

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

RE: THE APPLICATION OF AT&T)	
COMMUNICATIONS OF THE MOUNTAIN)	APPLICATION NO. 39020
STATES, INC., FOR RELAXED)	
REGULATION OF CERTAIN EMERGING)	COMMISSION DECISION
COMPETITIVE TELECOMMUNICATIONS)	
SERVICES.)	

October 26, 1988

Appearances: Rebecca B. DeCook, Esq., Denver, Colorado, for
Applicant AT&T Communications of The Mountain
States, Inc.;

Robert L. Connelly, Jr., Esq., Denver, Colorado,
for Intervenor The Mountain States Telephone
and Telegraph Company;

Craig Dingwall, Esq., Denver, Colorado, for
Intervenor U.S. Sprint Communications Company;

William Levis, Esq., Denver, Colorado, for
MCI Telecommunications Corporation;

Anthony Marquez, First Assistant Attorney General
and Sue E. Weiske, Assistant Attorney General,
Denver, Colorado, for Intervenor Colorado Office
of Consumer Council;

Mark W. Gerganoff and Carol Smith Rising,
Assistant Attorneys General for the Staff
of the Public Utilities Commission.

STATEMENT OF THE CASE

On June 2, 1988, Applicant, AT&T Communications of Mountain States, Inc. (AT&T), submitted its Application for Relaxed Regulation of Certain Emerging Competitive Telecommunication Services. In the application AT&T seeks maximum reduced regulation of AT&T's switched network services, under § 40-15-302(1), C.R.S., and Rules 1.1, 2.1, and 2.3 of the Commission's Rules for Emerging Competitive Telecommunications Services. Notices of Intervention as a Matter of Right were filed on June 30, 1988, by Staff of the Commission (Staff), on July 5, 1988, by The Mountain States Telephone and Telegraph Company (Mountain States), on July 6, 1988, by the Rye Telephone Company, Inc. (Rye), and on July 29,

1988, by the Colorado Office of Consumer Counsel (OCC). Petitions to Intervene filed June 30, 1988, by MCI Telecommunications Corporation (MCI) and July 5, 1988, by U.S. Sprint Communications Company (Sprint) were granted on July 28, 1988, by Decision No. R88-956-I.

A Motion for Entry of Protective Order was filed July 6, 1988, by AT&T which was withdrawn July 13, 1988. On July 15, 1988, Applicant filed a Motion to Modify Procedural Directives and Expedited Treatment and a modified schedule was established on July 28, 1988, by Decision No. R88-965-I.

Hearing began as scheduled on August 29, 1988, and Exhibits A through H and I through 79 were marked for identification. All were admitted except Exhibit No. 77, which was rejected, and Exhibit No. 79, which was admitted in part. Additionally, administrative notice was taken of the following Commission Decisions Nos.: C87-364, C87-567, C87-735, C87-1347, C87-1526, C87-1585, C88-501, C88-528, C88-710, C88-757, C88-770, C88-969, C88-976, C88-1162, R88-966 and the comments of AT&T in Case No. 5323. A request by the Staff to take administrative notice of Appendix B to Staff exceptions in Application No. 38755 is denied. Any argument or position of Staff in this proceeding shall be made by Staff in its Statement of Position. At the conclusion of hearing, the matter was taken under advisement and the parties were given until September 13, 1988, to file post-hearing briefs or statements of position.

In accordance with § 40-6-109(6), C.R.S., the Commission issues this Initial Commission Decision.

FINDINGS OF FACT AND CONCLUSIONS THEREON

Based upon all the evidence of record the Commission finds the following facts and makes the following conclusions of law.

1. In order to comply with the time guidelines in Rule 2.2.3(e) of the Commission Rules Under § 40-15-302(1), C.R.S., Emerging Competitive Telecommunications Services, the Commission finds that due and timely execution of its functions imperatively and unavoidably requires that the Recommended Decision of the Hearings Examiner be omitted and that this decision should be the Initial Decision of the Commission.

2. AT&T is a provider of Part 3 services and therefore subject to the jurisdiction of this Commission. Additionally, AT&T may provide telecommunications services under Title 40, Article 15, Part 4 (Part 4 services), which were deregulated under House Bill 1336. Services specifically addressed in this application are interLATA toll services regulated as Emerging Competitive Telecommunications Services pursuant to § 40-15-301(2)(c), C.R.S.

3. Staff of the Commission states that AT&T has not filed an accounting plan that segregates assets. The Commission finds that filing by AT&T and adoption by the Commission of its Cost Allocation Plan, which

would segregate the investment, expenses, and revenues between categories of services that AT&T offers in Colorado, currently before the Commission in Case No. 6692, constitutes substantial compliance with Rule 1.3.1 of Commission Rules under § 40-15-302(1), C.R.S., Emerging Competitive Telecommunications Service.

4. By this application, AT&T seeks relaxed regulation of certain Emerging Competitive Telecommunications Services. This application requests maximum reduced regulation for switched network services. By maximum reduced regulation, Applicant includes:

- (1) Elimination of traditional rate base and rate-of-return regulation;
- (2) Detariffing, as defined in Rule 2.3.5, of certain switched network services and the replacing of the network services and the custom network services tariffs with:
 - (a) A price list for these services;
 - (b) A standard set of terms and conditions;
- (3) Permitting changes in terms and conditions and the price list on notice of 14 days or fewer, without cost support; and
- (4) Permitting of the negotiation of customer-specific contracts with terms and conditions that meet individual customer needs, without filing cost-support information on the contracts.

In considering AT&T's application, the Public Utilities Commission will not consider or grant any form of relaxed regulation not requested in AT&T's application. Additionally, to whatever extent "maximum reduced regulation," as defined in Case No. 6633, exceeds the four requests of AT&T here, this application should be denied.

5. AT&T seeks reduced regulation for its intrastate switched network services. Those services are Message Telecommunications Service (MTS) including optional calling plans: Switched Network Service, Reach Out Colorado, and PRO Colorado; Directory Assistance Service; Outward Wide Area Telecommunications Service (WATS); 800 Service; MEGACOM Service; and MEGACOM 800 Service. We find that any grant of this application for relaxed regulation shall be limited to the services stated in the application. Additionally, evidence in this proceeding focused on interLATA toll market and AT&T has no plans to market in the intraLATA area. Any grant of relaxed regulation should therefore be limited to interLATA switched services.

6. By Article 15, Title 40, C.R.S., regulation of intrastate telecommunications services has been divided into three parts; Regulated

Telecommunications Services, (Part 2 Services), Emerging Competitive Telecommunications services, (Part 3 Services), and Deregulation, (Part 4 Services).

7. Article 15 further provides a method by which a utility or the Commission may reclassify services from Part 2 to Part 3 and from Part 3 to Part 4. In each instance, the Commission must determine whether or not effective competition for a specific telecommunications service exists. The five criteria for this determination are similar for each change of classification.

8. Article 15 provides that Part 2 services are, in general, subject to the provisions of Articles 1-7 of Title 40 including the regulation of all rates and charges pertaining to local exchange companies. By § 40-15-302, C.R.S., the Commission was directed to promulgate rules and regulations appropriate to regulate Part 3 services and products. In promulgating these rules, the Commission was directed to consider alternatives to traditional rate-of-return regulation, detariffing, and other methods of regulation deemed consistent with the General Assembly's expression of intent pursuant to § 40-15-101, C.R.S. This trifurcated system of regulation provides for a decreasing level of regulation or relaxed regulation from Part 2 to Part 3 services and the elimination of Commission jurisdiction over Part 4 services.

9. By § 40-15-301, C.R.S., interLATA toll services (services which are the subject of this application) have been declared by the General Assembly to be initially subject to regulation pursuant to Part 3 and subject to potential deregulation under § 40-15-305, C.R.S. It is clear that the intent of this legislation is to provide a reduced level of regulation for interLATA toll services. Furthermore, since no change in classification is sought, effective competition is not a necessary criterion to determine appropriate regulatory relief.

10. By Decision No. C87-1645, issued December 9, 1987, the Commission adopted Rules Under § 40-15-301(1), C.R.S., Emerging Competitive Telecommunications Service. Rule 2.3 of these rules provides relaxed regulation options and guidelines, the first of which is elimination of rate-of-return regulation, a relaxation specifically requested by AT&T in this proceeding. Furthermore, in § 40-15-302, C.R.S., the General Assembly expresses its intent that traditional rate base or rate-of-return regulation may be considered, but "shall not be the sole factor considered" by the Commission. These provisions, together with testimony in this proceeding that "defacto, the Commission has already accorded AT&T a measure of the regulatory relief it is requesting, namely, absence of rate-of-return regulation," (Exhibit H, page 2) are sufficient to establish that the request for elimination of rate-of-return regulation for all services listed in this application should be granted.

11. AT&T has requested that it be permitted to negotiate customer-specific contracts with terms and conditions that meet individual customer needs, without filing cost-support information or the contracts. This request should be granted; however, AT&T shall provide

to the Commission Notice of each such contract within 15 days after the same shall take effect. All contracts shall comply with the provision concerning averaging rates, in § 40-15-109, C.R.S. In the event any issue or action arises regarding contract rates, AT&T shall have the burden of establishing those rates are compensatory and non-discriminatory.

12. Neither the rules adopted by the Commission nor the statute under which they were promulgated require or even suggest a utility establish "effective competition" to receive relaxed regulatory treatment. On the contrary, Rule 1.1-Relaxed Regulation and Deregulation of Emerging Competitive Telecommunication Services mandates a finding that there is "emerging competition" rather than "effective competition" for the service.

Testimony during hearing focused on the market power and its impact on effective competition. It is market share, however, that demonstrates "emerging competition". Continuing decline in market share of the dominant carrier, together with continuing entry and an increasing number of competitors, demonstrate emerging competition.

AT&T contends that resellers who use the facilities of other carriers to serve their customers are providing competition to AT&T. This contention is rejected by the Commission. Some portion of the customer service in fact is provided by AT&T facilities. Resellers are arbitragers or distributors whose primary economic function is to provide for orderly markets. In the case of telecommunications markets, they are creatures of tariffs and could be damaged or eliminated by actions of facilities-based carriers.

13. Applicant seeks maximum reduced regulation for all switched network services. Services included in this application are more specifically defined on Exhibit No. 17. This exhibit establishes that Wide Area Telecommunications Service (WATS), 800 Service, MEGACOM, and MEGACOM 800 are services designed to meet the needs of customers making substantial volumes of long-distance calls. These services in areas of equal access are sufficiently competitive to support a grant of this application as requested by Applicant. Although the business market includes services other than these high-volume services, penetration into the business market has reduced AT&T's share of the market. The Commission neither approves nor disapproves the accuracy of AT&T's computations, nor the method used to determine market share; however, based upon the evidence in this proceeding, these services should be regulated by the elimination of rate-of-return regulation, detariff as defined in Rule 2.3.5, and replace tariffs with:

- (A) A price list for these offerings, and
- (B) A standard set of terms and conditions for these offerings, permit changes and terms and conditions, and a price list notice of 14 days or fewer without providing cost

support information, and permit customer contracts to be negotiated under terms and conditions which meet specific individual customer needs, without filing cost support information or the contracts.

14. Mark R. Correll, in his testimony on behalf of the OCC has noted that most wire centers serving rural counties do not offer equal access. Although AT&T states these rural areas have an alternative service, AT&T's service has a significant functional difference from any substitutable service. Because of this difference, Correll argues that the Commission should set a band of rates in which AT&T will be allowed to price without Commission approval. Correll states that, at the present time, maximum rates should be limited to current rates of AT&T and that minimum rates in areas within Colorado without equal access should be the long-run incremental cost of providing service. The banded rates established should be applicable to Message Telecommunications Service including Reach Out Colorado, PRO Colorado, and Directory Assistance Service. The Regulatory treatment of the high volume services, Wide Area Telecommunications Service (WATS), 800 Service, MEGACOM, and MEGACOM 800, has been established in paragraph 11 above, and § 40-15-109, C.R.S., precludes varied treatment in areas without equal access.

15. Message Telecommunications Service including Reach Out Colorado, PRO Colorado, and Directory Assistance Service are switched network services in which AT&T is clearly the dominant carrier. The evidence established that in the residential market, AT&T has at least a 68 percent share of the total revenue. For these services a price ceiling is the appropriate form of flexible regulation. This provides AT&T with pricing flexibility to compete for potential customers. The appropriate ceiling at the present time should be the present tariff rates of AT&T.

Although a minimum rate in areas of equal access may not be necessary, § 40-15-10, C.R.S., does not provide for rate variation based on access quality, but requires averaging rates on a statewide basis. Since the Commission has established minimum rates of long-run incremental cost for Message Telecommunication Service in rural areas without equal access, the same minimum rates would be applicable statewide. In other words, a single price falling between banded limits from a filed price list shall be applied statewide in both equal and non-equal access end offices.

In addition to this flexibility, AT&T should be permitted to enter into contracts with customers for MTS services. Subject to the price band established by this decision, AT&T shall continue to maintain records to support rates established by this decision and shall always have the burden of demonstrating a rate increase is reasonable in any future rate proceeding. Rates set by this decision have not been reviewed in this proceeding to determine if they are just and reasonable, and may be reviewed by the Commission subsequent to Decisions in Cases

No. 6685 (Permanent Segregation Rules) and No. 6692 (Class D Providers' Segregated Manuals).

16. The General Assembly has directed the Commission to promote a competitive telecommunications market place while protecting and maintaining the wide availability of high-quality service. In order that the Commission may evaluate the flexible regulation established by this decision, AT&T shall maintain records and file with the Commission information as set forth in the order below. During the fourth quarter of 1991, the Commission intends to investigate the level of competition in the various switched network services marketplace.

ORDER

THE COMMISSION ORDERS THAT:

1. The Motion to Dismiss, filed by Staff of the Public Utilities Commission is denied.

2. Application No. 39020, filed by AT&T Communications of the Mountain States, Inc., is granted in accordance with this Decision and Order, and in all other respects is denied.

3. Should issues arise and remain unresolved in Case No. 6692, AT&T shall implement this Decision according to the plan approved by the Commission in Case No. 6692.

4. Application No. 39020 is granted for all services for which AT&T Communications of the Mountain States has requested relaxed regulation to the extent that rate base or rate-of-return regulation shall not be the sole factor considered by the Commission in rate regulation.

5. AT&T shall be permitted to negotiate customer-specific contracts with terms and conditions that meet individual customer needs, without filing cost-support information or the contracts. Within 15 days after the effective date of any such customer contract, AT&T shall provide notice to Staff of the Public Utilities Commission. All of these contracts shall be made available to Staff upon request. AT&T shall have the burden of demonstrating all contract rates are reasonable, compensatory, and non-discriminatory in any action before the Commission. Customer-specific contracts shall be subject to adherence to § 40-15-109, C.R.S., averaging rates provisions.

6. The Public Utilities Commission shall regulate the large volume services of Outward Wide Area Telecommunications Service (WATS), 800 Service, MEGACOM Service, and MEGACOM 800 Service by:

(1) Elimination of traditional rate base and rate-of-return regulation;

(2) Detariffing, as defined in Rule 2.3.5, of certain switched network services and the replacing of the network services and the custom network services tariffs with:

- (a) A price list of these services;
- (b) A standard set of terms and conditions;

(3) Permitting of changes in terms and conditions and the price list on notice of 14 days, without cost support; and

(4) Permitting of the negotiation of customer-specific contracts with terms and conditions that meet individual customer needs, without filing cost-support information or the contracts.

7. In all areas in Colorado AT&T Communication of the Mountain States shall provide price lists and terms and conditions of offering for Message Telecommunications (MTS), including optional calling plans and Directory Assistance Service, which shall fall within a rate band with a maximum rate equal to current rates and a minimum rate equal to the long-run incremental cost of providing service. Any change in price lists shall remain within the price band established by this Order. Any future adjustments to maximum or minimum rates shall require Commission approval, and AT&T Communications of the Mountain States, Inc., shall have the burden of establishing just and reasonable rates.

Additionally, regulation shall permit changes in terms and conditions and the price list on notice of 14 days, without providing cost-support information provided rates remain within rate bands established by this Order. Customer-negotiated contracts shall be permitted subject to adherence to the § 40-15-109, C.R.S., averaging rates provision.

8. Regulation of MTS, including optional calling plans and Directory Assistance Service, shall permit changes in terms and conditions and the price list on notice of 14 days, without providing cost-support information, provided the ceiling rate is not exceeded. Customer-negotiated contracts shall be permitted subject to adherence to the § 40-15-109, C.R.S., averaging rates provision.

9. AT&T shall continue to file an annual report on or before March 31st of each year, and continue to use the Federal Communications Uniform System of Accounts in preparing its annual report.

10. The Commission shall waive Rule 20(c) of the Commission's Rules of Practice and Procedure to enable the Staff of the Commission to file reconsideration on issues presented in this application.

11. AT&T shall maintain records and file with the Commission on a quarterly basis, including data for each service receiving flexible regulatory treatment by this Order. Records for each service shall include: revenues, expenses, investment, numbers of customers, number of calls, minutes of use, number of channels or trunks where applicable,

rate of growth and a five-year estimate of growth by year for each service, and a record of customers who switch from one service to another including revenues, volumes, and dates. The Commission intends to review the level of competition in the switched network services market during the fourth quarter of 1991.

12. This Decision shall be considered as a final Decision, subject to the provisions of § 10-6-114 and § 40-6-115, C.R.S.

13. This Decision and Order shall be effective 30 days from this date.

DONE IN OPEN MEETING the 26th day of October 1988.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Arnold H. Cook
Ardis Schmidt
Ronald L. Lehr
Commissioners

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