

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION	)	APPLICATION NO. 36108
OF THE MOUNTAIN STATES TELEPHONE	)	
AND TELEGRAPH COMPANY'S PETITION	)	RECOMMENDED DECISION OF
FOR DECLARATORY RULING.	)	EXAMINER WILLIAM J. FRITZEL

- - - - -
April 11, 1984
- - - - -

Appearances: Coleman M. Connolly, Esq., Denver,
Colorado, for Applicant Mountain
States Telephone and Telegraph
Company;

Tucker K. Trautman, Esq., Denver,
Colorado, for Intervenor Colorado
State Board of Agriculture, acting
on behalf of the State of Colorado,
for and behalf of Colorado State
University, and Intervenor First
Interstate Bank of Fort Collins, N.A.;

Milton R. Larson, Assistant Attorney
General, Denver, Colorado, for
Intervenor Colorado State Board of
Agriculture, acting on behalf of Colorado
State University;

Mark Bender, Assistant Attorney General,
Denver, Colorado, for the Staff of the
Commission;

Robert M. Pomeroy, Jr., Esq., Denver,
Colorado, for Intervenor United
Technologies Corporation;

William E. Darden III, Esq., Louisville,
Colorado, pro se;

Victor J. Toth, Esq., Reston, Virginia,
for Intervenor Law Offices of Victor J.
Toth.

STATEMENT OF THE CASE

Applicant The Mountain States Telephone and Telegraph Company (Mountain Bell) filed the above-captioned application requesting a declaratory ruling from the Commission. Mountain Bell requested a ruling on the propriety of the installation by Colorado State University of a private telecommunications system on its campus at Fort Collins, Colorado.

On February 3, 1984, the Commission issued notice of the application to interested persons, firms, or corporations. Intervention was granted to the following parties: William E. Darden III, Esq.,

Colorado State Board of Agriculture, acting on behalf of the State of Colorado for the benefit of Colorado State University (CSU), First Interstate Bank of Fort Collins, N.A., United Technologies Corporation and the Law Offices of Victor J. Toth. On March 13, 1984, the attorney general entered an appearance for the Staff of the Commission. On February 23, 1984, Colorado State University filed a Motion to Dismiss the Application. A response was filed by Mountain Bell on February 27, 1984. On March 6, 1984, the Commission in Decision No. C84-271 denied the Motion to Dismiss and set the matter for hearing on March 22, 1984, at 9 a.m., in Denver, Colorado. Hearing commenced on the above date. As a preliminary matter, Mountain Bell moved to continue the hearing for the reason that it needed additional time to review a proposed stipulation. The motion was granted and the hearing was continued for an additional week to March 29, 1984, at 9 a.m., in Denver, Colorado. The matter was heard at this time by the undersigned Examiner. A document entitled "Stipulated Facts" dated March 29, 1984, was submitted by the parties. The intervenors who are not signatories to the stipulation, namely United Technologies Corporation, William E. Darden III, Esq., and Law Offices of Victor J. Toth have no objection to the stipulation. The stipulation was accepted by the Examiner. No witnesses or exhibits were presented at the hearing, however, oral arguments were presented by the parties. Administrative notice was taken of Commission Decision No. C83-1454, IN THE MATTER OF THE INVESTIGATION OF THE SALE AND RESALE OF INTRASTATE COMMUNICATION SERVICES WITHIN THE STATE OF COLORADO, at the request of the Staff of the Commission. No members of the public present at the hearing, after inquiry, wished to make a statement. Whereupon the hearing was closed and the matter was taken under advisement.

Pursuant to CRS 40-6-109, the Examiner now transmits to the Commission the record of said hearing, together with a written recommended decision.

FINDINGS OF FACT

Based upon the stipulation entered herein, the following are found as facts:

1. The planning for the CSU Telecommunications System commenced in August of 1980 with the formation of a University Telecommunications Planning Committee.
2. In July of 1981, telecommunications consultants were hired to assist with the development of system requirements, requests for proposals ("RFP"), vendor selection and system installation.
3. In October of 1982, a switch RFP was published, and in December of 1982, a cable system RFP was published.
4. In May of 1983, CSU entered into an agreement with GTE Business Communication in the amount of \$3,739,491 for two switches, 7,200 telephone sets, and associated facilities for the private system. The main switch has been delivered and installed and is currently being tested. All 7,200 telephone sets have been delivered. The other switch is scheduled to arrive March 1, 1984. The "cut over" date is scheduled for May 5, 1984.
5. In June of 1983, CSU entered into an agreement with Volt Technical Corporation in the amount of \$2,421,658 for a cable system and associated facilities for the telephone system. Work began in June of 1983, and at present over 80% of the cable system has been installed.

6. Site preparation and building contracts have also been entered. Construction of the 4,200 square foot telecommunication facility is complete. The main switch as well as telecommunication personnel are now located in that facility.

7. On June 1, 1983, the Colorado State Board of Agriculture issued Certificates of Participation in the amount of \$9,640,000 to finance the CSU telephone system.

8. On July 1, 1983, CSU gave notice to Mountain Bell to terminate its contract with Mountain Bell effective July 1, 1984. Subsequently, the termination date has been moved up to May 5, 1984, to coincide with the scheduled cut-over date.

9. As of February 9, 1984, CSU has expended the following amounts:

GTE Contract	\$2,168,138
Volt Contract	\$1,701,020
Site Contracts	\$ 384,000
Consulting	\$ 152,980
Miscellaneous	<u>\$ 323,543</u>
Total	\$4,729,681

10. After cut-over in May, 1984, CSU desires, or may desire as explained in Paragraph 11, [of these findings of fact] to provide service to the following persons at facilities on the CSU campus in the following manner.

- (a) CSU administrative and faculty employees. These employees were formerly provided service through Mountain Bell's special school centrex services.
- (b) Residents of CSU student dormitories. These individuals were formerly provided service through Mountain Bell's special school centrex services.
- (c) Residents of two residential complexes owned by CSU and located on its campus that have been designated as "Married Student Housing." These individuals are now served by Mountain Bell from its Fort Collins central office under the Company's residential service tariff offerings.
- (d) Four Federal government agencies (namely, the United States Departments of Agriculture, Commerce, Defense, and Interior), which lease and use space on the CSU campus in 17 different locations. Because CSU is a land-grant university, these federal employees are affiliated with the faculty and perform many of the same functions performed by CSU employees, including teaching and research. These federal employees presently are provided telephone service through the federal government under Tariffs denominated Federal Telephone Service Tariffs.
- (e) Three private business (namely, a florist, a travel agency, and a hair stylist) that lease space in the Lory Student Center. These businesses are presently provided service by Mountain Bell from its Fort Collins central office under the Company's business service tariff offerings.

The CSU telephone system, as proposed, will provide communications services from any telephone on the system to any other telephone on the system. In addition, the CSU system, as proposed, will provide communications services between any telephone on the system and any telephone not on the system.

11. CSU desires to provide the services to those persons described in Paragraphs 10(a), 10(b), and 10(c) [contained in Findings of Fact No. 10 above] at the cut-over in May 1984. With regard to the services to those entities described in Paragraphs 10(d) and 10(e) [contained in Findings of Fact No. 10 above] after cut-over in May 1984 Mountain Bell will continue to provide service to the four Federal government agencies and to the three private businesses in the Lory Student Center. CSU anticipates, however, that these entities could also be served by the CSU system if they would so choose.

12. After cut-over in May 1984, Mountain Bell will also (a) provide CSU trunk lines that will terminate in the CSU system switching machine; and (b) continue to provide coin-operated telephone on the CSU campus using its cable as necessary.

13. CSU proposes to provide the telephone and local exchange services on the CSU system without surcharge or mark-up of such services for profit. Long distance services will be itemized and billed to the individual users but not surcharged or marked up for profit.

14. To the extent necessary, CSU has agreed to provide Mountain Bell access to the campus through use of the CSU cable pairs without cost to Mountain Bell. Likewise, CSU has agreed to provide cable pairs without cost to Mountain Bell for coin-operated telephone service on campus, if necessary.

DISCUSSION

Applicant Mountain Bell herein requests a declaratory ruling concerning the proposed private telephone system of CSU which would serve university-related parties on the CSU campus. Mountain Bell requests that the Commission issue a ruling addressing two questions concerning the CSU system, namely, the status of all parties or entities who could lawfully be included on the CSU system including the three private businesses and the federal government agencies described above, and, secondly, whether the services offered to all parties or entities on the system constitute resale of services. Mountain Bell argues that the CSU case herein presents an opportunity for the Commission to delineate the relationships that must exist between the parties or entities served by the system and the owner of the private system, and to issue guidelines relating to these relationships for the lawful inclusion on the system. Mountain Bell further urges that a determination should be made pursuant to the facts of this case concerning the extent that calls made on the CSU system to the Fort Collins local exchange and calls made outside the Fort Collins calling area within Colorado constitute resale of local exchange and toll services. Such determination argues Mountain Bell, would provide guidance to Mountain Bell and other interested parties. Intervenor CSU and the Staff of the Commission argue that Mountain Bell seeks general guidelines of general applicability. CSU and Staff contend that a decision in this case should be strictly limited to the stipulated facts describing the parties to be placed on the system and the decision herein should not address principles of general applicability involving relationships beyond the parties or entities to be served.

The request of Mountain Bell for a broad ruling in this case should not be granted. The instant case as postured concerns only the

CSU system with the parties to be included on the system as indicated in the stipulation. It is not, as CSU points out, a rulemaking or generic proceeding, with extensive participation by interested parties. Any guidelines of general applicability should be reserved for a generic or rulemaking proceeding and not in the instant case.

Turning now to the ultimate issues in this case, the question presented is does the proposed private telecommunications system, as proposed by CSU and limited by the Stipulation of Facts, constitute public utility service or resale of service under the law and rules and regulations of the Commission?

CSU proposes to serve only its faculty, students and employees located in University-owned facilities within the confines of the CSU campus. Under the terms of the stipulation, CSU will not serve non-university entities such as the three private businesses located on campus or the Federal government agencies. Mountain Bell will continue to serve these businesses and agencies. CSU, by providing private service as above described, is not a public utility since it is not offering service to the general public indiscriminately. In order for an entity to be clothed with the status of a public utility, it must offer itself as willing to serve all members of the general public, and it must dedicate its service to the public use. The City of Englewood v. City and County of Denver, 123 Colo. 290, 229 P.2d 667 (1951); Parrish v. Public Utilities Commission, 134 Colo. 192, 301 P.2d 343 (1956); Public Utilities Commission v. Colorado Interstate Gas Company, 142 Colo. 361, 351 P.2d 241 (1960); Cady v. City of Arvada, 31 Colo. App. 85, 499, P.2d 1203 (1972).

The next question presented in this case is whether CSU, by its proposed telephone system, is a reseller of telephone service. The Commission in Decision No. C83-1454, issued September 13, 1983, has adopted the FCC definition of "resale" as:

"An activity wherein one entity subscribes to the communications services and facilities of another entity and then reoffers communications services and facilities to the public (with or without 'adding value') for profit."

The Commission has also in Decision No. C82-1928 and C82-1925 defined "resale" as an entity charging more or less than the certificated supplier of utility service. The proposed CSU service does not constitute resale under the above definitions since CSU will not increase or reduce the cost of service. Consequently, CSU will not be a reseller of intrastate telecommunications services.

CONCLUSIONS

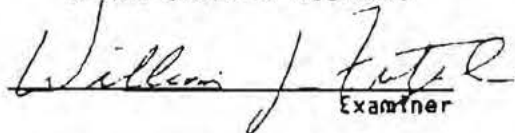
1. The Commission has jurisdiction over the parties and the subject matter of this action.
2. The CSU telephone system as proposed in Findings of Fact No. 10(a), (b), (c), and No. 11 above does not constitute public utility service.
3. The CSU system as proposed in Findings of Fact No. 10(a), (b), (c), and No. 11 above does not constitute resale of telephone service.
4. Pursuant to CRS 40-6-109(2), it is recommended by the Examiner that the Commission enter the following declaratory ruling and order.

O R D E R

THE COMMISSION ORDERS THAT:

1. The CSU telephone system as described in Findings of Fact No. 10(a), (b), (c), and No. 11 above does not constitute public utility service.
2. The CSU system as proposed in Findings of Fact No. 10(a), (b), (c), and No. 11 above does not constitute resale of telephone service.
3. The Findings and Conclusions contained in this case should not be construed by the parties to indicate Commission approval of other telephone systems.
4. Mountain Bell will maintain its separate telephone cable system on the campus of Colorado State University and provide telephone service to all independent businesses which lease space in the Lory Student Center, a university facility. Mountain Bell will also continue to provide Federal telephone service to the Federal agencies and continue to provide coin-operated telephone service at CSU.
5. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if such be the case, and is entered as of the date hereinabove set out.
6. As provided by CRS 40-6-109, copies of this Recommended Decision shall be served upon the parties, who may file exceptions thereto; but if no exceptions are filed within twenty (20) days after service upon the parties or within such extended period of time as the Commission may authorize in writing (copies of any such extension to be served upon the parties), or unless such Decision is stayed within such time by the Commission upon its own motion, such Recommended Decision shall become the Decision of the Commission and subject to the provisions of CRS 40-6-114.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO


Examiner

vc:0188c