(Decision No. C84-587)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

RE: INVESTIGATION AND SUSPENSION OF PROPOSED CHANGES IN TARIFF - COLORADO PUC NO. 5 - TELEPHONE, MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, DENVER, COLORADO 80202.	)	INVESTIGATION AND SUSPENSION DOCKET NO. 1655
IN THE MATTER OF THE INVESTIGATION OF CHANGES IN TARIFF - COLORADO PUC NO. 5 - TELEPHONE EFFECTED BY THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, DENVER, COLORADO 80202, PURSUANT TO ADVICE LETTER NO. 1930.	)	CASE NO. 6360
IN THE MATTER OF THE INVESTIGATION OF CHANGES IN TARIFF - COLORADO PUC NO. 5 - TELEPHONE EFFECTED BY THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, DENVER, COLORADO 80202, PURSUANT TO ADVICE LETTER NO. 1932.	)	CASE NO. 6361

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May 22, 1984
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STATEMENT AND FINDINGS

BY THE COMMISSION:

On November 28, 1983, the Mountain States Telephone and Telegraph Company (hereinafter "Mountain Bell" or "Company" or "Respondent") filed three advice letters:

1. Advice Letter No. 1930
2. Advice Letter No. 1931
3. Advice Letter No. 1932

On December 6, 1983, the Commission entered Decision No. C83-1831 to investigate tariffs filed by Mountain Bell pursuant to Advice Letter No. 1931 wherein Mountain Bell seeks a general across-the-board revenue increase of approximately $151 million.

The Commission discussed with its staff, Mountain Bell, and other interested parties on December 15 and 16, 1983, whether or not the tariffs filed pursuant to Advice Letter No. 1930 and Advice Letter No. 1932, respectively, should be suspended and the proposed rates, filed pursuant to the advice letters, should be set for hearing.

Mountain Bell agreed that, in the event the tariffs filed pursuant to Advice Letter Nos. 1930 and 1932 were permitted to become effective on January 1, 1984 without suspension, Mountain Bell would agree to assume the burden of proof, that is the burden of going forward and the burden of persuasion to prove that the rates so filed are just and reasonable. In the event said tariffs, subsequent to January 1, 1984, were to be the subject of an investigation by the Commission or the subject of a complaint to the Commission by some person or entity, Mountain Bell further agreed that were the Commission ultimately to find that the rates embodied in the tariffs, filed pursuant to Advice Letter Nos. 1930 and 1932, were not just and reasonable, but should be lower than the filed rates, Mountain Bell voluntarily would refund the difference between the filed rates and the rates ultimately established by the Commission together with appropriate interest on such refund.

By Decision No. C84-27 entered on January 4, 1984, the Commission, on its own motion, entered upon an investigation of the tariffs filed by Mountain Bell on November 28, 1983 pursuant to Advice Letter No. 1930 which tariffs proposed to recover $51.4 million from AT&T Communications of the Mountain States. By the same decision the Commission, on its own motion, entered into an investigation of Advice Letter No. 1932 which was accompanied by tariffs proposed on an "emergency interim increase" basis. By Advice Letter No. 1932, additional revenues of $33.2 million were proposed to be recovered by

applying a 7.38% increase to Mountain Bell rates, products, and services under the tariffs effective as of October 1, 1983, except for local coin calls and non-recurring one-time charges.

Case No. 6360, with respect to the tariffs filed by Mountain Bell with its Advice Letter No. 1930, and Case No. 6361, with respect to the tariffs filed by Mountain Bell with its Advice Letter No. 1932, were consolidated with Investigation and Suspension Docket (I&S) No. 1655 and set for hearing to commence on March 20, 1984.

It should be noted that Ordering Paragraph 4 of Decision No. C83-1831, dated December 6, 1983, stated, "The test period in this docket shall be the 12 months ending December 31, 1984." By Decision No. C83-1879, entered on December 20, 1983, Ordering Paragraph 4 as contained in Decision No. C83-1831 was amended, nunc pro tunc, as of December 6, 1983, to read as follows:

> 4. Each of the parties in this docket shall have the option of presenting its case, if any, by proposing a test year based either on a forecasted test year ended December 31, 1984 or a historic test year ending December 31, 1983 with appropriate pro forma adjustments, if any.

Mountain Bell's direct case and the cross examination of its witnesses occurred on March 20, 21, 22 and 23, and April 3, 4, 5 and 6, 1984. At the conclusion of Mountain Bell's direct case, the Staff of the Commission filed a Motion to Dismiss and intervenors, Colorado Ski Country USA and Colorado-Wyoming Hotel and Motel Association, Inc. (hereinafter Ski Country) filed a Motion to Dismiss and Limit the Issues. The Commission orally ruled from the bench that Mountain Bell would have an opportunity to file a reply to the foregoing motions on or before April 13, 1984, and that oral argument with respect to the same would be held on April 17, 1984 at 3:00 P.M.

On April 11, 1984, the Colorado Municipal League filed a pleading entitled, "Joinder by the Colorado Municipal League in Motions to Dismiss." On April 13, 1984, Mountain Bell filed a Reply to Motion to Dismiss.

On April 17, 1984, oral argument with respect to the Staff's Motion to Dismiss and Ski Country's Motion to Dismiss and Limit the Issues was held before the Commission. During oral argument, counsel for Mountain Bell tendered to the Commission for filing in I&S No. 1655 a pleading entitled, "Waiver of Statutory Rights" wherein Mountain Bell states:

> 1. In the above-captioned docket, two parties have filed Motions to Dismiss at the close of the direct case of Mountain Bell. The Colorado Municipal League has joined in these Motions.
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> 2. These Motions are presently pending before the Commission.
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> 3. In the event that the Staff of the Commission determines that the rate increase authorized in this docket warrants further examination, and an investigation proceeding is initiated, Mountain Bell will waive its rights under the statutes and rules of the Commission and assume the burden of proof and the burden of going forward with evidence to prove the fairness and reasonableness of the tariffs authorized in this docket.
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> 4. In the event that the Commission determines, after appropriate notice and hearing, that use of a forecasted 1984 test year caused the Commission to order an increase in Mountain Bell's rates greater than if the Commission had 1984 historical accounting results before it in this docket, Mountain Bell will waive its rights to have rates authorized by the Commission in this docket adjusted prospectively only, and hereby agrees to refund that portion of any rate increase caused by the lack of 1984 actual intrastate accounting results.

At the conclusion of the oral argument, the Commission took both Motions to Dismiss under advisement.

On April 24, 1984, Commission issued its Decision No. C84-478 wherein it denied the Motion to Dismiss filed by the Staff of the Commission on April 6, 1984 and also denied the Motion to Dismiss and Limit the Issues filed by Ski Country on April 6, 1984. Decision No. C84-478 also continued in effect all procedural dates in Docket No. 1655.

On May 15, 1984, the Commission commenced to hear the oral summarization of testimony that previously had been filed by witnesses for the Staff of the Commission and other intervenors, together with oral cross-examination of these witnesses. Hearings continued on May 16 and 17, 1984 for this purpose.

On the morning of May 18, 1984, Mountain Bell filed a Motion with respect to the above captioned cases and docket wherein it seeks the following relief:

(a) A severance of Investigation and Suspension Docket No. 1655 from Case No. 6360 and Case No. 6361;

(b) Permit Mountain Bell to withdraw the tariffs associated with I&S Docket No. 1655;

(c) Direct the Company to continue discussions with the Staff concerning the methodology for filing a test year comprised of 6 months actual and 6 months estimated intrastate financial results of operations;

(d) Continue the hearing dates in Case Nos. 6360 and 6361;

(e) Direct Mountain Bell to continue reporting Colorado results of operation on a monthly basis as actual results of operation become available;

(f) Absent a Staff request for a show cause proceeding, any refund liability of Mountain Bell resulting from the collection of interim rates will be determined after the Staff audits 1984 actual financial results (fully pro forma adjusted) and presents the results of such audit to the Commission;

(g) Permit Mountain Bell to continue billing customers on the basis of tariffs associated with Case Nos. 6360 and 6361 subject to refund at the last found rate of return.

In support of its Motion, Mountain Bell states:

1. On November 28, 1983, Mountain Bell filed three advice letters and associated tariffs. Advice Letter 1930 dealing with intrastate access charges and Advice Letter 1932 dealing with an interim increase in rates not associated with carriers became effective on January 1, 1984, subject to refund.

2. The Commission instituted Case No. 6360 and Case No. 6361 to examine the reasonableness of the aforementioned tariffs that became effective subject to refund on January 1, 1984.

3. Advice Letter No. 1931 sought a general rate increase, and said tariffs were suspended and set for hearing in I&S Docket No. 1655 pursuant to CRS 40-6-11 (sic). (Probably refers to 40-6-111.)

4. Pursuant to CRS 40-6-11 (sic) (probably refers to 40-6-111), unless the Commission publishes a decision in I&S Docket No. 1655 within 210 days of the Suspension Order, the tariffs become effective by operation of law.

5. Case No. 6360 and Case No. 6361 have been consolidated with I&S Docket No. 1655 for purposes of hearing, but tariffs associated with Case Nos. 6360 and 6361 are not subject to the 210 day suspension period applicable to the tariffs associated with I&S Docket No. 1655.

6. The extraordinary and unusual circumstances associated with the divestiture of Mountain Bell have caused the parties in these cases great frustration in attempting to apply previously established regulatory standards to an extraordinary change in circumstances.

7. In particular, the Staff of the Commission has been confronted with a limited amount of actual financial results that has caused extreme difficulty in the Staff's attempt to verify through audit the rate base, income statement and capital structure proposed for ratemaking purposes in this matter.

8. The booked financial results of Mountain Bell Colorado Intrastate Operations for the first six months will be available in September of 1984, and the Company could file a case based on six months actual results and six months estimated results 30 to 45 days thereafter.

9. The Commission Staff has indicated a willingness to confer with Mountain Bell to develop a methodology to present such a test year in a manner that would permit the Staff to verify through audit the results presented.

10. Based on recent developments at the Federal Communications Commission, Mountain Bell's best information is that the Company will be able to file revised intrastate access charge tariffs within the next 45 days. It is acknowledged that this filing may cause the spread of the interim rates to be modified.

On the morning of May 18, 1984, the Commission received oral comment from counsel who were present in the hearing room with respect to Mountain Bell's motion. The general consensus of the parties, based upon comment by their respective counsel, was that the Commission should grant Mountain Bell's motion. It should be noted, however, that counsel for the Colorado Municipal League stated that: (a) party intervenors in the three captioned dockets, as well as the Commission Staff, should be permitted the opportunity to confer with Mountain Bell and the Commission Staff with regard to the development of a methodology to present a test year filing based on six months actual results and six months estimated results, (b) that party intervenors as well as the Commission Staff, should be recipients of the monthly Colorado results of Mountain Bell's operations as actual results of said operations become available, and (c) that Mountain Bell should be required promptly to file necessary intrastate tariff changes as a result of any modifications by the Federal Communications Commission with respect to interstate access charge tariffs. Counsel for the Colorado Municipal League also suggested that parties be given two weeks subsequent to a decision on Mountain Bell's motion within which to file a motion for the payment of attorneys' fees and expert witness fees. Counsel for Mountain Bell orally indicated that Mountain Bell had no objection to acceding to the foregoing requests set forth by counsel for the Colorado Municipal League.

Although, as indicated above, the Commission did not grant the motion to dismiss filed by the Staff of the Commission and the motion to dismiss and limit the issues filed by Ski Country at the conclusion of Mountain Bell's case in chief, the Commission in its Decision No. C84-478, dated April 24, 1984, did express a number of concerns with respect to Mountain Bell's direct case in I&S Docket 1655. Inter alia, the Commission made reference to the basic guidelines set forth in

Decision No. C81-1999, dated December 1, 1981, in I&S Docket No. 1525, involving Public Service Company of Colorado, in which the Commission discussed forecasted test year information. The Commission indicated that the elements of a forecasted test year set forth in Decision No. C81-1999 were as appropriate to Mountain Bell as they were to Public Service Company of Colorado. As indicated, in Decision No. C84-478, an excerpt from C81-1999, dated December 1, 1981 dealt with forecasted test year information and was introduced in I&S Docket 1655 as Exhibit No. 19.

With regard to I&S 1655, which is Mountain Bell's general rate increase case wherein it seeks $99.5 million in increased revenues, Mountain Bell has proposed to withdraw the tariffs filed pursuant to Advice Letter No. 1931 which are designed to produce the $99.5 million figure. With respect to the interim increase of $51.3 million, as a result of the tariffs filed pursuant to Advice Letter No. 1930 and which is being collected from AT&T Communications, and with respect to the $33.1 million interim increase relative to Advice Letter No. 1932 which is being collected from the general body of ratepayers, Mountain Bell proposes that these tariffs continue in effect and that the hearing dates in Case No. 6360 and Case No. 6361 with respect to the same be continued. Mountain Bell also proposes to continue billing customers on the basis of the tariffs filed pursuant to Advice Letter No. 1930 and No. 1932, respectively, subject to refund at the last found rate of return.

The Commission states and finds that the motion as presented by Mountain Bell on May 18, 1984, and as generally agreed to by all parties present on that day, as modified by the suggestions of counsel for the Colorado Municipal League referenced above (and also agreed to by Mountain Bell) should be adopted in accordance with the order which will

follow hereinafter. It should be reasonably clear to Mountain Bell and all the parties herein that as a result of our discussion in Decision No. C84-478, as well as our discussion in this decision, the Commission could not and cannot verify the accuracy of figures based upon a budget year forecast by Mountain Bell. In response to our concerns, Mountain Bell is considering the filing of a rate case in the fall of 1984 based upon a test year comprised of six months actual and six months estimated intrastate financial results of its operations. It goes without saying that a so-called six and six filing (which is basically a current test year filing) is more in keeping with the Commission's regulatory philosophy than would be an entirely future test year which is based upon budget figures of Mountain Bell. Nevertheless, Mountain Bell, the Staff of the Commission, and all the intervenor parties in the three-captioned dockets should be apprised of the fact that this Commission cannot legally bind itself to a future course of conduct or regulatory philosophy. By the same token, this Commission cannot legally bind Mountain Bell, the Staff of the Commission, or intervenor parties to any particular test year philosophy. Nevertheless, Mountain Bell, the Staff of the Commission, and intervenor parties can be, and should be, apprised of the Commission's present regulatory stance with respect to the test year issue.

In recent years various regulatory commissions throughout the country, including this Commission, have utilized the mechanism of a Commission instituted management audit in order to pinpoint areas wherein utilities might operate more efficiently with corresponding benefits both to the utilities involved and their ratepayers. This Commission, for example, has utilized Commission instituted management audits with respect to Colorado-Ute Electric Association, Inc., in Case No. 5728, and with respect to Public Service Company of Colorado in Case No. 5978. In

an era in which changes in telecommunications have accelerated in increasingly rapid fashion, and in an era in which price changes are increasingly significant, we believe that Mountain Bell and its ratepayers would be greatly benefitted by utilization of the management audit to discover ways in which Mountain Bell might be operated more efficiently. Accordingly, the Commission anticipates that at some future time it will institute a management audit with respect to Mountain Bell. The Commission notes that intervenor Stephen Hodgson recommended a management audit. Although the Commission has not yet determined the most appropriate time for the commencement of the management audit process, generally speaking the Commission expects that such a management audit, from the procedural standpoint, will be similar to the previous management audits involving Colorado-Ute Electric Association, Inc., and Public Service Company of Colorado.

On May 9, 1984, Mountain Bell filed a Request of Correction of Transcript. No party has filed on objection to its request, and the same will be granted.

Premises considered, the Commission finds and concludes the following Order should be entered.

O R D E R

THE COMMISSION ORDERS THAT:

1. Case No. 6360 and Case No. 6361 are severed from Investigation and Suspension Docket No. 1655 for all purposes as of the effective date of this Order.

2. The Mountain States Telephone and Telegraph Company is permitted to withdraw the tariffs previously filed by it on November 28, 1983 pursuant to Advice Letter No. 1931 which tariffs are the subject matter of Investigation and Suspension Docket No. 1655.

3. The Request for Correction of Transcript filed by the Mountain States Telephone and Telegraph Company on May 9, 1984 is granted.

4. Investigation and Suspension Docket No. 1655 is closed.

5. All hearing dates in Case No. 6360 and Case No. 6361, previously set, are vacated and further hearing dates, if any, in Case No. 6360 and Case No. 6361 shall be set by subsequent Order of the Commission.

6. All prefiled and oral testimony with respect to Case No. 6360 and Case No. 6361, together with all previously filed and admitted exhibits with regard to the same, shall remain as part of the record in Case No. 6360 and Case No. 6361. In the event any one or more of the parties in Case No. 6360 and Case No. 6361 subsequently files a motion to strike all or part of the said testimony and exhibits as no longer being relevant, the Commission shall consider said motion in due course.

7. Mountain States Telephone and Telegraph Company shall (a) continue its discussions with the Staff of the Commission and other party intervenors in Case No. 6360 and Case No. 6361 and Investigation and Suspension Docket No. 1655 with respect to a proper methodology for filing a test year case comprised of six months actual and six months estimated intrastate financial results of Mountain States Telephone and Telegraph Company's operations (b) continue reporting to the Staff of the

Commission, and commence reporting to all party intervenors in Investigation and Suspension Docket No. 1655 on a monthly basis, the results of its operations on a Colorado Intrastate basis as the actual results ofsaid operation become available (c) continue the collection of interim rates established by tariffs filed pursuant to Advice Letter No. 1930 and Advice Letter No. 1932, dated November 28, 1983, until further Order of the Commission with the understanding that the collection of said interim rates shall continue to be subject to refund pursuant to Order of the Commission in Case No. 6360 and Case No. 6361, respectively.

8. Motions, if any, relating to attorney fees and expert witness fees shall be filed with complete time and charges documentation on or before June 11, 1984. Such motions will be subject to such disposition as the Commission subsequently may order.

9. Mountain States Telephone and Telegraph Company, in the event it files a general rate case on or after October 1, 1984, which general rate case is based upon a test year comprised of six months actual and six months estimated intrastate financial results, shall file with the Commission the following forecasted test year information:

a. Detailed estimates of revenues and costs for the forecasted test year for each major category of service.

b. Estimates of revenue of costs should be supported by work papers showing the calculations used to derive and/or support the exhibits.

c. Exhibits which are (1) arranged in an orderly sequence, appropriately indexed and legible (2) describe the methodology used to estimate the data (3) show derivation, including the specification of any equations used of each estimate (4) explain result and how it was reached where judgment is involved in estimation (5) list all assumptions that have consequent effects necessary for the derivation of each individual estimate and show or explain how each assumption was used in each estimate (6) show at least one year historical data to support estimates derived from the historical base (7) describe the management analysis and approval procedures.

d. Revenue estimates which have at least the following exhibits as back-up for each major telephone offering by customer classification: (1) number of customers (2) sales per customer (3) total sales (4) relevant unit price (5) revenues.

e. Estimates of operating expenses by category including per unit costs where costs vary directly with changes in output.

f. Estimates of major capital expenditures should be separated in specific categories with one-year historical and one-year forecasted data.

10. This Order shall be effective forthwith.

DONE IN OPEN MEETING the 22nd day of May, 1984.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Edythe S. Miller

Arden Schmidt

Ronald L. Lehr

Commissioners

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