(Decision No. C87-1526)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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RE: THE REVIEW OF PRIVATE LINE SERVICES IN ACCORDANCE WITH § 40-15-308, C.R.S., § 40-15-305, C.R.S.	CASE NO. 6633
RE: THE APPLICATION OF THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY FOR ENTRY OF AN ORDER BY THE COMMISSION REFRAINING FROM REGULATING POINT TO POINT AND POINT TO MULTI-POINT DEDICATED TELECOMMUNICATIONS SERVICES; OR IN THE ALTERNATIVE, FOR A DECLARATION OF CONTINUED APPLICABILITY OF THE PUBLIC UTILITY LAW OF COLORADO TO OPERATING RIGHTS FOR THOSE SERVICES.	APPLICATION NO. 37367 COMMISSION DECISION UPON APPLICATIONS FOR REHEARING, REARGUMENT, OR RECONSIDERATION

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November 4, 1987
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STATEMENT AND FINDINGS OF FACT

BY THE COMMISSION:

The Commission entered its initial Decision No. C87-1347 in the above-captioned dockets on September 28, 1987. Case No. 6633 and Application No. 37367 together denominated as the private line case. Timely applications for rehearing, reargument, or reconsideration of Decision No. C87-1347 were filed by the Colorado Office of Consumer Counsel (OCC), MCI Telecommunications Corporation (MCI), and The Mountain States Telephone and Telegraph Company (Mountain Bell) on October 19, 1987. The Colorado Municipal League (CML) untimely filed an application for rehearing, reargument, or reconsideration on October 20, 1987, and filed a simultaneous motion for acceptance of its late-filed application. The Commission finds that CML's motion for acceptance of a late-filed application does not set forth sufficient grounds for its granting, and, accordingly its motion for acceptance of a late-filed application will be denied, and its application for rehearing, reargument, or reconsideration will be dismissed as untimely.

The basic thrust of the Commission's initial decision of September 28, 1987, as embodied in Decision No. C87-1347, will remain unaltered. However, certain requests for clarification will be granted in accordance with this decision and order. Certain other requests for modification or change which are not discussed in this decision and order means that the Commission does not believe that those issues are germane to a final decision in the private line case. However, our silence on those issues should not be construed as approval or disapproval.

Mountain Bell has suggested clarification dealing with the issue of whether it has the burden of proving that their rates for private line services are reasonable in future rate cases. Mountain Bell also suggested that the Commission confirm that its rates will be deemed reasonable if they are established in compliance with the standards set forth in the private line decision. For purposes of clarification, it should be noted that the Commission has endorsed the concept of long-run incremental cost (LRIC) for establishing the minimum or floor prices for both high-end (24 circuits and above) and low-end (23 circuits and below) private line. Although the concept of LRIC was adopted for setting a floor, the Commission has not endorsed any particular LRIC method including the LRIC method used by Mountain Bell in Investigation and Suspension Docket No. 1720. Accordingly, in any future proceeding in which Mountain Bell is the moving party, it would carry the burden that it has used a valid LRIC method in establishing a floor for private line prices. Of course, the Commission cannot foreclose anyone from challenging the use of LRIC as a floor either in concept or as a method.

Mountain Bell has also suggested that if the tariff rate for any private line service is lowered in any future proceeding, that the maximum rate established in I&S 1720 remain unaffected. The Commission disagrees. The Commission can foresee the possibility that technological developments will result in lower cost to Mountain Bell which would justify a lowered tariffed rate for private line services in the future. If that does occur, we believe that the newly enacted tariffed rate should be the ceiling above which Mountain Bell would not be permitted to charge for private line services. Conversely, if the tariff rate in the future were to go up, then the ceiling rate for private line services would also advance upward to be current with the new, higher tariffed rate.

In connection with LRIC costing, Mountain Bell had indicated in its application for rehearing, reargument, or reconsideration that although Mountain Bell does not object to Staff review of its LRIC prices as part of its audit powers, Mountain Bell will not provide this information to customers or competitors even if it would be subject to the nondisclosure agreement. Mountain Bell states that this information is of such substantial commercial value to customers and competitors, who have no regulatory need to know it, that disclosure cannot be justified if Mountain Bell is to remain competitive and viable. In Finding of Fact No. 24 of Decision No. C87-1347, the following sentence appears:

> However, the LRIC prices will be available to Staff and parties to these proceedings who comply with previously issued protective orders.

The Commission agrees that this sentence should be deleted from the private line decision since there does not appear to be any justification, on this record, for present parties in this docket to have access to this competitive information. Finding of Fact No. 24 already points out that the Commission will use its audit powers to evaluate the rates derived using LRIC. However, it should be noted that the deletion of the quoted sentence above from this private line decision does not mean that in a possible future proceeding, such as a complaint, a customer or competitor would be denied access to Mountain Bell's LRIC costing information under the provisions of a protective order issued by the Commission. However, there is no need, at this time, to anticipate possible future proceedings and, accordingly, the deletion of the quoted sentence from Finding of Fact No. 24 of the findings is appropriate.

Finding of Fact No. 37 of the private line decision directs Mountain Bell to develop data which will reflect revenue, expenses, and investments associated with high-end services, such as, but not limited to, price list, quantities of services or products sold, income statements and balance sheets specific to high-end services. That finding also directs Mountain Bell to make available these data on a quarterly basis beginning on March 1, 1988, for the period ending December 31, 1987, consistent with directives in Case No. 6634 to the extent it is completed. Mountain Bell has suggested that the data be prepared on an annual or semi-annual basis as opposed to a quarterly basis, which it states is unduly burdensome. Mountain Bell also requests that the March 1, 1988, deadline be revised to May 31, 1988. We agree that as long as data are prepared to reflect monthly figures, we have no objections to them being presented on a semi-annual basis, and we have no objection to revising the March 1, 1988, deadline to May 31, 1988.

Mountain Bell has also requested the Commission to reconsider its decision not to deregulate high-end services, to reverse the requirement to segregate revenues, investments, and expenses associated with high-end services until the services are deregulated, to delete any requirement that Mountain Bell be required to unbundle the price of each component of packaged services to customers when regulated services are packaged with flexibly regulated or deregulated services, and that prices within banded rates be established on a exchange-by-exchange basis, rather than on a state-wide basis. The Commission is not persuaded that any of these four latter requests of Mountain Bell should be adopted in the private line decision.

MCI has requested clarification as to whether the unbundling provision in Finding of Fact No. 26 of Decision No. C87-1347 applies solely to regulated services or also to deregulated services as well. The Commission will clarify Finding of Fact No. 26 to make clear that the

unbundling requirement for packaged services is to separately price each regulated service and to separate the pricing for private line or other regulated services from the totality of unregulated services. In other words, the unregulated services must be separated from the regulated services. The private line and other regulated services must be separately priced, but the components which make up the bundle of unregulated services need not be individually priced, although Mountain Bell is free to do so if it so desires.

MCI also requests clarification as to whether or not the LRIC cost floor for contract-based prices is applicable to high-end services as well as low-end services. We shall clarify Finding of Fact No. 28 to make clear that LRIC costing sets the floor for both high-end and low-end private line services. Finding of Fact No. 21 will also be clarified in this regard. Of course, future rate case inquiry may be made of LRIC costing for both high-end and low-end services in order to insure that there is no cross subsidy flowing from regulated services to these minimally regulated private line services. The segregation procedure will segregate out the revenue expenses and costs associated with the offering of private line services from the revenue expenses and costs associated with fully regulated services. Private line revenues will be below-the-line in a general rate.

On the opposite end of the pole from Mountain Bell's suggestion that high end services be deregulated, is the OCC's recommendation that the Commission should adopt a price ceiling for the high-end and interLATA private line markets. The Commission is well aware of the fact that competition in the high-end markets is somewhat of a patchwork at the present time and that this market is in a period of transition. The Commission, broke the high-end market out of the overall private line market because the high-end market contains the greatest number of alternative providers for consumers. Accordingly, the Commission is not persuaded that the regulatory scheme adopted for low-end (23 and below channels) services should be identically adopted for high-end services (24 and above channels). The OCC recommends that Mountain Bell should be required to advise its customers of the currently effective prices for its services. It appears to the Commission that in competitive markets customers will not be kept in the dark as to what a provider's prices for its services are. We do not find that a specific Commission directive in this regard is necessary.

As indicated above, other proposals not specifically discussed in this decision are not adopted and silence concerning them should not be construed as either acceptance or rejection on the merits.

THEREFORE THE COMMISSION ORDERS THAT:

1. The motion for acceptance of late filed application filed by the Colorado Municipal League on October 20, 1987, is denied, and its application for rehearing, reargument, or reconsideration, filed on October 20, 1987, is dismissed as being untimely filed.

2. The application for rehearing, reargument, or reconsideration directed to Decision No. C87-1347, and dated September 28, 1987, and filed by The Mountain States Telephone and Telegraph Company on October 19, 1987, is granted in accordance with this Decision and Order, and otherwise is denied.

3. The application for rehearing, reargument, or reconsideration directed to Decision No. C87-1347, filed by MCI Telecommunications Corporation on October 19, 1987, is granted in accordance with this Decision and Order, and otherwise is denied.

4. The application for rehearing, reargument, or reconsideration directed to Decision No. C87-1347, filed by the Colorado Office of Consumer Counsel on October 16, 1987, is granted in accordance with this Decision and Order, and otherwise is denied.

5. The following sentence is inserted after the third sentence of the second paragraph of Finding of Fact No. 5 of Decision No. C87-1347, as amended by Ordering Paragraph 9 above:

> Although the Commission endorses the concept of LRIC as a floor below which prices for private line services are not permitted, the Commission is not, by this Decision, endorsing any particular LRIC method.

6. The third sentence in the second paragraph of Finding of Fact No. 21 of Decision No. C87-1347 is modified to read as follows:

> The Commission intends for Mountain Bell to operate as if these high-end private line services were virtually deregulated, although Mountain Bell is not permitted to set prices for these services below the cost floor as determined by long-run incremental costs (LRIC).

7. The following sentence appearing in Findings of Fact No. 24 of Decision No. C87-1347 is deleted:

> However, the LRIC prices will be available to Staff and parties to those proceedings who comply with previously issued protective orders.

8. Finding of Fact No. 26 of Decision No. C87-1347 is modified to read as follows:

> The Commission wants customers to have maximum choices. To foster this goal, Mountain Bell should have packaging flexibility, allowing it to package its services and products to give customers additional choices. However, if Mountain Bell offers private line services together with other regulated services or deregulated services, it shall unbundle the prices

of each component of its private line services and other regulated services by stating these prices separately in order to allow competitors the ability to offer similar packages as was suggested by CML witness, Mrs. Rigg. Competitors should be able to use some of Mountain Bell's private line and other regulated services and products on an unbundled basis to complete their own package offerings as was discussed by Mountain Bell witness, Mrs. Sharp. Customer choices should not be limited to Mountain Bell packages, rather, customers must also be able to chose packages from other providers. Where a competitor offers only a portion of the Mountain Bell package, it must be able to complete a similar package offer, using those Mountain Bell private line and other regulated services and products necessary at the unbundled prices, which should be reflected in tariffs for regulated services or on price lists for flexibly or unregulated services. In other words, Mountain Bell shall not use its ability to provide one-stop shopping to a customer, to the disadvantage of a competitor. It is the Commission's understanding, although not part of the record in this proceeding, that this approach corresponds with the open network architecture concept endorsed by US West before the Federal Communications Commission. Although there should be a item-specific unbundling of private line and other regulated services and products from the unregulated products, it is not necessary for Mountain Bell to unbundle, on an item-specific basis, its unregulated products and services unless it chooses to do so.

9. The first two sentences of Finding of Fact No. 28 as contained in Decision No. C87-1347 are modified to read as follows:

In addition to the flexibility allowed through the use of banded rates, Mountain Bell shall be permitted to enter into contracts with customers for both high-end and low-end private line services. Like banded pricing, the floor for the prices of services and products subject to a high-end or low-end contract shall be based on LRIC which, at least in theory, unambiguously prevents predatory pricing.

10. The last two sentences appearing in the second paragraph of Finding of Fact No. 37 of Decision No. C87-1347 beginning with the phrase, "Mountain Bell should develop data which will reflect revenues . . ." and concluding with the phrase ". . . to the extent it is completed." are modified to read as follows:

Mountain Bell should develop monthly data which will reflect revenues, expenses, and investments associated with these high-end services, such as, but not limited to, price lists, quantities of services or products sold, income statements and balance sheets specific to these high-end services. After May 31, 1988, these data should be made available by Mountain Bell for Staff audit on a semi-annual basis, beginning with the period ending December 31, 1987, consistent with directives in Case No. 6634 to the extent it is completed.

11. Except as clarified or modified by this Decision and Order, Decision No. C87-1347, dated September 28, 1987, is adopted by the Commission.

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

13. This Decision and Order shall be effective November 25, 1987.

DONE IN OPEN MEETING the 4th day of November 1987.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

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