

(Decision No. 72921)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

RE: INVESTIGATION AND SUSPENSION)
OF PROPOSED CHANGES IN TARIFF)
COLORADO P.U.C. NO. 5 OF THE)
MOUNTAIN STATES TELEPHONE AND)
TELEGRAPH COMPANY, 930 - 15TH)
STREET, DENVER, COLORADO, FILED)
PURSUANT TO THIS COMMISSION'S)
DECISION NO. 72385, DATED)
JANUARY 7, 1969.)

INVESTIGATION AND SUSPENSION
DOCKET NO. 625

April 28, 1969

Appearances: Akolt, Shepherd, Dick & Rovira, Esqs., Denver,
Colorado by
Luis D. Rovira, Esq., Denver, Colorado,
and
Denis G. Stack, Esq., Denver, Colorado,
for Mountain States Telephone and
Telegraph Company;
H. L. Thurtell, Esq., Denver, Colorado
and
Iris Bell, Esq., Denver, Colorado, for
United States General Services Admin-
istration;
John P. Holloway, Esq., Boulder, Colorado,
for the Regents of the University of
Colorado, Protestant;
Larry F. Hobbs, Esq., Denver, Colorado,
for Bailey, Colorado, area residents;
J. Pierpont Fuller, Esq., Denver, Colorado,
for Telephone Answering Services of the
Mountain States, Inc. and Telephone
Answering Service, Inc., Protestants;
Gorsuch, Kirgis, Campbell, Walker & Grover, Esqs.,
Denver, Colorado, by
Leonard M. Campbell, Esq., Denver, Colorado,
for the Colorado Municipal League, Protestant;
Max P. Zall, Esq., Denver, Colorado, and
Brian H. Goral, Esq., Denver, Colorado, for
the City and County of Denver, Protestant;
Howard Cloud, Lakewood, Colorado, for the
Jefferson County School District;
Mary D. Gordon, Esq., Colorado Springs, Colorado,
for the City of Colorado Springs;
Robert Smith, Pueblo, Colorado, and Elmer P.
Cogburn, Esq., Pueblo, Colorado for C.F. & I. Corporation
George Vincent Denver, Colorado, Communications
Coordinator, State of Colorado;
Henry F. Hansen, Denver, Colorado, for
Denver Public Schools;
Carl Rite, Denver, Colorado,
Telephone Cost Control, pro se;

Appearances: (Continued)

G. Hamilton Evans, Denver, Colorado,
Greater Denver Hotel Association and
Colorado Motel Association;
Girts Krumins, Esq., Denver, Colorado,
and
Harry A. Galligan, Jr., Esq., Denver, Colorado,
for the Staff of the Commission.

S T A T E M E N T

Pursuant to Commission Decision No. 72385 of January 7, 1969, the Commission authorized Mountain States Telephone and Telegraph Company, hereinafter referred to as "the Company," for the reasons and in the manner stated in said Decision, to file a new schedule of rates for its Colorado intrastate telephone service which, when applied to the test year 1967 conditions, would produce additional gross revenues in the amount of \$2,133,957; said rates to become effective on 30 days' notice to the Commission.

By said Decision, the Commission also authorized the Company to file a "Tariff Rider" to provide for a charge of 3.07% of gross revenues in addition to all regularly filed charges or, in the alternative, to file such new and separate rate schedule with an adjustment clause, which when applied to the test year 1967 conditions, would produce additional gross revenues in the amount of \$3,745,004, either of which would become effective on 5 days' notice to the Commission and would remain effective for only so long as the present 10% Federal Income Tax Surcharge remains in effect.

On January 20, 1969, the Company filed its Advice Letter No. 502 accompanied by approximately 435 new and revised tariff sheets under Tariff No. 5, hereinafter referred to as "Proposed Rate Schedule."

The effective date of the schedule so filed was to be March 4, 1969. Pursuant to Commission Decision No. 72528 of February 6, 1969, entered by the Commission on its own initiative, the effective date of said schedule was suspended and the matter set for hearing before the Commission at 10:00 o'clock A.M., on February 24, 1969, in the Commission Hearing Room, 507 Columbine Building, 1845 Sherman Street, Denver, Colorado, all of which is more fully set out in said Decision.

Formal protests were duly filed by the City and County of Denver, by Telephone Answering Services of the Mountain States, Inc., and by Telephone Answering Service, Inc. Numerous letters of protest were received and filed with the Commission and a number of persons appeared at the hearing to voice their protests against the proposed rates and charges. Applicant's Exhibits 1, 2, 3, 3a, 4, 5, and 6, Protestant Denver's Exhibits A, B, and C, and Protestant Colorado University's Exhibits D, E and F were received in evidence. The Applicant's Exhibit 1 which is the Proposed Rate Schedule was modified and revised during the hearing by Exhibit No. 2.

At the conclusion of the hearing the parties were given 30 days within which to file briefs and the matter was taken under advisement.

The Law (115-3-1.) provides that "all charges made" by a public utility for "any service rendered or to be rendered shall be just and reasonable," and (115-3-2.) empowers the Commission, and makes it the Commission's duty "to adopt all necessary rates and charges" of public utilities "and prevent unjust discrimination . . . and to all things . . . which are necessary or convenient in the exercise of such power." Under the law the burden is upon the utility to establish by sufficient and competent evidence that its rates and charges are just and reasonable and not unjustly discriminatory.

The Commission has authorized additional revenues in certain amounts, to-wit: (a) \$3,745,004 to offset the 10% Federal Income Tax Surcharge, and (b) \$2,133,957 to augment the Company's earnings in order that it realize a fair return. It is incumbent that this two-fold authorization must be exercised in a manner conforming to law and, in particular, to the law above referred to. Does the allocation of the rates and charges as provided and structured in the Proposed Rate Schedule meet the prerequisites of the law? Are the proposed rates and charges just and reasonable? Are they unjustly discriminatory?

Consideration of the Proposed Rate Schedule and of the evidence discloses many substantial inconsistencies and differentials in rates and

charges to various customers who receive substantially the same service which is provided without additional or different equipment. As the evidence in the record is inadequate to explain and justify these substantial inconsistencies and differentials it appears that such rates and charges are not just and reasonable and are unjustly discriminatory.

The "value of service" concept is strenuously urged without reasonable consideration of its method of application under the Proposed Rate Schedule. The Company's own evidence indicates that as here applied the "value of service" concept is based almost entirely on its "subjective" opinion. Very little evidence of an objective nature in support thereof is tendered. It is contended that since it is impossible to devise a precise mathematical rate structure which will avoid every discrimination the seasoned judgment and opinion of the utility's personnel must prevail. While we consider this "judgment and opinion" with great care, and with due respect, to which it is entitled, we cannot abdicate our legal duty to adopt only those rates and charges which, after careful consideration of all the facts, contentions, and the law, we find to be just and reasonable and not unjustly discriminatory.

The Commission does not favor delays in the rate-making process. With the proper evidence before us it might have been possible for the Commission to make the corrections deemed necessary and prescribe different rates and charges. This would have obviated the necessity of going through the entire spread of a rates and charges process one more time. However, the evidence presented by the Company is so meager that it is impossible to determine the revenue effect of any changes we might have deemed proper. As a consequence, if the Commission were to attempt to prescribe rates and charges different from those proposed by the Company the revenues raised thereby could either be unreasonably in excess of, or below, the authorized additional revenues. It must be emphasized that this Commission must make appropriate findings of fact which are legally adequate before it can permit rates and charges proposed by the Company to become effective.

FINDINGS OF FACT

Having carefully considered the record herein,

The Commission FINDS that the Company has filed the Proposed Rate Schedule (Exhibits 1 and 2) pursuant to Commission Decision No. 72385, dated January 7, 1969, which authorizes an increase in its intrastate telephone rates and charges consisting of two parts, (1) a percentage increase of approximately 3.07% of gross revenues to provide revenues to offset the 10% Federal Income Tax Surcharge to be effected by a Tariff Rider and to remain in effect only for so long as the Federal Income Tax Surcharge is effective, and (2) a percentage increase of approximately 1.78% as a general rate increase. It is noted that these two increases total slightly less than 5%.

The Commission FINDS:

1. Relative to the Proposed Rate Schedule:

(a) That the additional rates and charges authorized to offset the Federal Income Tax Surcharge is limited to only main station and PBX trunk services and is not applied on a broad base of services which would result in more equal treatment.

(b) That the increase in rates and charges authorized to offset the Federal Income Tax Surcharge is applied on the basis of an identical flat increment to all rate groups and results in widely varying percentage figures which would be avoided by use of an overall percentage basis.

(c) That a substantial differential will be established between rates and charges for business and for PBX extensions; for example

Business extensions, per month	\$2.00
Series 100 PBX extensions, per month	2.50
Series 200 PBX extensions, per month	2.75
Series 300 PBX extensions, per month	3.00

(d) That the flat rate on semi-public coin telephone service is higher than on one-party measured business service; for example

Semi-public coin telephone, per month (Plus 10¢ per local call)	\$8.85 + \$.75 surcharge increment
Measured business, per month (100 call allowance)	\$8.25 + \$.05 surcharge increment

(e) That station rates for various PBX systems are substantially different even though different equipment is not required, for example

Series 100 PBX - Main station, per month	\$3.65
Series 200 PBX - Main station, per month	4.50
Series 300 PBX - Main station, per month	5.25

(f) That increases in rates and charges are proposed which are substantially in excess of the overall total of the percentage rate increases authorized (less than 5%) such as the rates and charges on multi-party lines, combination tie trunks, toll diversion, tie lines, secretarial boards, intra-exchange private line service, and numerous other special services, all without good cause shown. The percentages of these increases range from as much as 15% to over 100%.

(g) That the proposed packaging of PBX systems will require customers (who reasonably may be considered captive) presently having at no extra charge camp-on equipment to buy a different and higher series system at a very substantial increase in rates and charges.

(h) That services such as measured PBX service will be "frozen" to existing customers.

(i) That increases of rates and charges on many specific types of service are being made far in excess (as much as 130%) of the total of the percentages of the two increases authorized by the Commission without a showing of corresponding changes in the cost of rendering the service, or in the value of the service, or of any other reasons, to adequately justify the same.

(j) That the Proposed Rate Schedule includes exchange group 11 which at this time does not apply to any exchange; that no top limit should be placed on the highest group of any existing exchanges; and, that the proposed grouping is basically a classification of ten groups.

(k) That a 4, 6, 8, or 10 group classification of exchanges may be appropriate but there is no evidence in the record upon which the

Commission can consider the merits of such alternative methods of classification of exchanges.

2. Relative to the presently effective rates and charges:

(a) That different rates and charges are applicable for residence extension telephones in various areas.

(b) That different rates and charges are applicable for business extension telephones in various areas.

(c) That certain exchanges have outgrown their rate groups and are receiving service at rates and charges below those of other exchanges having a corresponding, or even a lesser, number of telephones.

(d) That in certain other and less important practices such as relating to obsolete wall sets, special payments of commissions to Denver drug stores, etc., special and unequal treatment is given without good reason.

(e) That the classification of exchanges is made on the basis of total telephones but should be made on the basis of total terminals in the future.

The Commission FINDS:

That all the items in paragraph 1, although they do not include all the items of apparent discriminatory rates and charges in the Proposed Rate Schedule, are sought to be made without reasonable explanation and justification as to their fairness even though on their face the various customers are obviously treated radically unequally, and that such rates and charges are not just and reasonable and are unjustly discriminatory.

That all the items in paragraph 2, although they do not include all items of apparent inequitable rates and charges in the existing rates, are inequitable and should be corrected in a legal and proper manner.

The Commission FINDS that the Proposed Rate Schedule includes some disproportionate increases in existing rates and charges made for certain type services. Some of these increases exceed 100% of the existing

rates and charges. The Company has made no showing to what extent the existing rates and charges for these services are not just and reasonable from either a cost of service, or value of service, viewpoint, or that changes of a technical nature, or otherwise, have occurred since the existing charges were instituted to render them not just or reasonable. The presumption is that the existing rates and charges when they were instituted as applied to the overall revenue requirements at that time were just and reasonable and not discriminatory. Any increase proposed substantially above the overall percentage rate increase (less than 5%) authorized by the Commission should be supported by sufficient evidence as to the propriety of such change.

The Commission FINDS that in many areas 8-party service, such as in the Bailey area, continues to prevail without any offer to customers of an alternate service to their great dissatisfaction and in spite of complaint; that only vague promises of an economic feasibility study and future action to remedy the situation have been made; that such service is inadequate and should within the limitation of economic feasibility be corrected as soon as possible; that a complete study of 8-party service, having in view the elimination of such service, should be made to provide the Company and the Commission with information upon which future action may be based to alleviate this condition and a report of such study filed with the Commission; that certain exchange boundaries may be obsolete and that the Company should make a study thereof and ascertain if such boundaries are reasonably in conformity with the current community of interest; that certain utility services are rendered and charges made therefor without filed rates; that rates and charges for all utility services rendered, whether under general tariff schedules or special contracts, should be filed; that the revenue effect of the proposed changes in rates and charges is generally not computed on the basis of actual data but is computed on estimates and special studies, ostensibly because actual information is not available; and, that the Company should make a feasibility study of a business information system to provide such actual data.

The Commission FINDS that a restructuring of the whole schedule of rates is being proposed based apparently on the assumption that many of the present rates and charges are obsolete and consequently inequitable because of the passage of time. If this is so, many customers will be affected in their rates and charges in different ways. Such customers have not had adequate notice that their rates and charges would be affected in such manner.

The Commission FINDS that the Company should file an Advice Letter as hereinafter ordered.

The Commission FINDS that the Proposed Rate Schedule filed with the Commission should be permanently suspended and not permitted to become effective.

O R D E R

THE COMMISSION ORDERS:

That the Proposed Rate Schedule filed by Mountain States Telephone and Telegraph Company, pursuant to Decision No. 72385, with the Commission be, and hereby is, permanently suspended and shall remain permanently ineffective.

That an economic feasibility study be made of the 8-party service being rendered in various areas in conformity with the Findings herein and a report of such study be filed with the Commission within six months from the effective date of this Order.

That the Company make a study of exchange boundaries in conformity with the Findings and a report of such study be filed with the Commission within six months from the effective date of this Order.

That the Company file all rate schedules and contracts under which utility services are being rendered, not presently on file, within 30 days from the effective date of this Order and keep such rate schedules and contracts currently on file.

That the Company make an economic feasibility study of a business information system to provide actual data in conformity with the

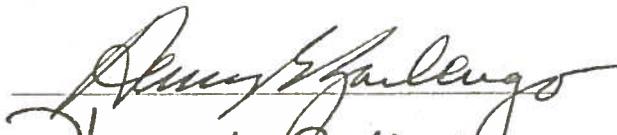
Findings herein and file a report of such study with the Commission within six months from the effective date of this Order.

That the Company file a new Rate Schedule in conformity with the Findings herein, to become effective upon 30 days' notice to the Commission, to raise the revenues authorized in Decision No. 72385, such rates to be just and reasonable and not unjustly discriminatory. To said Rate Schedule, when filed, there shall be attached an Advice Letter in accordance with Rule 20 of the Rules of Practice and Procedure before the Public Utilities Commission of the State of Colorado, and there shall be included therein a statement setting forth in detail the changes proposed, the revenue effect of each change, and the percentage increase or decrease involved for each such change.

That the Company shall file with the Commission for its consideration a classification of exchanges based on the number of total terminals into groups of 4, 6, 8, or 10, and the rates which will be required by such classification to provide the authorized revenues, indicating the percentage increases for each type of service in each exchange in addition to any other classification the Company may wish to propose.

That this Order shall become effective forthwith.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO





Commissioners

Dated at Denver, Colorado,
this 28th day of April, 1969.

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