(Decision No. C86-1529)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

RE: IN THE MATTER OF THE APPLICATION OF THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY FOR AN ORDER ADOPTING ONGOING SEPARATIONS CHANGE RECOVERY MECHANISM.	APPLICATION NO. 37730 COMMISSION DECISION DENYING APPLICATION

November 10, 1986

STATEMENT

BY THE COMMISSION:

On June 13, 1986, The Mountain States Telephone and Telegraph Company (Mountain Bell) filed Application No. 37730 seeking Commission approval and adoption of an ongoing separations-change-recovery mechanism. Mountain Bell seeks an abbreviated procedure to recover additional revenues from separation changes mandated by the Federal Communication Commission (FCC). (Separation changes refers to the allocation of various costs between interstate and intrastate provision of telephone services.)

Notice of Application No. 37730 was given by the Commission to all interested persons, firms, and corporations by the Executive Secretary of the Commission on June 23, 1986. The Staff of the Commission entered its appearance and filed an answer to, response and protest to Application No. 37730 on June 24, 1986. Petitions to intervene were filed by the Office of Consumer Counsel (OCC) on June 30, 1986, by the Department of Defense and Other Federal Executive Agencies (DOD) on July 3, 1986, by AT&T Communications of the Mountain States (AT&T) on July 7, 1986, and by the Colorado Municipal League (League) on July 9, 1986.

By notice dated July 18, 1986, this matter was set for hearing before the Commission to begin on August 27, 1986, in the Commission Hearing Room, Denver, Colorado. As a part of that notice, certain prefiling requirements were established. The original hearing dates were vacated and the matter ultimately was heard by the full Commission on September 17 and 18, 1986. Post hearing statements of position were filed by Mountain Bell, AT&T, League, OCC, DOD, and the Staff of the Commission on September 30, 1986.

Application No. 37730 is being determined by the Commission in accordance with the following findings of fact and conclusion of law.

FINDINGS OF FACT

I. Background

The filing of Application No. 37730 and the institution of this docket result from an issue raised by Mountain Bell in Investigation and Suspension Docket No. 1700 (I&S Docket No. 1700) (a Mountain Bell general rate case), but left unresolved. Mountain Bell had moved in I&S Docket 1700 for an order from the Commission adopting an ongoing mechanism for the recovery of certain revenue deficiencies attributable to changes in the way Mountain Bell separates investments and expenses between interstate and intrastate jurisdictions as mandated by the FCC. Mountain Bell proposed to recover increased expenses attributable to complying with FCC Decision No. C80-286, which modified Part 67 of the FCC rules for separating interstate and intrastate investment and expenses (separations changes).

The FCC mandated separations changes are caused by several factors: (1) phase down to 25 percent of the interstate subscriber plant factor (SPF) over eight years beginning in 1986; (2) phase-out over 60 months beginning in January of 1983 of the December 31, 1982, account balance of customer premises equipment (CPE) from interstate assignment; and (3) the direct and total assignment to the intrastate jurisdiction of closed end wats lines, rather than jurisdictional assignment, effective May 1, 1986.

The Commission dismissed Mountain Bell's motion in I&S Docket No. 1700 for the adoption of an ongoing mechanism for the recovery of revenue deficiencies attributable to the changes in the way Mountain Bell separates investments and expenses between the interstate and intrastate jurisdictions because consideration of Mountain Bell's request was not within the scope of the public notice issued in I&S Docket No. 1700. The Commission stated that consideration of this issue would require a new application to be filed by Mountain Bell and notice appropriately issued. See our Decision No. C86-685, dated June 3, 1986.

I&S Docket No. 1700 was a general rate case application filed by Mountain Bell in November of 1985. Many issues in the revenue requirements phase that case was resolved by a stipulation among the parties in that docket which was accepted by the Commission on April 15, 1986, in Decision No. C86-439. Paragraph 7 of the stipulation which we quote in full deals with separations and states as follows:

> 7. The parties, except OCC, agree that annual adjustments relating to Amendments of Part 67 of the Federal Communications Commission Rules for separating intrastate and interstate investment and expenses (separations changes) have been

> mandated by the FCC at least through 1993. Further, the parties to this Stipulation agree to create an ongoing mechanism to be utilized in accommodating the ordered changes in the phase out of Customer Premise Equipment, the reduction in the SPF (Subscriber Plant Factor) to 25 percent by January 1, 1994, and other separation changes. The parties shall endeavor to develop and present the mechanism to address those changes to the Commission by May 1, 1987. The parties agree in principle that Mountain Bell is entitled to propose recovery of these increased expenses and investments beginning January 1, 1987, so long as that recovery is accomplished in a lawful manner, all appropriate known and measurable changes are recognized and a fair rate of return is not exceeded. Beginning January 1, 1987, changes in rates which may occur caused by separations changes will be subject to true-up and audit, and any excess in rates is subject to refund at the deposit rate. The parties also recognize that it may be wasteful of the resources of the Commission and the parties and not in the best interests of the ratepayers for Mountain Bell to be required to file and prosecute a general rate case each year solely to effectuate the increased rates which may be caused by the separations changes. This qualification shall not limit the right of any party to propose changes to those expenses and investments for any reason including a change in the rate of return, nor is the qualification intended to limit the discovery rights of any party. If Mountain Bell files a general rate case, separations changes shall be filed therein. Mountain Bell will file its proposed separations changes at least 60 days prior to the effective date of tariffs filed hereunder. Mountain Bell will notice all parties in this docket by mail of the filing and provide notice by newspaper publication to the general public. The OCC does not agree to the provisions of this paragraph 7 but agrees not to challenge these provisions and to abide by the Commission's decision.

Essentially, the Commission has two questions which it must resolve in regard to Application No. 37730. First is the question whether the Commission, legally or otherwise, is required to adopt a separations mechanism at all. If the first question is answered affirmatively, then the Commission must determine what separations mechanism is appropriate.

The Commission finds that there are no legal or other requirements which mandate that this Commission adopt a separations mechanism for Mountain Bell. The Commission, of course, is cognizant of paragraph 7 of the stipulation which was entered into among the parties in I&S Docket No. 1700. However, we have also recognized that parties to a proceeding before the Commission cannot obligate the Commission to take any particular action. In our decision dismissing Mountain Bell's motion for a separations mechanism in I&S Docket No. 1700, we stated that:

> [i]t should be recognized that paragraph 7 of the stipulation did not require, and in fact <u>could not require</u>, the Commission to adopt in this Docket a separations recovery mechanism for the future. Basically, paragraph 7 of the stipulation provides only that the parties would <u>endeavor</u> to develop and present a mechanism to address separations to the Commission by May 1, 1987. <u>I&S Docket No. 1700</u>, Decision No. C86-685 at 3 (June 3, 1986) emphasis added).

As the League correctly noted in its statement of position, negotiations between the parties in the I&S Docket No. 1700 over a separations recovery mechanism were not successful. Paragraph 7 of the stipulation required the parties to endeavor to develop and present a separations mechanism to the Commission by May 1, 1986. The parties were not successful in that endeavor, but the mandatory terms of paragraph 7 of the stipulation were satisfied by the parties through attempted negotiations. In any event, even if the parties to the paragraph 7 stipulation in I&S Docket No. 1700 had been successful in developing and <u>presenting</u> a separations mechanism to the Commission, the Commission was not legally required to accept either the separations mechanism presented to it by the I&S Docket No. 1700 parties, or any other separations mechanism which might be proposed in Application No. 37730.

In summary, the Commission finds that it is not legally required to adopt a separations mechanism. Accordingly, it should now be discussed whether the adoption of a separations mechanism is in the public interest.

II. <u>Adoption of any one of the proposed separations mechanisms would not be in the public interest</u>

We find that the adoption of a separations mechanism would not be in the public interest. The proposed separations mechanism, advanced by Mountain Bell, is the same in some regards as an automatic adjustment clause such as an electric cost adjustment clause (ECA). It should be noted at the outset that the ECA used by this Commission to effect rapid cost recovery by electric utilities is <u>not</u> automatic. Automatic, or even semi-automatic, adjustment clauses are a deviation from what has been traditional regulatory treatment of revenue increases sought by a utility. In the traditional sense, rate changes are predicated upon an examination of test-year factors (such as the relationship between a utility's investment, expenses, revenues, and rate of return.) As such, the reasons for automatic adjustment clauses are limited and well-recognized. These are:

> 1. Certain utility costs (e.g. the cost of coal or other fuel burned to generate electricity in the ECA, or the cost of natural gas in the GCA) are extremely volatile, changing rapidly over short periods of time.
>
> 2. These volatile cost changes represent significant portions of total utility operating expenses.
>
> 3. These volatile cost changes are beyond the ability of the utility to control (e.g. a utility must purchase coal or gas at whatever prices producers or pipelines are willing to sell).

Montana Consumer Counsel v. Pub. Serv. Comm., 541 P.2d 770 (Mont. 1975); Consumers Org. for F.E.E., Inc. v. Dept of P.U., 335 N.E. 2d 341 (Mass. 1975); Pub. Serv. Co. of N.H. v. State, 311 A.2d 513 (N.H. 1973); Re. Potomac Electric Power Co., 84 P.U.R. 3d 250 (Dis. Col. P.S.C. 1970).

In Montana Consumer Counsel, supra at 775, the court stated:

> In our view the underlying justification for the use of "automatic adjustment clauses" and procedures lies in the realities of the marketplace. As the cost of purchased gas and royalty expense of the utility rise and fall, a corresponding increase or decrease in the prices charged its customers must occur. Otherwise the utility will either be driven out of business or it will reap windfall profits. Today, in a period of rapid increases in costs of these items to the utility, the former consideration is paramount; at another time, the situation may be reversed and the latter may be the principal concern. Automatic adjustment clauses and procedures are simply a means whereby rapid fluctuations in these costs to the utility can be reflected in equally rapid and corresponding changes in prices charged the utility's customers.

This Commission has itself adhered to this reasoning. When investigating the FCA clause of Public Service Company of Colorado in Case No. 5700, the Commission stated: "The Commission feels strongly that an adjustment clause, such as the FCA, should only be utilized as a regulatory device in very limited and extraordinary circumstances." Decision No. 91290, at p. 13, Case No. 5700 (Sept. 13, 1977). This Commission approved an FCA tariff after finding that fuel expenses were extraordinary in terms of magnitude, their rate of increase, and volatility throughout the year.

We find that the evidence in the present proceeding does not support the conclusion that new separations expenses are similar in nature to the type of expenses covered by an FCA. The record does not demonstrate that Mountain Bell would suffer irreparable financial harm if the mechanisum is not adopted. Moreover, Mountain Bell offered no evidence to show that its separations expenses are a significant portion of its operating expenses. Neither did Mountain Bell attempt to show that these expenses are beyond its ability to control. Further, Mountain Bell's witness, Ms. Chavira, openly conceded that separations expenses are not volatile. Ms. Chavira testified that in its November 1985 rate case filing (I&S 1700), the company had projected new separations expenses to the end of June 1987, over one and one-half years into the future. Some of the separations changes (e.g. change in subscriber plant factor) have been known for years. Finally, Ms. Chavira stated that these new separations expenses were known and measurable, and predictable (e.g. the $20 million estimate of new 1987 separations expenses was accurately calculated by the Company in I&S 1700).

Since these expenses are not volatile - one of the prerequisites for allowing expenses into an automatic adjustment clause - there is no reason these cannot be recovered under traditional ratemaking procedures after thorough examination and full ratepayer protection. In fact, Mountain Bell's original proposal to recover these expenses in I&S 1700 proves this to be true. It is critical for the Commission to recognize that a separations mechanism could result in substantial rate increases through 1993 (e.g. $20 million of new separations expenses in 1987 alone). The only rationale given for adoption of a separations procedure is the possibility that general rate cases may be avoided. The potential of avoidance of general rate cases is not sufficient reason to implement a separations mechanism. The Commission has a responsibility to protect ratepayers against unjust and unreasonable charges, not to avoid general rate cases. While some expenses appropriately are treated in an adjustment clause, these are restricted to limited and extraordinary expenses (e.g. volatile expenses beyond the control of the utility). Separations expenses are not of this nature.

We further find that a separations recovery mechanism is not necessary because, while the FCC is increasing the intrastate apportionment of non-traffic sensitive costs, the intrastate apportionment of traffic-sensitive costs is declining in an offsetting manner. Whether these declines fully offset the FCC-mandated increases is not known. What is certain, however, is that the composite change in separated revenue requirement is not as great as projected by Mountain Bell (about $20 million for 1987). Mountain Bell's intrastate revenue requirement will not grow in direct proportion to the effect of the FCC mandated changes in non-traffic-sensitive costs.

Nor will the recovery mechanism Mountain Bell proposes reduce the cost of examining the issues involved either for the parties or the Commission; in fact it may have the contrary result. As the hearings of September 17 and 18 made abundantly clear, the mechanism proposed by Mountain Bell (or by the League and the OCC) would not avoid any of the issues normally raised in rate cases. Even Mountain Bell acknowledged that any party could raise any issue associated with the calculation of revenue requirement in March of each year in the true-up procedure. These issues would include the entire spectrum of Commission mandated disallowances, the conceptual basis and computation of all pro-forma adjustments, and finally the authorized rate of return. If there is the possibility that Mountain Bell might have exceeded its authorized rate of return, the Commission would anticipate that most, if not all, issues normally discussed in rate cases will be raised in the "true-up" proceedings.

Even if the Commission were to find the adoption of a separations mechanism advisable, the Commission finds that the proposals submitted by Mountain Bell, the League and OCC, the Staff, and DOD, for various reasons have not been demonstrated to us to be administratively workable efficient. Since we have already decided that a separations mechanism is not necessary or in the public interest, there is no need to burden this decision with an extensive discussion of the flaws which we find in each of the proposals submitted to us. However, we shall comment briefly upon Mountain Bell's proposal since Mountain Bell is the moving party in this application.

The testimony of Mountain Bell witness Irene G. Chivara described a separations change recovery mechanism that is designed to recapture the effects of three separations changes ordered by the FCC in Docket 80-286:

1. The phase-down to 25 percent of the SPF over eight years beginning in 1986.

2. The phase-out over 60 months beginning in January of 1983 of the December 31, 1982, balance of CPE from interstate assignment.

3. The direct assignment effective May 1, 1986, of closed-end WATS lines as opposed to jurisdictional assignment.

Mountain Bell's proposal is essentially a two-stage procedure. No later than September 30 of each year (necessarily later in 1986) Mountain Bell would submit an estimate of the incremental revenue requirement effect of the FCC-mandated separations changes on revenue requirements for the last calendar year for which full accounting data are available, which will be the year ending the previous December. The incremental impact data will reflect certain Commission adjustments (i.e., those disallowances prescribed by the Commission in I&S Docket No. 1700) and accounting adjustments [i.e., extraordinary or one-time items not reflective of on-going operations], but no pro-forma adjustments [i.e., known and measurable changes to expenses, investments and revenues to reflect future conditions]. The impart of the separations change quantification would be subject to review and audit by the Commission Staff but apparently not subject to full evidentiary hearings. The impact quantification, inclusive of any staff adjustments, would then be the basis for increases in rates on January 1 of each year.

The second phase of Mountain Bell's proposal occurs following the subsequent March 31 submission of its annual report for the prior year. That report contains accounting adjustments, Commission adjustments and pro-forma adjustments. Mountain Bell's projected revenues, inclusive of the separations mechanism increment, would be compared with the adjusted pro-formed expenses and investment amounts to determine whether Mountain Bell is exceeding or is likely to exceed it rate of return authorization. If it were, Mountain Bell would refund the full amount of the overcollection since January 1 over the remainder of the year. If it were not, the January 1 rate would be made permanent. Unlike the previous September filing, the calculation of revenue requirement and rate of return following the March 31 annual report would be subject to intervenor comments and, if necessary, Commission hearings.

Mountain Bell's proposal, in its determination of whether or not it is exceeding its authorized rate of return, is premised upon projected revenues and expenses rather than an after-the-fact review of its actual historical results in the year subsequent to its initial September filing. Thus, if the separations filing is made in September of 1987, the separations rate-change adjustment goes into effect on a tentative basis on January 1, 1988. After the submission of the 1987 annual report in March of 1988, a determination would be made whether, based upon that report (which, of course, includes the various adjustments described above) and possible hearings in 1988, Mountain Bell is earning, or likely to earn, in excess of its last authorized rate of return. If the determination, based upon the annual report filed on March 31, 1988, and possible hearings is negative the rate which went into effect on a tentative basis on January 1, 1988, is made permanent, presumably on or before June 30, 1988.

The flaw in the Mountain Bell proposal is obvious. The result of Mountain Bell's actual 1988 revenues and expenses cannot be made until 1989; yet Mountain Bell's proposal not only does not have an after-the-fact review based upon actual figures, but Mountain Bell witness Chavira opposed this concept as advocated by the OCC.

On a substantive basis, the three separations changes that Mountain Bell proposes to incorporate into its recovery mechanism all have the common effect of increasing the intrastate revenue requirement and correspondingly reducing the interstate revenue requirement. These changes, however, are by no means the only changes in the factors separating interstate from intrastate revenue requirement. The factors that Mountain Bell proposes to adjust in its recovery mechanism relate only to non-traffic sensitive costs. Other factors separate traffic-sensitive costs. Those other factors include the dial-equipment-minute factor that is used to separate the traffic sensitive costs of switching equipment, the minutes-of-use factors that are used to allocate the cost of trunk termination equipment, and the message-minute-mile factors that separate the line haul costs of interoffice transmission equipment. These traffic-sensitive factors are experiencing trends which are different from the non-traffic-sensitive factors that Mountain Bell proposes to treat in its recovery mechanism.

Mountain Bell's proposal is not only a one-way street with the inclusion of non-traffic-sensitive factors, and the exclusion of traffic-sensitive factors, but Mountain Bell's proposal is substantially weakened by the exclusion of consideration of major financial changes affecting its operations (such as enactment of the Tax Reform Act of 1986) in its proposed separations-change-recovery mechanism.

The alternative proposals made by the League and the OCC, the Staff, and DOD, although improving upon Mountain Bell's proposal in the sense that the procedure would be more comprehensive and the measurement of after-the-fact results would be more accurate, result in an excessively burdensome process because of associated administrative complications and complexity. We do not believe that the injection of a new, untested, and complicated procedure side by side the normal rate case procedure, with which we are all familiar, will lessen the burden and the expense to be carried by Mountain Bell, its ratepayers, this Commission, and other intervenors, or bring about a streamlined recovery of revenue on a timely basis Our judgment is that the burden and expense will be greater.

For all the foregoing reasons, the Commission concludes that (1) there is no obligation upon the Commission to adopt a separations mechanism, (2) the need and public interest which would support the adoption of a separations mechanism has not been shown by a preponderance of the evidence in this proceeding, (3) the proposal of Mountain Bell and others for a separations mechanism have not shown themselves to be a streamlined procedure which would reduce, rather than increase, the administrative and regulatory burden upon Mountain Bell, its ratepayers, this Commission, and other intervenors. Accordingly, Application No. 37730 should be denied.

<u>THEREFORE THE COMMISSION ORDERS THAT:</u>

1. Application No. 37730, filed by The Mountain States Telephone and Telegraph Company on June 13, 1986, is denied.

2. This Decision and Order shall be considered a final decision and order for the purposes of §§ 40-6-114 and 40-6-115, C.R.S.

3. Notwithstanding the provisions of ordering paragraph 2, the Commission retains jurisdiction to enter ancillary orders in connection with this Docket as as may be necessary.

4. The 20-day time period under by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the mailing or serving of this Decision.

5. This Decision and Order shall be effective 30 days from this Date.

DONE IN OPEN MEETING the 10th day of November 1986.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Edythe S. Miller

Andra Schmidt

Commissioners

CHAIRMAN RONALD L. LEHR DISSENTING

CHAIRMAN RONALD L. LEHR DISSENTING:

I respectfully dissent.

On November 15, 1985, The Mountain States Telephone and Telegraph Company (Mountain Bell) filed an overall rate increase request of $143.5 million to become effective on January 1, 1986. On March 18, 1986, Mountain Bell filed revised testimony which had the effect of reducing its original rate request by approximately $40.5 million dollars.

On April 2, 1986, Mountain Bell submitted to the Commission a proposed stipulation, which was signed by all the parties who had intervened in the case. As accepted by the Commission in Decision No. C86-439 entered April 15, 1986, the stipulation settled all issues in this case (Docket No. I&S 1700) except for the establishment of a rate of return on common equity between 13.5 percent and 13.75 percent; the establishment of an initial incremental revenue requirement between $10 million and $15 million; and the determination of legal and factual issues related to transfer of directory assets. On April 15, 1986, the Commission entered Decision No. C86-439 in which we accepted the stipulation according to its terms.

The stipulation in paragraph 7 contained the following language with respect to separations:

> 7. The parties, except OCC, agree that annual adjustments relating to Amendments of Part 67 of the Federal Communications Commission rules for separating intrastate and interstate investments and expenses (separations changes) have been mandated by the FCC at least through 1993. Further, the parties to this stipulation agree to create an ongoing mechanism to be utilized in accommodating the ordered changes in the phase out of Customer Premise Equipment, the reduction in the SPF

(Subscriber Plant Factor) to 25 percent by January 1, 1994, and other separation changes. The parties shall endeavor to develop and present the mechanism to address those changes to the Commission by May 1, 1987. The parties agree in principle that Mountain Bell is entitled to propose recovery of these increased expenses and investments beginning January 1, 1987, so long as that recovery is accomplished in a lawful manner, all appropriate known and measurable changes are recognized and a fair rate of return is not exceeded. Beginning January 1, 1987, changes in rates which may occur caused by separations changes will be subject to true-up and audit, and any excess in rates is subject to refund at the deposit rate. The parties also recognize that it may be wasteful of the resources of the Commission and the parties and not in the best interests of the ratepayers for Mountain Bell to be required to file and prosecute a general rate case each year solely to effectuate the increased rates which may be caused by the separation changes. This qualification shall not limit the right of any party to propose changes to those expenses and investments for any reason including a change in the rate of return, nor is the qualification intended to limit the discovery rights of any party. If Mountain Bell files a general rate case, separations changes shall be filed therein. Mountain Bell will file its proposed separations changes at least 60 days prior to the effective date of tariffs filed hereunder. Mountain Bell will notice all parties in this docket by mail of the filing and provide notice by newspaper publication to the general public. The OCC does not agree to the positions of this paragraph 7 but agrees not to challenge these provisions and to abide by the Commission's decision.

It would appear obvious that Mountain Bell gave up money that it originally asked for in its rate request in return for the cooperation of parties in developing a separations mechanism. This process was agreed to by the parties in paragraph 7 of the stipulation. The Commission recognized the benefits of the stipulation and stated in its Decision No. C86-439, dated April 15, 1986:

> The Commission commends the spirit of cooperation and dedication by the parties in this docket which has produced the stipulation for settlement of practically all issues in this docket. The Commission is cognizant of the fact that the parties to this stipulation spent a great deal of time and effort in reaching a settlement which would be mutually beneficial to all concerned. In particular, we want to commend the Staff for its initiative and dedication in reaching agreement. Alternative methods of dispute resolution are not only beneficial in reducing

litigation before courts, but also are beneficial in ameliorating the litigation burden on administrative agencies such as the Commission. The Commission commends the parties for the historic achievement of this stipulation.

The Commission majority points out in Decision No. C86-685 dated June 3, 1986, that there is no obligation to accept the proposed mechanism:

> First of all, it should be recognized that paragraph 7 of the stipulation did not require, and in fact could not require, the Commission to adopt in this docket a separations recovery mechanism for the future.

While not disagreeing with the description of the reservation of discretion by the Commission stated above, the context of the stipulation implies a serious consideration by the Commission of a separations mechanism. Indeed, the Commission also stated in C86-685:

> The parties in I&S Docket No. 1700 who have been negotiating with Mountain Bell regarding the adoption of a separations change recovery mechanism probably will find it to their mutual advantage to continue discussions <u>as to the separations change mechanism which they desire the Commission to adopt</u>. If agreement is reached with regard to an appropriate separations change recovery mechanism, and there is no protest or motion to intervene by others in application proceedings to adopt a separations change recovery mechanism, <u>it may be possible to dispense with the necessity for a hearing</u>. (Emphasis added.)

Before the statements of position were filed on Application No. 37730, the only reference in the records of both I&S 1700 and Application No. 37730 to the idea of not needing a mechanism for separations came in the Office of Consumer Counsel reply to Mountain Bell's motion to initiate the mechanism. This was consistent with the position of OCC as evidenced in the stipulation.

As was pointed out by a number of parties in this case, including the Staff of the Commission, a cost recovery mechanism would allow for more timely recovery of FCC mandated costs incurred by the company. Second, the mechanism would avoid the need for a full scale rate case each year. Third, the stipulation which settled I&S Docket No. 1700 was clearly structured to allow Mountain Bell to propose a mechanism and the Commission to consider the proposal with an eye toward protecting the interest of the ratepayers through investigation and refund provisions.

Generally speaking, any regulatory process has its difficulties. In this instance, the degree of complexity of a separations mechanism could be directly controlled by the Commission. If the Commission wanted to make the oversight mechanism complex, it could do so. If the Commission wanted to simplify the monitoring process it could also do that. The record is full of different levels of protection that could be adopted. Whether the company could absorb the increased costs could be determined by the protective mechanisms, including audits. If it were discovered that the company had overcollected, a refund could be ordered.

In its Decision, the Commission majority has decided to turn its back on this proposal for a regulatory method which could help eliminate full blown rate filings. The better policy, it seems to me, would have been to have taken a stand between those parties arguing for a separations mechanism review process that would be the same as a full blown rate case and those suggesting a more automatic form of mechanism with less complex monitoring. This middle ground was certainly available to the Commission, given the testimony it heard in this case. After taking the middle ground, the Commission could have tested this process to see whether it could indeed save time and money.

The question before the Commission in this application is how Mountain Bell can collect in a timely fashion certain costs which are beyond its control without absorbing the additional expenses while earning below its authorized rate of return. To me, this problem seems little different than that faced by the electric and gas industry in the 1970's. The costs incurred by those industries were for rising fuel costs. The Commission adopted mechanisms which allowed dollar for dollar recovery of those expenses. Costs and revenues other than fuel expenses were also changing at the time the Commission approved the pass on mechanisms for these industries. The Commission protected the ratepayer by testing fully pro forma financial data against the utilities' authorized rate of return. The Commission could accomplish the same protection of the ratepayers in the mechanism proposed by this application.

The majority argues that rapid fluctuations, large magnitude increases, and volatility throughout the year characterize the energy adjustment clauses it adopted in the 1970's. While this may be so, these mechanisms are in place and operating today without the <u>ad horrendum</u> problems the majority sees in the separation mechanism proposed in this case. Energy costs are no longer fluctuating rapidly, increasing in large magnitude or volatile throughout the year. Yet the mechanism which adjusts these costs up and down works today <u>without significant problems</u>. I do not share the same clouded crystal ball as the Commission majority which rejects the proposed separation mechanism. There are certain procedural challenges in any new process. It seems to me that the Commission majority has passed up an opportunity to apply a process which works very well in the energy utilities to the telephone utility.

The Commission had before it the opportunity to institute a number of relevant standards against which a separations mechanism might have been judged. Would it save time and costs? Could it have allowed for timely recovery of expenses? Could the mechanism protect the ratepayers from the threat of overearnings? Would it have encouraged timely disclosure by the company of relevant information? Would it have been a step toward a smoother working relationship between the company and the intervening parties?

The answers to these questions will never be known, since the majority has decided not to even try this procedure. It may be that all these questions would have been answered in the negative, and the mechanism ultimately be found to be not in the public interest. However, it may also have been found that the answers were positive. Unless the Commission majority changes on reconsideration, we will never really know.

For these reasons, I respectfully dissent.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Ronald L. Lehr

Chairman

jkm:1536P