

(Decision No. R87-1665)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION)	
OF THE MOUNTAIN STATES TELEPHONE)	
AND TELEGRAPH COMPANY FOR ENTRY)	APPLICATION NO. 37709
OF AN ORDER BY THE COMMISSION)	
REFRAINING FROM REGULATING CERTAIN)	RECOMMENDED DECISION OF
CENTRAL OFFICE-BASED SERVICES THAT)	EXAMINER JOHN B. STUELPNAGEL
ARE SUBJECT TO COMPETITION.)	

December 14, 1987

Appearances: Russell P. Rowe, Esq.,
and David Stacey, Esq.,
Denver, Colorado, for Applicant
Mountain States Telephone &
Telegraph Company;

Anthony Marquez, Esq., Denver,
Colorado, for the Office of
Consumer Counsel;

Suzanne Fasing, Esq., Assistant
Attorney General, Denver,
Colorado, for the Staff of the
Commission

STATEMENT OF THE CASE

On June 6, 1986, Application No. 37709 was filed with the Commission by Mountain States Telephone and Telegraph Company. This application together with the amended application filed June 13, 1986, requests deregulation of the following services:

1. Touch-Tone;
2. Custom-Calling Features including Speed Dialing, Three-Way Calling, Calling Forward, and Call Waiting;
3. Centron Services;
4. Remote Call-Forwarding;
5. Toll Restrictions Services.

Notice of Application filed was issued July 2, 1986, and a Petition to Intervene, filed by the Office of Consumer Counsel on July 25, 1986, was granted August 8, 1986, by Executive Ruling No. 86-240. A Petition for Leave to Intervene filed July 18, 1986, by the Department of Defense and All Other Federal Executive Agencies was granted August 8, 1986, by Executive Ruling No. 86-241.

On July 29, 1986, a Motion for Order Setting Procedural Dates was filed by Applicant and by Decision No. C86-942 issued August 12, 1986, the Motion for Order Setting Procedural dates was denied and a pre-hearing conference to establish procedural dates was set for September 11, 1986, at 9:00 a.m. in the Public Utilities Hearing Room, Office Level 2 (OL2), Logan Tower, 1580 Logan Street, Denver, Colorado 80203.

The pre-hearing conference was called as scheduled and by Decision No. R86-1363-I, issued October 15, 1986, procedural dates were established and Motion for Protective Order filed by Mountain States Telephone and Telegraph Company was granted with certain modifications. Further, hearing in this matter was scheduled for January 13, 14, and 15, 1987, at 9:00 a.m. in the Commission Hearing Room, Office Level 2 (OL2), Logan Tower, 1580 Logan, Denver, Colorado, 80203. On October 22, 1986, a Motion to Vacate and Reset Hearing dates was filed by the Colorado Office of Consumer Counsel. This motion was granted on October 28, 1986, by Decision No. R86-1442-I and by Decision No. R86-1568-I issued November 18, 1986, the matter was reset for hearing on February 11, 12, and 13, 1987, at the same time and place as previously scheduled. A Motion to Dismiss filed November 20, 1986, by the Staff of the Colorado Public Utilities Commission was denied on December 12, 1986, by Decision No. R86-1661-I. Additionally, certain procedural orders were directed to Applicant in this proceeding.

On December 18, 1986, the Mountain States Telephone and Telegraph Company filed a Motion for Continuance requesting that the hearing dates of February 11, 12, and 13, 1987, be vacated and this matter be continued until after June of 1987. No other party to this proceeding either objected to or supported this motion and the same was granted on January 6, 1987, by Decision No. R87-2-I.

On July 2, 1987, House Bill 1336 took effect which reenacted Article 15 of Title 40 C.R.S. (1984). By Decision No. C87-930 issued July 2, 1987, the Commission ordered Mountain States Telephone and Telegraph Company to provide to the Commission and all parties in this proceeding a listing of all central-office-based services which, in its opinion, continue to be at issue in this proceeding. On July 31, 1987, a Petition for Intervention was filed by Eagle Telecommunications, Inc., and the same was granted August 14, 1987, by Executive Ruling No. 87-161. On August 4, 1987, the Mountain States Telephone and Telegraph Company submitted its Identification of Central Office Based

Services Which Continue to be at Issue in this proceeding. Mountain Bell identified the following services to be at issue, when offered or provided to non-residential customers with 5-lines or less or when offered to residential customers:

1. Speed Dialing;
2. Three-Way Calling;
3. Call Forwarding;
4. Call Waiting

Mountain Bell withdrew its request for relief with respect to TOUCHTONE Service.

By Decision No. R87-834-I, issued June 18, 1987, hearing in this matter was scheduled for September 21, 22, 23, and 24, 1987, at 9:00 a.m. in the Commission Hearing Room, Office Level 2 (OL2), 1580 Logan Tower, Denver, Colorado 80203. Additionally, this decision established procedural filing dates for parties to this proceeding. These procedural dates were amended on July 2, 1987, by Decision No. R87-914-I.

On September 15, 1987, a Stipulation and Motion to Approve Stipulation was filed by Mountain States Telephone and Telegraph Company and the Staff of the Public Utilities Commission. This Stipulation included a withdrawal by Mountain States Telephone and Telegraph Company of any request for relief with respect to Touch-Tone Service, Centron Services, Remote Call-Forwarding, and Toll-Restriction Services. At commencement of hearing in this matter, the Motion to Approve Stipulation was granted and no determination shall be made regarding those services deleted pursuant to said Stipulation.

Hearing commenced as rescheduled and Exhibits 1 through 34 were marked for identification and admitted into evidence. At the conclusion of hearing, a briefing schedule was established and the subject matter was taken under advisement. Statements of Position were filed October 13, 1987, by Mountain States Telephone and Telegraph Company, Staff of the Public Utilities Commission and the Colorado Office of Consumer Counsel. Responses were filed October 27, 1987, by the Mountain States Telephone and Telegraph Company and the Colorado Office of Consumer Counsel.

Pursuant to the provisions of § 40-6-109, C.R.S., the Examiner hereby transmits to the Commission the record and exhibits of this proceeding along with this written Recommend Decision.

FINDINGS OF FACT AND CONCLUSIONS THEREON

Based upon all the evidence of record, the following facts are found and conclusions thereon drawn:

1. Mountain States Telephone & Telegraph Company is a public utility engaged in the business of providing telephone utility service within the State of Colorado pursuant to the provisions of § 40-1-103,

C.R.S. The Company's intra-state telephone business within the State of Colorado is subject to the jurisdiction of this Commission, and the Commission has jurisdiction over the subject matter herein.

2. By this application Mountain Bell requests deregulation of a portion of its business services pursuant to § 40-15-305, C.R.S., (House Bill 1336). Services at issue in this proceeding are referred to as Advanced Features and are defined in § 40-15-102(2), C.R.S., as Custom-Calling Features known as Speed-Calling (Speed Dialing), Three-Way Calling, Call-Forwarding, and Call-Waiting. Speed-Calling is a service which permits a customer to dial telephone numbers automatically. Call Forwarding, Three-Way Calling and Call-Waiting may collectively be referred to Telephone Call Management Services. Call Forwarding transfers calls to a designated number, thereby insuring that important calls are not missed. Three-Way Calling allows a customer to add a third party to a conversation. Call-Waiting allows a customer to leave one call and answer a second call.

3. Pursuant to § 40-15-301, Advanced Features offered and provided to residential customers and non-residential customers with no more than 5 lines are declared to be initially subject to regulation pursuant to Article 15, Part 3 - Emerging Competitive Telecommunications Services. Additionally, these services are subject to potential deregulation under § 40-15-305 which provides that the Commission shall deregulate, pursuant to Part 4 of this Article specific telecommunication services subject to this Part 3 upon a finding that there is effective competition in the relative market for such service and that such deregulation will promote the public interest and the provision of adequate and reliable service at just and reasonable rates. In order to determine whether or not there is effective competition for a specific telecommunication service, the Commission is directed to make findings and issue an order based upon consideration of the following factors as the Commission deems applicable in particular cases:

- I. The extent of economic, technological, or other barriers to market entry or exit;
- II. The number of other providers offering similar services;
- III. The ability of customers to obtain service from other providers at reasonable and comparable rates, on comparable terms and under comparable conditions;
- IV. The ability of any provider of such telecommunications service to affect the prices or deter competition;
- V. Such other relevant and necessary factors, including but not limited to relevant geographic areas, as the Commission deems appropriate.

4. Speed dialing or speed calling permits a customer to dial frequently used telephone numbers by dialing only one or two digits instead of the entire telephone number. Seven to 15 digit telephone numbers can be programmed into the memory bank of Mountain Bell's Central Office Equipment. Speed Calling is used by both residential and business customers to complete calls to frequently contacted parties. Terminal equipment with automatic dialing capabilities equivalent to Speed Calling is widely available to both business and residential customers. Mountain Bell asserts that a summary of research conducted by Mountain Bell identified 43 types of terminal equipment that provides Speed Calling capability. Dr. Mark Correll testifying on behalf of the Office of Consumer Counsel states that competition is effective for Speed Calling because of the availability of low-cost memory telephone sets. A competitive alternative is very similar in function to Speed Calling, and in many situations the terminal equipment alternative is comparably priced. Bruce Mitchell of the Staff of the Public Utilities Commission established by his testimony that the Speed Calling service of Mountain Bell is very similar or functionally equivalent to the Speed-Dialing Feature of the electronic telephone and service is available at a comparable price.

5. Neil Langland of the Staff of the Commission and Dr. Mark Correll on behalf of the Office of Consumer Counsel recommend that Speed Dialing not be exempt from regulation under Part 4 of Article 15 but remain subject to flexible pricing to be determined in a separate proceeding under Part 3. Mr. Langland states that since asset segregation has not yet occurred the cost of providing such service may fall which may increase any existing market power on behalf of Mountain Bell. Dr. Correll recommends a policy which sets a price ceiling equal to the current tariff and allows Mountain Bell to discount from that price in order to meet competition. Dr. Correll states that a mixture of competition and market power invites a utility to engage in undue price discrimination between types of customers.

6. The evidence in this proceeding is sufficient to establish that effective competition at reasonable and comparable costs exists for the Speed Dialing Service provided by Mountain Bell. There is sufficient statutory protection to customers regarding any cross-subsidization of service and this Advanced Feature should be deregulated pursuant to Part 4 of Article 15.

The remaining Advanced Features, Call Forwarding, Three-Way Calling and Call Waiting have been collectively referred to as Telephone Call Management Services. Call Forwarding is more specifically known as Variable Call Forwarding and allows a customer to program another telephone number into the memory of the central office switching machine to which any calls directed to his home phone will be diverted. With two or more service lines, an electronic device known as a Call Diverter is capable of transferring an incoming call on one line into an outgoing

call on another line. This Call Diverter can approximate the service of variable Call Forwarding provided by Mountain Bell. For customers with multi-line service the alternative may be obtained at sufficiently reasonable and comparable rates to support a granting of this application to deregulate multi-line service pursuant to Part 4 of Article 15.

8. Mountain States Telephone and Telegraph Company asserts that alternatives to Call Forwarding for single-line service are functionally equivalent when provided by telephone answering machines, personal paging services and available answering services, each of which assures that customers will receive, or be aware of, important calls while away from their telephones. Such alternative services are not functionally equivalent to the Call-Forwarding Feature provided by Mountain Bell. Call Forwarding offers the opportunity to receive directly and in person any call made, and allows for immediate conversation. Answering machines and answering services, on the other hand, provide a permanent record of calls made but do not allow immediate conversation. Call Forwarding implies availability of the party being called, whereas answer machines and services suggest unavailability. There is nothing in this proceeding to establish that the alternatives are functionally equivalent to Call Forwarding for all or a significant number of customers of Mountain Bell. Transfer of this service to Part 4 of Article 15 should be denied.

9. The Call Waiting Feature provided by Mountain Bell allows a customer to be warned through the sending of an audible tone by the central office that a third party is trying to reach him during a telephone call. The customer may then either ignore the warning and continue the present call or he can briefly touch or flash the switch hook to place the first call on hold while answering a second call. In the event a customer picks the second option he can switch between the two calls by flashing the switch hook but cannot be simultaneously connected to both calls. The testimony of Mountain Bell and Bruce Mitchell of the Public Utilities Commission establish that at least two dial tones lines are required before the use of an electronic telephone can approximate the Call-Waiting Feature of Mountain Bell. At the present time terminal equipment is not available to a single-line customer with the same capability as Call Waiting and the addition of another line prevents such customers from obtaining services at reasonable and comparable rates. The application by Mountain Bell to deregulate the Call-Waiting Feature pursuant to Part 4 of Article 15 should be granted for multi-line service and denied for service to single-line customers.

10. The Three-Way Calling Feature provided by Mountain Bell allows a customer to originate a conference call with two other parties either within or outside his local exchange. Once again there is not a similarity of service for single-line customers of Mountain Bell. Mr. Stice, testifying on behalf of Mountain Bell, recites a number of functionally equivalent or similar alternatives. A subscriber, however,

could only begin to approximate this Custom-Calling Feature by use of a multi-line telephone instrument with a Conference Feature. Once again, multi-line customers may obtain a similar service at comparable and reasonable rates but single-line customers are unable to do so. The Conference-Call Feature for multi-line service should therefore be deregulated pursuant to Part 4 of Article 15 and application for deregulation of conference calling for single-line service should be denied.

11. Dr. Correll states that public interest considerations support continued regulatory control over the advanced features at issue in this proceeding. He expressed concern that basic local service not become a "dumping ground" for revenue requirements which are shifted from other services. Dr. Correll states further that the outcome of Case 6634 (Segregation of Investments and Expenses for Services and Products Deregulated under Title 40, Article 15, Part 4) may allay his concerns and subsequent to a decision in that proceeding deregulation would be more palatable.

Effective competition, not asset and expense segregation or revenue allocation, is the criterion for deregulation pursuant to Part 4 of Article 15. There are sufficient statutory safeguards against cross-subsidization and the Public Utilities Commission retains power to review any service requiring plant use or costs which are joint and common to provision of basic local exchange service. Any improper segregation of investments and expenses made in Case 6634 should be resolved by an appeal of that matter without affecting this proceeding.

12. The Office of Consumer emphasizes that Mountain Bell can achieve all legitimate goals it seeks through deregulation by flexible regulation under Part 3 of Article 15. Mountain Bell, however, seeks deregulation and § 40-15-305, C.R.S., provides in part; "*** upon application by any person, the Commission shall deregulate pursuant to Part 4 of this Article ***" (Emphasis supplied). Once Applicant establishes that effective competition exists in the relevant market for such service and that such deregulation will promote the public interest and the provision of adequate and reliable service at just and responsible rates, a grant of the application is mandated by statute.

13. The evidence in this proceeding clearly established that effective competition exists for all Speed-Dialing services provided by Mountain Bell. Additionally, there are numerous alternatives to the telephone Call-Management Services (Call-Forwarding, Three-Way Calling and Call Waiting) on all multi-line service. In each of these there are minimal barriers to market entry and exit, sufficient other providers at reasonable and comparable rates and granting of this application to deregulate these services pursuant to Part 4 of Article 15 would be in the public interest and should be granted.

14. Telephone Management Services (Three-Way Calling, Call Forwarding, and Call Waiting) for single-line customers cannot be provided in either a sufficiently similar manner or at reasonable and comparable rates, and application to deregulate such services pursuant to Part 4 of Article 15 should be denied.

15. Pursuant to § 40-6-109, C.R.S., the Examiner recommends that the following order be entered.

O R D E R

THE COMMISSIONER ORDERS THAT:

1. Application No. 37709 being the application of the Mountain States Telephone and Telegraph Company for Entry of an Order by the Commission refraining from regulating certain central office-based services that are subject to competition should be granted to the extent that all Speed-Calling or Speed-Dialing Services and Telephone-Call Management Services including Call-Forwarding, Three-Way Calling, and Call Waiting for multi-line customers shall be deregulated pursuant to Part 4 of Article 15.

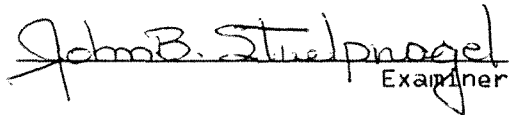
2. That portion of Application No. 37709 requesting deregulation pursuant to Part 4 of Article 15 for Telephone-Call Management Services including Call-Forwarding, Three-Way Calling and Call Waiting for single-line customers is denied.

3. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if such be the case, and is entered as of the date hereinabove set out.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions thereto; but if no exceptions are filed within 20 days after service upon the parties or within such extended period of time as the Commission may authorize in writing (copies of any such extension to be served upon the parties), or unless such Decision is stayed within such time by the Commission upon its own motion, such Recommended Decision shall become the Decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

5. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO


Examiner

lc:3743d