

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION	)	
OF THE MOUNTAIN STATES TELEPHONE	)	APPLICATION NO. 36247
AND TELEGRAPH COMPANY TO OBTAIN	)	
AUTHORIZATION FOR THE TRANSFER	)	ORDER OF THE COMMISSION
OF CERTAIN ASSETS ASSOCIATED	)	DENYING APPLICATION
WITH DIRECTORY ADVERTISING.	)	

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June 14, 1985
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Appearances: Russell P. Rowe, Esq.,
Coleman M. Connolly, Esq.,
Denver, Colorado, for
The Mountain States Telephone
and Telegraph Company

Dudley P. Spiller, Jr., Esq.,
Peter R. Nadel, Esq.,
Denver, Colorado, for
Colorado Municipal League

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

Mark A. Davidson, Esq.,
Valerie McNevin-Petersen, Esq.,
Denver, Colorado, for
the Staff of the Commission

John E. Archibold, Esq.,
Denver, Colorado,
For the Commission.

STATEMENT AND FINDINGS OF FACT

BY THE COMMISSION:

I. HISTORY OF PROCEEDINGS

On April 2, 1984, The Mountain States Telephone and Telegraph Company (Mountain Bell) filed Application No. 36247 seeking the Commission's approval of the transfer of certain of its assets pursuant to § 40-5-105, C.R.S. In fact, Mountain Bell, on January 1, 1984, prior to the filing of this application, had transferred certain assets associated with the publishing of telephone directories (directory assets), to Landmark Publishing Company (Landmark). Landmark is a

wholly-owned subsidiary of U S West Inc.¹ These assets, and the net book value associated with them on a total Mountain Bell company basis were as follows:

Cash (Account 113)	\$56,300,000.00
Building (Account 212)	2,613,000.00
PBX and Station Equipment (Accts. 234 and 231)	2,738,000.00
Office Equipment and Computers (Account 261)	2,977,000.00
Motor Vehicles	6,000.00
Computer Software Related to Directory Yellow Pages	-0-
TOTAL	\$64,634,000.00

Mountain Bell sold and assigned the foregoing assets to Landmark, but did not seek this Commission's authorization of the transfer prior to effecting the transfer of assets, nor did Mountain Bell seek prior authorization of this Commission with possible terms and conditions attached to the transfer.

At the time Mountain Bell transferred its directory assets to Landmark, it received in exchange a .56 share of Landmark stock. Landmark has one share of stock, and thus Mountain Bell for an instant controlled 56% of Landmark. Mountain Bell declared a dividend of the .56 share of Landmark stock to Mountain Bell's then shareholder, U S West, payable on January 3, 1984.

Notice of Application No. 36247 was given by the Executive Secretary of the Commission to all interested persons, firms or corporations on April 18, 1984.

¹ U S West Inc. (U S West) is a publicly-held corporation organized and existing under the laws of the state of Colorado with its principal place of business located in Englewood, Colorado. U S West was incorporated on September 22, 1983 and it is the sole shareholder of Mountain Bell Holdings Inc., a Colorado corporation. Mountain Bell Holdings, Inc., which was incorporated in Colorado on June 14, 1984, is the sole shareholder of Mountain Bell. Landmark Publishing Company, which was incorporated under the laws of the state of Colorado on October 14, 1983, is the parent company of U S West Direct Company (U S West Direct). U S West Direct is also a Colorado corporation which was incorporated on October 14, 1983 and has its principal place of business located in Aurora, Colorado. The foregoing information is common knowledge of which the Commission takes official notice pursuant to Rule 14N of its Rules of Practice and Procedure.

On May 30, 1984, the Commission entered Decision No. C84-620 setting Application No. 36247 for hearing to begin on August 23, 1984. Decision No. C84-620 also set forth certain procedural requirements and further provided that any person, firm or corporation desiring to intervene as a party in Application No. 36247 should file a motion to intervene with the Commission on or before June 27, 1984, and should serve a copy of its motion on Mountain Bell or its counsel of record or both. The Commission also initially set Mountain Bell's application for hearing to begin on August 23, 1984; subsequent developments resulted in the initial hearing date being postponed until May 22, 1985.

On May 1, 1984, the Colorado Municipal League (League) moved to intervene, which request was granted by executive ruling of the Commission on May 31, 1984.

On June 6, 1984, the Commission by notice vacated the hearing that had previously been scheduled for August 23, 1984, and reset the same for September 6 and 7, 1984.

On June 21, 1984, the Staff of the Public Utilities Commission (Staff), through its counsel, entered its appearance in Application No. 36247.

On June 21, 1984, the League filed a Motion to Require Prefiling of Written Direct Testimony in question and answer form and for a prehearing conference to establish procedural dates. By Decision No. C84-788, dated July 10, 1984, the Commission granted the League's motion and set a prehearing conference for July 23, 1984. By the same decision, the Commission vacated the hearing dates of September 6 and 7, 1984.

On August 10, 1984, Hearings Examiner William J. Fritzel entered Decision No. R84-881-I, a procedural order which, inter alia, set the hearing dates for this application for December 12, 13, and 14, 1984. Examiner Fritzel's order also established other dates for discovery and the prefiling of testimony and joint or partial stipulations as to issues.

On August 27, 1984, Mountain Bell filed a Motion to Amend, seeking Commission authorization to amend its application to reflect certain recent developments.

Mountain Bell stated in Paragraph No. 18 of its amended application that on January 1, 1984, it had transferred certain assets associated with the publishing of directories to Landmark Publishing Company in the total amount of \$64,634,000. Of that amount, \$56,300,000 was cash to be used as cash working capital. In Paragraph No. 24 of its amended application, Mountain Bell stated that the \$56.3 million of cash working capital, which was transferred on January 1, 1984, was the result of an estimate. In Paragraph No. 25 of its amended application, Mountain Bell alleged that subsequent events caused U S West Direct (which is the parent company of Landmark Publishing Company) and Mountain Bell to believe that the \$56.3 million estimate was larger than necessary. Consequently, on August 1, 1984, U S West Direct transferred to Mountain Bell \$16.925 million, together with \$949,492 as compensation for the use of the \$16.925 million for the first seven months of 1984.

On August 30, 1984, the League filed a response entitled Response Filed by Colorado Municipal League to Motion to Amend. In its response, the League stated that it had no objection to Mountain Bell using the most recent data in its application, including data relating to the true-up. However, the League did oppose the deletion in Mountain Bell's proposed amended application of an entire section which had appeared in the original application entitled "Suggested Procedure." In its statement of the suggested procedure, Mountain Bell indicated that this proceeding "could also be employed to examine the impact of the structural separation on Mountain Bell's 1984 results." Mountain Bell also stated, as follows, in Paragraph No. 26 of its original application:

On December 12, 1984, Hearings Examiner William J. Fritzel entered Decision No. R84-1451-I, vacating the hearing dates of December 12, 13, and 14, 1984, and rescheduling the matter for January 23, 24, and 25 and January 30, 31, and February 1, 1985. Decision No. R84-1451-I also denied a motion that had been filed by Mountain Bell to continue the hearing in Application No. 36247 to a time after the Denver District Court ruled on the merits in Civil Action No. 84 CV 8902. However, as indicated, in footnote 3, Judge Warren O. Martin of the District Court entered a stay of Commission proceedings in this Application on January 22, 1985. Judge Martin's stay was in effect until April 18, 1985 when it was terminated by Senior Judge Henry E. Santo.

After the Denver District Court stay was terminated by Senior Judge Santo, the Commission, by notice, reset the hearings on this matter to begin on May 22, 1985. Hearings did commence on May 22, 1985 and were concluded on May 30, 1985.

On May 22, 1985, Mountain Bell orally moved to amend the procedural order which had been entered by the Commission on September 21, 1984 in Decision No. C84-1068. Mountain Bell proposed that the Commission proceed with the hearings on Mountain Bell's amended application on May 22, 1985. The Staff objected on the basis that the September 21, 1984 order specifically provided that the hearings which had originally been scheduled to begin on December 12, 1984, were for the purpose of considering Mountain Bell's original application, not its amended application. The Staff position was that the Court stay of Commission proceedings in Application No. 36247 merely froze the Commission's order as contained in Decision No. C84-1068, and that the subsequent termination of the stay by Judge Santo merely unfroze that order so that the May 22, 1985 hearing would stand in the same posture as the hearing previously scheduled for December 12, 13, and 14, 1984, which concerned Mountain Bell's original application, not its amended

