(Decision No. 87701)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF PROPOSED INCREASED RATES AND CHARGES CONTAINED IN TARIFF REVISIONS FILED BY MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY UNDER ADVICE LETTER NO. 1073.	)	INVESTIGATION AND SUSPENSION DOCKET NO. 930 - PHASE II DECISION AND ORDER OF THE COMMISSION ESTABLISHING NEW RATES AND CHARGES

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October 30, 1975
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Appearances: Denis G. Stack, Esq.,
Coleman M. Connolly, Esq., and
Laurence W. DeMuth, Jr., Esq.,
Denver, Colorado, for
Mountain States Telephone
and Telegraph Company,
Respondent;

Messrs. Gorsuch, Kirgis, Campbell,
Walker & Grover, by
Leonard M. Campbell, Esq., and
William H. McEwan, Esq., Denver,
Colorado, for the Colorado
Municipal League;

Lou Bluestein, Esq., Denver,
Colorado, pro se;

George A. Hacker, Esq.,
Robert A. Lubowitz, Esq., and
Kenneth R. Fish, Esq., of the
Senior Citizens Law Center
of the Legal Aid Society of
Metropolitan Denver, Inc.,
Denver, Colorado, for
Frances Allen, on behalf of
herself and all others
similarly situated;

Harold S. Trimmer, Jr., Esq.,
General Counsel,
Maurice J. Street, Esq.,
Assistant General Counsel,
Clinton P. Swift, Esq.,
General Attorney,
Washington, D. C., and
John L. Mathews, Esq., Counsel, and
John M. Hewins, Esq., Assistant
Regional Counsel, Region 8,
Denver, Colorado, for the
Administrator of General Services,
on behalf of the executive agencies
of the United States Government;

Velma Beck, President,
Denver, Colorado, for
Metro-Denver Chapter,
Colorado Motel Association;

George Falconer Wilson,
Denver, Colorado, pro se;

John P. Thompson, Esq., and
James M. Lyons, Esq., Denver,
Colorado, for Colorado
Retail Council;

John W. McKendree, Esq.,
Denver, Colorado, for
Communications Workers of
America;

Homer Ball, Assistant Vice-
Chancellor, Boulder, Colorado,
of the Regents of the
University of Colorado;

James M. Lyons, Esq., Denver,
Colorado, for Denver Burglar
and Fire Alarm Co. and American
District Telegraph Co., d/b/a
ADT Security Systems;

Eugene C. Cavaliere, Esq., and
Tucker K. Trautman, Esq.,
Denver, Colorado, for the
Commission.

BY THE COMMISSION:

I

STATEMENT

A

HISTORY OF PROCEEDINGS

On March 7, 1975, Mountain States Telephone and Telegraph Company (hereinafter referred to as either "Mountain Bell," "Company" or "Respondent") filed with the Commission Advice Letter No. 1073 and tariff revisions that would have resulted in increased rates on most of Respondent's Colorado intrastate telecommunications services. According to Advice Letter No. 1073, the effect of the tariff revisions would be to produce additional gross revenues of $40,323,000, based on actual business volumes experienced by Respondent during the calendar year 1974.

On March 25, 1975, by Decision No. 86545, the Commission ordered that a hearing be held concerning the propriety of the tariff revisions filed by Respondent under Advice Letter No. 1073.

By Decision Nos. 86644, 86645, 86646, and 87063, the Commission prescribed procedures for the filing of written testimony, the taking of testimony from public witnesses and the cross-examination of witnesses in Phase I of this rate proceeding.

On September 16, 1975, by Decision No. 87492, the Commission ordered Mountain Bell to file, on or before October 14, 1975, written testimony and exhibits on issues associated with spread-of-the-rates and ordered that any intervenor or the Staff of the Commission, if they so desired, file written testimony and exhibits, on or before October 21, 1975, limited solely to issues associated with spread-of-the-rates. In Decision No. 87492, the Commission set October 23 and 24, 1975, as the dates on which Mountain Bell, intervenors and Staff of the Commission were to produce their witnesses who had filed written testimony and exhibits on issues associated with spread-of-the-rates, for purposes of cross-examination of said witnesses.

On October 7, 1975, by Decision No. 87582, the Commission determined the revenue requirement of the Company and concluded Phase I of this rate proceeding. In Decision No. 87582, the Commission found that Mountain Bell, on a test-year basis, had an earnings deficiency of $5,236,000 and further found that, after application of the tax factor, an increase in revenue in the amount of $11,466,000 in the Company's intrastate business was necessary to offset the net operating earnings deficiency.

On October 14, 1975, Mountain Bell filed written testimony and exhibits of Robert W. Heath, Colorado Commercial Supervisor - Rates and Tariffs; Roger T. Fuller, Corporate Tariff and Rate Supervisor; William E. Corbin, Marketing Operations Manager; and, Dr. Byron L. Johnson, Professor of Economics at the University of Colorado.

On October 20, 1975, Intervenor Communications Workers of America filed written direct testimony of Edmond F. Bishop, Vice-President, District 8, Communications Workers of America.

On October 21, 1975, written direct testimony and supporting exhibit of Dr. George J. Parkins, Assistant Supervising Public Utilities Engineering Analyst, a Staff member of The Public Utilities Commission of the State of Colorado, was filed with the Commission.

On October 23 and 24, 1975, each of the above witnesses who had filed written direct testimony were cross-examined by all parties present and desiring to cross-examine.

B

TESTIMONY AND EXHIBITS

The Commission in this proceeding has required all direct testimony to be in writing and pre-filed in advance of cross-examination. All hearing time has been reserved solely for cross-examination of witnesses filing written direct testimony. In this proceeding, all pre-filed written direct testimony has been marked as an exhibit using letters of the alphabet. All exhibits filed with and in support of written direct testimony, or offered during cross-examination, have been marked using Arabic numerals. The following is a list of all of the pre-filed written direct testimony in Phase II of this proceeding, which was marked as an exhibit:

Exhibit	Description
Q	Testimony of Robert W. Heath
R	Testimony of Roger T. Fuller
S	Testimony of William E. Corbin
T	Testimony of Dr. Byron L. Johnson
U	Testimony of Edmond F. Bishop
V	Testimony of Dr. George J. Parkins

Eleven exhibits were filed with and in support of written testimony, or offered during cross-examination, that were marked using Arabic numerals. The following is a list of these exhibits:

Exhibit No.	Description
52	Exhibit to testimony of Robert W. Heath
53	Exhibit to testimony of Roger T. Fuller
54	Exhibit to testimony of Dr. George J. Parkins
55	Notice of an Increase in the Rates of The Mountain States Telephone and Telegraph Company
56	Letter from John M. Hewins, Esq., to Honorable Edwin R. Lundborg, Chairman, Colorado Public Utilities Commission, dated October 17, 1975
57	Letter from James M. Lyons, Esq., to Harry A. Galligan, Jr., Secretary, Public Utilities Commission, dated October 21, 1975
58	Colorado Directory Assistance Terminating Study
59	Memorandum to Mr. D. M. Carr, Assistant Vice-President, from W. J. Hindman, Assistant Vice President--Information, dated September 30, 1975
60	Colorado Directory Assistance Summary of First Year Effects, 3 Call Allowance--20¢ Charge
61	Decision and Order of the New Jersey Board of Public Utility Commissioners in In the Matter of Schedules Filed By the New Jersey Bell Telephone Company Increasing Basic Exchange Telephone Rates, Message Toll Rates, and Charges for Certain Items of Equipment, Facilities, and Services in the State of New Jersey, Docket No. 747-522
62	Newspaper article from the Miami Herald, dated Tuesday, September 16, 1975.

II

SPREAD-OF-THE-RATES

The Commission's task in this decision is to determine which telephone service rates should be increased to enable Mountain Bell to earn the additional $11,466,000 in revenue found necessary in our Phase I decision to allow the Company to provide adequate telephone service. Currently, the rates for the general body of ratepayers include hidden costs generated by specific classes or users of specialized telephone services. For example, all of the costs of providing Directory Assistance and most of the costs of providing coin-operated public telephones are presently paid in the basic rate of the telephone subscriber even though that subscriber himself may never use those specialized services. In making our decision today, instead of raising all customers' basic rates uniformly, which would have continued the subsidy from the general ratepayer to the specific classes or users of specialized telephone services, we have chosen instead to directly assess those classes and users who have heretofore not paid their own way. Thus, our decisions authorizing a 20¢-pay telephone call, a Directory Assistance charging plan, assessment of municipal franchise taxes, and the reclassification of rate groups, while appearing at first glance to result in significant rate increases, in reality result in a much smaller increase required for the general body of ratepayers. Although the Commission fully understands the hardship of any rate increases in these times of inflation, we believe that our decision equitably distributes Mountain Bell's increased costs of doing business to those most directly causing those costs.

A

LOCAL COIN TELEPHONE SERVICES

In I&S Docket No. 867, Mountain Bell proposed to raise the rate for a local call from a public or semi-public telephone from 10¢ to 20¢. In Decision No. 86103, dated December 17, 1974, the Commission did not approve the increase as requested by the Company stating, inter alia:

> 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.

When the Company filed Advice Letter No. 1073, on March 7, 1975, it included once again a request for an increase in the local coin telephone services from 10¢ to 20¢. Filed with Advice Letter No. 1073 were a number of attachments. In Attachment 5, the Company showed its projections of revenue increase, repression, conversion cost and the effect of reduced pay station commissions in the event the local coin rate was increased from 10¢ to 20¢. In Attachment 6, the Company included a list of estimated costs, including coin station modifications and an implementation schedule for dial-tone-first service. Attachment 6 contains three lists. List 1 is applicable to major metropolitan areas, such as Denver, Colorado Springs and Pueblo, comprising 69% of state coin stations in 50 separate offices. The Company plans to begin implementation of dial-tone-first in these areas on December 1, 1975, with projected service in all offices, except Aurora and Colorado Springs Main by June 1, 1977. Aurora and Colorado Springs Main will be equipped with dial-tone-first capabilities in late 1978 on conversion to Electronic Switching System (ESS). The Company shows the following costs with respect to List 1: Initial plant investment, $1,176,000;

conversion costs, $426,000; and, annual recurring costs, $382,000. List 2 on Attachment 6 shows the Company's proposal for equipping common control offices, plus Extended Area Service (EAS) (15% of the state coin stations, in 43 offices). The Company proposes under List 2 to commence implementation of dial-tone-first on December 1, 1975, with total completion by July 1, 1977. The Company shows List 2 costs as $903,000 for initial plant investment, $16,000 for conversion costs and $260,000 for annual recurring costs. List 3 on Attachment 6 would include the remaining community dial offices (CDO) and number one step-by-step offices (#1SXS) (16% of state coin stations, in 112 offices). The Company proposes that conversion to dial-tone-first for the offices under List 3 be implemented when economically feasible. Attachment 6 shows List 3 costs as $3,868,000 for initial plant investment, $23,000 for conversion costs and $1,154,000 for annual recurring costs.

Mr. Fuller in his testimony stated that the Company's proposal is that it be permitted to implement the 20¢-charge for local coin service immediately, with conversion to dial-tone-first as provided in Attachment 6 to Advice Letter No. 1073. Mr. Fuller stated that 30 days would be required to visit all the coin stations to prepare them for the new charge level. The revenue increase, according to Mr. Fuller, would be $2,122,397, after allowing for a 24% repression in the number of local calls. The revenue effect for the test-year would be $1,502,120, after allowing $390,277 for annual increase in coin commission payments and collection expenses, and a one-time, noncapital conversion expense of $230,000. Mr. Fuller stated that the last time the coin telephone service rate was increased was 23 years ago in 1952. Mr. Fuller pointed out that telephone development in Colorado households has gone from about 75% of households in 1955 to about 95% of households in 1975, thus

the number of people who would regard public coin service as basic service has been substantially reduced since the last rate increase. According to Mr. Fuller, coin service today has become largely a convenience service for those who use it the most. Mr. Fuller stated that coin telephone service is more expensive to provide than other single-line exchange services and that the costs associated with it have more than doubled since the last rate increase in 1952. Mr. Fuller referred to a study conducted by Mr. Lynn Wallace, which indicated that a revenue requirement of $50 per month was necessary in order to cover just the cost of the telephone instrument and an outdoor booth, but that the test-year average monthly local revenue generated amounted to just over $25 per month. The study, according to Mr. Fuller, did not include the costs of providing central office or outside plant facilities or any of the coin collection and billing functions.

Mr. Fuller stated that an alternate proposal would be for the Commission to specifically approve the 20¢-local-coin rate increase immediately, but that the 20¢-charge be implemented as central offices are converted to "dial-tone-first" operation. Staff witness Dr. George J. Parkins urged that the Commission order implementation of the alternate proposal, that is, the 20¢-charge could be implemented only after a central office had been converted to dial-tone-first capabilities. Dr. Parkins pointed out that once dial-tone-first had been engineered into a central office, the caller would have the ability of reaching a telephone operator without charge. This, according to Dr. Parkins, would open up a certain number of options that the Commission may choose to authorize, namely, local collect calls, local credit calls and third number billing calls.

The Commission is still of the opinion that before a caller is charged 20¢ for a local coin telephone call, the caller should have available to him the expanded services that will flow from dial-tone-first. Accordingly, the Commission will hereinafter order that a local call from a public or semi-public telephone be increased from 10¢ to 20¢, with certain exceptions to be noted hereinafter. However, before a coin station may be converted to the new 20¢-charge level, the Company must at the outset have first implemented dial-tone-first in the central office serving that coin station. In other words, the Company shall convert a central office to dial-tone-first capabilities, before it converts any local coin station to the hereinafter ordered new 20¢-charge level.

As stated above, 5% of the households in Colorado do not have telephone service. It is apparent therefore that for a number of these households, coin telephone service remains a basic telephone service. This Commission is of the opinion that consideration should be given to those households in which a coin-operated telephone is still a basic service. Even Mountain Bell witness Fuller testified that, in addition to cost, certain public interest considerations still play a part in the pricing of public telephone service. In this context, Mr. Fuller referred to the existence of many coin-operated telephones in certain locations for emergency purposes which produce so little revenue that their existence is justified only by public interest considerations. Mountain Bell's surveys established that public telephones are used not just by the poor and elderly but instead are used by a cross-section of all persons. This prompted Mr. Fuller to characterize public telephones as a "convenience" and not a basic service. However, Mr. Fuller

admitted that for persons who cannot or do not have a private phone of their own, approximately 5% of Colorado households, the use of a public telephone must be considered a basic, if not a necessary, service.

Accordingly, in view of the above, the Commission is of the opinion that Mountain Bell should maintain the 10¢-call from public and semi-public coin-operated telephones, even after conversion to dial-tone-first, in those locations where there are high concentrations of poor and elderly persons. We realize that it is impossible to ascertain with precision all such locations and to limit the use of such telephones to the poor and elderly. However, we are aware of the fact that there are numerous identifiable buildings in which occupants rely on public telephones for their basic service. For example, nursing homes (excluding those having no Medicaid patients), public housing projects, and other buildings in which a majority of occupants are low-income must and should have such public and semi-public telephones available at 10¢ even after conversion to dial-tone-first. Consultation with the Colorado Department of Health and local public housing authorities, in conjunction with the Staff of the Commission, will aid and assist Mountain Bell in identifying those locations.

B

DIRECTORY ASSISTANCE

Directory Assistance Service (DA) began with the introduction of telephone numbers in the 1880's and today provides a means for both business and residence customers to obtain telephone numbers that are not at their disposal. Although DA is provided as an adjunct to the customer's local directory, and is not intended to be used as a substitute for the directory, a terminating traffic study performed by Mountain Bell showed that 65.5% of the directory assistance requests were for local numbers that were readily available in the customer's directory. Currently, a customer is not separately charged for DA calls, although the operating expenses of $6,700,000 for employing about 726 operators to handle the increasing call volumes (now approximately 185,000 calls a day) are rolled in the basic rates of all customers whether or not DA service is used. In light of the increasing frequency of DA call volumes, the high percentage of calls for numbers already in the customer's directory, and the resulting unnecessary expense, the Commission is of the opinion that a DA charging plan would reduce unnecessary calling and related expense and would also more equitably place the burden of costs on those customers who use the service most.

Mountain Bell proposed in this proceeding a nonselective DA charging plan under which the customer would be charged 20¢ for each call to local and intrastate long-distance DA after a three-call monthly allowance. Under Mountain Bell's proposal, (1) no charge would be made for calls to interstate DA; (2) Private Branch Exchange (PBX) and Centrex CU customers would receive one three-call monthly allowance per central office trunk; (3) Centrex CO customers would receive one three-call allowance for every eight stations; (4) customers would be allowed a maximum of two number requests each time they call the DA; (5) for those customers having regular need for numbers outside their calling

area, foreign directories would be provided free of charge; and (6) coin telephones, hotel and motel guests, hospital patients and certain handicapped persons would be excluded from the charge.

Mountain Bell justified its nonselective DA charging plan on two grounds: First, according to Mountain Bell, a small percentage of customers make the majority of calls to DA while most customers make little use of the service, thereby rendering the three-call allowance sufficient to cover necessary calls. For example, a study in Colorado of originating DA calls showed that approximately 70% of the combined business and residence customers, excluding coin, hotels, motels, and hospitals, made three or fewer calls per month. Nearly 40% made no calls to DA, while only 20% of the customers placed approximately 75% of the DA calls. Secondly, according to Mountain Bell, a selective plan (under which the customer would be charged only for calls to DA where the requested number was already in his local directory), although technically feasible, is not economically feasible at this time. The Commission believes that a selective plan is the most equitable approach since customers are only charged for unnecessary calls to DA, whereas, a nonselective plan unfairly penalizes certain users, such as students, who may make more than three necessary calls to DA per month because of obsolete directories. Further, we are not satisfied with Mountain Bell's position that implementation of selective plan would cost more than it would save. According to Mr. Fuller, Mountain Bell intends to utilize for recording DA calls the existing long-distance Automatic Message Accounting (AMA) equipment. The AMA equipment records the calling customer's number on tape with the dialing of the digit "1" and enters all dialed digits thereafter. The information from the AMA equipment is fed into the billing computer near the end of the billing cycle to arrive at the customer's final bill. Mr. Fuller testified that the DA operator has no recall access to the

AMA equipment and, therefore, has no means of negating an entry by this equipment. However, he admitted that it would be possible for the DA operator, on "necessary" calls, to record the calling customer's number on a computer card which could also be fed into the billing computer to negate the call recorded by the AMA equipment or merely record a credit for the necessary DA call on the customer's bill. Mr. Fuller estimated that this "ticketing" by the DA operators would increase the length of the average DA call, now 36 seconds, by almost 50%, thereby reducing by that amount the operator's time to handle other calls. This would have the effect of increasing the need for more operators. However, the call repression resulting from this plan would, of course, also markedly decrease the number of DA calls that would have to be handled, although Mountain Bell had no estimates on that savings. Accordingly, Mountain Bell will hereinafter be ordered to conduct an economic feasibility study of such a selective DA charging plan and submit a cost-benefit analysis of such plan within six months of the effective date of this decision, for the Commission's further review.

Although a selective DA charging plan is the most equitable approach, we believe that a nonselective plan with a higher call allowance than proposed by Mountain Bell will provide a fair substitute and yet still result in significant cost savings to the Company and the customers. The purpose of any DA charging plan is to reduce unnecessary calling to DA and thus expenses to the Company which are ultimately borne by the general body of ratepayers. Since at least 65% of DA calls in Colorado are unnecessary, a proper DA charging plan would be one that had approximately this repression effect upon DA calling. However, upon the counsel of the American Telephone and Telegraph Company (AT&T), Mountain Bell, like all of the other Bell operating companies making such a proposal, has proposed a three-call allowance, 20¢-plan with an estimated call repression of 80%. As even a Vice President for Mountain Bell concluded

(Exhibit No. 59), such a proposal, while perhaps proper for Cincinnati, may not be proper for Colorado with its growth and high mobility. Growth and high mobility renders telephone directories obsolete, thus resulting in the need to use DA. Moreover, the multitude of directories in Colorado, all of which are not available to the customer, compared to one directory for the Cincinnati area, leads to a greater need to resort to DA in Colorado. All of these factors dictate a higher call allowance than proposed by Mountain Bell.

In determining the proper allowance for Colorado, the experience in other jurisdictions is helpful. The following is a list of jurisdictions having nonselective DA charging plans and the call repressions resulting from each:

Arizona -- 5-call allowance/10¢ per call -- 65%

Cincinnati -- 3-call allowance/20¢ per call -- 80%

El Paso, Texas -- 5-call allowance/20¢ per call -- 75%

Georgia -- 5-call allowance/20¢ per call -- 75%

New York -- 3-call allowance/10¢ per call/credit under 3 and charge over 3 -- 40%

Wisconsin -- 5-call allowance/10¢ for next 5 calls/20¢ per call over 10 -- 60%

It would appear that almost any form of nonselective charging plan has a substantial repressive effect on DA calling. Both Georgia and El Paso, Texas, have a five-call allowance and 20¢-plan and both are experiencing 75% repression. Staff witness Dr. George J. Parkins testified that studies from New York and Wisconsin indicate that it costs approximately 16½¢ and 19¢ per call to DA in those jurisdictions, respectively, which further justifies a 20¢-charge. Thus, we find and will hereinafter order that a five-call allowance and a 20¢-DA-charging plan which will result in a 75% repression of DA calls, is cost justified and is just and reasonable. All of the other facets of Mountain Bell's plan are approved with respect to the plan adopted by the

Commission with the following three exceptions. First, all patient-subscribed for telephones in health care facilities (not merely hospitals) should be exempted from DA charging. Secondly, the Company should also develop a plan to exempt persons who can't read, perhaps in conjunction with the Colorado Department of Social Services, in addition to those persons who are physically or visually handicapped and thus unable to use a directory. And, finally, we see no valid reason for exempting hotel and motel guests from the charge as proposed by Mountain Bell.

Dr. Parkins recommended a graduated plan with three uncharged calls, a charge of 10¢ per call on the next three calls, and a charge of 20¢ per call thereafter that would have an annual revenue effect of $2,690,000, which Mr. Fuller thought was a reasonable estimate for such plan. Mountain Bell's proposal, based on an expected 80% repression, according to Mr. Fuller would have an annual revenue effect of $3,124,320. In light of the slight variation in repression effects of those states having DA charging plans as shown above and the similarity between Dr. Parkins' proposed plan and that adopted by the Commission, we find that the revenue effect of the five-call per month allowance and 20¢-plan adopted by the Commission will also be approximately $2,690,000. Since Mountain Bell will not implement this plan for seven months, and has indicated that it would be filing in 1976 for another general rate increase, we will only utilize five-twelfths of that annual amount or $1,120,833 toward the total revenue requirement of $11,466,000, as authorized by the Commission, and will allow the nonrecurring expenses associated with "start-up". If for some reason Mountain Bell sees the adequacy of the revenue authorized in this proceeding and does not file for a general rate increase in 1976, the Commission will initiate a proceeding to evaluate whether further reduction of basic rates is justified as a result of the savings due to the DA charging plan. And, finally, Mountain Bell should not discharge any permanent full-time or permanent part-time DA operators as a result of this DA charging plan, but instead should reduce operator force through attrition and reassignment.

C

MUNICIPAL LICENSE, GROSS RECEIPTS, FRANCHISE AND OCCUPATIONAL TAXES

Mountain Bell, in Advice Letter No. 1073, stated the Company is proposing that municipal license, gross receipts, franchise or occupational taxes or other impositions, which are levied on local service revenues should hereafter, and insofar as practicable, be passed on in their entirety to the customers in the area wherein such taxes, impositions or other charges are imposed. This is a refiling of the same proposal that was associated with Advice Letter No. 987, dated May 31, 1974, which was rejected by the Commission in Decision No. 86103, dated December 20, 1974. Dr. Byron L. Johnson, Professor of Economics at the University of Colorado, presented the Company's proposal. Dr. Johnson pointed out in his testimony that 65% of the customers of Mountain Bell in Colorado live in jurisdictions imposing either municipal license, gross receipts, franchise or occupational taxes and that approximately 35% of the Company's customers live in areas not levying such taxes. Dr. Johnson argued that the burden of these local taxes falls inequitably as among ratepayers, with the burden falling most heavily upon subscribers living outside taxing jurisdictions, or in jurisdictions levying a low rate. Dr. Johnson pointed out that subscribers living in jurisdictions levying the full 3% are not being charged in full for the payments made to their towns and cities, inasmuch as the costs of the Company resulting from these local taxes are spread across all customers in the State of Colorado. Dr. Johnson stated that the present flat-rate allocation of these special taxes is a continuing encouragement to those jurisdictions which have not yet levied such a tax to do so, or is a standing invitation by this Commission to all cities and towns to increase such taxes to 3%.

Testimony produced at the hearing tends to corroborate Dr. Johnson's statement. In his written testimony (Exhibit T), Dr. Johnson

sets out in tabulation form the number of jurisdictions in Colorado levying a municipal license, gross receipts, franchise or occupational tax and the rate of said tax, as follows:

Rates	Number of Jurisdictions
0.5	1[1]
1.0	0
1.5	3
2.0	51
2.5	2
3.0	41

Dr. Johnson stated that he compiled the above tabulation from Exhibit 7 (page 7) introduced into evidence in I&S Docket No. 867. Upon request at the hearing, Dr. Johnson updated this tabulation. The updated tabulation showed that between the time Exhibit 7 in I&S Docket No. 867 was prepared and the date of the cross-examination of Dr. Johnson on October 23, 1975, two communities (Leadville and Buena Vista) had increased their rate from 2% to 3%; that five communities (Dillon, Federal Heights, Loch Buie, Platteville and Poncha Springs) had adopted for the first time, municipal license, gross receipts, franchise or occupational taxes at the 3% rate; that one community (Idaho Springs) adopted such a tax at a 2% rate and that no community had lowered or abandoned such taxes. Dr. Johnson testified that with his present information, three jurisdictions were charging at the 1.5% rate, 50 jurisdictions at a 2% rate, one jurisdiction at a 2.5% rate and 49 jurisdictions at a 3% rate.

The Colorado Municipal League has requested that the Commission incorporate by reference the testimony of its witness on the issue of surcharging municipal license, gross receipts, franchise or occupational taxes in I&S Docket No. 867, which request has been previously granted. In I&S Docket No. 867, Municipal League witness H. J. Copland, Jr.,

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1. This is apparently in error since Exhibit 7, page 7 (introduced in I&S Docket No. 867) shows this as "Denver (#131)."

testified that Mountain Bell was attempting to pass on to the telephone customer those costs of the Company of doing business which pertained to street repairs, use of streets, alleys and rights of way -- which costs are created by the Company and covered by the tax upon the Company's gross revenues. Mr. Copland testified further that these costs are costs created by the Company for doing business within the municipality and that it would be hard to determine whether the costs to the local government were more than the Company pays.

The Commission in two prior rate proceedings involving Mountain Bell, namely, Application No. 23116 and I&S Docket No. 867, rejected Mountain Bell's request to impose municipal license, gross receipts, franchise or occupational taxes as an additional surcharge on those customers living in municipalities wherein such taxes, impositions, or other charges are levied. It has been the Commission's policy not to permit surcharging of municipal subscribers with the various municipal taxes, unless the municipal franchise or license taxes exceeded 3% of local revenue. Dr. Johnson testified with respect to this 3% level that it is a standing invitation by the Commission to all cities and towns to increase such taxes to 3%. We note from the evidence submitted by Dr. Johnson that in approximately the last year to a year and a half that an additional eight municipalities either increased or enacted for the first time a 3% municipal tax upon the Company. Dr. Johnson further argued that concealment of the tax in the general tariff fails to encourage tax consciousness. Furthermore, it appears to encourage the use of a tax, which at the moment seems to be a way of exporting a municipality's tax requirements to those persons unable to resist, or to enjoy any benefits therefrom. Dr. Johnson pointed out that four states, by statute, authorize passing on the full amount of local taxes and that 20 states, by Commission order, pass on the full amount of such local taxes. Only two states, Oregon and Georgia, share Colorado's position of

permitting the surcharging of local taxes above 3%; while Wyoming and Florida use 1%, Virginia 0.5%, and Arkansas $.80 in small towns and $1.07 in others.

The Commission has been persuaded by the Company in this proceeding that it should change its policy with respect to surcharging local taxes and should now order the surcharging by the Company of the full amount of such municipal license, gross receipts, franchise or occupational taxes to those customers in the taxing jurisdictions wherein such taxes are levied. Furthermore, in keeping with the Commission's hereinafter determination that specific charges by the Company should be "unbundled," the Company shall hereinafter be ordered to separately list this item upon the customer's bill.

D

MAIN STATION RATES

Mountain Bell witness Robert W. Heath testified that over the years since 1953, main station rates of the larger exchange group business services have been increased a much larger percentage than the smaller exchange business services, and that the same is true, to a lesser degree, in the residence services rates. Mr. Heath argued that because of the rate changes in the past, the disparity in rates between the largest and smallest exchanges has become too wide, leading now to the necessity of narrowing the differential. Consequently, Mr. Heath proposed to the Commission a constant dollar increase in his recommended proposal (Exhibit 52, pages 9 and 10) and a constant dollar increase in both of his alternate proposals (Exhibit 52, pages 11 and 12). According to Mr. Heath, a constant dollar increase means that all rate groups will receive the same dollar rate increase for a particular service. Mr. Heath stated that over the past several years, the dollar difference in what a large exchange customer pays for main station service and what a small exchange customer pays for the same service has become too large. It was the

Company's feeling that the value of this service does not differ that much between largest and smallest exchanges. Furthermore, in all likelihood, the cost of providing services does not vary that much between the different sizes of exchanges. Staff witness Dr. Parkins agreed with Mr. Heath that the present differential between what a customer pays for main station services in the largest exchange is too wide. It was Dr. Parkins' opinion that justification no longer exists for either the wide spread in rates for similar services, or for 10 rate groups. Consequently, Dr. Parkins proposed to the Commission a regrouping of all existing exchange rate groups. Dr. Parkins proposed in his testimony that the existing 10 rate groups be restructured into five rate groups. Dr. Parkins proposed that the existing Rate Groups I and II be combined into a new Rate Group I; that existing Rate Groups III and IV be combined into a new Rate Group II; that existing Rate Groups V and VI be combined into a new Rate Group III; that existing Rate Groups VII and VIII be combined into a new Rate Group IV; and, that existing Rate Groups IX and X be combined into a new Rate Group V. Under Dr. Parkins' proposed regrouping, Rate Group I would include all exchanges in the state having a terminal (main stations plus PBX trunks) range from 1 to 2,000 terminals; Rate Group II, all exchanges having a rate group terminal range from 2,001 to 8,000; Rate Group III having a terminal range from 8,001 to 32,000; Rate Group IV, having a terminal range from 32,001 to 125,000; and Rate Group V, all exchanges exceeding 125,000 terminals. Both the proposal of Mountain Bell witness Heath and Staff witness Parkins would lead to a narrowing of the differential between rates for similar services in the smallest exchange and the largest exchange.

After consideration of the testimony of Mr. Heath and Dr. Parkins that the differential between the smaller exchanges and the largest exchange for similar services has widened too much over the years since 1953, the Commission will not order a percentage increase in existing main station rates. We do, however, accept Dr. Parkins' proposed regrouping together with his recommended repricing of main station service, and do accordingly hereinafter order the same.

E

CONTIGUOUS EXCHANGE TOLL CALLING

Contiguous exchange toll calling was first introduced as an experimental offering in January 1973. Contiguous exchange toll calling is a two-way calling service available between 21 selected toll rate points in the State of Colorado. The present rate, on a per-call basis, is 10¢ for the first three minutes with regular customer dial message toll for additional per-minute rate levels thereafter. Contiguous exchange toll service was ordered by this Commission in Decision No. 81320, after hearings in I&S Docket No. 717. Testimony was presented in I&S Docket No. 717 that in certain parts of the State a call from one neighbor to another neighbor just across an exchange boundary line resulted in toll charges. Consequently, contiguous exchange toll calling was ordered by the Commission on an experimental basis. In I&S Docket No. 867, the Commission approved a toll rate increase which increased customer-dialed toll rates in shorter mileage steps; however, the rate for the first three minutes on contiguous exchange toll calls was not increased. Mountain Bell witness Roger T. Fuller recommended to the Commission that the initial three-minute rate for contiguous exchange toll calls should be increased from 10¢ to 20¢. Evidence submitted by Mr. Fuller showed that there was a 76% discount, vis-a-vis a regular toll call, for contiguous exchange toll calls up to 10 miles in distance, a 79% discount for calls between 11 and 16 miles, an 82% discount for calls between 17 and 22 miles and an 84% discount for calls between 23 and 30 miles. Even with an increase from 10¢ to 20¢, as proposed by the Company, a contiguous exchange toll call of less than three-minute duration and less than 10 miles will be discounted by 51%, for calls 11 to 16 miles in distance by 58%, for calls 17 to 22 miles in distance, by 64% and for calls 23 to 30 miles in distance, by 68%.

We do not think that the Company's proposal is unreasonable. Furthermore, it will be in line with the Commission's approval of the increase in local coin telephone rates from 10¢ to 20¢. The rationale underlying the Commission's initial order establishing the contiguous exchange toll calling rates at less than existing regular toll call rates remains valid. Accordingly, the Commission finds that it would be just and reasonable to increase charges for contiguous exchange toll calling, from 10¢ to 20¢ for the first three minutes of said calls and will hereinafter order the same.

F

MISCELLANEOUS SERVICES

In Advice Letter No. 1073 and accompanying tariffs, the Company proposed increases in certain vertical services and other miscellaneous services that it did not include in its testimony filed on October 14, 1975. Dr. Parkins recommended, as an alternative to recommendations made by the Company in this Phase II, that certain of the proposed increases in Advice Letter No. 1073 for vertical services and other miscellaneous services that had been excluded by the Company in its October 14, 1975, testimony, be accepted by the Commission as proposed in Advice Letter No. 1073.

In Advice Letter No. 1073, Mountain Bell proposed a 10¢-per-month increase in extension stations. The Company in Advice Letter No. 1073 proposed that the business extension station increase be carried through to Centrex CO extension stations, Airport Dial Telephone Service extension stations and intercom line stations, since these rates are tied directly to the flat-rate business individual line extension rate. The Company stated in Advice Letter No. 1073 that these proposed increases for vertical services would help minimize other increases associated with the basic main station service schedules. The Company also proposed in Advice Letter No. 1073 that residence and business additional directory listings be increased from 55¢ to 75¢ and from 85¢ to $1.00, respectively,

and that the 15¢ increase on business additional listings also apply to night number service listings. The Company stated in Advice Letter No. 1073 that it was proposing the increase because of increased charges based upon both value and cost of service. Also, in Advice Letter No. 1073 the Company proposed a flat 13.89% increase, the amount of the gross percent of revenue increase proposed in Advice Letter No. 1073, for Order Turrets and Automatic Call Distributing Systems. The Company also proposed in Advice Letter No. 1073 that the increment for Princess Telephones be increased from $1.03 to $1.25 per month and that the increment for Trimline Telephones be increased from $1.26 to $1.55 per month. As stated above, the Company did not include the above proposed increases, or a number of other proposed increases, in its testimony filed in Phase II of this proceeding. Staff witness Dr. Parkins, as one of his recommendations to the Commission as an alternative to recommendations of the Company, recommended that the Commission accept the Company's original proposed increases for extension stations, additional directory listings, Order Turrets and Automatic Call Distributing Systems, Princess and Trimline Telephones. In addition to the reasons stated by the Company in Advice Letter No. 1073, Dr. Parkins pointed out that Order Turrets and Automatic Call Distributing Systems had not been increased by the Commission since at least July 1969, and perhaps even longer than that. Dr. Parkins pointed out that basic business telephone services and other related business telephone services, on the other hand, had been increased substantially since 1969 and that the proposed increase would help bring the service charges for Order Turrets and Automatic Call Distributing Systems more into line, percentagewise, with related basic business services charges and other business services charges. Dr. Parkins also pointed out that extension stations represent a fast-growing telephone service in the State of Colorado. Dr. Parkins states that when revenue increases are derived from growth services, where that is feasible, a much better match is achieved between increasing expenses and increasing revenues, with the obvious result that the need for rate increases is

postponed or obviated. We accept Dr. Parkins' recommendations. Accordingly, we will hereinafter order increases in extension station charges, additional directory listing charges, Order Turrets and Automatic Call Distributing Systems charges and Princess and Trimline Telephones charges as proposed in Advice Letter No. 1073 and on page 2 of Exhibit No. 54.

G

USAGE-SENSITIVE PRICING

Dr. Parkins proposed as part of his recommendation for re-grouping and repricing of main stations, that the Commission direct Mountain Bell to file tariffs implementing an optional one-party, usage-sensitive residential rate in the City and County of Denver. Dr. Parkins stated in his testimony that in recent years economic conditions have necessitated frequent rate increases which is forcing a change in the philosophy of pricing utility services. Dr. Parkins further stated that in an era when utility rates were stable, or even declining, flat rates for telephone service were not perceived as objectionable, even though all sorts of subsidies were rolled into them. As rate increases have forced the level of rates upward, there has been a greater need for increased equity in charges. In addition, Dr. Parkins stated that this trend has given rise to the philosophy of usage-sensitive pricing, but pointed out that implementation of such a rate has been impeded by the cost associated with introduction of the necessary measuring equipment, especially in step-by-step offices as well as by customer resistance. Dr. Parkins noted, however, measurement cost in electronic offices (ESS) are quite minimal. Mountain Bell witness Heath stated in his testimony that the cost of equipping and maintaining ESS offices for usage-sensitive pricing would be 14¢ per main station per month, with the billing and commercial costs of 9¢ and 15¢ per main station per month, respectively. Dr. Parkins recommended,

as a first step toward widespread introduction of usage-sensitive pricing, that an optional rate be offered only to customers within the boundaries of the City and County of Denver, with the exception of those customers served from the West Office, which is the only wire center in Denver that does not presently have an electronic office. Dr. Parkins stated that studies made by the Staff indicate that a usage-sensitive rate could be offered in the range of 60% to 70% of the one-party flat residential rate, with a reasonable call-unit allowance roughly equivalent to 70 "average" calls. Dr. Parkins stated that he is making this recommendation at this time since it will allow both the ratepayers and the Company to gain some experience with usage-sensitive pricing prior to any statewide mandatory implementation. Dr. Parkins recommended that Mountain Bell conduct studies to determine what happens to charges and calling habits of customers who elect to subscribe to the usage-sensitive service that he is recommending to the Commission, so that informed projections can be made in the event of statewide mandatory introduction.

In contrast, the Company recommended that the introduction of usage-sensitive pricing on a uniform basis begin in Denver Metro in 1988, rather than 1983 as was recommended in I&S Docket No. 867. In light of the testimony offered by Mr. Heath that the cost of equipping and maintaining ESS offices to provide measurement capabilities for usage-sensitive pricing of 14¢ per main station per month, and billing and commercial costs of 9¢ and 15¢, respectively, per main station per month, the Commission will hereinafter order Mountain Bell to file within four months of the effective date of this decision, usage-sensitive rate plans to be offered, on an optional basis, to all customers in the Denver Zone of Metro 65 (with exception of those customers served from the West Office).

The introduction of a one-party residential usage-sensitive rate will give the low telephone user three optional budget services. There is presently available a two-party measured rate which, after the increase hereinafter ordered, will be $3.80 per month, with a 60 unlimited-duration-call allowance and a two-party flat residential rate, with the increase hereinafter ordered, of $6.32 per month.

H

ONE-PARTY MEASURED BUSINESS SERVICE

Dr. Parkins recommended in his testimony that the Commission order Mountain Bell to submit within a reasonable period of time, an advice letter proposing modifications to the existing tariff language for one-party measured business services, to eliminate abuses that have developed in this service. Dr. Parkins points out that one-party measured business service was originally conceived as a budget service for business customers whose communication needs were primarily to receive incoming calls. Dr. Parkins testified that a number of abuses have developed in recent years due to the lack of restrictive language in the tariffs. One of these abuses, Dr. Parkins points out, is where a customer orders a one-party measured business line to be terminated in only a secretarial bureau where there is no business phone as such and perhaps even no business location. In these cases there is a real possibility of customer deception since the address listed in the directory for the business is the address of the secretarial bureau. Customers of the business seeking to resolve complaints find that they are dealing with a "phantom."

The Commission will hereinafter order Mountain Bell to submit, within 60 days from the effective date of this order, an advice letter and accompanying tariffs proposing modification to the existing tariff language for one-party measured business service eliminating, insofar as is reasonably possible, current abuses in this service.

I

ATTORNEYS' FEES AND EXPERT WITNESS FEES

On July 25, 1975, the Municipal League filed a motion with the Commission for an order requiring Mountain Bell to reimburse and pay to the League certain costs advanced by the League in the presentation of evidence and representation of the interest of general consumers. The League stated in its motion that it is a not-for-profit Colorado corporation having over 200 members, which are primarily municipalities whose residents' telephone service is supplied by Mountain Bell. The League stated that it has appeared in the present rate proceeding on behalf of its member municipalities which, in turn, have requested the League to represent the general interest of their citizens who number in excess of 1,000,000 users of telephone service in the State of Colorado. As stated in the motion, the request for reimbursement by the League does not relate to any expense incurred in connection with the proposal of Mountain Bell to surcharge municipal franchise taxes to consumers living within the boundaries of the municipalities levying such taxes. The League stated in its motion that the costs advanced and expenses incurred by the League relate to general consumer interest and not to specific rates or preferential treatment of any particular class of ratepayers. The League stated that in this proceeding it has not sought to affect the amount of any residential or commercial charge by Mountain Bell, whether for local or for intrastate telephone service, but instead has sought to present evidence affecting the general consumer interest by seeking a reduction in the amount of revenues that would be allowed by the Commission to be imposed upon all ratepayers using the telephone service of Mountain Bell. The League stated further in its motion that it was necessary that there be presented to the Commission on behalf of the general consumer interest expert rate-of-return testimony to refute the testimony and exhibits

offered by Mountain Bell through its expert witnesses, James W. Heckman and Dr. Ezra Solomon. In this regard, the League made provisions for the employment of David A. Kosh and Associates, Inc., of Arlington, Virginia. The League further stated in its motion that it secured the services of Stephen A. Duree, Certified Public Accountant, of the firm of Elmer Fox, Westheimer & Co., to analyze accounting procedures of Mountain Bell and to prepare written testimony and exhibits regarding tax reserves and offsets to rate base, as well as to review the Company's proposal that declared dividends should be considered by the Commission as equity capital subject to return similar to all equity capital. The League further stated in its motion that in organizing the presentation of witnesses and participation in the full rate proceeding, it was necessary to employ legal counsel to represent the interest of the League, the general interest of ratepayers, and of consumers affected by Mountain Bell's proposed increase. For this representation, the League employed the firm of Gorsuch, Kirgis, Campbell, Walker & Grover.

During the hearings on Phase I of this proceeding, Mountain Bell and the Municipal League informed the Commission that they had agreed that the motion of the Municipal League for reimbursement of attorneys' fees and expert witness fees could be submitted to the Commission on written affidavit, thus obviating the necessity for a formal hearing. Accordingly, on September 10, 1975, the Municipal League filed affidavits of Stephen A. Duree, David A. Kosh and Kenneth G. Bueche in support of the League's motion for reimbursement of attorneys' fees and expert witness fees. Also, brief oral argument on the matter was heard at the conclusion of these Phase II hearings.

In Decision No. 85817, entered on October 15, 1974, in I&S Docket No. 867, the Commission set forth three requirements that must be met before the Commission will order a utility to reimburse a

protestant-intervenor for costs incurred. The criteria were set forth as follows:

> (i) The representation of the Protestant-Intervenor and expenses incurred relate to general consumer interests and not to a specific rate or preferential treatment of a particular class of ratepayers.
>
> (ii) 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.
>
> (iii) 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.

In addition, the Commission views as necessary costs in a rate proceeding (which must be ultimately borne by the ratepayers) the reasonable costs of the utility in sustaining its burden of demonstrating that the requested increase in revenues is just and reasonable, and the costs of the Commission. All other costs that are attempted to be assessed to the utility are additional costs ultimately to the ratepayers. For these additional costs to be assessed to the ratepayers, the services performed must be exceptional and materially contribute to the reaching of the decision.

The League has filed for reimbursement of professional services and costs advanced for Stephen A. Duree as follows: For professional services -- $8,178, and for costs advanced -- $701. The League has filed requests for reimbursement of costs for professional services for David A. Kosh of $3,500. The League has filed for reimbursement of attorneys' fees and costs in I&S Docket No. 930 as follows: For professional services -- $11,250, and for costs advanced -- $203. The League has also filed for reimbursement of attorneys' fees associated with the appeal to the courts from I&S Docket No. 867 in the amount of $5,000.

Based upon the criteria set forth in Decision No. 85817, the Commission finds that the participation of Municipal League counsel in

this proceeding has 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. With regard to the specific fees and costs incurred by the League, we find that attorneys' fees in the amount of $11,250 and costs advanced in the amount of $203 are reasonable charges to the operating expenses of Mountain Bell. The Commission will not award attorneys' fees for professional services rendered in court appellate procedures. Application for reimbursement of fees incurred in appellate proceedings should be made to the courts. With respect to the amounts specified as professional services and costs associated with expert witnesses, the Commission, based upon the criteria specified in Decision No. 85817, finds that the Municipal League should be reimbursed in the amount of $1,000 with respect to the testimony of David A. Kosh and nothing with respect to the testimony of Stephen A. Duree. Accordingly, the Commission will hereinafter order Mountain Bell to pay to the League the sum of $12,453 consisting of the following:

A.	Attorneys' fees	$11,250
B.	Attorneys' costs	203
C.	David A. Kosh and Associates, Inc., fee	1,000

J

UNBUNDLING

The Commission is of the opinion that the time has arrived for "unbundling" of charges. By unbundling, the Commission means that the statement of charges received by the customer should separately list all of the component charges that go to make up the customer's total charge. Unbundling has become necessary inasmuch as the Commission since I&S Docket No. 717 in 1972 has been attempting to identify those specific areas of costs of Mountain Bell which can be identified and to shift said costs from the general body of ratepayers to those individual ratepayers who are responsible for the costs. In the past, all costs of the Company were rolled into the Company's flat-rate charges. At the present time, the Company does individually itemize certain charges on the customer's bill; for example, all intrastate and interstate long-distance telephone calls are separately listed, with their individual charge, on the customer's monthly statement. The same is true, to a certain extent with installation charges. Commencing on June 1, 1976, the Company will be required to separately list all of the components of the customer's monthly statement. For example, if the customer has an extension station, the charge for this extension station shall appear as a separate charge on every monthly statement received by the customer, as will the charge for Princess Telephones, Trimline, etc. Inasmuch as the Commission has authorized the surcharging of municipal license, gross receipts, franchise or occupational taxes, this shall be listed separately on the customer's monthly statement, also, in essentially the following language: "Surcharge - Denver assessment on Company local revenues." For those charges which are monthly recurring charges, the Company may identify each separate service by a separate code; however, each code symbol and its identification shall be printed on the reverse side of the monthly statement. The Commission is requiring this billing change in order to provide the

customer with the information necessary to make an informed economic choice of services and equipment desired. Also, the Company, as will be hereinafter ordered, shall, commencing on June 1, 1976, list side-by-side on the monthly statement the "billing date" and "due date" of the statement.

K

CONSUMER REPRESENTATION AND THE ROLE OF STAFF

In recent weeks the matter of effective consumer representation before the Commission has been prominently mentioned. For example, in the dissenting opinion in the recently concluded Public Service Company rate proceeding (I&S Docket No. 935), the statement was made that "No one appeared in this (i.e., the Public Service Company proceeding) multi-million dollar request for rate increases as an adversary for and on behalf of the interests of the general consumers." The dissenting opinion further stated that the Staff of the Commission is "unsuitably limited in number, and resources, to function as an effective adversary vs. the utility and to fairly compete against its vast resources in personnel and funds which, ironically, are provided by the consumers." In our opinion, such statements becloud and distort the reality of what, in fact, happened in the Public Service Company rate proceeding. Similarly, such statements, if made about the present Mountain Bell rate proceeding, would be erroneous.

Anyone who is familiar with the ratemaking process realizes that a Commission decision establishing just and reasonable rates must be predicated upon the record developed in hearings before the Commission. In other words, a factual foundation must be laid for a proper Commission decision. With respect to the present Mountain Bell rate proceeding, the Staff of the Commission expended over 1,000 man-hours of time in auditing (four Staff auditors were used in checking Mountain Bell's records), analyzing, and preparing for -- and participating in -- the hearings before the Commission. In addition, the Assistant Attorneys General from the Department of Law who presented the Staff's testimony and cross-examined Mountain Bell's witnesses in this proceeding, and the Assistant Solicitor General, also have expended approximately 900 man-hours of time. It should be recognized that a great deal of the cross-examination of Mountain Bell's witnesses by the State's attorneys in the hearing most assuredly was adversary in nature.

As a result of effective and coordinated Staff action, a record was developed in this proceeding from which the Commission was able to determine that Mountain Bell was entitled to a rate increase of $11,466,000 -- some $28.8 million less than the original $40.3 million requested by Mountain Bell. In other words, the revenue increase finally determined by the Commission was less than 4%, rather than approximately 14%, as originally requested. It should also be pointed out that the record developed by Staff witnesses in this proceeding served as foundation blocks for intervening parties in the presentation of their own evidence.

We believe that the above facts speak for themselves and effectively destroy the erroneous impression that the Staff of this Commission plays a relatively passive, subordinate, or relaxed role in major rate proceedings, such as the present rate proceeding.

Although often stated, it needs to be reiterated that the raison d'être for the establishment and operation of a Public Utilities Commission is to protect the public interest. As our Colorado Supreme Court succinctly stated approximately 13 months ago, under our statutory scheme the Commission is charged with protecting the interest of the general public from excessive, burdensome rates and must determine that every rate is "just and reasonable" and that services provided "promote the safety, health, comfort and convenience of its (the utility's) patrons, employees and the public . . . ." The Court further stated that the Commission "must also consider the reasonableness and fairness of rates so far as the public utility is concerned." Public Utility Commission vs. District Court, ____ Colo. ____, 527 P.2d 233, 234-235 (1974). In other words, when this Commission fulfills its duty to protect the public interest, it must attempt to establish the lowest possible rates commensurate with the provision of adequate service.

It is not difficult to recognize that during a period of time when utility rates necessarily must rise, as a result of economic forces

beyond the control of the Commission or the utilities which it regulates, it is easy, and perhaps popular, to criticize any rate increase for a large utility. However, to ignore the effect of inadequate rates upon the utility's ability to provide adequate service is to do a disservice to the public interest. We do not believe that such a facile approach to the ratemaking process which ignores that factor serves either the present or the future public interest.

In exercising this responsibility of protecting the public interest, the Commission does not always agree with the positions set forth by Staff witnesses. This Commission is obliged to exercise its own independent judgment relative to the evidence which comes before it in a hearing, whether from Staff witnesses or others. However, it goes without saying that the Commission relies heavily upon the assistance which its Staff is able to render to it. The fact that the Staff capably has done so in two of the largest rate proceedings ever to come before us in an overlapping time frame (despite the fact that its other workload has not only continued, but has become increasingly heavy) deserves recognition rather than unjustified criticism.

III

FINDINGS OF FACT

Based upon evidence of record, it is found as fact as follows:

1. Local coin telephone rates for public and semi-public telephones should be increased from 10¢ to 20¢ per call. It is in the public interest to except from this rate increase public and semi-public coin-operated telephones located in nursing homes (excluding those having no Medicaid patients), public housing projects, and other buildings in which a majority of the occupants are low-income persons. It would be further in the public interest that before a public or semi-public coin station is converted to the new 20¢-charge, Mountain Bell shall have first implemented dial-tone-first in the Central Office serving that coin station. No revenue effect should be given to the increase in the local coin telephone rate.

2. A Directory Assistance charging plan which provides for a five-call, no charge allowance per month, with a charge of 20¢ per directory-assisted call commencing with the sixth directory-assisted call per month should be implemented, effective July 1, 1976. Up to two requested telephone numbers will be provided with each Directory Assistance call. It is in the public interest to exempt patient-subscribed for telephones in health care facilities, and telephones subscribed for by customers who are unable to read, or who are physically or visually handicapped, and thus unable to use a directory. The sum of $1,120,833 should be charged to the total revenue requirement of $11,466,000 previously authorized by the Commission.

3. Municipal license, gross receipts, franchise or occupational taxes or other impositions levied upon local service revenues should be surcharged upon customers living in the jurisdictions wherein such taxes, impositions or other charges are imposed. The sum of $3,730,000 in increased revenues, on the test-year basis, will be realized from the above surcharge of local taxes upon customers living in jurisdictions imposing such taxes.

4. Main station rates should be regrouped and repriced as set forth in Exhibit No. 54, page 1. The regrouping and repricing as set forth in Exhibit No. 54, page 1, on the test-year basis, will result in increased revenues to Mountain Bell of $5,016,690.

5. Contiguous exchange toll calling rates should be increased from 10¢ to 20¢ for the first three minutes of said calls. The additional revenues generated, on a test-year basis, from the increase in contiguous exchange toll calls from 10¢ to 20¢ for the first three minutes of said calls are $136,000.

6. Extension station charges, additional directory listing charges, Order Turrets and Automatic Call Distributing Systems charges, and Princess and Trimline Telephone charges should be increased as proposed in Advice Letter No. 1073. Revenues, on a test-year basis, to be derived from said increases are as follows:

a.	Extension Stations	$625,520
b.	Additional Directory Listings	$150,518
c.	Order Turrets and Automatic Call Distributing Systems	$ 52,188
d.	Princess and Trimline Telephones	$632,749

7. An optional one-party, usage-sensitive residential rate in the Denver Zone of Metro 65 (except for the West Office) should be offered by Mountain Bell.

8. Modifications to the existing tariff language for one-party measured business service, to eliminate abuses that have developed in this service should be filed with the Commission by Mountain Bell.

9. The Colorado Municipal League should be reimbursed by Mountain Bell for attorneys' fees and costs in the sum of $11,453.

10. The Colorado Municipal League should be reimbursed by Mountain Bell for expenses incurred by the Municipal League for the testimony of David A. Kosh, in the sum of $1,000.

CONCLUSIONS ON FINDINGS OF FACT

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

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

2. The Colorado intrastate telephone rates that are presently in effect, in the aggregate, are not just and reasonable, nor adequate and, based upon the test-year ended December 31, 1974, result in an overall revenue deficiency in the amount of $11,466,000.

3. Mountain Bell should be authorized to file new rates for Colorado intrastate telephone service that would, on the basis of the test-year, produce additional revenues equivalent to the revenue deficiency determined in Decision No. 87582 and be spread among the classes of customers as hereinafter ordered.

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

An appropriate Order will be entered.

O R D E R

THE COMMISSION ORDERS THAT:

1. Decision No. 87087, entered on July 1, 1975, and Decision No. 87582, entered on October 7, 1975, are incorporated herein by reference and are subject to the provisions of C.R.S. 1973, 40-6-114.

2. The tariff sheets filed on March 7, 1975, under Advice Letter No. 1073 be, and hereby are, rejected, except those tariff sheets listed on Appendix A to this decision.

3. Mountain Bell be, and hereby is, ordered to file tariff revisions for local coin telephone services as set forth in Part II A of this decision.

4. Mountain Bell be, and hereby is, ordered to file new tariff revisions for Directory Assistance service as set forth in Part II B of this decision.

5. Mountain Bell be, and hereby is, ordered to file new tariff revisions for main station rates as set forth in Exhibit No. 54, page 1.

6. Mountain Bell be, and hereby is, ordered to file within four months after the effective date of this decision, usage-sensitive rate plans to be offered, on an optional basis, to all customers in the Denver Zone of Metro 65 (with the exception of those customers served from the West Office).

7. Mountain Bell be, and hereby is, ordered to file within 60 days after the effective date of this Order, tariff revisions modifying the language to existing tariffs for one-party measured business service to eliminate, insofar as is reasonably possible, abuses in one-party measured business service, as set forth in Part II H of this decision and in the testimony of Dr. George J. Parkins.

8. Mountain Bell be, and hereby is, ordered to pay to the Colorado Municipal League as reimbursement for attorneys' fees and costs and expert witness fees the sum of $12,453 to be charged as an operating expense of Mountain Bell.

9. Mountain Bell be, and hereby is, ordered to conduct an economic feasibility study of the selective Directory Assistance charging plan set forth in Part II B of this decision and submit a cost-benefit analysis of such plan within six months after the effective date of this decision.

10. Mountain Bell be, and hereby is, ordered to conduct studies to determine the effects of charges and calling habits of customers who elect to subscribe to the one-party, usage-sensitive residential service heretofore ordered by the Commission in Paragraph 6, above.

11. Mountain Bell be, and hereby is, ordered, effective June 1, 1976, to commence separately listing all of the components of its customers' monthly statements, as set forth in Part II J of this decision.

12. Mountain Bell be, and hereby is, ordered not to discharge any permanent full-time or permanent part-time Directory Assistance operators as a result of implementation of the Directory Assistance plan ordered in Paragraph 4, above.

This Order shall be effective forthwith.

DONE IN OPEN MEETING the 30th day of October, 1975.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

EDWIN R. LUNDBORG

EDYTHE S. MILLER

Commissioners

COMMISSIONER HENRY E. ZARLENGO
DISSENTING.

COMMISSIONER HENRY E. ZARLENGO DISSENTING:

I respectfully dissent for the following reasons.

An increase in charges of $11,466,000 and a 12.04% rate of return on equity are authorized. Under the facts and law neither should be.

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 as to whether or not the utility is operating efficiently. 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.

In Investigation and Suspension Docket No. 867, Re: Rate Increase for Mountain Bell (MB) Decision No. 86103, December 20, 1974, an expert witness of the Municipal League clearly, and unequivocally, laid the foundation and condition upon, and without, which the right of a utility to a fair return on investment is fundamentally based and upon which charges are established which are designed to provide revenue 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 responsibility of providing good service to all who demand it, at reasonable and nondiscriminatory rates. If operating efficiently and economically, and fulfilling its public utility responsibility, the utility is entitled to every reasonable opportunity 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]

"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 secenario, 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

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1. I&S 867, Tr. Vol. XXXII, page 7
2. I&S 867, Tr. Vol. XXXII, page 8
3. I&S 867, Tr. Vol. XXXII, page 11

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?

Capital Structure

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

Is Mountain Bell's 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.

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 and that there must be "a balancing of the investor and consumer interests."

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1. I&S 867, Tr. Vol. XXXII, pages 163, 164.

Because of the impact of federal and state income taxes and franchise taxes, the tax multiplier factor is 2.1898.[1] In order to produce $1 of net operating earnings revenue of $2.1898 is required.

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 true cost rate of interest, i.e. 3.465% (6.93%[2] interest rate on embedded debt less 50% for income tax savings) is deducted from 26.37%, the true, not ostensible cost of Mountain Bell's embedded equity capital is 22.905 percentage points more than the true cost (i.e. interest on) of embedded debt capital. This excess cost of financing must be borne by the ratepayers.

To illustrate:

Mountain Bell had the following average intra-state amount of common equity, long term debt and equity/debt ratio.[3]

Equity	$354,408,000	52.52%
Long Term Debt	$316,887,000	47.48%

If the equity/debt ratio instead of being 52.52%/47.48% were 45%/55% the revenue requirement would be $11,511,966 less and the rate of return authorized of 12.04% found to be necessary "to attract capital" would still be maintained.

Actual Equity	$350,565,000[4]	X	26.37%[5]	=	$92,443,990	
Debt	316,887,000	X	3.465%[6]	=	10,980,135	
Total Cost	$667,452,000					$103,424,125

1. Dec. No. 87582, Finding No. 14, page 45
2. Commission records
3. Company Exhibit No. 3, page 8
4. Company Exhibit No. 3, page 8 (Equity less dividends accrued but not paid.)
5. 12.04% return on equity X 2.1898 (Factor, Finding No.14) = 26.37% Dec. No. 87582,page 45
6. Commission records (Embedded cost 6.93% less 50% income tax impact)

ASSUMED	45% Equity	$300,353,400	X	26.37%	= $79,203,192	
	55% Debt	367,098,600	X	3.465%	= 12,719,967	
	Total	$667,452,000				
	Cost					$91,912,159
	Less Cost					$11,511,966

There is no competent evidence that a 55% rather than 47.48% debt ratio would be detrimental; no factual evidence; none from the market place.

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 investment at millions of dollars in savings, and with continued savings in the future. The great disadvantage of this policy of continuing to acquire new equity capital is the exorbitant additional cost imposed on the ratepayers without any tangible benefit whatever to them.

Another disadvantage is that whenever Mountain Bell acquires additional equity rather than debt capital, the amount acquired becomes part of its equity, and whenever in the future its rate of return on equity is increased "to attract capital" the increase in rate increases the cost of this capital as well as of the already acquired equity capital. This is not true of debt capital as when the rate of interest is increased "to attract" and acquire additional debt capital the increase in rate will not affect the rate of interest on the already acquired debt capital.

In other words, whenever the Commission increases the rate of return on equity in order "to attract new capital" it increases by millions of dollars the cost of the already acquired equity capital; and whenever Mountain Bell increases the rate of interest needed "to attract new debt capital", the rate of interest on the already existing debt capital remains the same.

Past, and present, disregard of the availability, and the use of, more debt, which could provide enormous savings to the ratepayers, is not <u>efficient</u> and <u>economical</u> operation. This policy of financing by

adhering to high equity ratios and continuing to acquire more equity capital is not "efficient and economical operation" first required before a fair rate of return can be justified, and it constitutes an abuse of managerial discretion.

II.

Rate of Return

Authorizing a 12.04% Rate of Return on Equity is Arbitrary and Capricious and Contrary to Law.

During the year 1974 the 215 major investor-owned electric utilities, Class A and Class B, including Public Service Company of Colorado, had an average rate of return on common equity of 10.8%.[1] The rate of return of 12.04%, which is authorized, is 11.48% higher. There is no reason why Mountain Bell should have so much higher a rate of return than the average of the majors.

True, comparison is made of a major telephone utility, Mountain Bell, with the average of 215 major electric utilities, but the comparison is fair. The return of utilities should be commensurate to the risk involved. To contend that the risk of investment in Mountain Bell is greater than in electric utilities the facts must be: (a) That the need of telephone service is not as great and essential to the public as the need for electricity and, therefore, Mountain Bell is more subject to loss of business; and (b) that the profit of Mountain Bell is not as secure as it is to these electric utilities. The facts are to the contrary. (a) The service of telephone communication which Mountain Bell is required by law to provide, as distinguished from luxury items, is as indispensible and necessary to the public interest and to the welfare of the public as are electric services required by law to be provided by a major electric utility. Police and fire protection, medical services, the conduct of business and the level of living, all dictate an indispensible need for both types of service. (b) Mountain Bell has, and for many years has had, the highest financial rating

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1. Source: U.S. Congressional Record, Volume 121, Sept. 10, 1975, No. 132. FPC Study.

possible (Aaa). This is a most compelling indicator of the low risk involved in investment in Mountain Bell. Moreover, as to a fair return, the Commission and the courts are bound by law to provide a return which will "attract capital" for telephone and electric utilities alike, which tends to make each just as secure.

In the Hope Case the U.S. Supreme Court held that, "The return should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and attract capital."[1] In light of the fact that the average rate of return of the 215 major investor-owned electric utilities (reasonably comparable) is 10.8%, one wonders what justification there could be to authorize a rate of return of 12.04% for Mountain Bell. There can be no doubt that if so many reasonably comparable utilities have an average rate of return of 10.8%, such rate of return must be adequate "to assure confidence in the financial integrity of the enterprise, so as to maintain credit and to attract capital." Otherwise, an unreasonable and unacceptable number of such major utilities must be assumed to have a rate of return inadequate "to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital." What justification is offered in opposition to this assumption? Only, by analogy, a conclusion of experts based on opinion, pure and simple, involving no factual comparisons, and not founded on factual evidence. One wonders how so many comparable major electric utilities with an average rate of return of 10.8% attract capital and survive.

If the average rate of return on equity of the majors of 10.8%, rather than the 12.04%, were authorized, by change of this factor alone the revenue requirement would be $9,519,073 less and the increase in revenue of $11,466,000 authorized would be only $1,945,927.

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1. FPC vs. Hope Natural Gas Co., 320 U.S. 591

Common Equity $354,408,000 - $3,843,000[1] = $350,565,000

12.04% - 10.8% = 1.24% X $350,565,000 = $4,347,006.

$4,347,006 X 2.1898[2] = $9,519,073

The Hope Case holds that:

> "The rate-making process under the Act, i.e. the fixing of 'just and reasonable' rates, involves a balancing of the investor and the consumer interests.. ." (Emphasis supplied.)

Authorizing a rate of return of 12.04% is not under the facts "a balancing of the investor and the consumer interests. . ."

The method of determining a return to the investor based on equity invested rather than on rate base is prejudicial to the ratepayers. It is obvious that in a given case the cost of providing service to the customers, excluding the cost of capital, remains the same whether the utility has a low, or high, equity ratio. It is also obvious that management has an area of wide discretion, limited only by arbitrary and capricious exercise therof, in determining what the equity ratio shall be. It is also obvious that the higher the equity ratio the more the cost of capital and, therefore, the higher the revenue required of the ratepayers. To permit the revenue requirement to be based on equity, as the Majority does here, opens the door for higher revenues as management may imprudently or without concern for the interests of the ratepayers, continue to maintain, or to increase, the equity ratio.

III.

Construction Work in Progress

Construction work in progress (CWP) should not be included in rate base. The purpose of building additional plant is to increase capacity which in turn necessarily will produce conforming additional revenues. By its inclusion in rate base the ratepayers are made to provide revenues thereon which are not taken into account in calculating the return found necessary "to attract capital" as such revenues are

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1. Exhibit No. 3, page 8 - Accrued Dividends not paid and excluded.
2. Tax multiplier factor (Dec. No. 87582, Finding No. 14)

generated only in the future as the CWP becomes progressively productive. The obvious result is that the utility will continually, as the construction work in progress becomes productive in the future, be the recipient of additional revenues not accounted for. As CWP is a constant and continual investment in the nature of a revolving investment, i.e. some coming in, and some going out, the Company is continually the recipient over the years of continuing additional revenues not accounted for in calculating the revenue required to produce the rate of return found necessary "to attract capital", and thereby is allowed to collect more revenues from the ratepayers than is necessary; and results in "unjust and unreasonable" charges.

As the amount of plant under construction (CWP) is $49,764,000[1] and as the equity ratio is 52.52%[2] the pro rata amount of equity capital invested in CWP is: 52.52% X $49,764,000 = $26,136,053. As the tax multiplier factor is 2.1898 and the rate of return on equity authorized is 12.04%, the revenue required of the ratepayers for the amount of equity capital invested in CWP is: 26.37% X $26,136,053 = $6,892,077. If the CWP were excluded from rate base and not allowed to earn, instead of an increase in revenue required to provide the authorized rate of return of 12.04% there would be a reduction of $6,892,077 in the overall revenue required and the increase authorized of $11,466,000 be reduced to $4,573,923.

It may be pointed out that if the investment in CWP is not included in rate base it will not earn for the stockholders. There is no good reason why the stockholders in a utility business who, if the utility operates efficiently, are legally assured of opportunity of profit in the future on their investment should have earnings not available to stockholders in nonutility businesses who are exposed to the risk of constant and, perhaps, destructive competition, who do not earn on any

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1. Dec. No. 87582, page 22
2. Exhibit No. 3, page 8

capital while invested in CWP, and who do not recoup interest on any debt capital while invested therein.

By exclusion of construction work in progress from rate base a strong incentive will be given the utility to make the construction work in progress productive as soon as possible. If a return thereon is realized regardless of when CWP becomes productive this incentive is lost to the great prejudice of the ratepayers. A major utility in Colorado is now some 5 years behind the time a certain project in its CWP costing some $90 million was to become productive.

The Colorado Supreme Court has held that: "The utility is entitled to a reasonable return on the value of the property which is used and useful to the rendering of its service to the public."[1] (Emphasis supplied.)

Construction work in progress is property which may become used and useful in the rendering of service to the public in the future. It is not during construction property which is used and useful to the rendering of service to the public as during such period it is not used and is not useful in rendering any service. It is clear that the Court did not mean CWP as the type of property upon which the utility is entitled to earn. It is also obvious that the return on investment to which the Court in the Hope case holds the utility is entitled "to attract capital", must mean, in light of the Colorado Case, only that investment which is "used and useful".

The Majority includes construction work in progress in the rate base and realizing it should not be there in justification resorts to a fine spun rationalization allegedly offsetting its effect, which offset is not at all an equal offset. If it should not be in the rate base in the first instance it should be excluded and whatever other entitlement the utility may have treated on its own merits.

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1. PUC et al, vs. Northwest Water Corp. 168 Colo. 154

IV

Salaries

The greater the competency of the officers of a utility, the more beneficial is their service to both the stockholders and to the ratepayers. Adequate salaries should be paid to attract and to motivate them. Company officers fix the amount of their own salaries. The stockholders, who control, are little concerned as the cost is not shared by them. There exists, therefore, an inherent conflict between the interests of the officers and those of the ratepayers who bear the cost. There is no bargaining with officers as there is with other types of employees. Very little incentive, if any, remains to exercise restraint. As the benefit of competent officers is definitely shared by both the stockholders and the ratepayers and cannot be exactly measured their salaries should be borne equally, i.e. one-half by the ratepayers and one-half by the stockholders. This would serve as a restraint of payment of exorbitant salaries and would provide the proper balancing of the consumers' interests and the investors' interests required by the law where a conflict arises.

V.

Purchasing Practices

AT&T owns 88% (rounded) of the common stock of, and controls absolutely, Mountain Bell, the Purchaser, and totally controls its wholly-owned non-regulated subsidiary Western Electric (Western), the Seller. As Western is not subject to regulation and Mountain Bell is a capitve customer its charges may be whatever the traffic will bear. The more money Western makes the more AT&T makes, and the higher the charges to the customers of Mountain Bell. 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 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 not ordinary caution but strict scrutiny, and require hard and convincing evidence to establish that Mountain Bell's purchases are efficient and economical; and the burden of proof is the Company's to provide such evidence. This evidence, however, is totally lacking in the record notwithstanding the fact that such evidence is definitely, and peculiarly, within the resources of Mountain Bell and not of the Commission Staff, or of the Protestants. Having such evidence, and failing to adduce it, it fails to carry its burden of proof.

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 under the evidence cannot reasonably be found to be efficient and economical, and the Commission cannot legally establish any rates as "just and reasonable".

VI.

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

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1. I&S 867, Tr. Vol. XXVIII, Pages 119, 120

2. I&S 867, Tr. Vol. XVIII, Pages 46, 47, 48

It has been suggested that if the charges 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.

VII

Majority Treatment of Capital Structure

Debt vs. Equity Ratios

The Majority states:[1]

> "Advocates of a high debt ratio set forth the relative costs of long-term debt and equity by comparing a utility financed by 100% debt to a utility financed by 100% equity. In comparing these two extremes in a vacuum, the mathematics are correct." (Emphasis supplied.)

A table is then set out and conclusions drawn therefrom to disprove a position not taken. The "straw man" argument is used; i.e. a straw man is set up and torn down. No one advocates that a utility should be 100% debt financed. What is advocated is that because of the known excessively higher cost of equity capital a course of financing should be pursued whereby only debt capital should be acquired until market-place facts rather than self-serving opinion evidence indicate some other method of financing to be more in the public interest.

They state the advocates who argue that higher debt ratios should be attained in the public interest treat the problem ". . . in summary fashion or avoid them entirely, . . ."[2] The facts are: the amounts of equity and debt capital are known; the cost rates of equity and debt capital are known; the federal and state income tax laws are known; the mathematical conclusions indicating that the cost of equity capital is so much higher than that of debt capital are known; the fact

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1. Dec. No. 87582, Page 18, para. 5

2. Dec. No. 87582, Page 20, para. 1

that the more the debt capital the less will be the revenues required to cover "the expense of doing business"; the fact that the lower the expense the less will be the revenue required to provide a fair return on investment; and, the fact that by reduction of expense the risk to investment, and to profit on the investment is reduced. No facts, on the other hand, justify the continued acquisition of more, and more, equity capital, only opinions.

The Majority states:[1]

> "As for the suggestion that Mountain Bell continue to increase its debt ratio until it is no longer able to sell debt, the response of David A. Kosh, previously recognized by this Commission as an expert on rate of return when he appeared on behalf of the Colorado Municipal League in I&S Docket No. 867 captures the essence of the problem: (Emphasis supplied.)
>
> > . . . (I)t's like saying to somebody we don't know whether a certian medicine is good or bad so we are going to let you try it, and if you die it's bad and if you don't it's good." (Investigation and Suspension Docket No. 867, Volume XXXII, pp. 224-225 of transcript.)

The good Dr. Kosh would be closer to the facts and to the truth if he said:

> "The present medicine (low debt capital) is disastrous. We know a much better medicine (more debt capital). Take it until we find on competent evidence that some other medicine is better."

The suggestion is not that Mountain Bell continue to increase its debt ratio until it is "no longer able to sell debt" at any cost: what is advocated is that it acquire only debt capital until factual evidence from the market place indicate some other method of financing is more in the public interest.

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1. Dec. No. 87582, Page 21, para. 1.

VIII.

Coin Telephone Service

Coin telephone service located where it is, and available as it is, serves to provide the mass of telephone customers with a telephone service which would not be available to them at the time, and the place, they need the service. Therefore, if there should be any partial subsidization it is justified by the benefit to the general customers of having needed service available when no other service is available.

A 100% increase in charges for coin telephone service is authorized. To authorize an increase so much greater than the average increase of 4.6% authorized assumes, if the increase from 10¢ to 20¢ is proper, gross lack of judgment on the part of the utility, and on the part of the Commission, to have allowed a charge of 10¢ to have remained in effect for so many years in the past.

The evidence to justify so great, and disproportionate, an increase is not to be found in the record.

The increase should not be allowed.

C O N C L U S I O N

In this dissent 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 principles concerned are 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, just and reasonable charges may be undertaken; that it is the burden of Mountain Bell to sustain such finding by 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, among others its policy of financing, or, at least that its operation is not shown to be efficient and economical by competent and sufficient evidence; and, that therefore the charges authorized are illegal as not being "just and reasonable."

To authorize increased charges without proof of efficiency 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 an increase of charges to provide a fair return on the investment.

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

Title 40-6-115 (3), CRS 1973, 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 the evidence.

I regret that I have not had sufficient time to consider in full the decision concerning the structure of rates which was given to me this morning.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

HENRY E. ZARLENGO

Commissioner
hbp

ATTEST: A TRUE COPY

Harry A. Galligan, Jr., Secretary

APPENDIX A

Colo. P.U.C. Sheet No.	Colo. P.U.C. Revision No.	Title	Cancels Colo. P.U.C. Sheet No.	Cancels Colo. P.U.C. Revision No.
		General Exchange Tariff		
3	Fifth	Section 9	3	Fourth
2	Seventh	Section 11	2	Sixth
30	Third	Section 20	30	Second
1	Sixth	Section 23	1	Fifth
5	Twelfth	Section 26, Part 6	5	Eleventh
10	Eighth		10	Seventh
1	Fourth	Section 30	1	Third
2	Sixth		2	Fifth
3	Fifth		3	Fourth
4	Fifth		4	Fourth
5	Sixth		5	Fifth
6	Fifth		6	Fourth
7	Fifth		7	Fourth
8	Fifth		8	Fourth
9	Fifth		9	Fourth
10	Third		10	Second
11	Third		11	Second
12	Third		12	Second
13	Third		13	Second
14	Third		14	Second
15	Third		15	Second
16	Fourth		16	Third
17	Third		17	Second
18	Third		18	Second
19	Third		19	Second
34	Fourth	LDMTS	34	Third
28	Second	WATS	28	First