

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN RE THE INVESTIGATION OF THE)
TRANSFER OF ASSETS FROM THE)
EL PASO COUNTY TELEPHONE COM-)
PANY TO MOUNTAIN STATES TELE-)
PHONE AND TELEGRAPH COMPANY)
PURSUANT TO THE ACQUISITION OF)
MAJORITY STOCK CONTROL BY THE)
MOUNTAIN STATES TELEPHONE AND)
TELEGRAPH COMPANY.)

CASE NO. 6433
ORDER TO SHOW CAUSE
AND NOTICE OF HEARING

- - - - -
December 11, 1984
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STATEMENT AND FINDINGS OF FACT

BY THE COMMISSION:

Mountain Bell has notified this Commission of its intent to acquire the outstanding shares of the El Paso County Telephone Company (El Paso) by letter dated December 4, 1984, addressed to Mr. Harry A. Galligan, Jr., Executive Secretary of the Colorado Public Utilities Commission, was received on December 5, 1984 and is signed by Thomas W. Lindblom, Colorado Vice President of the Mountain States Telephone and Telegraph Company (Mountain Bell). Attached to the letter were four copies of the decision of the Federal Communications Commission (FCC) in File No. W-P-C-5525, In Re the Application of the Mountain States Telephone and Telegraph Company to Acquire a Controlling Interest in the El Paso County Telephone Company by the Purchase of its Common Shares of Stock, was adopted on November 20, 1984 and released on November 25, 1984. Also attached to the December 4 letter from Mountain Bell were four copies of a Mountain Bell letter addressed to each shareholder of El Paso indicating that Mountain Bell "can begin purchasing your shares as early as December 17, 1984."

C.R.S. 40-5-105 provides:

Certificate or assets may be sold, assigned or leased.
The assets of any public utility, including any certificate of public convenience and necessity or rights obtained under any such certificate held, owned, or obtained by any public utility, may be sold, assigned, or leased as any other property other than in the normal course of business but only upon authorization by the commission and upon such terms and conditions as the commission may prescribe.

In accordance with this statute, it is the position of this Commission that a utility may not transfer its assets, other than in the normal course of business, to another entity, either by way of a direct asset transfer itself or by way of an indirect asset transfer pursuant to the acquisition of a controlling interest in the common stock of the utility involved. The above referenced FCC Order and Certificate indicates that the directors of El Paso recommended to its shareholders that they accept the price per share competitive bid offered by Mountain Bell. By virtue of the arrangements between El Paso and Mountain Bell, the assets of El Paso effectively are being transferred from El Paso to Mountain Bell.

As of the date of this order, the El Paso has not filed with this Commission an application for the approval of the transfer of its assets to Mountain Bell pursuant to an acquisition of the controlling stock interest in El Paso by the purchase of its shares of common stock by Mountain Bell.

The Commission states and finds that sufficient cause exists for the holding of a hearing to determine the facts of this matter, to hear material argument, to receive evidence from the Staff and any others who may testify, and to determine what remedial action, if any, shall be imposed by the Commission.

The Commission finds that both El Paso and Mountain Bell should be made respondents in this proceeding. The Commission further finds that Mountain Bell, as a telephone utility subject to the supervisory oversight and regulation by this Commission, should be ordered to cease and desist any action on its part which may result in its acquisition of the controlling stock interest in El Paso pending resolution of the issues raised in this docket.

THEREFORE THE COMMISSION ORDERS THAT:

1. The El Paso County Telephone Company is made a Respondent in this Docket.
2. The Mountain States Telephone and Telegraph Company is made a Respondent in this Docket.
3. The Respondents, El Paso County Telephone Company and The Mountain States Telephone and Telegraph Company, are directed to appear before the Commission on February 4, 1985, as specifically set forth below, to show cause why the Commission should not take such action, or enter such order, or prescribe such other remedial measures as may be appropriate; including but not limited to, an order to forthwith file an application for Commission authorization to transfer assets from the El Paso County Telephone Company to The Mountain States Telephone and Telegraph Company, pursuant to an acquisition of controlling stock interest in El Paso County Telephone Company by The Mountain States Telephone and Telegraph Company, or otherwise, or if ordered, an order suspending, revoking, altering, or amending the authority which the El Paso County Telephone Company and The Mountain States Telephone and Telegraph Company, or either of them, now has to render telephone service within the State of Colorado.
4. Any person, firm or corporation who wishes to intervene in Case No. 6433 shall file an appropriate pleading requesting permission to do so on or before January 11, 1985.

5. This case is set for hearing before the Commission at Logan Tower, Office Level 2, 1580 Logan Street, Denver, Colorado 80203, on February 4, 1985, at 9:00 A.M., at which time and place such evidence as is proper may be introduced and material arguments to the issue may be presented.

6. The Mountain States Telephone and Telegraph Company immediately shall desist from taking any action to effect the purchase of the controlling stock interest in the El Paso County Telephone Company without authorization by order issued by this Commission. The Mountain States Telephone and Telegraph Company immediately shall take such action as is necessary to implement this ordering paragraph which action shall include, but may not be limited to sending a letter to each shareholder of the El Paso County Telephone Company indicating that The Mountain States Telephone and Telegraph Company has been ordered by this Commission to cease and desist from taking any action which may result in acquiring the controlling stock interest in the El Paso County Telephone Company without authorization, by order of this Commission.

7. This Order shall be effective forthwith.

DONE IN OPEN MEETING THE 11th day of December, 1984.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Edythe S. Miller
Andre S. S. S.
Ronald L. Lehn
Commissioners