(Decision No. 86103)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE PROPOSED INCREASED RATES AND CHARGES CONTAINED IN TARIFF REVISIONS FILED BY THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY UNDER ADVICE LETTER NO. 987.	))))))	INVESTIGATION AND SUSPENSION DOCKET NO. 867 DECISION AND ORDER OF THE COMMISSION ESTABLISHING NEW RATES AND TARIFFS

- - - - - - - - - -
December 20, 1974
- - - - - - - - - -

Appearances: Denis G. Stack, Esq. and Coleman M. Connolly, Esq., Denver, Colorado, for Respondent;

Leonard M. Campbell, Esq., William H. McEwan, Esq. and Suzanne Griffin, Esq., Denver, Colorado, for the Colorado Municipal League;

Lynn J. Ellins, Esq. and John P. Thompson, Esq., Denver, Colorado, for J. C. Penney Company, Inc.;

Rothgerber, Appel and Powers, by James M. Lyons, Esq., Denver, Colorado, for Sturgeon Electric Company and Sears, Roebuck & Company;

Jay Swearingen, Esq., Denver, Colorado, for Colorado Association of School Boards;

Jane Kardokus, Esq., Denver, Colorado, for Colorado Department of Education;

Richard L. Banta, Jr., Esq., Englewood, Colorado, for Cherry Creek School District No. 5 in the County of Arapahoe and State of Colorado;

Tucker K. Trautman, Esq. of the Legal Aid Society of Metropolitan Denver, Denver, Colorado, for Colorado Senior Action Committee;

Tucker K. Trautman, Esq.,
Michael L. Gilbert, Esq.,
Betty Nordwin, Esq., and
Carolyn Lievers, Esq., all of
the Legal Aid Society of
Metropolitan Denver, for
Darold and Amye Martin, Helen
Bradley, Laura Jones, Wilson
E. Thompson, Barbara Barner,
Coreen Patrick, Sonja Jones
and Priscilla Vigil;

Sander N. Karp, Esq., Denver,
Colorado, for Colorado Workers
Unity Organization;

Clark, Oates, Austin and McGrath, by
J. Nicholas McGrath, Jr., Esq.,
Aspen, Colorado, for The Board
of County Commissioners of
Pitkin County;

John P. Moore, Esq., Attorney
General of the State of Colorado,
John E. Bush, Esq., Deputy Attorney
General, and
John P. Holloway, Esq., Assistant
Attorney General, for the Regents
of the University of Colorado;

Harold S. Trimmer, Jr., Esq.,
General Counsel,
Maurice J. Street, Esq., Assistant
General Counsel, and
Clinton P. Swift, Esq., General
Attorney, Office of the General
Counsel, General Services
Administration, Washington, D. C.
for General Services Administration
and all other executive agencies of
the United States;

John E. Archibold, Esq.,
Oscar Goldberg, Esq., and
Bruce C. Bernstein, Esq.,
Denver, Colorado, Counsel
for the Commission.

I N D E X

INVESTIGATION AND SUSPENSION DOCKET NO. 867
Decision No. 86103

BY THE COMMISSION:

I

HISTORY OF PROCEEDINGS

On May 31, 1974, Mountain States Telephone and Telegraph Company (hereinafter referred to as "Mountain Bell," "the Company," or "Respondent") filed Advice Letter No. 987 accompanied by tariff revisions which would result in increased rates on most of its particular services.

On June 21, 1974, by Decision No. 85240, the Commission, on its own motion, pursuant to 115-6-11, CRS 1963, as amended, (1) set the tariff revisions filed by Mountain Bell -- pursuant to its Advice Letter No. 987 -- for hearing to commence on July 17, 1974, and (2) suspended the effective date of the tariff revisions filed by Mountain Bell under Advice Letter No. 987 until October 28, 1974, or until further order of the Commission. On October 8, 1974, by Decision No. 85812, the Commission further suspended the effective date of the tariff revisions filed by Mountain Bell until January 26, 1975, or until further Order of the Commission. Notice in accordance with the provisions of Rule 18 of the Commission's Rules of Practice and Procedure properly was given by Mountain Bell to its customers. Approximately 1,205 letters of protest to the proposed rate increases were received by the Commission. Approximately twelve letters were received supporting the proposed revisions.

Mountain Bell states that a number of the items included in Advice Letter No. 987 were included in the March 1, 1974, filing by Advice Letter No. 953 in Investigation and Suspension Docket No. 845. The Commission on April 24, 1974, by Decision No. 84907, rejected the tariffs filed pursuant to Advice Letter No. 953 and closed Investigation and Suspension Docket No. 845. In the same decision, the Commission also dismissed Mountain Bell's Application No. 27366 which requested this Commission to set the same for hearing and to determine the full revenue requirement of Mountain Bell.

Mountain Bell filed an Application for Rehearing, Reargument or Reconsideration in both Investigation and Suspension Docket No. 845 and Application No. 27366, which was denied by the Commission in Decision No. 85054. Mountain Bell appealed the aforesaid decisions to the District Court in and for the City and County of Denver (Civil Action Nos. 45524 and 45525). On July 23, 1974, the District Court affirmed Commission Decision No. 85054.

The following requested leave to intervene or become parties in this proceeding:

Date Request Filed	Intervenor
June 24, 1974	Cherry Creek School District No. 5
June 25, 1974	Sturgeon Electric Company, Inc. ("Sturgeon")
June 25, 1974	Sears, Roebuck & Company ("Sears")
June 28, 1974	Regents of the University of Colorado ("Regents")
July 1, 1974	Colorado Public Interest Research Group ("COPIRG")

Date Request Filed	Intervenor
July 1, 1974	Colorado Association of School Boards ("School Boards")
July 3, 1974	J. C. Penney Company, Inc. ("Penney")
July 9, 1974	Colorado Municipal League ("League")
July 9, 1974	CF&I Steel Corporation ("CF&I")
July 9, 1974	Darold & Amye Martin et al. ("Martin")
July 10, 1974	Colorado Workers Unity Organization ("CWUO")
July 10, 1974	Colorado Department of Education
July 10, 1974	General Services Administration ("GSA")
July 12, 1974	Board of County Commissioners, County of Pitkin ("Pitkin")
July 15, 1974	Colorado Senior Action Committee ("CSAC")

All the above-named persons were granted leave to intervene in this proceeding by the Commission. CF&I and COPIRG withdrew as intervenors, respectively, on August 8, 1974 and October 29, 1974.

After due and proper notice, the herein matter was heard by the Commission on the following dates at the following places:

(1) July 17, 1974 (Denver, Colorado) - prehearing conference.

(2) August 12, 13, 14, 15 and 16, 1974 (Denver, Colorado) - presentation of Mountain Bell's direct case and clarification of testimony and exhibits.

(3) October 8, 1974 at 7 p.m. (Denver, Colorado) - testimony of public witnesses.

(4) October 9, 1974 (Fort Collins, Colorado) - testimony of public witnesses.

(5) October 9, 1974 at 7 p.m. (Denver, Colorado) - testimony of public witnesses.

(6) October 11, 1974 (Pueblo, Colorado) - testimony of public witnesses.

(7) October 15, 16, 17, 18, 21, 22, 23, 24, 25, 29 and 30, as well as 31, 1974 (Denver, Colorado) - cross-examination with respect to Mountain Bell's direct case.

(8) November 1, 1974 (Grand Junction, Colorado) - testimony of public witnesses.

(9) November 8, 1974 (Durango, Colorado) - testimony of public witnesses.

(10) November 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27 and 29, 1974 (Denver, Colorado) - testimony of intervenors and Commission Staff witnesses, and rebuttal testimony of Mountain Bell witnesses.

The evening hearings of October 8, 1974 and October 9, 1974, the hearings on October 9, 1974 at Fort Collins, October 11, 1974 at Pueblo, November 1, 1974 at Grand Junction, and on November 8, 1974 at Durango were all held for the sole purpose of receiving testimony from public witnesses. However, public witnesses who desired to testify were also heard as the first order of business on all other hearing dates and at other times. A total of forty-six public witnesses appeared and testified on various hearing dates.

During the course of this proceeding, testimony was presented by Mountain Bell; Colorado Association of School Boards; Colorado Workers Unity Organization; Colorado Senior Action Committee; Colorado Department of Education; Colorado Municipal League; Sears, Roebuck & Company; J. C. Penney Company, Inc.; General Services Administration; Sturgeon Electric Company; members of the Commission Staff; and members of the public.

The transcript of testimony consists of thirty-seven volumes totalling 4,586 pages. A total of 102 exhibits was received into evidence. A list of the exhibits is attached hereto as Appendix A.

At the request of the League, the Commission took official notice of the fact that formal complaint proceedings before the Commission require 20 days notice, and a citation to answer before the matter is set for hearing.

The hearing in this proceeding concluded on November 29, 1974.

All parties in this proceeding were permitted to file statements of position, on an optional basis, on or before December 13, 1974. Statements of position were filed by:

The Board of Commissioners, County of Pitkin
Colorado Association of School Boards
Colorado Department of Education
Colorado Municipal League
Colorado Workers Unity Organization
General Services Administration (late filed)
Mountain Bell
Sears, Roebuck & Company
Sturgeon Electric Company
University of Colorado

Although not a party intervenor, the Telephone Answering Service of the Mountain States (TASMS) filed a "position statement" on December 13, 1974, which we will accept. The late filed statement of position of the GSA also will be accepted.

On October 16, 1974, the Colorado Municipal League filed a Motion for Reimbursement. On November 15, 1974, an Affidavit for Reimbursement was filed by Leonard M. Campbell, attorney for the Colorado Municipal League, and Affidavit for Reimbursement was filed by Kenneth G. Bueche, Executive Director of the Colorado Municipal League. Mr. Campbell's Affidavit states that the total fee, without appeal, is $17,240, and that after a deduction for attorneys' time related to municipal franchise taxes separately, the total fee will be $14,500. Mr. Bueche's Affidavit requests, in addition to attorneys' fees, $12,500 expert witness fees plus costs of $2,500, or a total of $15,000. In summary, the League requests the award of $29,500 consisting of $14,500 in attorneys' fees plus $15,000 for expert witness fees plus costs.

On October 29, 1974, a Motion for Awarding of Attorneys' Fees, Expert Witness Fees and Other Costs Incurred by Intervenor Colorado Workers Unity Organization was filed. On November 11, 1974, by oral motion made at the open hearing then in process before the entire Commission, the Colorado Workers Unity Organization withdrew its previously filed motion.

The herein matter has been submitted to the Commission for decision. Pursuant to the provisions of the Sunshine Act of 1972, and Rule 32 of this Commission's Rules of Practice and Procedure, the subject matter of this proceeding was first placed on the agenda for the open public meeting of the Commission held on December 10, 1974. At the recessed open public meeting on December 20, 1974, the herein decision was entered by the Commission.

II

DESCRIPTION OF THE COMPANY

Mountain Bell is a public utility engaged in the business of providing telephone utility service in both intrastate (that is, service wholly within Colorado) and interstate (service originating or terminating within the State of Colorado but originating or terminating in some other state) commerce. Mountain Bell is a subsidiary of the American Telephone and Telegraph Company ("AT&T") which has a number of other operating subsidiaries similar in nature and operation to Mountain Bell. AT&T owns approximately 88% of Mountain Bell's outstanding common stock. The remaining 12% of Mountain Bell's common stock is held by 29,437 shareholders (12,965 of whom own ninety-nine shares or less). The number (9,193) of common shareholders (Volume XXV, page 81) who live in the State of Colorado comprise approximately thirty-one percent of the total number.

Mountain Bell operates not only in the State of Colorado, but also in the States of Arizona, Idaho, Montana, New Mexico, Utah, Wyoming, and in El Paso County, Texas (Volume I, page 90).

In addition to its operating subsidiaries, AT&T has a manufacturing subsidiary which is the Western Electric Company, and a research subsidiary which is the Bell Telephone Laboratories. The entire group of companies, including AT&T, Mountain Bell, Western Electric, Bell Telephone Laboratories, and other operating companies, which are subsidiaries of the AT&T comprise what is known and generally referred to herein as the "Bell System".

With respect to its Colorado operations, Mountain Bell has been, and currently is, involved in the largest construction program in its history in order to facilitate the operation of its telephone communications facilities. This construction program has been undertaken in order to provide the facilities to meet expected demands for service and to provide adequate reserve capacity. Mountain Bell expended $180.0 million during the year 1973 and, on March 31, 1974, its construction work in progress amounted to $48,212,000. (Volume III, page 127; Volume XI, page 69).

Mountain Bell has also been engaged during the past two years in an extensive service improvement program and although service difficulties still exist, significant improvements have been made in reducing the time lags for installation of service, upgrading the service of rural customers, and increasing the efficiency of repair and operator service (Mountain Bell Exhibit No. 5).

III

GENERAL

The past several years have shown an increased awareness and interest in the rate-making functions of this Commission. Utility rates with respect to gas, electric and telephone services affect large segments of the public. In view of inflationary and other economic pressures, rate cases have become more frequent, and public participation in the rate-making process has increased.

The power of the Public Utilities Commission to regulate non-municipal utilities in the State of Colorado is grounded in Article XXV of the Constitution of the State of Colorado which was adopted by the general electorate in 1954. The Public Utilities Law, which currently is contained in Chapter 115 of the Colorado Revised Statutes (1963, as amended), implements Article XXV of the Colorado Constitution. More specifically, CRS 115-3-2 vests the power and authority in this Commission to govern and regulate all rates, charges and tariffs of every public utility subject to its jurisdiction.

A number of our decisions involving Mountain Bell have been subject to jurisdictional review *

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* Commission Decision No. 72385 is the subject matter of Colorado Municipal League and the City and County of Denver vs. the Public Utilities Commission of the State of Colorado and the Mountain States Telephone and Telegraph Company, 172 Colo. 188, 473 P.2d 960 (1970); Commission Decision No. 77230 is the subject matter of Mountain States Telephone and Telegraph Company vs. the Public Utilities Commission of the State of Colorado, et al., 513 P.2d 721 (Colo. 1973); Commission Decision No. 81320 is the subject matter of Cases No. 25965, Mountain States Telephone and Telegraph Company vs. the Public Utilities Commission; No. 25984 Secretary of Defense on behalf of the Department of Defense and all other executive agencies of the United States vs. the Public Utilities Commission and Mountain States Telephone and Telegraph Company; Case No. 25975, Colorado Municipal League vs. Public Utilities Commission and Mountain States Telephone and Telegraph Company. In these latter three cases, Commission Decision No. 81320 was affirmed by the Colorado Supreme Court on September 30, 1974, ___ Colo. ___, 527 P.2d 524 (1974) (Use of past test year by the Commission was proper; no demonstration that the PUC had departed from zone of reasonableness). Other recent cases concerning the Mountain States Telephone and Telegraph Company are: Mountain States Telephone and Telegraph Company vs. the Public Utilities Commission of the State of Colorado, et al., 176 Colo. 457, 491 P.2d 582 (1971) (Telephone company not entitled to preliminary injunction); Mountain States Telephone and Telegraph Company vs. the Public Utilities Commission of the State of Colorado, 177 Colo. 332, 494 P.2d 76 (1972) (Invalidity of telephone company request that trial court exercise equity jurisdiction of allowing higher rates pending final Public Utilities Commission determination); Mountain States Telephone and Telegraph Company vs. the Public Utilities Commission of the State of Colorado, 502 P.2d 945 (Colo. 1972) (Commission refusal to consider evidence that telephone customers suffered no excess charges during refund period is proper)

It first must be emphasized that ratemaking is a legislative function. The City and County of Denver vs. People ex rel Public Utilities Commission, 129 Colo. 41, 266 P.2d 1105 (1954); Public Utilities Commission vs. Northwest Water Corporation, 168 Colo. 154, 551 P.2d 266 (1963). It should also be emphasized that ratemaking is not an exact science, Northwest Water, supra, at 173. In the lodestar case of Federal Power Commission vs. Hope Natural Gas Company, 320 U.S. 591, 602-603 (1944) Justice Douglas, speaking for the United States Supreme Court, stated that the "ratemaking process under (The Natural Gas) Act, i.e., the fixing of 'just and reasonable' rates, involves a balancing of the investor and consumer interests." The Hope case further stands for the proposition that under "the statutory standard of 'just and reasonable', it is the result reached, not the method employed, which is controlling." See also Bluefield Water Works and Improvement Company vs. P.S.C. of West Virginia, 262 U.S. 679 (1923) wherein the United States Supreme Court defined the "comparable earnings" test for utility ratemaking.

The procedural process by which public utility rates are established should be explained. Under current law, when a public utility desires to charge a new rate or rates, it files the same with this Commission, and the proposed new rate or rates are open for public inspection. Unless the Commission otherwise orders, no increase in any rate or rates may go into effect except after thirty (30) days' notice to the Commission and the customers of the utility involved.

If the thirty (30) day period after filing goes by without the Commission having taken any action to set the proposed new rate or rates for hearing, the new rate or rates automatically become effective by operation of law.* However, the Commission has the power and authority to set the proposed new rate or rates for hearing, which, if done, automatically suspend the effective date of the proposed new rate or rates for a period of 120 days. **

As indicated above, under "History of Proceedings", the decision of this Commission entered on June 21, 1974, to set for hearing the proposed telephone tariffs filed by Mountain Bell had the effect of suspending their effective date until October 28, 1974, or until further order of the Commission. On October 8, 1974, pursuant to Decision No. 85812, the Commission further suspended the effective date of the tariffs filed by Mountain Bell under Advice Letter No. 987 for an additional period of ninety (90) days from and after October 28, 1974, or until January 26, 1975, or until further order of the Commission. The decision herein is the order which effective establishes the telephone rates for Mountain Bell.

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* Under CRS 115-3-4, most fixed utilities file rates on thirty (30) day notice; however, thirty (30) days is a minimum notice period, unless otherwise ordered by the Commission. A utility may select a longer notice period. In any event, if the Commission elects to set the proposed rate or rates for hearing, it must do so before the proposed effective date.

** CRS 115-6-11

IV

TEST PERIOD

In each rate proceeding, it is necessary to select a test period and then adjust the operating results of the test period for known changes in revenue and expense levels so that the adjusted operating results of the test period will be representative of the future. This affords a reasonable basis upon which to predicate rates which will be effective during a future period.

Mountain Bell takes the position that this Commission should use a future test period, but did not specify the particular future test period which it would recommend. Alternatively, Mountain Bell proposes a 12-month past test year commencing July 1, 1973, and ending June 30, 1974. The Staff of the Commission, the League, the GSA, and the School Boards took the position that the 12-month past test year period commencing April 1, 1973, and March 31, 1974, should be used by the Commission in establishing the rates.

The rates filed by Mountain Bell pursuant to its Advice Letter No. 987 which would effect rates and charges producing additional adjusted gross revenues of at least $36,720,400 were based upon a test year ending March 31, 1974. This test year information was verified by audit by the Staff of the Commission.

Prior to the commencement of public hearings in this docket in July of 1974, members of the financial staff of the Commission conducted and completed an audit of the books of the Company for the 12-month period commencing April 1, 1973, and ending March 31, 1974. The operating results of Mountain Bell for the second quarter of 1974 were not in final form at the time Commission staff personnel conducted the audit, and thus were not included therein. On August 27, 1974, Mountain Bell filed a motion with the Commission seeking an order of the Commission to its Staff to conduct a further audit of the books of the Company for the period from April 1, 1973, to June 30, 1974. This motion was set for hearing by the Commission on September 11, 1974, at which time M. Raymond Garrison, Supervising Financial Analyst of the Staff of the Commission, testified.

An audit of a 12-month test period ending June 30, 1974, could not be based upon a mere update of the first 9 months of that period to include the last quarter, but would require a staff examination of the entire 12-month period July 1, 1973-June 30, 1974, in order to comply with accepted auditing standards. Due to the amount of time consumed by the Staff in the major rate case involving the Public Service Company of Colorado, and the press of work concerning the instant docket and other pending rate proceedings, the undertaking of an additional audit by the financial staff of the Commission would have been a "near physical impossibility" (Volume VI, Pages 72-79 of the transcript). Mountain Bell's Motion for an additional audit was denied by the Commission at the conclusion of the hearing on the motion.

Although Mountain Bell proposed that the Commission use a future test year, the thrust of its case was based upon a past test year commencing July 1, 1973, and ending June 30, 1974. The policy of this Commission has been to select a test period reflective of known results rather than to choose a future test period which relies upon prophetic predictions. The impact of inflation alone, without more, does not persuade us that our general policy of using a past test year for rate-making is unsound. Also we do not select the past test year proposed by Mountain Bell for two reasons: (1) Mountain Bell's test year

figures are tainted in part by estimates of future results for which pro forma adjustments have been made in the test year figures (Mountain Bell Exhibit No. 1, Page 10, Column D (exchange reclassification) and Page 11, Column I (general services and licenses increases)), and (2) the fact that Mountain Bell's June 30, 1974 test year financial data had not been audited and verified by our Staff. Accordingly, we find that the most appropriate past test year period, reflective of the actual operating results of Mountain Bell, is April 1, 1973 to March 31, 1974.

V

RATE BASE

For purposes of setting Mountain Bell's rates in this proceeding, we find and adopt the Staff's average rate base of Mountain Bell for the period ended March 31, 1974, which is as follows:

1.	Utility Plant in Service	$744,574,000
2.	Plant Under Construction	$35,153,000
3.	Property Held for Future Use	$784,000
4.	Materials and Supplies	$5,483,000
5.	Less: Depreciation Reserve	$131,570,000
6.	Less: Deferred Income Taxes - Accelerated Depreciation	$17,703,000
7.	Rate Base (Lines 1 through 6)	$636,721,000

(Staff Exhibit No. 2(a))

Mountain Bell, in addition to presenting an average rate base, also presented a June 30, 1974 year-end rate base, as adjusted, of $699,321,000 (Mountain Bell Exhibit No. 1, Page 13). The League agrees with the concept, which we have adopted in this proceeding, of an average rate base for the period ending March 31, 1974, but it urges that plant under construction or construction work in progress be deleted.* As we have decided in previous cases, we find that it is both appropriate and necessary that construction work in progress be included in the rate base as long as operating income is credited with the entire amount of interest-charged construction during the year. There is no question but that a growing utility must regularly and routinely construct new plant for replacement of worn out or obsolete plant as well as additional plant in order to provide numerous and adequate services to the public. It is axiomatic that such investment in construction work in progress bears a cost of capital as do other investments One way of recovering this cost of capital is to capitalize these costs in the form of "interest-charged construction." By this method the recovery of these costs is postponed to the time when the plant is placed in service. Barring unusual circumstances, construction work in progress must be included in rate base if interest is not capitalized. A logical extension of this concept is that if construction work in progress is included in rate base, and interest-charged construction is credited to income, any remaining earnings

*The League's Statement of Position, filed December 12, 1974, uses the figure of $28,153,000 as average Plant Under Construction; presumably this figure is in error inasmuch as the League's Exhibit No. 3, as well as Staff Exhibit No. 2(a), uses the figure of $35,153,000.

deficiency created thereby represents plant under construction on which interest has not been charged or has been charged in an amount less than the cost of capital. To take the position that a utility is fairly compensated for its investment in construction work in progress by the amount of interest charged construction which is recovered in subsequent years through depreciation charges and return on the undepreciated portion, regardless of the amount of the interest charged to construction, is unsound.

If the amount of interest-charged construction equals the return on the construction work in progress, the effect as to revenue requirements would be zero and it would not matter whether the construction work in progress was or was not included in the rate base. This observation cannot be the basis for the reason that, if the effect is not zero, construction work in progress should be excluded. On the contrary, in such a situation where the effect is not zero, either the utility or the customer would be penalized. Accordingly, we find that construction work in progress ("Plant Under Construction") is a proper and necessary element of rate base since it is an investment devoted to providing utility service to the public. We might add that in a situation wherein an extraordinary construction project is undertaken which is not done in the usual course of business, the inclusion of such plant under construction may very well distort test year figures and thus be excluded from rate base. However, no showing has been made that the plant under construction included in the rate base in this proceeding would fall in that category. Our Supreme Court has held that whether or not plant under construction is included in rate base is a matter within the province of this Commission. Colorado Municipal League vs PUC, 172 Colo. 188, 204-205 (1970).

In order that Mountain Bell is perfectly clear as to what it may properly use as the rate at which interest is capitalized for the construction account, it should be at the same rate as the authorized rate of return which, as will be indicated below, is 9.2%. Of course, this rate was not the one used for the test year and although Mountain Bell requested an out-of-period adjustment from 8 to 9% (Mountain Bell Exhibit No. 1, Page 11, Column D) the matter is moot inasmuch as we have not adopted the June 30, 1974 test period proposed by Mountain Bell. The interest-charged construction rate that has been used herein for test year purposes was 8%.

— Witnesses for the League and the GSA and the Staff of the Commission advocated the use of an average rate base. Mountain Bell's witness Mr. Leake also stated that average rate base should be used to determine the proper rate of return (Volume XXXV, Page 98). It should be noted that although this Commission used a year-end rate base in the recently concluded Public Service Company of Colorado docket (Investigation and Suspension Docket No. 868, Decision No. 85724, Pages 9-13), we are not bound by our prior decisions by any doctrine similar to that of stare decisis (Rumney vs. Public Utilities Commission, 172 Colo. 314, 472 P.2d 149 (1970); B.D.C. Corporation vs. Public Utilities Commission, 167 Colo. 472, 448 P.2d 615 (1968); B&M Serv. Inc., vs. Public Utilities Commission, 163 Colo. 228, 429 P.2d 293 (1967)). Accordingly, we adopt the average rate base of $636,721,000.

VI

RATE OF RETURN

Return on Rate Base and Cost of Equity.

Having determined the average rate base as found above, we find, on the basis of the record made in this proceeding, that a rate of return on Mountain Bell's rate base of 9.2% and a rate of return of 12.04% to common equity is fair and reasonable, sufficient to attract equity capital in today's market, and commensurate with rates of return on investments in other enterprises having corresponding risks.

The problem of determining the cost of a utility's capital represented by common stock is a difficult and complex task, since the utility has no fixed contractual obligation to pay dividends to its common shareholders. To be sure, equity capital has a market cost in the sense that there is always a going rate of compensation which investors expect to receive for providing equity capital, but it is not a cost that is directly observable from the market or accounting data. While a purchaser of senior securities acquires a right to a contractual return, a purchaser of common stock simply acquires a claim on the Company's future residual revenue after overall costs, including the carrying cost of debt and preferred stock, have been met. This essentially venturesome claim is capitalized in the market price of the stock. Conceptually, then, the true cost of common stock is the discount rate equating the market price of the stock with a typical investor's estimate of the income stream including a possible capital gain or loss he might reasonably expect to receive as a shareholder.

A determination of a reasonable discount rate, adjusted as necessary for market pressure on new stock issues and underwriting costs, is implicit in every regulatory decision in which an allowance for a cost of equity capital is included as a component of the approved rate of return on a utility's rate base. Although theoretically, it might be said that there is no cost for utility capital raised by common stock since there is no contractual right of a common shareholder to receive any dividend return, it is patently obvious that no reasonable investor will entrust his capital funds to a utility, by purchasing common stock, unless he can expect to obtain a reasonable return on his investment.

As is so often the case in solving the complex problems in fixing a fair rate for a utility, we find ourselves faced with a mass of conflicting evidence, none of which is definitely conclusive. In such a situation, it is necessary for us to exercise our own judgment in weighing the evidence presented to us by expert and other witnesses and arrive at a rate of return that will meet the recognized legal tests, enable Mountain Bell to meet its increased costs, and provide the telephone service which is so important to our state and its economy. By its very nature, the determination of a fair rate of return is not subject to precise calculations and cannot be arrived at by any specific formulae, although the approaches taken by the expert witnesses in this proceeding can assist us in reaching a determination.

Dr. George Christy, who testified for Mountain Bell, adopted the approaches of examining competition for the investment dollar in the capital markets and determining that ratio of market value of Mountain Bell stock to its book value which would enable past investors in Mountain Bell to become whole with respect to the purchasing power of the invested dollar. He concluded that a market-to-book ratio of 1.5 would be necessary for this purpose (Mountain Bell Exhibit No. 4, Page 7) and that to obtain a current dollar return on equity to provide a Mountain Bell shareholder with a real 17-1/2% return on his investment it would take a 14% return on equity (Mountain Bell Exhibit No. 4, Page 8). We do not agree with the reasoning of Dr. Christy in that his approach would have the effect of compensating the Mountain Bell equity investor at the rate of 14% (which necessarily assumes some measure of investment risk) and at the same time remove the risk by restoring the purchasing power of past invested dollars through regulatory action. Although we agree that the market price of a utility company's stock should normally be above book by at least some percentage which will enable new issues of stock to be sold which will not dilute the embedded equity's book value, we do not agree that the market-to-book ratio should be so high, as suggested by Dr. Christy, to make up past losses. To do so would place this Commission in the role of a quasi-guarantor rather than making our regulatory action a substitute for competition.

Mountain Bell's witness Heckman approached the problem of return on equity from a variety of approaches, including the so-called discounted cash flow (DCF) method, comparable earnings method, the cost of debt in relation to equity, interest coverage, and market-to-book ratio. He concluded that a fair rate of return on equity would be 14%. We do not agree that the comparable earnings test used by Mr. Heckman is what the Supreme Court of the United States had in mind in the Bluefield case. Although Mr. Heckman agreed that Mountain Bell is not comparable to any one of Standard and Poor's 425 industrials, he concluded that Mountain Bell was comparable to the aggregate of Standard and Poor's 425 whose average rate of return on equity during the period 1965-1973 was 14%. Mr. Heckman also presented the average return on equity during 1965-1973 for Moody's AAA electrics which had earned an average of 14.7% on equity. It is difficult to imagine on what basis an aggregate of 425 industrials or six AAA electrics are comparable in risk to that of Mountain Bell. Mountain Bell failed to make "appropriate adjustments" for those companies which have dissimilar risks to those of Mountain Bell. (See Williams vs. Washington Metropolitan Area Transit Commission, 415 F.2d 922 C.A., D.C., (1968); cert. den. 393 U.S. 1081 (1969)).

With respect to the matter of comparable earnings and the DCF method with regard thereto, we give the most weight to the evidence adduced by Mr. Kosh who testified on behalf of the League and the GSA, while at the same time we decline to adopt all of Mr. Kosh's conclusions.

In applying the DCF method, Mr. Kosh relied not only on the experience of Mountain Bell and AT&T, but also on other Bell System subsidiaries whose stock is traded. Having demonstrated the similarity of Mountain Bell's Colorado operations to those of AT&T and the four other Bell operating companies whose stock is traded, thus establishing a similarity of risk, Mr. Kosh estimated the growth rates in dividends per share and dividend yields for those companies. On the bases of these analyses, Mr. Kosh found that the indicated bare equity compensation rate was in the range of 10% to 10 25%. However, Mr. Kosh realized that this "bare bones" cost of equity, the so-called capitalization rate, was not sufficient, and that if Mountain Bell were to earn no more than this rate on its book equity, the market price of its stock would tend to equal book value, and Mountain Bell would have to sell stock at less

than book value, thereby causing dilution. Mr. Kosh recommended, in order to protect potential equity offerings against dilution, a rate of return for the near term future that would keep the market price 20% above book value would be reasonable. On this basis, Mr. Kosh found that an 11.5% return to equity would be reasonable. The 11.5% return, however, is not the rate of return to Mountain Bell's book equity, but rather the effective rate of return on equity to Mountain Bell's major stockholders, to wit, AT&T. The rate of return to Mountain Bell's minority stockholders, based upon Mr. Kosh's calculations, would be only 10.68%.

In today's market, Mountain Bell stock has been selling at approximately 75% of its book value and the rate of return to Mountain Bell equity is close to what Mr. Kosh now recommends. Realistically, we find that it is necessary to adjust Mr. Kosh's figures upward in order to take into account the unsettled conditions in today's capital markets and the depressed state of utility stocks, including Mountain Bell.

We entertain no illusion that even our upward adjustment of Mr. Kosh's recommended rate of return to equity from 11.5% to 12.04% will have a significant impact in raising the market price of Mountain Bell stock, let alone lifting it to a level of 1.2 of book in the near term market. By the same token, it is also clear to us that Mr. Kosh's suggested rate of return of 11.5% likewise is too low to raise Mountain Bell stock to 1.2 of book in the near term.

Mr. Garrison, of the Commission Staff, testified concerning "interest coverage". Mr. Garrison found that earnings available for coverage compared to the interest expense resulted in a pretax ratio of 3.3. Mr. Garrison who has a long-time background in financial analysis, further found that Mountain Bell has been maintaining an interest coverage in the area of 4.25, or slightly above, since 1971, and that it would be logical to continue to do so. It should be pointed out that if the interest coverage is below 1, a company cannot pay its interest. The higher the interest coverage ratio, the lower the risk and the easier it is for such a company to sell debt, and also its common equity. Other things being equal, we find that a pretax interest ratio of about 4.25 is about the minimum that a company must have in order to induce investors to become either bondholders or stockholders.

Mr. Garrison adjusted the 4.25 pretax interest coverage ratio upward to 4.66 in order to compensate for the factor of erosion which Mountain Bell has experienced. For example, the erosion of the times interest earned coverage on a pretax basis averaged 8.73% for the two quarters ended March 31, 1974 and June 30, 1974. The reciprocal of 8.73% is 91.27%, which figure when divided into 4.25 equals 4.66.

Multiplying the total interest expense of $19,642,000 by 4.66, results in a figure of $91,532,000. After subtracting present available earnings from that sum of $64,856,000 and making necessary tax factor adjustments, Mr. Garrison found that the total revenue increase required by Mountain Bell, using a 4.66 times pretax interest ratio, would be $28,982,000 (Staff Exhibit No. 5, Page 2 of 3; Volume XXVIII, Pages 41-50).

Translating Mr. Garrison's pretax 4.66 interest coverage figures with respect to net operating earnings increase of $13,178,000 (Page 2 of Staff Exhibit No. 5) to rate of return on rate base, and rate of return on average equity, respectively, we find that the return on average rate base would be 9.53% and the return on average investor supplied equity would be 12.68%. Mr. Garrison's interest coverage approach obviously was not based on comparability, but rather it was an independent test to check rate of return to equity otherwise found. As already indicated, Mr. Garrison's revenue figure found by 4.66 pretax interest coverage translates to an average return on rate base of 9.53% and return to equity of 12.68% which we think is somewhat higher than we believe is necessary, but still is an indication that a rate of return to equity in the range of 12-13% is reasonable.

After weighing all the evidence with respect to rate of return on rate base and rate of return to equity, and after making our own adjustments with respect thereto, we find that the appropriate rate of return on rate base is 9.2% and that a fair rate of return to equity, which meets the recognized legal tests above enumerated, is 12.04%.

- Capital Structure.

One of the issues raised in this proceeding was that of Mountain Bell's capital structure. With respect to the debt-equity components of Mountain Bell's capital structure, we find that the equity portion at the end of 1973 was 52.01% and that the debt portion was 47.99% (Staff Exhibit No. 11). At the end of March 31, 1974, the percentage of debt with respect to Mountain Bell's Colorado intrastate operations was 48.88% and equity was 51.12% (Mountain Bell Exhibit No. 1, Page 41). We further find that the capital structure of Mountain Bell is reasonable.

As our Supreme Court stated in Mountain States Telephone and Telegraph Company vs. the Public Utilities Commission, 513 P.2d 721, 727:

> "Methods of raising capital should be left to the discretion of management unless there is a substantial showing that ratepayers are being prejudiced materially by the managerial options in the area of capital financing," (Emphasis supplied).

Mr. Kosh did advocate the imputation of the Bell System capital structure on Mountain Bell for purposes of ratemaking. He estimated that at the end of 1974, the Bell System capital structure will include 54.1% fixed charged capital (i.e. debt and preferred stock) and 45.9% common equity, and at the end of 1975, it will consist of 53.1% fixed charged capital and 46.9% common equity (Volume XXXII, Pages 54-55). Mr. Kosh reasoned that the advantage of debt in the capital structure must be recognized since debt costs less than equity, and the interest charges are deductible for income tax purposes. Therefore, he concluded the more of this lower cost capital (i e debt) a utility has, the less should be the cost of overall capital (Volume XXXII, Page 63). Since the Bell System capital structure contains more fixed charged capital than does Mountain Bell itself, Mr. Kosh reasoned that it would be advantageous to impute the Bell System capital structure to Mountain Bell.

Mr. Kosh recognized, however, that it is not always true that more debt in the capital structure lowers the cost of overall capital inasmuch as it must be judged whether the increase in the debt ratio does not so increase the cost of both debt and equity so as to overbalance the benefits of the larger proportion of debt, which, in his terminology, is the question of economy. Mr. Kosh also recognized the fact that if a capital structure has too much debt and a depression or recession occurs, the utility can be in real trouble by either going bankrupt or having its credit destroyed (Volume XXXII, Pages 223-225). He further recognized that expert opinion will differ as to the appropriate level of debt in a capital structure. It cannot be realistically assumed that if the debt portion of a utility's capital structure increases, that all other factors (including the cost of equity) will remain constant. Normally, as the proportion of debt rises in the capital structure, both the cost of debt and equity will go up. This is because lenders will loan money at a lower interest rate where a utility has less debt, but as the proportion of debt goes up, thus increasing the risk to the debt holder, a higher interest rate will be demanded. As the proportion of debt in the capital structure rises, the equity investor normally will also demand a higher rate in order to compensate him for the rate of risk due to the larger percentage of fixed obligations outstanding and the risk that the income will not be sufficient to pay both the fixed charges of debt and a fair return on equity. Thus, it cannot be properly concluded that debt is always, due to its tax deductibility, a more desirable means of financing.

It should also be pointed out that proponents of increased debt in the Mountain Bell capital structure ignore the fact that during times of capital shortage only the most credit-worthy borrowers can obtain financing. Utilities with a high debt ratio have experienced difficulty in the recent past in bringing new debt issues to market. Prudent management would suggest that a utility should not put itself in the position where it cannot raise capital to meet its service obligations. We do not agree that Mountain Bell should gradually raise its debt until it reaches a danger point where it would be unable to either borrow money or issue new equity. If that point is reached, we must recognize the fact that this Commission is without legal or economic power to compel investors (whether of debt or equity) to invest in Mountain Bell. Thus, we have to conclude that no substantial showing has been made in this proceeding that ratepayers are being materially prejudiced by capital costs flowing from Mountain Bell's current capital structure. Accordingly, we must decline to impute the Bell System or some other hypothetical capital structure to Mountain Bell for purposes of ratemaking in this proceeding for determining its capital costs.

VII

REVENUE REQUIREMENT

Net Earnings Increase and Gross Revenue Requirement.

Based upon average rate base for the year ended March 31, 1974, of $636,721,000 and a 9.2% rate of return on said rate base, we find the total required net operating earnings of the Company to be $58,578,332. We find the earnings deficiency, based on the test year, to be as follows:

Required Net Operating Earnings (rate base x 9.2%)	$58,578,332
Net Operating Earnings for the Test Year	$45,686,000
Indicated Earnings Deficiency	$12,892,332

In order to produce $1.00 of net operating earnings, a gross revenue increase of $2.1993 is required because of additional income and franchise taxes (Staff Exhibit No.3,Page 7). Accordingly, a gross increase in revenues of $28,354,106 is required to compensate for the net earnings deficiency of $12,892,332.

The derivation of the net operating earnings for the test year of $45,686,000 is as follows: The Staff pro forma net operating figure of $47,486,000 (Staff Exhibit No.3, Page 1, Line 27, first column designated "pro forma") is increased by $1,409,000 which figure represents the effect of guideline wages on net operating earnings from Staff Exhibit No. 1, line 27, column 0. These two figures add to $48,895,000. From that figure is subtracted $70,000 which is a Staff adjustment with respect to guideline wages which becomes inoperative since the effect of guideline wages is added back into the net operating earnings. The figure now becomes $48,825,000. From this figure the net operating earnings effect of the July, 1974, wage increase, or a reduction of $3,139,000, must be subtracted from the test year net revenue figure to arrive at a net operating earnings figure for the test year of $45,686,000.

Two Staff adjustments in the operating expenses of Mountain Bell merit comment. The Staff properly made an adjustment of tax accruals of $373,000, which, when further adjusted by federal and state income taxes, nets to a total net operating earnings tax adjustment of $185,000. Mountain Bell's adjustment of tax accruals, in our view, is not proper and should be decreased, as was done by the Staff, to recognize that a test period based on a fiscal year creates an imbalance in the accrual patterns of ad valorem and gross receipt taxes. The effect of this imbalance was to overstate the accrual of these items by $373,000 ($185,000 increase in net operating earnings after considering the income tax effect) which must be removed from Mountain Bell's proposed adjustment. We also disapprove Mountain Bell's assumption of a mill levy increase on ad valorem taxes which is based on estimates of increases rather than actual known increases (see Staff Exhibit No. 3, Page 3).

Another significant Staff adjustment to Mountain Bell's Colorado intrastate federal income taxes is an adjustment in the amount of $788,000. We agree with Mr. Richards of the Commission Staff who testified that Mountain Bell's federal income tax expense was based upon the fiction that Mountain Bell in fact paid federal income taxes of $17,636,000. This figure assumes that Mountain Bell paid federal income taxes as a single corporate taxpayer. In fact, Mountain Bell's federal income taxes are paid to the federal government through the medium of a consolidated tax return filed by AT&T. The result of a consolidated filing means that Mountain Bell's dollar contribution is some $788,000 less than what it reportedly would pay as a single taxpayer. This Commission has the power and authority to adjust the federal income tax expense of a utility which files a consolidated tax return as a member of an affiliated group. The Federal Power Commission vs. United Gas Pipeline Company, 386 U.S. 237 (1967); Re Northwestern Bell Telephone Company, 36 PUR3d 67 (S.D., 1960); Re Illinois Bell Telephone Company, 7 PUR3d 493 (Ill., 1955); Re Southwestern Bell Telephone Company, 2 PUR3d 1 (Ark., 1953); Re Southwestern Bell Telephone Company, 2 PUR3d 265 (City of Houston, 1953).

Transactions With Bell System Affiliates.

Western Electric Company.

Mountain Bell purchases a significant amount of its materials, supplies and equipment from Western Electric Company. Inasmuch as Western Electric is wholly owned by AT&T (which is the owner of approximately 88% of Mountain Bell's common stock) the Commission must examine the transactions between Mountain Bell and Western Electric in order to determine their fairness and the affect upon Mountain Bell's ratepayers.

The evidence in this record indicates that Western Electric's prices are substantially lower than prices which would be available by Western Electric's competitors. For example, products such as telephone apparatuses are sold by Western Electric at approximately 70% of the price offered by the lowest general trade competitive manufacturer. With respect to cable, Western Electric's price is 85% of the lowest general trade price; with respect to telecommunications supplies, the Western Electric prices are approximately 80% of the lowest general trade price. Similarly, with respect to assembled equipment, such as transmission equipment, Western Electric's price is approximately 80% of the lowest general trade price, and with respect to switching equipment, the Western Electric price is approximately 65% of the lowest general trade price (Mountain Bell Exhibit No. 9, Part K, Sheet 1. of 2.). This evidence supplements similar testimony received by the Commission in Investigation and Suspension Docket No. 717 in 1972 when the Commission fully explored the question not only of Western Electric prices but its profits and operating efficiency as well. Inasmuch as Western Electric is a manufacturing enterprise with increasingly higher risks than a utility, we find and conclude that Western Electric's profits are not unreasonable and cannot be characterized as exclusive. Since we further find that Mountain Bell purchases Western Electric's products at prices generally lower than comparable items from other suppliers, no adjustment in Mountain Bell's operating expenses with respect to its purchases from Western Electric is warranted.

General Service and License Fee.

During the test year ended March 31, 1974, AT&T received $2,279,000 for licensed contract services applicable to Colorado intrastate operations (Staff Exhibit No. 1, line 16, column R) pursuant to a license contract entered into between AT&T and Mountain Bell, dated August 5, 1930, under which AT&T agreed to provide a wide range of services and privileges to Mountain Bell to aid the latter in providing service in its operating territory (including the State of Colorado) for which Mountain Bell agreed to pay a fee based on a percentage of its local and total revenues less uncollectibles. The percentage specified in the contract is 2-1/2%, but AT&T since 1948 has accepted 1% from Mountain Bell and all licensing companies. Among the general area of service and privileges which AT&T agrees to provide to Mountain Bell are the cover use of patents, research and fundamental development and advice and assistance in general, engineering, plant, traffic, operating, commercial, accounting, plant, legal, administrative and other matters pertaining to the efficient, economical and successful conduct of Mountain Bell's business.

The method of payment under the licensed contract and types of service rendered did not change during the test period since this Commission's last investigation of the licensed contract in 1972 in Investigation and Suspension Docket No. 717 (see Decision No. 81320 dated September 19, 1972). We find that the licensing fee is a fair and reasonable charge for services furnished to Mountain Bell by AT&T, and the payments made are a necessary and proper business expense of the Company.*

Although evidence was received by the Commission of a recent change in the method of payment for services rendered under the licensed contract which became effective October 1, 1974 (based on monthly allocations of the cost of providing services to the Bell operating Companies) and since the new method of payment will vary, depending upon the volume of services rendered by AT&T during the period involved, we conclude that any adjustment to Mountain Bell's license fee operating expense during the test period would not be appropriate, especially in view of the fact that such allocations are based upon estimates and not upon actual expenses incurred in the test period by Mountain Bell.

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*A caveat is in order. Mountain Bell's Colorado intrastate share of charitable contributions paid by AT&T for the year 1973, amounts to $9,249.

The Commission does not allow donations and contributions as expenses which are included in the cost of service payable by the ratepayers of Mountain Bell. Theoretically, the $9,249 should be disallowed as part of the license fee paid by Mountain Bell to AT&T. However, evidence in the record would indicate that the expenses incurred by AT&T for its services amount to $3,673,871 for the year 1973, compared to the revenues received of $3,209,791, which would indicate that Mountain Bell receives in return from AT&T more than what it costs the latter. Accordingly, no adjustment need be made for the minimalistic amount of $9,249, to which reference has been made.

Business Information Systems.

On July 1, 1967, Mountain Bell, along with other Bell System operating companies, entered into an agreement with AT&T whereby Bell Laboratories (which is 50% owned by AT&T and 50% owned by Western Electric) develops business information systems (BIS) and programs to be used in the operation of the communications business as conducted by the Bell System operating telephone companies utilizing computer based methodology. The agreement provides for the apportioning of BIS costs among the participating operating companies and the long-lines development of AT&T. The apportionment of BIS costs is made in accordance with the relationship of the average of gross balance and operating expenses of the participating companies. That is, each participating company's costs are based annually on the average of (1) the percentage of its total gross telephone balance to the aggregate gross balance of all the participating companies as of the end of the preceding year, and (2) the percentage of each participating company's total operating expenses to the aggregate of the operating expenses of all the participating companies during the preceding year. At the end of 1972, Mountain Bell had 4.09% of the total gross balance of the operating companies and 3.85% of the total operating expenses. Its allocation percentage was 3.97% and its 1973 allocation of Bell Telephone Laboratories costs was $1,845,666.75.

Mountain Bell benefits under the BIS agreement due to the centralization, development and maintenance of the systems by Bell Laboratories and the ongoing operational benefits through use of these systems. By virtue of centralization, mechanized systems are made available and continually maintained for Mountain Bell at a fraction of what it would cost Mountain Bell to do itself. Operational benefits include reduction of operating costs, reduction in capital requirements, improved customer services, better workforce utilization and more accurate and timely information for management control. As an example, BIS products provide more accurate business records due to the elimination of many manual records, and, in some cases, higher service levels are achieved through faster response to customer requests due to improved information handling capabilities.

We find that the BIS agreement, in fact, benefits the ratepayers of Mountain Bell through the advantages of centralization and lower operating costs, and we further find that the allocation procedures are fair and reasonable and that the payments are a necessary and proper business expense of Mountain Bell.

Donations and Contributions.

Pursuant to established Commission policy, Mountain Bell has not included charitable donations and contributions in its operating expenses.

Advertising.

Test year mass media advertising expense incurred by Mountain Bell was $400,985 (Staff Exhibit No. 3, Page 6). These advertising categories are: long distance, directory assistance, business communications services, holidays, informative, service aid, directory closings and miscellaneous. Although some of this advertising expense was promotional in nature, it must be recognized that unlike gas and electric utility service, the addition of new customers normally will result in

increased revenues which spreads the costs of plant and other expenses of a larger number of subscribers. Other advertising expense such as advertising relating to long distance and directory assistance, for example, helps reduce costs by advising subscribers how to take advantage of long distance rates in off peak hours and by reducing directory assistance expense. Accordingly, we find Mountain Bell's advertising expenses are proper and of mutual benefit to the operating efficiency of the Company and its subscribers.

Out-of-Period Wage Adjustment

Mountain Bell entered into a new wage agreement with its non-management employees on July 18, 1974, the effect of which is to increase its non-management wage expense by $8,218,000 on a pro forma yearly basis. The sum of $2,160,000 for productivity is offset against the wage expense of $8,218,000 which results in a net increase in Mountain Bell's wage expense of $6,058,000 (Mountain Bell Exhibit No. 1, Page 11A.). The $6,058,000 wage adjustment, to which we give recognition, is outside of the test period, and it is true that in the past this Commission has looked with disfavor to out-of-period wage adjustments to test year operating expenses. In any event, we are persuaded that the case of Mountain States Telephone and Telegraph Company vs. Public Utilities Commission, 513 P.2d 721 (1973), compels us to take into account out-of-period wage and salary increases which have been contracted for and will take effect after the test year. Our Colorado Supreme Court has said, 513 P.2d at 724:

> "...(2.3) The relationship between costs, investment, and revenue in the historic test year is generally a constant and reliable factor upon which a regulatory agency can make calculations which formulate the basis for fair and reasonable rates to be charged. These calculations obviously must take into consideration in-period adjustments which involve known changes occurring during the test period which affect the relationship factor. Out-of-period adjustments must be also utilized for the same purpose. An out-of-period adjustment involves a change which has occurred or will occur, or is expected to occur after the close of the test year. An increase in the public utility taxes effective after the test year is a good example of such an adjustment. Wages and salary increases which have been contracted for and which will take effect after the test year must also be analyzed in the process of calculations. Such wage and salary increases may not exceed to any large extent the usual consequent increase in the productivity of the employers. If they do, which is generally the case in periods of uncontrolled inflation, then such out-of-period adjustment must be reckoned with in the rate fixing procedure. These are matters which must of necessity be of substantial concern to a rate fixing regulatory agency of the government when it considers all the evidence and all the factors available to it in a rate case..."

The League in its Statement of Position states that the net operating earnings of Mountain Bell appearing on Staff Exhibit No. 3 (Page 1, line 27) was $48,551,000. This figure, however, is based upon a year-end rate base, and does not take into account the out-of-period wage adjustment to which we have given recognition. The net operating earnings of Mountain Bell, giving effect to the out-of-period wage adjustment, is $45,686,000 (Mountain Bell Exhibit No. 1, Page 39, line 27, column E).

The League and the GSA urge that the out-of-period wage adjustment not be allowed due to the "confusion" in the record regarding productivity and the absence of other corresponding adjustments to revenue. Mountain Bell used a productivity factor of 3.1% which was based upon a 5-year (1969-1973) average. Mountain Bell's increase in total operating revenues, exclusive of rate changes, was divided by weighted man hours to obtain the increase in output per man hour (Mountain Bell Exhibit No. 1, Page 12). More specifically, the productivity figures for Mountain Bell were 6.5% in 1969; 3.8% in 1970; 4% in 1971; .2% in 1972 and an estimated .8% in 1973 (Volume XXV, Page 146). The GSA urges this Commission, in the event we allow an out-of-period adjustment for wages, to utilize the productivity figure used by the Communications Workers of America (CWA) in negotiation for wage increases. However, on cross-examination the witness who testified on behalf of the CWA was unable to explain how the 5.6% figure was determined. Accordingly, we cannot give that figure any weight. We find that the 3.1% productivity offset is fairly reflective of the actual productivity gains experienced by Mountain Bell over the past five years and will approve the productivity offset figure of $2,160,000.

Summary.

To summarize, we find that the required net operating earnings of the Company are $58,578,332, and that the net operating earnings for the test year (after giving effect to the out-of-period wage adjustment) are $45,686,000 which creates an earnings deficiency of $12,892,332. Applying an income and franchise tax factor of $2.1993 to the earnings deficiency of $12,892,332, we find a gross increase in revenues of $28,354,106 is required.

VIII

RATE DESIGN AND SPREAD OF THE RATES

Having determined that Mountain Bell requires a total gross increase in its revenues of $28,354,106, it is necessary to spread the revenue requirement increase among its various categories of ratepayers.

Mountain Bell in its Advice Letter No. 987, dated May 31, 1974, proposed revenue increases of $36,720,400 which is an average increase of 14.77% of its total revenues. However, in its proposal the rate increases are not uniform for each category of service. Of course, a simplified manner of effecting a general rate increase would be to raise each category by uniform percentage increase. However, Mountain Bell does not propose a uniform increase nor do we in the order to follow, inasmuch as revenue deficiencies and the relationships as determined by usage, cost, value and market considerations, in fact, are not uniform.

The setting of individual rates is as much an art as a science. A number of factors enter into a decision on the design rates. One factor, namely "the value of service" concept, has been used by this Commission and other regulatory commissions. This concept recognizes that, among broad classes of customers, there are some who have a greater need and use for telephone service and, accordingly, for whom the service has greater value. A historical example, of course, has been the difference in rates between business and residential customers.

The cost of service is also a significant factor in setting rates. The term "cost" may be used either in a relative sense or in an absolute sense. Thus a given service may have costs which can be isolated, are clearly identifiable, and to which a specific rate can be assigned, based on those costs. In other situations, because of the commonality of the use of equipment, specific costs cannot be readily assigned, but it can be determined that there are certain relative cost differentials. An example of this category can be found in the rate differentials between service provided in relatively close proximity to a central office or switching facility and service provided in a distant rural or semi-rural area.

Usage of the service also can be a significant factor and useful tool in setting rates. Usage can reflect both the value of service as well as the cost of providing service. Normally a subscriber with high usage obtains greater value from his telephone than the subscriber with low usage. As usage increases, the cost of providing service generally increases to some extent. However, it must be recognized that neither usage, cost, nor value of service can be considered as a sole determinant of any specific rate. Consider the example of the subscriber who makes one call during a month's time to a fire station to report a fire. If his house is saved as a result of the telephone call, such subscriber certainly receives greater value in a strict economic sense than the subscriber who makes dozens of strictly social or personal calls. The Commission must give consideration to these various factors in determining an appropriate rate design.

Finally, acting in our rate-making legislative capacity, we must also recognize what, perhaps, can be designated as "socio-economic" considerations. For example, if the cost of providing telephone service to a given business or residence customer is identical, the Commission must consider the social desirability of having some subsidy flow from the business customer to the residence customer. Likewise, in the case of rural customers, it may be necessary or socially desirable to have some subsidy

flowing to these users of the utility service from the urban customer. Similar comparisons could be made as to other types of service or classes of users. All of these considerations must be taken into account by the Commission in setting rates, and there is no single formula or weight which can be assigned to these various considerations in establishing rates. Thus, in one instance the Commission may well feel that usage is a more important criteria than cost or value of service, yet in another instance the converse may well be true. It is with these considerations in mind that we now turn to a discussion of some of the more pertinent rates which have been proposed by Mountain Bell in this proceeding.

Main Stations.

Flat Rate.

Mountain Bell proposed an increase of approximately 11.9% for main station service, or a revenue increase of $9,372,500. We have proportionately reduced this increase to $5,612,100 to reflect our overall reduction in the amount of additional revenues needed by Mountain Bell as compared to the 36.7 million dollar increase proposed by it.

For the average urban residential customer, the rate increase which we approve today is 35¢ rather than the 86¢ proposed by Mountain Bell.

Measured Rate - Business and Trunk

Mountain Bell proposed that the individual measured line business service be increased to equal 62.5% of the individual flat (non-companion) business line service (1FB). Although it is true that, based upon usage, the level of usage of the measured business line and the individual business line is almost equal (Mountain Bell Exhibit No. 6, Page 14), it is also true that the outward calling of a measured business line is slightly less than half that of the individual business line. Accordingly, we find that a more appropriate relationship between the individual measured business line and the individual flat business line is at the level of .5 rather than the .625 level as proposed by Mountain Bell.

We approve Mountain Bell's proposal to make the basic rate for measured trunks equal to .625 of the individual flat business line rate. In view of the fact that each individual trunk call is charged 8¢, which is in addition to the basic rate, we find that the .625 factor for measured trunk vis-a-vis the individual flat business line rate is a reasonable one.

Flat Trunks and Computer Access Lines.

At the present time the flat trunk line rate is 1.75 times the individual flat business line rate. Mountain Bell proposed that the rate for flat rate PBX trunks be increased from 1.75 to 2.0 times the 1-party flat business line rate. Mountain Bell also proposes that the computer access line rate similarly be increased from 1.75 times the individual flat business line rate to 2.0 times the individual flat business line rate. Mountain Bell witness, Mr. Wallace testified that based on total usage the flat trunk was 2.8 times the individual business line and the computer access lines are 3.9 times the individual business line usage. Intervenor Sears disputed the validity of the usage study conducted by Mountain Bell on statistical bases and also objected to a pricing methodology based on usage measured by duration alone and not taking into account the other factors of frequency, distance, or time of day/week.

Sears further argued that this study was not made for the purpose of structuring proposed rates and charges.

We recognize, of course, that any study conducted to sample usage is subject, to a degree, of statistical imprecision. However, we find that the usage study conducted by Mountain Bell is a reasonably valid indication of usage by various classes of service, and to that extent it may be considered by us. It is, of course, true that duration is not an exclusive measure of usage, nor can it be the sole determinative factor of pricing policy Depending upon the equipment involved, argument can be marshalled in support of the proposition that frequency is more important than duration, or conversely, that duration is more important than frequency. In the last analysis, the judgment factor must be exercised as to appropriate rate relationships. We agree with Mountain Bell that usage, measured by duration, is a significant factor in pricing policy relationship. We do not attach as much weight to it as does Mountain Bell for the simple reason that it must be recognized that inward calling is normally paid for by the calling party rather than the called party. Thus, for example, with respect to computer access lines, outward calling, compared to individual business lines in terms of duration, is less than the individual business line but inward calling is extremely high. We find that an appropriate relationship at this time for flat trunks and computer access lines vis-a-vis the individual business line rate, should be raised from $1.75 to $1.875.

Non-listed Directory Service.

At the present time Mountain Bell charges $1.00 a month for non-published service. Non-publication service is that wherein a customer's number is not published in the telephone book and cannot be obtained from directory service. Non-listed directory service is the non-listing of the customer's telephone number in the telephone book, but which number can be obtained from the directory assistance operator. At the present time no charge is made for this latter service. Mountain Bell proposes a 50¢ per month charge for this service. We find that this is a reasonable charge in view of the present $1.00 per month non-published service charge which is presently in effect

Companion Line Service.

Companion line service is that service whereby a customer has two or more numbers which are connected in rotary. In other words, if the first number called is busy, the call will automatically ring over to the next unbusy number. At the present time there is no special charge for this service. Accordingly, for example, the customer who has four lines not in rotary pays the same as a customer who has four line in rotary. Mountain Bell has proposed that companion lines be charged at a rate which is 1.25 times the single line rate for both business and residential. The usage study indicated that the companion flat business lines are used 1.7 times as much as the individual business lines. The outward usage of a companion business line is approximately 1.1 times the amount of outward usage of an individual business line (Mountain Bell Exhibit No. 6, Page 14) Inward calling for the companion line is significantly more in terms of duration than for the individual business line. We believe it is clear that a customer who has lines in rotary (companion lines) attains better utilization of his phone network than a customer who has an equal number of lines which are not in rotary and that this advantage differential should

receive some recognition in price.* Based upon the outward usages, respectively, of the individual business lines and the companion business lines, together with the utilization advantage, we believe that the companion business lines should be charged at 1.125 times the individual business line rate. The same factors just mentioned are also applicable to residential lines, both individual and companion.

Restoration of Service Charge.

Mountain Bell has proposed an increase of the restoration of service charge, based on cost of service, to $12.00 from $3.00. We find that this increase is proper. However, inasmuch as a customer who is disconnected and then has service restored will not only have to pay the restoration charge, but is also subject to payment of unpaid back charges and a deposit, the effect of this 3-part cost to the customer should be ameliorated with respect to those subscribers whose payment records have been satisfactory in the past. Accordingly, we shall order Mountain Bell to file a tariff which provides that customers whose payment records have been satisfactory be allowed to pay the restoration of service charge and any deposit which may be required over a 90-day period commencing with the first regular bill after restoration of service in equal installments.

Although installation charges are not a subject matter of this proceeding, Legal Aid Intervenors Martin et al, through their witnesses, brought to our attention the difficulty of impoverished elderly and disabled persons not receiving telephone service because of installation charges. In order to avoid the necessity of formal Commission action, we strongly urge Mountain Bell to file, within thirty (30) days of the effective date of this Decision, a 2MR customers' tariff which would permit those on public assistance who qualify for Medicaid benefits, and who are issued a Medicaid identification card, to amortize over a 12-month period, in equal installments, the charges which are presently made for installation of telephone service. This would have the effect of making telephone service available for approximately $6.00 per month, including installation charges, for these 2MR customers.

Taxes - Municipal, License, Gross Receipt, Franchise, and Occupational.

Mountain Bell has proposed to impose municipal, license, gross receipt, franchise and occupational taxes as an additional surcharge on those customers in areas wherein such taxes, impositions, or other charges are levied.

In our Decision No. 72385 dated January 7, 1969, involving Mountain Bell, we stated that it is not uncommon for a municipality to levy local franchise or license taxes upon a utility, which taxes are normally designed to compensate the municipality for the use of its streets and alleys by the utility. If these taxes are not surcharged to the customers living within the municipal boundaries, then these taxes are spread among all the customers of the utility who pay a proportionate share thereof. If these taxes are used to raise

* As with respect to flat trunks and computer access lines, Sears objects here to the reliance upon the Mountain Bell usage study. Our above comments apply

general revenue for the municipalities, a discriminatory situation might exist whereby a customer outside the municipal boundary of a particular city or town is in effect paying general taxes to the municipality. We also recognize, however, that persons who live outside the corporate boundaries of a municipality have occasion to use the facilities of a municipality such as its libraries, museums, and parks.

Further, if the taxes are for the compensation of the municipality for the use of its streets and alleys, which is generally the case, then this expense should be shared by all ratepayers and not those who happen to live within the incorporated limits of a town and city. We find that there is no evidence in the record which would lead us to deviate from our established policy that local franchise and license taxes amounting to not more than 3% of local revenue are reasonable charges for the municipal streets and alleys. Accordingly, we will not approve of the tariff proposed by Mountain Bell which would permit it to surcharge local charges to residents of municipalities.

The Regents, the Department of Education, and the School Boards contest both the legality and the reasonableness of adding a surcharge on municipal franchise taxes to educational entities such as the University of Colorado and School Districts. These intervenors have cited various constitutional, statutory and case law arguments for the proposition that public educational entities are exempt from municipal taxes. Mountain Bell argues, on the contrary, that the educational entities involved are not being taxed because the incidence of the tax is still on Mountain Bell for which it remains liable. Mountain Bell argues that the educational entities would merely be paying one of Mountain Bell's costs and that if the argument of the Regents, the Colorado Department of Education, and the School Boards were to be adopted, then it would be possible to argue further that they likewise be entitled to exclude from the rates which they pay, any portion of Mountain Bell's costs which would be associated with payment of Colorado State Income Tax or any ad valorem property tax. In view of our policy determination of disapproving Mountain Bell's proposed tariffs which would enable it to surcharge municipal subscribers with the various municipal taxes, we need not decide the legal arguments raised by the parties with respect to the legality of municipal tax surcharges.

Local Coin Telephone Services.

Mountain Bell has proposed to raise the rate for a local call from a public or semi-public telephone from 10¢ to 20¢ which would be an increase of 100%. Mr. Wallace did point out that the cost of a local public telephone call had increased and that the value of service of a local public telephone call had increased due to an expansion of the local calling area. However, at this time, Mountain Bell does not have what is commonly referred to as "Dial Tone First". Dial Tone First enables a caller from a public or semi-public telephone to reach the operator, directory assistance, and certain emergency services such as fire and police without having to deposit money in the telephone. We believe that prior to the increase in the public or semi-public local telephone rate, Mountain Bell should be prepared to have engineered "Dial Tone First" into its network. We believe it is imperative in this day and age, to have access to the operator and other emergency services and that a 20¢ coin rate would make this objective difficult in a substantial number of cases. We also recognize that the general body of ratepayers, to a certain extent, subsidize the 10¢ local public and semi-public telephone call.

Although the evidence is not conclusive as to the people who generally use coin telephones, a substantial percentage of local coin telephone calls are made by those who cannot or do not have a private phone of their own.

Both Intervenors Martin et al, and the School Boards strongly objected to the 100% increase in the coin telephone rates from 10¢ to 20¢. Evidence introduced by the School Boards would tend to bear out the fact that an increase in coin phone rates in schools would present severe problems for some children both with respect to access and cost. Accordingly, we shall not approve any increase in the local public or semi-public telephone rate at this time.

Local Message Rate for Measured Service.

Mountain Bell has proposed that for calls in excess of the basic monthly allowance for subscribers of measured business and residential service, the price per call be increased from 7¢ to 8¢. We find that this increase is justified in light of rising costs experienced by Mountain Bell.

Intervenors Martin et al, presented compelling evidence that the need for telephone service for the disabled and the elderly is critical, especially in view of their ongoing need for medical attention and the high percentage of elderly people who live alone. The possession of a telephone, especially for the disabled and elderly, may mean the difference -- in some cases -- between life and death, or between recuperation and disablement. Because of their susceptibility to emergency medical problems such as falls, strokes and sudden illness, and the psychological problems of loneliness, the elderly disabled constitute a sizeable group to which the telephone might be considered a necessity. As witnesses for these intervenors pointed out, the telephone is needed not only in emergencies, but is also needed in order to obtain medication, arrange transportation and appointments for regular physician visits, and to arrange for food. For many elderly and disabled persons, the telephone is the only contact with the outside world. One of the primary goals for serving elderly persons is to assure that they remain in their homes and maintain themselves as long as possible. Accordingly, many senior citizen organizations and social agencies are instituting telephone reassurance networks which are designed to check on older people who live alone. It is clear the telephone facilitates these efforts and will help in alleviating (if not eliminating, for some people) the unnecessary, costly and depressing institutionalization of these older persons.

Intervenors Martin et al, in response to the problems enumerated above, make two proposals: (1) that the Commission provide special lower rates to the elderly and disabled, and/or (2) that the basic monthly allowance for the 2-party measured residential (2MR) service be increased from 40 calls to 60 calls per billing period.

We find, on the basis of the testimony adduced in our hearings, that the basic monthly allowance of 40 calls does not adequately meet the needs of the average 2MR or 1MB customer. Accordingly, we shall order that the basic monthly allowance for 2-party measured residential (2MR) and 1-party measured business (1MB) service be increased from 40 calls to 60 calls per billing period.

Interconnect Arrangements.

Mountain Bell has proposed a service charge of $25 per line installation charge with respect to the connection of customer-provided communications systems, and also proposed an increased monthly rate with respect to such communications systems. These increases were vigorously protested by Intervenor Sturgeon Electric Company on the basis that no cost justification for such charges had been demonstrated. Although the evidence in this regard is inconclusive, we are not persuaded that Mountain Bell has met its burden of proof in showing that these interconnect charges are, in fact, fully cost based and, accordingly, we shall only approve service charges ranging from $15 to $20 as set forth in Appendix B and we shall not approve any increase in monthly charges.

Summary.

By the order hereinafter to follow, we shall permanently suspend the tariffs filed by Mountain Bell which accompanied its Advice Letter No. 987, dated May 31, 1974, and shall order Mountain Bell to file tariffs in accordance with our directives herein and as further delineated in Appendix B to the order. The result of our order herein will have the effect of increasing Mountain Bell's annualized revenues by approximately $28,354,000.

IX

MOTIONS FOR ATTORNEYS' FEES AND EXPERT WITNESS FEES

On October 20, 1974, the Colorado Workers Unity Organization, through its attorneys, filed a Motion for Award of Attorneys Fees, expert witness fees, and other costs incurred by it in this proceeding. On November 11, 1974, Colorado Workers Unity Organization's attorney made an oral motion during the course of the hearings herein to withdraw its theretofore filed Motion requesting reimbursement of attorneys fees and costs advanced for expert witnesses. The withdrawal of the Motion was granted by the Commission.

On October 15, 1974, in Decision No. 85817, the Commission entered its preliminary order regarding reimbursement fees and expenses incurred by Protestant-Intervenors. In that Decision the Commission found that it possesses the power and discretionary authority under the Constitution of the State of Colorado, applicable statutes, and pertinent case law decisions, to award fees and expenses incurred by Protestant-Intervenors. Our Decision further stated that in exercising such authority and power we would review and award said fees and expenses only upon certain terms and conditions among which any Protestant-Intervenor seeking such an award should request the same by written pleading on or before November 1, 1974, and be able to support by appropriate evidence that:

> "Any Protestant-Intervenor submitting a claim shall disclose in its motion and be able to support by appropriate evidence at a later hearing that:
>
> "The representation of the Protestant-Intervenor and the expenses incurred relate to general consumer interests and not to a specific rate or preferential treatment of a particular class of ratepayers.
>
> "The testimony, evidence and exhibits introduced in this proceeding by the Protestant-Intervenor have or will materially assist the Commission in fulfilling its statutory duty to determine the just and reasonable rates which Mountain Bell shall be permitted to charge its customers.
>
> "The fees and costs incurred by the Protestant-Intervenor for which reimbursement is sought are reasonable charges for the services rendered on behalf of general consumer interests."

The only Protestant-Intervenors who filed motions seeking the award of fees and expenses, to be assessed against Mountain Bell as an operating expense, were the Colorado Workers Unity Organization and the League. As indicated, the Colorado Workers Unity Organization by subsequent motion which was granted by the Commission withdrew its request for such an award, and, accordingly, only the Motion for Reimbursement filed by the Colorado Municipal League is pending our decision. Basically, the Colorado Municipal League requests reimbursements of its cost advance on behalf of general consumers of the telephone industry as follows:

"For rate of return expert testimony and costs expenses - $12,500 plus estimated costs of $2,500, or a total of $15,000.

"For legal fees and costs advanced, the sum of $5,108.22 previously paid, plus $4,772.35 incurred to on or about November 1, plus the expected additional amount through the proceedings of $3,595, plus transcript costs of $519 previously paid, plus $450 anticipated costs in connection with appeal, as well as $5,000 for appellate review, or a total of $19,444.57."

Without fees for appeal, the League requests $14,500.

Oral hearing on the Motion of the League was held on November 25, 1974, at which time Mr. Leonard M. Campbell, Esq., testified relative to the expert witness fees and costs and attorneys fees and costs. Testimony was also received from Mr. Kosh as to his basis for charging a fee. He stated that he entered into a flat fee arrangement with the League for the sum of $25,000 plus expenses.

The GSA entered into an agreement with the League. It agreed to assume responsibility for paying one-half of Mr. Kosh's $25,000 fee and one-half of his expenses (GSA is not seeking reimbursement before this Commission of its one-half of the fee and costs of Mr. Kosh). We find that the representation of the League, as a Protestant-Intervenor in this proceeding, was substantially limited to general consumer interests and not to a specific rate or preferential treatment of a particular class of ratepayers. Historically, the League has appeared in a number of major rate cases before this Commission. The League is a not-for-profit Colorado corporation having over two hundred members consisting primarily of municipalities whose telephone service is supplied by Mountain Bell. These municipalities have requested the League to represent the general interests of their citizens.

We further find that the testimonial evidence and exhibits introduced in this proceeding by the League have materially assisted the Commission in fulfilling its statutory duty to determine the just and reasonable rates which Mountain Bell shall be permitted to charge its customers and we make specific reference to the testimony of Mr. Kosh with respect to the appropriate rate of return. By "material assistance" we do not mean that we have necessarily adopted the particular methodology with respect to discounted cash flow or other theories advanced by Mr. Kosh. Nevertheless, we recognize that his testimony and exhibits did aid the Commission in arriving at the decision which we render today.

With regard to the specific fees and costs incurred by the League, we find that the attorneys' fees and costs advanced in the amount of $14,500 are reasonable charges. We cannot properly grant the League's request for $450 anticipated costs in connection with a possible appeal as well as $5,000 attorneys' fees for possible appellate review, for this, in our judgment, would be an encouragement to litigation which we cannot ethically countenance. Accordingly, the requested $5,450 in connection with possible appeal will not be allowed.

Mr. Kosh testified that his fee for services was not based upon any hourly or daily rate but was a flat fee of $25,000 half of which (or $12,500) is sought by the League by way of reimbursement. We note that Dr. Christy, the expert witness who appeared for Mountain Bell, charges $200 per day for time spent in hearings, and $150 per day for work done at his home or office. We find that a daily rate of $200 per day for hearing time is reasonable. Mr. Kosh testified for one day, and his assistant, Dr. Lurito, testified on one day and was present in the hearing room several other days. We estimate that a total of twenty days' hearing and non-hearing time is reasonable with respect to the participation of Mr. Kosh and Dr. Lurito in this proceeding. There is no evidence at this time in the record indicating what expenses were incurred by Mr. Kosh and Dr. Lurito; but expenses, up to a maximum of $1,000, would be reasonable and will be allowed. Accordingly, the Commission shall order that Mountain Bell pay to the League the sum of $19,500 consisting of the following:

a.	Attorneys' fees and costs	$14,500.00
b.	David Kosh and Associates fees	$ 4,000.00
c.	David Kosh and Associates expenses	$ 1,000.00 (maximum)

X

SUMMARY OF FINDINGS OF FACT

1. The proper test period in this proceeding is April 1, 1973 to March 31, 1974.

2. Mountain Bell's rate base for the period ended March 31, 1974, is $636,721,000.

3. The current capital structure of Mountain Bell is not unreasonable.

4. A fair and reasonable return on Mountain Bell's rate base is 9.2%.

5. A rate of return to common equity of 12.04% is fair and reasonable, sufficient to attract equity capital in today's market, and commensurate with rates of return on investments in similar enterprises having corresponding risks.

6. A total gross increase in revenues required is $28,354,106.

7. To obtain the increased revenues of $28,354,106, rates should be increased for the various classes of service as set forth in Appendix B attached to this Decision and Order.

8. The League represented general consumer interests in this proceeding and introduced testimonial evidence and exhibits which materially assisted the Commission in fulfilling its statutory duty to determine just and reasonable rates which Mountain Bell shall be permitted to charge its subscribers.

9. The attorneys' fees and costs incurred by the League, to the extent of $14,500.00 are reasonable.

10. The expert witness fees and costs incurred by the League to the extent of $5,000 are reasonable.

XI

CONCLUSIONS ON FINDINGS OF FACT

Based upon all the evidence of record in this proceeding, the Commission concludes that:

1. The existing rates and tariffs of Mountain Bell do not, and will not in the foreseeable future, produce a fair and reasonable rate of return to Mountain Bell.

2. Such rates and tariffs presently in effect are not, in the aggregate, just and reasonable or adequate, and, based upon the test period ending March 31, 1974, the overall revenue deficiency for Mountain Bell is $28,354,106.

3. Mountain Bell should be authorized to file new rates and tariffs that would, on the basis of the test year conditions, produce additional revenues equivalent to the revenue deficiency stated above, spread among its ratepayers in the manner set forth in Appendix B attached to this Decision and Order.

4. The rates and tariffs, as ordered herein, are just and reasonable.

5. The Motion of the League for attorneys' fees and costs and for expert witness fees and costs should be granted in part, in accordance with our findings above.

An appropriate Order will be entered.

O R D E R

THE COMMISSION ORDERS THAT:

1. The rates and tariffs accompanied by Advice Letter No. 987, filed by the Mountain States Telephone and Telegraph Company, be, and the same hereby are, permanently suspended.

2. The Mountain States Telephone and Telegraph Company be, and hereby is, ordered to file new rates and tariffs to produce approximately $28,354,106 in increased revenues as more specifically set forth in Appendix B which is attached hereto and made a part hereof.

3. The rates and tariffs provided for in Paragraph 2 shall be filed by Mountain States Telephone and Telegraph Company after the twenty-first day following the effective date of this Order, but no later than the thirtieth day after the effective date of this Order, to become effective on not less than one (1) day's notice. Notice required hereby shall be given in the manner prescribed by CRS 1963, 115-3-4, as amended, with additional notice required only to the parties herein. The filing of all the new rates and tariffs provided for herein shall reflect the effective date of the various schedules and the authority for filing under this decision.

4. The Motion filed by The Colorado Municipal League for the award of attorneys' fees and costs and expert witness fees and costs is granted in part.

5. The Colorado Municipal League be, and hereby is, ordered to file with this Commission within thirty (30) days from the effective date of this order a verified statement or affidavit setting forth the expenses incurred by David A. Kosh and Associates in connection with this proceeding and which have been paid by it, and a copy of said verified statement or affidavit shall be mailed or delivered to the counsel of record of the Mountain States Telephone and Telegraph Company.

6. Within sixty (60) days of the effective date of this Order, Mountain States Telephone and Telegraph Company be, and hereby is, ordered to remit to Colorado Municipal League the sum of $18,500.00, plus one-half of the amount of the expenses incurred by David A. Kosh and Associates in this proceeding and paid by the Colorado Municipal League, but not to exceed, with respect thereto, the sum of $1,000.00.

7. All pending Motions not previously ruled upon by the Commission or by the Order herein, be, and hereby are, denied.

This Order shall be effective forthwith.

DONE IN OPEN MEETING the 20th day of December, 1974.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

EDWIN R. LUNDBORG

HOWARD S. BJELLAND

Commissioners

I am unable at this time to participate in the decision, a copy of which was given to me 3 days ago. The matters involved required 37 days of hearing, are complex and involved, and of utmost importance to the utility and the public. Voluminous briefs have been filed within the last week. I have not had sufficient time within which to fully consider the decision and the briefs. A written decision on my part will follow.

HENRY E. ZARLENGO

Commissioner

(SEAL)

ATTEST: A TRUE COPY

Harry A. Galligan, Jr.
Secretary

MOUNTAIN BELL EXHIBITS

Exhibit No.	Description
1.	A 38-page exhibit consisting of various charts, tables, and statistics associated with testimony of Mr. N. W. Leake.
1a.	A 15-page exhibit setting forth for various periods of time a ratio (annual basis) of net operating income plus interest charged construction to average net book cost of telephone plant.
2.	A 5-page exhibit consisting of pages 2A through 2F associated with testimony of Mr. J. I. Boggs.
3.	A 21-page exhibit consisting of various charts, tables and statistics associated with testimony of Mr. J. W. Heckman.
4.	An 8-page exhibit consisting of various charts, tables, and statistics associated with testimony of Mr. George A. Christy. Page 3 of the exhibit is subdivided into pages 3A, B, C and D.
5.	A 2-page exhibit entitled "Mountain Bell - Colorado, Service Summary."
6.	A 21-page exhibit consisting of various charts, tables and statistics associated with testimony of Mr. L. A. Wallace.
7.	An 8-page exhibit consisting of various charts, tables and statistics associated with testimony of Mr. Robert W. Heath.
8.	An exhibit consisting of Parts I through VII associated with testimony of Mr. Clyde S. Thompson.
9.	An exhibit consisting of Parts A through K associated with testimony of Maureen A. Smith.
10.	Testimony of Frank L. Schmitt, and Parts A, B and C, thereto.
11.	An exhibit entitled "Example of the Effect of Additional Income on Income Taxes."
11a.	An exhibit entitled "Mountain Bell, Colorado Intrastate Operations, Income Statement - Expense Pro Forma Adjustment."
12.	Chart entitled "DBA Series Loop."

MUNICIPAL LEAGUE EXHIBITS

Exhibit No.	Description
1.	Notice by Mountain Bell dated May 31, 1974 to customers of proposed rate increase.
1a.	Attorney General of Colorado Opinion No. 74-0035, dated September 3, 1974.
2.	Affidavit of Norman W. Leake, in one page only, viz. page 5.
3.	Rate Base of Mountain Bell per PUC Decision No. 81320; also identified as Attachment No. 1.
4.	List of Organizations and Amounts of Contributions received; also identified as page, -2-.
5.	Advertising Expense, Account 642, Year Ended March 31, 1974; also identified as Attachment No. 4.
6.	Colorado Intrastate, Mountain Bell, Interest Rates; also identified as Attachment No. 5.
7.	Third Quarter Report of Mountain Bell, dated October 1, 1974.
8.	A 3-page exhibit entitled "Market Dip Creates Balance Sheet Bargains."
9.	"The Fortune Directory of the 500 Largest Industrial Corporations."
10.	A 5-page exhibit pertaining to charges and payments by Mr. Roy L. Jansen.
11.	Memo dated 7-29, and charges for S. H. Foss.
12.	A series of correspondence between Mountain Bell and City of Denver, re: Denver General Hospital.
13.	An exhibit consisting of 5 tariff sheets.
14.	PUC Decision No. 72385 dated January 7, 1969.
15.	Statement of Position by Pitkin County Board of Commissioners.
16.	Agreement between Greenwood Village and Mountain Bell dated March 9, 1972.
17.	Resolution No. R-74-52 by City of Arvada dated August 19, 1974.
18.	Resolution No. 4 of City Council of City of Cortez dated July 9, 1974.
19.	Resolution of Alamosa City Council dated April 17, 1974.
20.	Affidavit of Reimbursement by Kenneth G. Bueche.
21.	Affidavit for Reimbursement by Leonard M. Campbell.
22.	Various pages of testimony from Transcript, Volume XXXII.

STAFF EXHIBITS

Exhibit No.	Description
1.	"Colorado Intrastate Income Statement, Year Ended March 21, 1974", for Mountain Bell.
2.	"Study for Chuck Miller."
2a.	"Colorado Intrastate Operations Rate Base Summary, Year Ended March 31, 1974", for Mountain Bell.
3.	A 7-page exhibit consisting of Income Statement for Mountain Bell for Year Ended March 31, 1974, with adjustments and explanations thereto.
4.	NARUC Pamphlet entitled "Allocation of American Telephone and Telegraph Company Federal Income Taxes 1973."
5.	A 3-page exhibit, computing Return on Average Equity and Return on Year End Equity.
6.	Summary of Filed Tariffs and Revenue Effects.
7.	A 6-page exhibit entitled "Main Stations - Measured Rate (Business and Trunks)."
8.	A 6-page exhibit on Toll Calls.
9.	Proposals on Local Coin Telephone Service.
10.	Proposals on Local Messages.
11.	"Mountain Bell Composition of Capital, 1973."
12.	Mountain Bell Information Request 115 from Commissioner Zarlengo.
13.	Mountain Bell Information Request 117 from Commission Staff (in 2 pages).
14.	Mountain Bell Information Request 119 from Mr. Archibold.
15.	Mountain Bell Information Request 122 (in 2 pages).
16.	DCF Analysis, Utilities Issuing Stock in October.
17.	Mountain Bell Information Request 106 from Mr. Bernstein.

GSA EXHIBITS

Exhibit No.	Description
1.	"Telephones - End of Period."
2.	Page 1 - "Growth Rate of Growth Revenue Excluding Rate Increases Per Telephone Since 1968," Page 2 - "Value of Rate Increases Since Test Year 1967."
3.	A 3-page exhibit on "Analysis of Financial Statements."
4.	"P-E Ratios from Moody's Stock Survey September 9, 1974."
5.	"Return on Equity Aaa Electrics 1965-1973."
6.	A 2-page exhibit entitled "Backup Numbers - DCF Calculation."
7.	Study of David A. Kosh, re: Fair Rate of Return.

SEARS - PENNEYS EXHIBITS

Exhibit No.	Description
1.	A pamphlet entitled "Companion Line Service."
2.	"Terminology."
3.	"Mountain Bell Company, Line Services to be Studied".
4.	"Rates and Charges - Connection of Customer - Provided Computer and/or Computer System Equipment for Data Transmission and/or Reception
5.	"Present and Proposed Rates for Service to Trunks and Computer Ports."
6.	"Exhibit of Lee L. Selwyn."
7.	"Point of Sale."
8.	"Admin. Message/Order Collection Network".
9.	"Credit Inquiry System."
10.	Mountain Bell Letter Dated November 8, 1974, to Mr. Art Ruff.
11.	Mountain Bell Information Request 123 from Mr. Lyons.
12.	Deposition of Arthur C. Brandon.
12a.	U. S. Patent.
13.	Deposition of J. A. Peister.

COLORADO WORKERS UNITY ORGANIZATION EXHIBITS

Exhibit No.	Description
1.	Letter to the Public Utilities Commission by President, Denver Local, American Postal Workers Union.
2.	Letter dated November 5, 1974 signed by Charles W. Carter, National Vice President, American Federation of Government Employees.
3.	Leaflet entitled "People Unite: Stop the rate hike."
4.	Manila folder containing numerous signed petitions.

DAVISON EXHIBITS

1.	Letter dated November 6, 1974, to the Public Utilities Commission signed by Brenda G. Johnston.
2.	Letter dated November 7, 1974 to the Public Utilities Commission by Ruth L. Mason.

SQUIRES EXHIBITS

1.	Petition by Colorado Motel Association.

COLORADO DEPARTMENT OF EDUCATION EXHIBITS

1.	"Authorized Revenue Base for Colorado School Districts - 1975 Budget Year."

STURGEON ELECTRIC COMPANY EXHIBITS

1.	Estimated Cost Data, CD7, CD8, CD9.
2.	Estimated Cost Data, CDH.
3.	Memorandum in 3 pages signed by Keith Nesladek, dated February 5, 1974.
4.	Memorandum in 3 pages signed by Keith Nesladek, dated October 24, 1973.

COLORADO ASSOCIATION OF SCHOOL BOARDS EXHIBIT

1.	PUC Decision No. 80636, dated June 26, 1972.

ANSWER INC. EXHIBITS

1.	"Summary of the Effect of Proposed Mountain Bell Rate Increase."
2.	Letter dated June 7, 1974, addressed to Answer - All Secretarial Service.

MARTIN ET AL EXHIBITS

1.	Denver Usage Statistics
2.	"Revenue Effect Increasing Call Allowance - 2MR."
3.	"Survey of Old Age Pensioners and Needy Disabled Persons."
4.	Mountain Bell Information Request 124 from Mr. Trautman.

COPIRG EXHIBITS

Exhibit No.	Description
1.	Mountain Bell Letter dated July 26, 1974, signed by Mrs. A. Pietro.
2.	Mountain Bell Letter dated July 15, 1974, signed by C. Pankow.

HESSLER EXHIBIT

1.	Series of 3 bills.

MASTERS EXHIBIT

1.	List of signatures by elderly persons living on low incomes.

PEDOTTO EXHIBIT

1.	Article by Denver Post Staff Writer entitled "PUC's Bjelland Issues Plea for Fairness to Mountain Bell."

WEISS EXHIBIT

1.	Letter dated June 27, 1974, addressed to the Public Utilities Commission.

PUEBLO CHAMBER OF COMMERCE EXHIBIT

1.	Statement to the Colorado Public Utilities Commission.

MAC FARLANE EXHIBIT

1.	"Lesson 41 - Some General Present-day Problems."

COMMUNICATIONS WORKERS OF AMERICA EXHIBIT

1.	Testimony of Edmond F. Bishop.

SUMMARY OF TARIFFS AND REVENUE EFFECTS

	ITEMS	TARIFF REFERENCE	REVENUE EFFECT (000) ROUNDED
1.	Main Stations	Local Exchange	
	A. Flat Rate	General Exchange	5,701.7
	B. Measured Rate	Sections 1,5,6,7	796.6
	C. Semipublic Coin	12,14,17,20,21	422.8
	D. Locality Rate Areas	22,23,24,25,29	1.8
	E. Urban Zone Rate Areas	31,34 and 40	24.1
	F. Flat Trunks and Computer Access Lines	Private Line	1,775.7
2.	Toll		
	A. LDMTS	LDMTS	9,685.0
	B. WATS	WATS	304.4
	C. METROPAC	Intercity Services	30.2
3.	Nonlisted Directory Service	General Exchange Section 9	280.0
4.	Companion (Rotary) Line Service	Local Exchange General Exchange Section 15	1,755.0
5.	Restoration of Service Charges	General Exchange Section 19	367.0
6.	Service Charges		
	A. Private Line	Private Line	157.4
	B. Noncontinuous Property Extensions	General Exchange Sections 14 and 15	89.9
7.	Taxes	General Exchange Section 20 WATS	000.0
8.	Local Coin Telephone Service	General Exchange Sections 18 and 24	000.0
9.	Extended Local Service Area Increments	Local Exchange	419.6
10.	Local Messages	Local Exchange General Exchange Section 6	110.2
11.	Extension Stations	General Exchange	
	A. Business	Sections 6,11,17	444.9
	B. Residence	25,36 and 40	667.0
12.	Additional Directory Listing	General Exchange Section 9	69.2

13.	Special Assemblies and Special Systems and Services	General Exchange Section 35 and Special Assemblies	294.0
14.	Supplemental Equipment	General Exchange Section 26	742.8
15.	Interconnection Agreements	General Exchange Section 17	22.4
16.	Touch-Tone	General Exchange	
	A. PBX	Section 39	76.8
	B. Residence - Business	Special Assemblies	203.4
17.	Secretarial Bureau Service	General Exchange Section 29	104.7
18.	Multiline Telephone Systems	General Exchange Section 36	2,096.8
19.	PBX Service	General Exchange Section 6	664.7
20.	Line Mileage Charges	Private Line	
	A. Private Line Service	Local Exchange	586.8
	B. General Exchange Service	General Exchange Sections 5,6,12,14,25, 26,29 and 36	521.9
	TOTAL		$28,416.8*

*Differs from $28,354.1 due to rounding in rates. Difference is .22%.

DETAILS OF TARIFFS AND REVENUE EFFECTS

The Commission approves all proposed changes with the following exceptions:

1A. Flat Rate Main Stations

All the rates proposed by the Company in this category are approved, with the exception of those set out below which shall be refiled as set out.

Rate Group	Item	Average Month Period Ending 3-31-74	Rate Increase	Approved Rate	Revenue Effect
I	1FR	11,197	.20	4.70	26,873
	2FR	2,579	.15	3.65	4,642
	4FR	47	.15	3.10	85
II	1FR	12,746	.20	5.00	30,590
	2FR	2,543	.15	3.90	4,577
	4FR	-	-	-	-
III	1FR	14,030	.25	5.35	42,090
	2FR	2,902	.20	4.20	6,965
	4FR	58	.15	3.60	104
IV	1FR	22,313	.25	5.65	66,939
	2FR	8,115	.20	4.45	19,476
	4FR	155	.20	3.90	372
V	1FR	12,949	.30	6.00	46,616
	2FR	5,375	.25	4.75	16,125
	4FR	22	.20	4.15	53
VI	1FR	36,288	.30	6.30	130,637
	2FR	14,971	.25	5.00	44,913
	4FR	377	.20	4.40	905
VII	1FR	28,497	.35	6.65	119,687
	2FR	6,601	.25	5.25	19,803
	4FR	-	-	-	-

VIII	1FR	68,226	.35	6.95	286,549
	2FR	7,819	.25	5.50	23,457
	4FR	414	.20	4.90	994
IX	1FR	-	.35	7.25	-
	2FR	-	.30	5.80	-
	4FR	-	.25	5.20	-
X	1FR	376,265	.35	7.55	1,580,313
	2FR	31,110	.30	6.05	111,996
	4FR	1,285	.25	5.45	3,855
				Total	$2,588,616
			Total of Other Increases		$3,113,106
				Total Increase	$5,701,722

1B. Measured Rate

In this category, the Commission approves the following rate structure:

1. Measured Business (1MB)	= 0.50 X (1FB Rate Appropriate to the Rate Group).
2. Joint User - Measured or Semipublic (JUM)	= 0.50 X (1MB Rate Appropriate to the Rate Group).
3. Measured Trunks (TMB, TM2, THB, TTT, THF, SQZ, NQS, MSS)	= 0.625 X (1FB Rate Appropriate to the Rate Group).
4. Joint User Measured Rate PBX or Semipublic PBX	= 0.50 X (Measured Trunk Rate Appropriate to the Rate Group).

This rate structure is set out in detail in Staff Exhibit No. 7 which is part of the record in this docket.

REVENUE EFFECT = $796,645

1F. Flat Trunks and Computer Access Lines

In place of the company's proposal, the Commission approves the rate for flat-rate trunks and computer access lines as set out below:

Rate for Flat Rate Trunks and Computer Access Lines	= 1.875 X (1FB Rate Appropriate to the Rate Group).

REVENUE EFFECT = $1,775,748

2A. Toll - Long Distance Message Telecommunications Service

The Commission approves the rate structure proposed, but declines to allow any allowance for repression.

REVENUE EFFECT = $9,685,000

4. Companion (Rotary) Line Service

In place of the company's proposal, the Commission approves the rate set out below, and also declines to allow any repression effect in calculating the revenue effect.

1. 1-Party Flat Business. Companion Line Rate (COM/B)	= 1.125 X (1FB Rate Appropriate to the Rate Group).
2. 1-Party Measured Business Companion Line (COM/M)	= 0.50 X (Rate for COM/B in that Rate Group).
3. 1-Party Flat Residence Companion Line (COM/R)	= 1.125 X (Residential Rate Appropriate to that Rate Group).

REVENUE EFFECT = $1,754,988

5. Restoration of Service Charge

The Commission approves the restructuring proposed, but directs that Section 19 of the General Exchange Tariff be modified to include the following provisions which shall apply to temporary suspension of service for nonpayment:

If a subscriber's service has been temporarily suspended in whole or in part on account of nonpayment of exchange service, toll service, or other charges, but an order providing for complete disconnection has not been completed, such service will be reestablished upon payment of a change order charge and a restoral charge of $6.00 in addition to all charges due up to the date of suspension with the exception of the case where the records show that the customer has had less than three written notifications of temporary suspension and no actual temporary suspension in the previous nine months in which case the service will be reestablished under the following conditions:

1. The amount due for exchange service, toll service, or other charges must be paid in full.
2. The customer will be offered the opportunity of amortizing the change order charge, the restoral charge and any required deposit in approximately equal payments over three monthly bills starting with the first regular bill following restoration of service.
3. If the customer elects to amortize the applicable amounts, and fails to pay any bill in full by the due and payable date during amortization period, then service may be immediately suspended without notice, and will not be reestablished until the full amount of all past due charges are paid in full.

7. Taxes

The Commission declines the company's proposal to surcharge 100% of Municipal License, Gross Receipt, Franchise and Occupational Taxes. Instead, the presently effective tariff will remain in force.

NO REVENUE EFFECT

8. Local Coin Telephone Service

The Commission declines the company's proposal to increase the charge for local calls from coin phones from $0.10 to $0.20. The Commission feels the rate should remain at this level until "Dial-Tone First" service is instituted.

10. Local Messages

The Commission approves the proposal to increase the charge per call over the basic allowance from $0.07 to $0.08 for all measured services. It also directs that the allowance for 1MB and 2MR services be increased from 40 calls per month to 60 calls per month.

REVENUE EFFECT $110,200

15. Interconnection Arrangements

The Commission declines any increase in monthly charges for equipment. It approves all service charges filed except for those in Parts 12 and 14 of Section 17 of the General Exchange Tariff where all filed service charges should be refiled at $15.00. Sheets 6 and 7 of Part 14 are approved as filed.

REVENUE EFFECT APPROXIMATELY
$22,425

DISSENT TO:

DECISION NO. 86103
Dated December 20, 1974

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE PROPOSED INCREASED RATES AND CHARGES CONTAINED IN TARIFF REVISIONS FILED BY THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY UNDER ADVICE LETTER NO. 987.	))))))	INVESTIGATION AND SUSPENSION DOCKET NO. 867

January 3, 1975

COMMISSIONER HENRY E. ZARLENGO DISSENTING AND CONCURRING IN PART.

I respectfully dissent for the following reasons.

Under the facts and law no increase in charges or increase in the rate of return on equity, or rate base, may be authorized.

I.

EFFICIENT AND ECONOMICAL OPERATION

No one questions the right of a utility to a fair rate of return on its investment provided certain conditions required by law are first met. One of these conditions upon which such right is fundamentally based is that the utility's operation must be efficient and economical, for unless the utility operates efficiently and economically any charges, or increases in charges, authorized to provide a fair rate of return on investment are not "just and reasonable" charges as charges are required by law to be. Before authorizing any increase in charges to achieve a fair rate of return on investment, the Commission must first find as fact based on sufficient evidence that the utility is operating efficiently and economically. Inefficiency cannot be disregarded, nor can the Commission establish rates in a factual vacuum, or in doubt. Otherwise, it could be authorizing charges regardless of inefficiency and uneconomical operation which charges clearly would not be "just and reasonable." This risk the Commission cannot legally assume.

The expert witness of the Municipal League clearly, and unequivocally, first lays the foundation upon which the whole of his testimony is based, i.e. the condition upon, and without, which the right of a utility to a fair return on investment is fundamentally based and charges established and designed to provide revenues to produce such rate of return.

> "Q. Will you tell the Commission what, in your opinion, is the fair rate of return for Colorado intrastate operations of Mountain Bell?
>
> A. The analyses I propose to present indicate that a fair rate of return for the Colorado intrastate operations of Mountain Bell is in the range of 9.1 percent to 9.2 percent to be applied to an original cost rate base." [1]
>
> "Q. Will you briefly describe the function of the fair rate of return in utility rate making?
>
> A. Fair rate of return is a basic element in utility rate making, and its role is as follows: the fair rate of return times the rate base equals the fair return; the sum of all operating expenses (including taxes and depreciation) and the fair return equals the utility's revenue requirement. Rates for the various types of service and various groups of customers, are then designed so as to collect from customers, in the aggregate, a sum equal to the above revenue requirement. It is thus evident that the fair rate of return and the rate base is one of the costs that make up the total cost of the service." [2]
>
> "A. The principles involved in determining a fair rate of return are rather straightforward. What is complex is the application and the quantification of those principles.
>
> The utility has the <u>responsibility</u> of providing good service to all who demand it, at reasonable and nondiscriminatory rates. If operating <u>efficiently and economically</u>, and <u>fulfilling</u> its public utility responsibility, the utility is entitled to every <u>reasonable opportunity</u> of earning a fair return. That in turn then means that regulation should so set rates that the utility can obtain a sufficient amount of revenue to cover all expenses and have enough left over to cover the cost of capital. If the utility earns its cost of capital, it can attract the required additional capital in reasonable amounts and at reasonable terms. This is the basic principle." [3]

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1. Transcript Volume XXXII, page 7
2. Transcript Volume XXXII, page 8
3. Transcript Volume XXXII, page 11

"Q. What part then would efficiency of operations play?

A. In my book, in my philosophy of utility regulation this is the picture, this is the scenario, to use a current term: a utility, if operating efficiently and economically and fulfilling its public utility responsibility, should get rates which will give it a reasonable opportunity of earning a fair rate of return. This means that there is a burden of demonstrating efficient and economical operation. And if it doesn't, then I think that there is a question in my mind whether allowing a fair rate of return under those circumstances isn't underwriting inefficiency. So the specific answer to your question is it should be demonstrated that it operates efficiently or economically as a starting point before you even being (begin) to talk of rate of return."

Q. So the way to maintain a certain rate of return is by efficient operations and by the revenue allowed by the Commission, right?

A. Yes. . ."[1] (Emphasis supplied.)

ARE THE OPERATIONS OF MOUNTAIN BELL EFFICIENT AND ECONOMICAL?

IS THE COMMISSION UNDERWRITING INEFFICIENCY?

A.

Capital Structure

Is its capital structure prudent, efficient and economical insofar as the right of its customers to satisfactory service at the least possible cost is concerned?

Mountain Bell in the past has maintained, and it continues to maintain, and insists upon, a debt ratio so low that its policy of financing cannot be held to be efficient and economical. The factual, and proven, difference of the excess cost of equity over debt capital to the ratepayers is so great, and the reasons given in justification so lacking in factual basis, and illogical, that its method of financing cannot be held to be prudent, efficient and economical.

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.

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1. Transcript Volume XXXII, pages 163, 164.

Management seems to have lost sight of the fundamental principle that a utility must provide satisfactory service at the least cost to the ratepayers rather than investment opportunity for investors.

The taxable income of a corporation is taxed under the federal law at 48%[1] and under the state law at 5%.[2] Because of the reciprocal inter se deductions allowed by said laws the composite tax is at least 50%. As money used to pay the cost of equity financing comes from income which is taxed at such composite rate of at least 50%, for every dollar required to pay such cost Mountain Bell must collect from the ratepayers $1 to pay the cost and $1 to pay the income taxes. The heretofore authorized minimum rate of return on equity is 11.4%.[3] Because of this doubling effect of income taxes Mountain Bell for every $100 of embedded equity capital must collect $22.80; or at the rate of 22.8%. Actual figures show the factor to be 2.1993[4] rather than double, which (lower factor) will be used conservatively and for purposes of simplification. The true factor would show even greater savings.

Interest, on the other hand, works in the opposite direction.

Interest is a deductible expense in computing income tax when the tax is paid. For every $100 of interest paid, $100 is deducted from the taxable income which being taxed at 50% results in a savings of $50 in the amount of taxes to be paid, or a 50% reduction of the ostensible rate of interest. This is true, of course, if the company has sufficient taxable income against which this offset can be applied; -- an assumption hardly disputable. When this <u>true</u> cost rate of interest, i.e. 3.38% (6.77%[5] interest rate on embedded debt less 50% for income tax savings) is deducted from 22.8%, the true, not ostensible, cost of Mountain Bell's embedded equity capital is 19.42% more than the true cost (i.e. interest on) of embedded debt capital. This excess cost of financing must be borne by the ratepayers.

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1. Section 11 of the Internal Revenue Code (1971)
2. Section 138-1-3 (2), CRS 1963
3. Authorized heretofore by Decisions Nos. 77230 and 81320.
4. Page 18 of Majority Decision herein.
5. Commission records. Interest rate on Company's embedded debt.

As of December 31, 1973, Mountain Bell had the following amount of common equity, long term debt and debt ratio.[1]

	Amount	%
Equity	$1,340,413,463	54.22
Long Term Debt	1,131,808,045	45.78
	$2,472,221,508	100.00

Making the following substitutions of long term debt capital for equity capital, the following annual savings and debt ratios would have resulted.

Substituted Amount	Annual Savings	Annual Savings	Resulting Debt Ratio
$100,000,000	($100,000,000 X 19.42%)	$19,420,000	49.83
$200,000,000	($200,000,000 X 19.42%)	38,840,000	53.87
$300,000,000	($300,000,000 X 19.42%)	58,260,000	57.92
$400,000,000	($400,000,000 X 19.42%)	77,680,000	61.96

As allocation is prorated for the Colorado operation on a basis of 34.39%,[2] at the 61.96% debt ratio the Colorado customers would be saved $77,680,000 X 34.39%, or $26,714,152 annually; -- almost the total increase being authorized.

There is no competent evidence that such a debt ratio would be detrimental; no factual evidence; none from the market place.

The foregoing is an indication of the enormous detrimental impact of equity rather than debt capital on the cost of capital.

Had the amount of embedded equity been kept at lower levels and the amount of embedded debt capital correspondingly higher, the Company for many years would have had the same amount of capital at millions in savings, and with continued savings in the future.

This policy of financing is not "efficient and economical" operation.

Again, during 1972 Mountain Bell sold 9,186,093 shares of common stock acquiring $180,506,727, and in 1974 Mountain Bell sold

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1. Company Annual Report for 1973.
2. Figures supplied by the Company.

9,151,534 shares of common stock and acquired $164,727,612. By these sales of common stock it acquired an additional total amount of equity capital in the sum of $345,234,339 on which the Company was then authorized a rate of return of 11.4%, at a cost to the ratepayers of 22.8%[1] X $345,234,339 or $78,713,429 annually. If the same amount of capital had been acquired by long term debt, even at an assumed interest rate of 10%[2] the cost would be 5%[3] X $345,234,339 or $17,261,717 annually, a savings in cost of capital of $61,451,712; -- or to the Colorado ratepayers on the Colorado prorated basis of 34.39%[4] would be $61,451,712 X 34.39% = $21,133,244 annually.

Moreover, when the stock was sold in 1972 its book value was $21.68 and the stock was sold for $19.65 or $2.03 below book value, and in 1974 the book value was $23.25 and the stock was sold for $18 or $5.25 below book value.[4] Having sold 9,186,093 shares at $2.03 or $18,647,769 below book value and 9,151,534 shares at $5.25 or $48,045,554 below book value; the two stock sales were made $66,693,323 below book value. This diluted the value of the stock of the existing stockholders; another disadvantage avoidable if debt capital had been acquired.

Still another disadvantage of equity capital is the exorbitant cost imposed on the ratepayers without tangible benefit whenever, a reasonable prospect, the rate of return on equity is increased. When, in this instance, the Commission to make the Company's equity "more attractive", inter alia, increases the rate of return on equity from 11.4% to 12.04%, or by .64%, by so doing it increases the cost to the ratepayers on the already acquired equity without acquistion of any additional capital at all by the following amount, to wit:
Embedded equity 12-31-73 $1,340,413,463 X .64% = $8,578,646 annual increase. This means an additional cost to the Colorado customers of:

$8,578,646 X 34.39% or $2,950,196 -- almost three million dollars annually.

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1. Due to the impact of income taxes (Supra, page 4.)
2. Higher than any interest rate ever paid by Mountain Bell on its bonds.
3. Due to the impact of income taxes. (Supra, page 4.)
4. Figures and percent supplied by Company.

If, and when, however, to attract new debt capital, the rate of interest is increased, the ratepayers are not made to pay any more for the cost of the already acquired debt capital as the rate of interest thereon remains fixed.

Thus, every fact relevant to the issue of the merits of low, or high, debt ratio points to the disadvantage of maintaining low debt ratios and the great disadvantage of adding new equity capital.

Admittedly, the Company from time to time has needed, and will need, additional capital for growth. However, it takes it for granted that without more, and more, equity capital sufficient debt capital is not available, or if available, its acquisition is detrimental to it and the ratepayers; that with higher debt ratios a level will be reached where additional debt capital will be unavailable, or cost more than the cost of additional equity capital. This position it bases on opinions, not fact, or facts readily and feasibly available; and, cannot be reasonably sustained. The Company has not beforehand fully explored, and ascertained, in the market place, as prudent managerial judgment would dictate, the level of debt ratio at which additional debt capital would exceed the true cost of equity capital, or otherwise, be detrimental to it and the ratepayers. Prudent managerial discretion requires that its guidelines and course of action be based not on the opinions of experts which are lacking in objectivity, no two of whom may agree, and, the probative value of whose opinions, although admissible, cannot reasonably be compared with evidence of factual experience; but guidelines based on facts obtainable in the market place which are readily and feasibly available, and which will provide factual evidence not evidence consisting of a pyramid of self-serving conjectures, prophecies, and opinion, each leaning on the others. The market place when probed will provide the answers.

Even if with progressively increasing debt ratios the rate of interest on new debt will increase, there is no evidence in the record that it will ever increase to a point where the cost of debt capital will exceed the true cost of equity capital to the ratepayers. It is for the

present, and for a long period of time in the foreseeable future, inconceivable that with increases in debt ratios the rate of interest will ever remotely approach the cost of equity capital (22.8%) when it is realized that with assumed and unrealistic rates of 14%, or 16%, or 18%, etc., the cost of debt would actually be only increased to 7%, 8%, or 9%, etc.,[1] to the customers. Where does this point lie? The Company itself does not dare speculate. The market place will provide the answer when such point, if ever, will be reached.

Upon consideration of its contentions that at some point, with progressively increasing debt, it cannot acquire debt capital; we find no evidence adduced where that point lies and the fact to be that in the past it has never failed to obtain whatever amount of debt capital it sought[2] at rates extremely lower than the cost of equity.

Past, and present, disregard of the availability, and the use of, debt capital at enormous savings to the ratepayers is not efficient and economical operation. Failure, itself, to fully probe the market place for this great economic advantage is not efficient and economical operation.

To justify its policy of use of so much equity capital, despite its exorbitant cost, the Company also argues that the bond ratings of a utility affect the rate of interest of its bonds, i.e. cost of its debt; that higher debt ratios will lower its bond rating from Aaa to Aa and that the lower bond rating will increase the interest rate on its bonds. Aside from the effect of the bond rating itself on the interest rate, it also argues that the higher the debt ratio, the higher the interest rate. If these contentions of Mountain Bell were sound, its cost of debt would be lower than that of Public Service Company of Colorado (Public Service), the second largest, and only comparable, utility in Colorado. The facts demonstrate the contrary.

For many years Mountain Bell has had the highest possible bond rating, i.e. Aaa; whereas Public Service has had a lower bond rating, i.e.

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1. Due to the impact of income taxes. (Supra, page 4.)
2. Example supra re substitution of debt for equity equity capital (page 5).

Aa. As of June 30, 1974, Mountain Bell had a total debt ratio of 50.52%[1] whereas Public Service had a total debt ratio of 55.64%,[2] or 5.12% lower. Thus, Mountain Bell had a higher bond rating and a substantially lower debt ratio, but contrary to its contentions, the fact is it had a higher cost rate for total debt. As of June 30, 1974, the cost of total debt of Mountain Bell was 7.82%,[3] and of Public Service was 6.38%;[2] or 1.44% higher.[1] And, what does this mean in terms of dollars? As of June 30, 1974, the total debt of Mountain Bell Colorado intrastate was $339,103,000 and of Public Service was $550,835,792.[2] Despite the fact that Mountain Bell has a higher bond rating and a lower debt ratio than Public Service, it costs the Colorado customers of Mountain Bell $4,883,083 ($339,103,000 X 1.44%) more annually than it costs the customers of Public Service for the same amount of debt.

The Commission to make equity capital "more attractive" has raised the rate of return on equity of Mountain Bell to 12.04%. Again, it misjudges reality. The Commission cannot "buck" the market. This should be obvious. Too many other factors in the market place by far outweigh the evaluation of stock by investors, and dictate its desirability, other than the rate of return authorized by the Commission.

By Decision No. 85724 of September 24, 1974, the Commission majority authorized an increase in revenues of Public Service Company in the sum of $29,695,000, and increased the rate of return on equity from 12.43% to 15%, a 20.68% increase (very substantial), inter alia, in order to "attract" equity capital. The stock market quotations of Public Service Company stock indicate the following, to wit:

	High	Low	Close
September 24, 1974	11-3/4	11-1/8	11-3/4
December 30, 1974	12-1/8	11-5/8	11-7/8

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1. Mountain Bell Exhibit 1 (Leake) Page 14.
2. Figures supplied by Public Service Company.
3. Figures supplied by Mountain Bell.

On September 24, 1974, the date of increase, the net book value of its stock was $17.91.[1] With an increase of only one-eighth in the market value of the stock, and with the stock still selling at $5.91 below book, more than 3 months after the increase, effectively demonstrates "rate of return" to have insignificant impact on "attraction" of stock to investors.

B.

Usage Sensitive Pricing

Usage sensitive pricing has a twofold advantage (a) it substantially reduces the need for capital investment which in turn reduces the cost of operation and consequently reduces the charges to the customers, and (b) avoids discriminatory rates.

(a)

There is no question that when service is paid for by the amount the public will make less use of the service than if the service may be used without limit without additional charge. This is acknowledged by the Company itself, yet, instead of reducing its flat rate service which, with some insignificant exception, allows use without limit and without additional charge, it has pursued, and continues to pursue, a course in the opposite direction creating need for additional capital and additional revenue from the ratepayers.

As of March 31, 1974, the end of the test year, there were 582,511 single party residential subscribers who had flat rate service whereby they could use the service without limit, and there were 82,015 2-party residential subscribers who could use the service without limit.[2] If the service of these 664,526 subscribers was on the basis of usage sensitive pricing, i.e. rather than flat rate, their use of service would be very greatly reduced, which would have the effect of improving the quality of service and substantially reduce the amount of equipment

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1. Figures from Commission records (Supplied by Company). (Closest figures as of 9-30-74)
2. Figures supplied by Company.

required to meet the need to provide satisfactory service. This would, in turn, reduce capitalization and expenses and thereby the overall cost of service to the customers. Experience bears this out.

When Metropac was first initiated in 1969 the service was rendered within a 30-mile radius on a flat rate basis rather than on usage sensitive pricing. This resulted in so great an overload of equipment that the quality of service deteriorated to the point of being unsatisfactory. In 1971 by Commission Decision No. 76215 the Company was ordered to change its method of charging to reduce usage. Usage sensitive pricing was established which reduced the level of usage to the point where satisfactory service could be rendered and additional investment in equipment avoided.

Prior to 1972 intrastate Wide Area Telephone Service (WATS) was provided on a flat rate basis. The unlimited use of the toll network at a fixed charge resulted in such abuse, and the service became so unsatisfactory, that without very substantial additional investment in equipment and facilities the service could not be improved. By Comission Decision No. 80092, dated April 25, 1972, the Company was ordered to convert WATS to usage sensitive pricing which was done within a few months. Additional investment was avoided and the service did improve.

Company witness, Robert W. Heath testifying:

"Q. Is the trend away from measured service to flat service, flat rate service?

A. No, I would say that the trend is more in the other direction.

Q. Has this been a steady trend over the last five or six years?

A. In my opinion, I believe it is as far as the system is concerned, yes.

Q. Would you say that there was more flat rate service in 1973 than there was in 1970?

A. Oh, yes.

Q. There was more flat rate service?

A. Well, I want to make sure that I respond properly. Simply by virtue of the growth, there was more flat rate service.

Q. Was there more flat rate service in 1973 than in 1970?

A. Yes, sir.

Q. Was there more flat rate service in 1972 than in 1970?

A. Yes, sir.

Q. Then the trend is toward flat rate service, isn't it?

A. Well, I think I need to clarify that, and I started to just a moment ago. I am not sure of the context that you are taking it in, but when you asked me the direct question, is there more flat rate service now as opposed to 1973 or '72 or any other year, simply by the nature of the growth I would have to answer that question yes.

Q. There is?

A. Oh, yes, but it's just a mathematical thing. If we grow, there is naturally more.

Q. What attempts is the company making to go to measured service on the new installation?

A. As far as new installations, no. As a segment, no, we are not taking any steps along that line. I think not only in this case, but in previous proceedings before this Commission there has been a great deal of evidence and discussion that the plans are certainly being laid in that direction in the mid-eighties." [1]

Company witness, Lloyd Leger, testifying:

"Q. . . . Do you think that measured service would tend to decrease the use of telephone facilities?

A. Measured service meaning --

Q. You pay by the call or by the call and the length of the call?

A. Yes, I do.

Q. What attempt is the company making to go to this type of service in order to avoid further capital requirements to provide more service?

A. Well, as I stated in my direct testimony, we have been through a complete round of very careful examination of the question and arrived at the conclusion that general usage sensitive pricing, as we call it, rather than measured service is in the public interest, will be beneficial to the company, beneficial to the public ultimately in Denver.

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1. Transcript Volume XXI, pages 53 and 54.

At the same time we have concluded that if it were introduced prematurely it would not be beneficial, would cost the company more, and would cost the customers more. Our plans are to crank in, as we have done in our long-range planning, the schedules and the consideration for equipping first the Denver network with the capability of measuring all of the elements of usage, and to bring that on line as we convert the Denver metro network to complete common control technology.

At an appropriate time when the schedule is more precise, which we now see as being the early 1980s, our plan would be to come before this Commission and propose a shift, and to inform the public and to provide for a participation by the public in the deliberation of the Commission.

Q. Are you saying --

A. If that can be accomplished. Then we would set out on a schedule to equip the network with the measuring technology and convert the pricing system to usage service.

Q. Are you saying that the change has to be made all at once and cannot be made in stages?

A. Yes. It can be made in stages over a reasonably short period of time, probably a year. But to make it in stages between now and the early 1980s, in my view, my considered conclusion is that that is not a good answer.

Q. Now, when I came on the Commission about 15 or 16 years ago I heard testimony that the company was making attempts to go to more measured service. Is there more measured service today in the company than there was 15 years ago?

A. Less.

Q. There is less?

A. Right, I am sure of that.

Q. Well, doesn't that mean that the trend is in the wrong direction?

A. Well, it simply means that more and more customers have favored flat rate rather than measured rate service and have made the choice.

Q. Well, does the desire of the customers control the efficiency of the operations of the company or does management?

A. Well, the desire of the customer where you have an option between measured service and flat service is the controlling factor on which one grows and on which one goes down." [1] (Emphasis supplied.)

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1. Transcript Volume XVIII, pages 53,54,55 and 56.

The witness speaks of an "option". Actually the customers have no realistic "option". As of March 31, 1974 there were 582,511[1] single party flat rate residential customers who were offered no service but flat rate service unless they went to 2-party service, a very much less desirable and unacceptable type of service, as privacy is lost and availability of service is doubtful. To have an "option" the "option" should be available to the single party customer retaining single party service.

(b)

Only flat rate single party residential service is provided. No explanation is made, nor can any justification be supplied, to show why such method of charge for service is not discriminatory. Why should the customer who needs the service infrequently, and makes use of it sparingly, pay the same as the customer who uses the service frequently, or makes use of it prodigally or recklessly?

So, the Company imposes upon the public,and asks the Commission to accept, a system of charging which increases the cost of service, increases the charges, and is discriminatory; and, offers no sign of improvement except to state that plans are being laid to correct this inefficiency of operation, and inequity, as far off as some ten years hence. Such operation is not efficient and economical.

C.

Purchasing Practices

AT&T owning 88% (rounded) of the common stock controls absolutely Mountain Bell, the Purchaser, and totally controls its wholly-owned subsidiary Western Electric (Western), the Seller. As Western is not subject to regulation its charges may be whatever the traffic will bear. The more money Western makes the more AT&T makes, and the more it costs the customers of Mountain Bell for service. No more favorable, and feasible, set of circumstances can be imagined to siphon money from the customers of Mountain Bell to AT&T. What incentive could AT&T have, or Mountain Bell

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1. Figures from Commission records (Supplied by Company).

its alter ego, to deal "at arm's length", and to seek for the most favorable competitive prices, when both the Seller and the Purchaser are in reality one and those who pay are captive? Under these circumstances the Commission is bound to exercise extreme caution and strict scrutiny, and require hard and convincing evidence to establish that Mountain Bell's purchases are efficient and economical; and, the Company is bound to provide such evidence. This evidence, however, is totally lacking in the record notwithstanding the fact that such evidence is definitely, and pecurliarly, within the resources of Mountain Bell and not of the Commission Staff, or of the Protestants. Having such evidence, and failing to adduce it, poses a presumption which feebly rebutted under circumstances requiring strict accountability is conclusive. A Company witness[1] testified on this issue. The testimony consists of bare statements, opinions and conclusions (nothing tangible), that the purchases from Western are at the best available prices. This witness admits without explanation that Mountain Bell does not follow the widespread, and well recognized, practice for making purchases at the most economical prices, i.e. by solicitation of sealed bids with equal opportunity to all bidders and with the assurance that the lowest qualified bidder gets the bid.

Some evidence to indicate efficient purchasing practices from Western Electric is adduced by making a comparison of purchases made by an independent telephone company, to wit: The Independent Telephone Company[2] showing that company to have made purchases totaling $8,052,180 within a 12 month period; however, purchases of $2,321,528[3] were not included in the price comparisons leaving the total amount of purchases made by the Independent Telephone Company used for comparison of $5,730,662. The total purchases of Colorado Mountain Bell from Western was $99,632,297.

$$\frac{5,730,662}{99,632,297} = 5.69\%$$

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1. Maureen Smith, Witness - Tr. Volume IV, pages 211, 238 and Tr. Volume XXI, page 139
2. Mountain Bell Exhibit 9 (Smith) Part J, Sheet 1
3. Mountain Bell Exhibit 9 (Smith) Part J, Sheet 2

The comparison is made of prices paid by a particular independent telephone company having a dollar volume of purchases of only 5.69% the dollar volume of purchases of Colorado Mountain Bell. It is obvious that the volume of purchases is a very dominant factor in price paid for merchandise. The comparison is not only inappropriate in this respect, but the prices paid by the particular independent telephone company used in the comparison are not shown to be the lowest prices of independent telephone companies buying in a competitive market. Furthermore, no claim is made that the prices paid by the Independent Telephone Company are within the range of the lowest prices paid by a broad spectrum of independent telephone companies making purchases in the competitive market. The comparison is indicative of something, but does not support the conclusion that Mountain Bell could not obtain in a competitive market better prices than it pays Western Electric.

Because of circumstances of relationship requiring the strictest type of accountability of purchasing practices, and failure to measure up to its responsibility to so account, the purchasing practices of Mountain Bell cannot, under the evidence be held to be efficient and economical, and the Commission cannot legally establish any rates as "just and reasonable".

II.

VALUE OF SERVICE

The Company's charges are based on the cost of service and on the value of service.[1] Charges are legally required to be "just and reasonable" and "nondiscriminatory". Charges based on value of service cannot possibly effectuate charges which are "just and reasonable" and are "nondiscriminatory". There are no reasonable standards, or criteria, by which the value of service may be measured.[2] The value of an emergency call, i.e. for a doctor, an ambulance, police, or fire assistance, etc., cannot be determined. Neither can a business call, nor

1. Transcript Volume XXVIII, Pages 119, 120
2. Transcript Volume XVIII, Pages 46, 47, 48

a call made for personal reasons. The benefit, or value, derived by the caller is not subject to measurement.

It has been suggested that if the charge made for the service is not equal to the value placed on the service by the Company, the customer need not have the service. This test may reasonably have some justification in a competitive market where alternative service is available, but where the service is a necessity, and its availability is from one source only, i.e. a monopoly, the captive customer has no option. The suggested test, therefore, is fallacious. If the value of any service cannot realistically be determined by "value of service", charges based on such a concept cannot be "just and reasonable" and "nondiscriminatory".

If, again, the value of any particular service itself cannot be measured and determined, how can different charges based on the value of service for different classes of service such as between residential and business, etc. (the rate structure) be "nondiscriminatory"?

Moreover, since some customers are charged on the basis of "value of service", an unrealistic approach; and some customers charged on the basis of "cost of service", a realistic approach, the customers are not treated equally and discrimination is unavoidable.

The law itself calls for more realistic and reasonable criteria. Courts routinely have held that a utility is entitled to sufficient revenue to cover its cost, not value, of service with a surplus to provide a fair rate of return on its investment. While perfection itself is not attainable in determining cost of service this method for achieving "just and reasonable" charges and charges which are "nondiscriminatory" is weighted with objectivity, and means, totally lacking to the concept of basing charges on the value of service. Other utilities, i.e. railroads, airlines, motor carriers, gas and electric utilities, do not base charges on the value of service; nor, are their rates authorized on such basis. By basing charges on the "value of service" concept which inevitably results in arbitrary, rather than "just and reasonable", charges and

in charges which cannot feasibly be made to be "nondiscriminatory", either among customers who are charged on "value of service", or between those customers charged on the "value of service" and those customers charged on "cost of service", the Company's method of charging, and its charges, are not in compliance with the law. Nonetheless the Company makes extensive use of this illusory method of charging.

III.

RATE OF RETURN

A.

Any increase in the rate of return recommended by the Company, the League, the Commission Staff, or authorized by the Commission overlooks failure to affirmatively establish efficient and economical operation.

B.

The ratios (annual basis) of the net operating income to average net book cost of telephone plant of all 22 Bell Telephone System companies for the year 1973 indicate that there is only one company which had a higher ratio, to wit: Chesapeake & Potomac Telephone Co. (West Virginia) with a percent of 9.04, and Mountain States Telephone and Telegraph Company with a percent of 8.60.[1] A later report shows for the 12 month period ending September 30, 1974 that Mountain Bell dropped to fifth place among the 22 operating Bell System companies with a percent of 8.33 rather than 8.60, but still maintaining a higher net operating income than 17 companies of the system and higher than the Bell System Operating Companies (Excluding Long Lines) average of 7.71%.

With this record of net operating income to average net book cost of telephone plant, it is an abuse of Commission discretion to further increase rates of return on rate base, or on equity.

Moreover, there is no evidence in the record that the present rates of return are confiscatory.

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1. Source: Monthly Reports of Mountain Bell, Commission records.

IV.

8-PARTY LINES

The history of 8-party line service should be considered as another example of the Company's inefficiency to improve service. Eight-party line service for many years has been one of the most dissatisfactory of services provided by the Company. CRS 115-1(2) provides that every public utility shall furnish, provide, and maintain service as shall in all respects be adequate, efficient, just and reasonable. Attesting to the inadequacy and insufficiency of 8-party service is the fact that as of February 25, 1971, there were 12,690 requests for a higher grade of service.[1] Regardless of the law, and the noncompliance therewith over the years, the following indicates the history of failure to improve the service.

Year	No. of 8-Party[1] Lines in Service
As of December 31, 1967	41,310
As of December 31, 1968	42,395
As of December 31, 1969	44,950
As of December 31, 1970	46,203
As of December 31, 1971	49,718
As of December 31, 1972	53,965
As of December 31, 1973	55,522
As of November 30, 1974	34,824

The Company, instead of decreasing the number of 8-party lines, progressively increased them each year from 41,310 in 1967 to 55,522 in 1973. As of November 30, 1974 the number of 8-party lines did drop to 34,824. This improvement, however, was ordered by the Commission in Decision No. 81320, September 19, 1972, which required the Company to convert from 8-party line service to a higher grade of service.

Moreover, the Commission, having found in that Decision that the rate structure therein being authorized would provide revenues in excess of the revenue requirement in the amount of $2,261,000,[2] rather than redesigning the rate structure authorized application by the Company of this excess revenue amount to the cost of making the conversion. This authorization (a) constituted an annual contribution of $2,261,000 to the utility's capital investment not provided by the stockholders but

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1. Source: Commission records
2. Decision No. 81320, September 20, 1972, pages 25 and 26.

by the general customer, or (b) at best, a subsidy of a special class of customers; either of which is illegal.

Preserving this archaic type of service over many years does not indicate fulfillment of its responsibility as a public utility.

CONCURRENCE

I concur in the allowance of $19,500 for attorney fees and costs incurred by the Colorado Municipal League. I am of the opinion, however, that any allowance of any fee and expenses incurred in the future should be determined after proper hearing on the merits without commitment in this order one way or another.

C O N C L U S I O N

In this opinion an effort has been made to concentrate on only several fundamental principles of regulation leaving for consideration of others reference to the briefs of the parties. The basic principle concerned is that unless the Company operates efficiently and economically, it is not entitled to any increase in charges to provide a fair rate of return on the investment; that efficient and economical operation must first be established as a condition precedent before any consideration of what are, or are not, reasonable charges may be undertaken; that to sustain such finding of fact is the burden of Mountain Bell requiring sufficient and competent evidence that it is operating efficiently and economically; that in this instance such operation has been shown to be inefficient and uneconomical; or, not shown by competent and sufficient evidence to be efficient and economical; and, that therefore the charges authorized are illegal as not being "just and reasonble."

To authorize increased charges in the face of inefficiency, or even doubt, not only results in unjust and unreasonable charges; it also destroys incentive to operate efficiently and economically.

When a utility is not earning a fair rate of return on its investment two alternatives are open to it. It must either make its operation more efficient and economical by reducing expenses, or must request that its charges be increased, to increase its revenues. If it is already operating efficiently and economically, then it must resort to the second alternative. Likewise, two alternatives are open to the Commission. It must first ascertain whether the utility's operation is efficient and economical. If it finds by sufficient evidence that the utility is already operating efficiently and economically it then, and then only, may and must authorize increase of charges to provide a fair return on the investment.

COMMENTS

(a)

Having shown the great desirability of Usage Sensitive Pricing to effect efficiency and economy, to provide better quality service and to avoid discrimination, the Company should be ordered to file a complete and comprehensive study on, or before, April 1, 1975, indicating the cost of converting all service to Usage Sensitive Pricing service in the metropolitan areas of Denver, Colorado Springs and Pueblo, and the earliest feasible date for the conversion.

(b)

The discretion of management is very broad indeed, but it is not without limit, and when that limit is abused the Commission has not only the power but the duty to correct the abuse. (172 Colo. 188).

Chapter 115-6-15 (3), CRS 1963, provides for an even broader power of the Courts than pronounced in the Colorado Municipal League v. PUC and Mountain States Telephone and Telegraph Company 172 Colo. 188 at pages 203, 204, providing, inter alia, that upon review the Court

shall determine whether the Commission has violated any constitutional rights of the petitioners and additionally "whether the decision of the Commission is just and reasonable, and whether its conclusions are in accordance with the evidence." Not only an abuse of law, but an abuse of findings of fact is clearly indicated. Under the evidence in this case the Decision of the Commission is not just and reasonable and its conclusions are not in accordance with such evidence.

(c)

This Dissent was not filed concurrently with the Decision of the majority because of insufficient time for full consideration of Transcript, Briefs and the Decision itself.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioner
hbp