Trunks, Centrex, Installation and service charges, Rural Service (outside base rate areas), Construction charges and extension policy outside base rate areas, Toll Service, Private Line Service, etc.

The burden of establishing that new rates are just and reasonable and are not discriminatory is that of the utility. In this case, however, the burden is even greater as the determination involved is not a determination of new rates but a determination of increase of already legally effective rates which the Commission as recently as March 25, 1971 in Decision No. 77230 determined to be just and reasonable and not discriminatory as between themselves or with rates for other types of service. The rates, having been legally determined, are presumed to be valid and to rebut this presumption even greater proof than to establish new rates is required. Yet judgments only, not evidentiary facts, are in the record to support the amount of each increase, and to establish that the wide differences in increases for the specific types of services are not discriminatory.

Company as well as Staff witnesses testified in general that many cost figures for plant and for service are substantially products of estimates rather than of detail accounting. The Company witnesses attempt to justify this by asserting, and it is naked assertion, that the cost of detail cost accounting to the customers would exceed any benefits to be derived from detail cost accounting. These estimated cost figures are further vitiated by being averaged.

Even should such increases be justified, the revenues derived should be allocated across the board in reduction of other rates not changed as the Company is not entitled to the increased revenues authorized for the reasons herein elsewhere set out.

F.

PURCHASE PRACTICES

As AT&T completely controls both Western Electric, the seller, a nonregulated business, and Mountain Bell, the purchaser, a regulated business, a clear conflict of interest disadvantageous to Mountain Bell customers is apparent; and in addition, because Mountain Bell is a utility its relationship with its customers is under the law, in essence, that of a trustee;--the issue was raised as to the propriety and prudence of its purchasing policies and practices insofar as the best interests of its customers are concerned. The burden of carrying this issue is that of the utility and was so acknowledged by its counsel during the hearing. Voluminous testimony and exhibits were presented to the extent of being oppressive, yet the evidence was wholly insufficient to support any reasonable conclusion. The Company, for reasons not apparent, failed to avail itself of <u>indisputable</u> evidence under its control and in its records as to actual past negotiations and purchases made, which evidence, properly presented showing actual payments made and contrasted with costs for comparable materials from other supply sources, would have clearly established the correctness of its purchasing policies and practices. With the inherent and apparent conflict of interests involved and its strict duty as a quasi-trustee to protect the ratepayers' interests imposed by law, such failure only leaves the matter in serious doubt. The Company was aware of the problem, was aware of its resources to solve it, and was aware of its burden under the circumstances, yet it deliberately failed to clear the issue. In light of this failure authorizing any rate increase is not justifiable and is at least doubtful and, therefore, not in order.

G.

COMPARISON OF RETURNS

The comparisons used in this proceeding of rates of return on rate base, or on equity, as between other utilities and Mountain Bell, or on capital investment as between Mountain Bell and non-utilities, such as manufacturers, food processors, etc., as made are useless in helping to determine what is a fair rate of return on rate base, or on equity, for Mountain Bell. The defect in this approach lies with the fact that what goes into, and constitutes, the rate base, or the equity, or the capital investment, varies with liberality of the method and the standards used in making the determination. For example, if revenues are kept at the same level, and a liberal method and standards are used to determine what constitutes rate base, or equity, or capital investment, the rate of return can be substantially lower and still be fair than if a conservative method and standards are used. To be of any use such comparisons must require that the rate bases, equities, or capital investments being compared be determined by exactly the same method and standards. The record is barren of any evidence that exact method and standards of determination were used to determine the rate bases, equity, or investments being compared; or, that the risks, also a pertinent and material consideration, are comparable.

H.

REGULATORY LAG

The utility complains of "regulatory lag." It fails to recognize and admit that regulatory lag is an unavoidable inherent characteristic of utility regulation. Under the law, a regulatory body must "determine rates which are just and reasonable." To do so properly under the law the regulatory body must consider very many pertinent factors and complex issues which require substantial time. Knowledgeable investors know, or should know, this to be a fact and do consider regulatory lag as a demerit in appraising the overall desirability of their investment.

The utility urges a more fluid and up-to-date method over the method being used by the Commission, to wit: "the past test year." Historically the Commission has found this method, although not perfect nevertheless, to be the best possible method to be used insofar as the interests of both the utility and the ratepayers are concerned. A more fluid and up-to-date method by use of later out-of-period adjustments carries with it the fundamental fault that all the pertinent factors (ingredients) which must be considered for proper determination of charges cannot be simultaneously considered with each such adjustment when made and thus create an unacceptable distortion.

I.

HYPOTHETICAL CAPITAL STRUCTURES

It must be pointed out that any detriment to the stockholders by imputation of a debt ratio higher than the actual debt ratio is the direct result of actions of their own instrumentalities; i.e., the corporate officials whom they control and therefore the detriment is of their own creation and the burden thereof, if any, cannot legally be passed on to the ratepayers.

J.

ADEQUACY OF SERVICE

115-3-1 (2) provides, inter alia, that:

> "Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities . . . as shall in all respects be adequate, efficient, just and reasonable."

The following rules of the Rules Regulating the Service of Telephone Utilities provide, inter alia, as follows:

RULE 3

> General Provisions.--These rules and regulations govern the furnishing of intrastate telephone service and facilities to the public by telephone utilities subject to the jurisdiction of the Commission. The purpose of these rules is to set forth reasonable service standards to the end that adequate and satisfactory service will be rendered to the public through the necessary refinement in the transmission of both local and long distance messages.

RULE 9

Adequacy of Service.--Each exchange shall have sufficient switchboard capacity, a sufficient operating force, or sufficient automatic equipment to handle traffic at all times with reasonable facility, and each telephone utility shall provide and maintain adequate telephone facilities so as to have available at all times sufficient plant and equipment to supply any reasonable demand for service within the base rate area.

RULE 15

Answering Time.--(a) Manual Exchanges. At manual exchanges serving 500 or more subscribers, 95% of the calls should be answered by the operator without undue delay. At all other exchanges, at least 90% of the calls should be answered without undue delay.

At small exchanges operated in connection with other work, slower service may be adequate, but effort should be made to comply with the provisions of this rule. It is not intended that this rule shall mean that the average answering time on all calls should be delayed, for good service requires prompt answering of all calls. In large exchanges it should be possible to answer the majority of calls within three seconds except during periods of momentary peak loads. It is not contemplated that this rule can be observed during periods of emergency when an abnormal and unexpected volume of traffic occurs.

The Company itself does not contend that it has met these requirements.

The records of the Commission show that as of July 31, 1972, 8,404 persons protested in writing the adequacy of telephone services and the proposed increases in charges for services. In addition, many hundreds of witnesses in various parts of the State testified in protest. When it is considered that only a very small segment of the public undertakes the great inconvenience of protesting in writing, or of appearing at a hearing, that number becomes most significant. Inadequacy of telephone service is so widespread as to have become common knowledge and any local court would take judicial notice that service for long past, and presently, is not at the level required by law, by the rules of the Commission, and to which the customers are reasonably entitled. The protest as to the level of service is accompanied by the concomitant protest that the Company has been, and is, collecting charges not commensurate with the service rendered. In fact, the customers are being

made to pay unjust and unreasonable charges because the charges were authorized for adequate service. It is more reasonable to conclude that until such time as the service rendered meets the level of service required by law a reduction rather than an increase in charges is more in order.

Mountain Bell has had available the technical skill of Bell Laboratories, the material resources of Western Electric, the backing of AT&T, the highest of credit ratings, and at all times had sufficient funds to engage experts in all fields of knowledge. It would be absurd to assume under the circumstances that it could not have obtained, or did not obtain, over the years forecasts of the growing future needs for telephone service and projections of facilities which would be necessary to supply those needs. The evidence in the record does not explain the unacceptable inadequacy of service to which the customers of Mountain Bell have been subjected. Management either failed to obtain such forecasts and projections, or if obtained, failed to comply with their requirements.

It is urged in the press, as well as before the Commission, that the poor quality of telephone service is due to inadequate earnings of the Company. The tendered excuse is baseless. The level of service is not geared to the level of earnings under the law. Mountain Bell is unconditionally bound by law as a utility to provide such telephone service "as shall in all respects be adequate, efficient, just and reasonable." 115-3-1(2) CRS 1963. There is no exception. Otherwise, the customers would be subjected to a "floating" level of service depending on whether the level of earnings of the Company in the sole opinion of management is good, bad, or indifferent. This is not the law, and if it were the situation would be unacceptable. As the need for capital arose the Company having a triple A rating of its bonds could easily, and in accord with its duty, have obtained sufficient capital to timely provide facilities necessary to adequately meet the growing needs.

The majority decision wholly sidesteps these considerations and this issue, makes only token reference to the poor quality of service, and takes no action to provide relief.

Even should an increase be justified, the majority in deference to the law to protect the public interest should at least order any increase to become effective only <u>after</u> the level of service has reached the level required by the law and the Commission Rules Regulating the Service of Telephone Utilities. To do otherwise, as has been done, unjustly rewards and encourages the utility in its disregard of its duty to provide good service and forfeits the Commission's most effective means and leverage; i.e., the withholding of rate increases, to bring about the type of service legally required.

K.

EXCLUSIVE INTRASTATE OPERATION

Mountain Bell under one umbrella is carrying on intrastate telephone operations within each of the following states: Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming -- each regulated by its respective state public utilities commission under their respective state laws.

Substantial amounts of common expenses, approximately $20 million, for personnel and property used for the benefit of each state must be allocated in varying degrees largely on the sole judgment of management. Conflicts of interest between the managements of the several states and with the general management inevitably exist. These allocations could be substantially discriminatory and affect unequally the different states, and even the level of rates in the different states.

Time consuming procedures, reporting, supervision and substantial expenses are involved.

The process of determining rates for Mountain Bell is inherently very complex, technical, and burdensome. This hearing alone consumed 41

hearing days requiring 6,554 pages of transcript of testimony and thousands of pages of exhibits far more complex and technical than would otherwise be the case had but one state only been involved.

The criteria of determining the "attractiveness" of capital is actually the company's composite rate of profit to which the investor looks. To avoid discrimination between the states and have a valid composite rate of profit for the whole of Mountain Bell desired to "attract capital" the method and standards of determining the rate of return on equity, or profit, of each state would have to be the same. This is far from being the case; the facts are otherwise.

Hundreds of millions of dollars of capital must, from time to time, be acquired by Mountain Bell and because the whole of the Company is involved, and is so big, the amounts to be borrowed are so extremely large as to greatly narrow the number of lenders available. This would not be the case if debt capital had to be acquired by a company restricted to solely intrastate Colorado operations. The greater the number of available lenders, the greater is the competition, and greater is the opportunity for obtaining capital at lower interest rates.

The capital structure of a utility is of the greatest importance to the ratepayers as equity capital costs them at least twice as much as debt capital. Even a comparatively small variation in the proportion of debt capital to equity capital of Mountain Bell can mean millions of dollars in savings yearly to the ratepayers.

The Company strongly contends that Mountain Bell must at all times and at all costs maintain the highest possible "financial integrity" in order to attract capital and to attract capital at the lowest cost. Its financial integrity is actually based on its capital structure. With 7 state public utilities commissions regulating Mountain Bell, each operating under a different state law, each having different powers and duties, and each determining what the capital structure shall be, who is

to determine what is the proper capital structure? How can it be determined? This is an inherent and serious defect in regulating the Company under the circumstances.

If the intrastate telephone service in Colorado were provided by a company restricted exclusively thereto all these uncertainties, obstacles, expenses, defects in regulatory process, discriminations, and other burdensome complications would be eliminated. Even regulatory lag would be reduced.

The Commission in deference to its duty under the law to regulate Mountain Bell in the public interest should issue an order to the Company to show cause why it should not sever its Colorado intrastate operations from that of the other states to be carried on by a company restricted exclusively to such operations.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

HENRY E. ZARLENGO

Commissioner

Dated at Denver, Colorado, this
19th day of September, 1972.
hbp

ATTEST: A TRUE COPY

Harry A. Galligan, Jr., Secretary