

DEPARTMENT OF PUBLIC SERVICE REGULATION
MONTANA PUBLIC SERVICE COMMISSION

IN THE MATTER of the Application)
of MONTANA TELEPHONE CO. to) DOCKET NO. 6285
change basic service rates charged)
for its telephone service.) ORDER NO. 4231

This matter came on regularly to be heard before the Department of Public Service Regulation, Montana Public Service Commission, in accordance with the notice of hearing, issued in this docket and based upon written application for relief submitted March 21, 1975, in letter form with supporting documents from the regulated company. The hearing commenced at 10:00a.m., M.D.T. on May 6, 1975, in the conference room of the Public Service Commission at 1227 11th Avenue, Helena, Montana 59601.

During the hearing, three witnesses testified for the regulated company and one witness testified on behalf of the consuming public affected by the application in these proceedings. All witnesses were subject to cross examination. Seven documentary exhibits were offered and admitted into the record.

APPEARANCES:

JOHN M. DIETRICH & THOMAS N. KELLEY, of the firm of Crowley, Kilbourne, Haughey, Hanson & Gallagher, P. O. Box 2529, 500 Electric Building, Billings, MT 59101, appearing for the applicant.
DAVID L. JACKSON, Horsky Block, Helena, MT 59601, appearing for Big Sky of Montana, Inc.

GEOFFREY L. BRAZIER, Montana Consumer Counsel, 330 Fuller Avenue. Helena, MT 59601, appearing for the customers of applicant.
J.T. MERICA, Cameron, MT 59720, appearing for the Butler Corp., owner of the Sun Ranch
R. L. DOTY, JR., Appearing as the Montana Public Service Commission Staff Counsel

RULINGS ON OBJECTIONS TO EVIDENCE AND MOTIONS

Upon the close of hearing of this matter on May 7, 1975, the Commission ruled upon the following motions and objections submitted on behalf of the Montana Consumer Counsel:

I

An objection to the Commission's reliance upon any statistics other than the recorded actual 1974 expense and rate base figures as identified in the Applicant's exhibits and affected rate in this proceeding was denied.

II

An objection to considering any part or parts of the Applicant's plant or equipment which is not presently used and useful including obsolete plant and equipment, abandoned plant and equipment and plant under construction was sustained, except for materials and supplies.

III

An objection to the inclusion of any plant, equipment, materials or supplies, which is devoted to interstate utility service in the Montana rate base of the application was sustained.

IV

An objection to the Commission's reliance upon a cost of capital rate base in its rate-making process in these proceedings was denied.

V

A motion to dismiss the proceedings on the ground that on the facts and on the law, the Applicant has shown no right to relief, was denied.

VI

A motion that this Commission order Montana Telephone Co., to design its own proposed rate structure reflecting costs of service and investment therein was denied.

VII

A motion that this Commission adopt a rate schedule reflecting recorded 1974 statistics and an original cost depreciated rate base as shown in Applicant's exhibits, excluding there from plant under construction and materials and supplies intended for future construction was denied.

VIII

A motion to exclude from the utility's rate base plant and materials and supplies dedicated to interstate communication was granted.

IX

A motion to continue the proceedings to a later date after documents had been produced as requested and all parties had sufficient time to analyze them in order to develop meaningful interrogation with respect thereto was granted in part.

X

A motion to hold the hearing in two or more communities was denied.

XI

The hearing on this matter was continued for the sole purpose of receiving such material as had been requested of Montana Telephone Co., by the Commission and the Consumer Counsel during the taking of oral testimony.

XII

All other rulings on objections to evidence and motions made at the hearing, and contained in the transcript, are incorporated herein by reference.

XIII

Any objections to evidence or motions not previously ruled upon are denied.

This Commission ordered the filing of proposed findings of fact and conclusions of law accompanied by briefs on or before twenty (20) days from and after the date that Montana Telephone Co., delivers the material requested by the Commission and by the Consumer Counsel, and served copies on the Consumer Counsel. The requested information has been filed with the Commission and copies have been served on the Consumer Counsel. Proposed Findings of Fact and Conclusions of Law have been filed, along with their respective supporting briefs. Reply briefs were also filed by the Consumer Counsel and counsel of Montana Telephone Company.

The Department of Public Service Regulation, Montana Public Service Commission, having considered the testimony and exhibits, the proposed findings of fact and conclusions of law and briefs, and the late filed information requested by the Commission and filed by Montana Telephone Co., on June 18, 1975, and deeming itself fully advised in the premises, makes

its findings of fact, conclusions of law and order as follows:

FINDINGS OF FACT

1) That notice of hearing was given by mailing copies of formal notice to ten radio and television stations in Southern Montana, to two newspapers of general circulation in the State of Montana and to three newspapers of general circulation in the areas affected. No objection was interposed in these proceedings regarding the scope or substance of notice. Objection was interposed in these proceedings regarding the place of hearing, and that objection was denied. (See Rulings Paragraph X above)

2) Applicant is a small telephone utility serving very small towns and rural areas and is subject to the jurisdiction and authority of the Public Service Commission at the end of 1974, it served 1,410 main stations and 2,291 telephones. It has four exchanges, the names and main stations of which as of December 1974, are:

<u>EXCHANGE</u>	<u>MAIN STATIONS</u>
Ennis	542
Hysham	413
Big Sky	306
Harrison	149

3) Applicant is engaged in a construction program upgrading and improving its facilities and service. During the last four years it has spent approximately \$2,959,200 for construction of facilities.

4) In connection with its program Applicant has signed a loan contract dated August 14, 1973, whereby, subject to the conditions therein set forth, the Rural Telephone Bank has agreed to lend to Applicant an amount not to exceed \$2,485,350 at 6.5 percent interest per annum. Under the loan contract the Applicant is required, among other things, to obtain the sum of \$592,000 of equity funds from the lawful sale of common stock or other equity sources and to purchase from the Rural Telephone Bank Class "B" stock of the bank in the amount of \$118,350.

5) As of December 31, 1974, Applicant owed \$2,170,000 to Continental Telephone Corporation (parent company that owns all equity in Applicant) at an interest rate of 11.25 percent and \$600, 000 to Crocker National Bank at a 10.5 percent interest rate. Since the Rural

Electrification Administration loan was approved, (telegram dated March 11, 1975)

Applicant will be enabled to retire part of the aforesaid debt and thereby enjoy a 6.5 percent interest rate on the long term REA loan rather than the much higher interest rates it is presently paying.

6) The utility's witness, Mr. Miles, testified that the utility was relying upon an original cost depreciated rate base in these proceedings.

7) From the late filed exhibit – "Montana Telephone Company, Separated Adjusted Results of Operation for 12 months ending 12-31-74," Aontana Telephone Company advocates the following operating income:

	Interstate	Interstate	Total
Plant in Service Plant	\$1,184,706	\$2,073,268	\$3,257,974
Plant under construction	233,800	213,835	447,635
Depreciation Reserve	(\$ 174,272)	(\$166,394)	(\$340,666)
Materials and Supplies	95,002	143,993	238,995
Working Capital	8,459	13,995	22,454
Deferred Taxes	(\$ 39,754)	(\$67,747)	(\$107,501)
Total Old Rate Base	\$1 ,307,941	\$2,210,950	\$3,518,891
Net Operating Income	78,219	176,162	245,381
Rate of Returns	5.98%		

The rate base used by the Public Service Commission is as follows:

Plant in Service	\$1,184,706	\$2,073,268	\$3,257,974
-Depreciation Reserve	(\$ 174,272)	(\$166,394)	(\$340,664)
+Working Capital	\$ 8,459	\$13,995	22,454
-Deferred Taxes	(\$ 39,754)	67,747	(\$107,501)
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TOTAL O.C.D. Rate Base	\$ 979,139	\$1,853,122	\$2,832,261
Net Operating Income	\$ 78,219	\$176,162	\$ 254,381
Rate of Return	7. 99%	9.51%	8.90%

8) Materials and supplies were testified to by a Company witness as being held for future use.

9) The \$213,835 for Intrastate plant under construction, and \$143,993 for intrastate materials and supplies, were not actually used and useful for the benefit of the utility's customers on the date of the utility's application and should be excluded from the utility's rate base.

10) The results of Applicant's Intrastate operations for the year ended December 31, 1974, show that its original cost depreciated rate base was then \$1,853,122 and its net operating income was \$176,162, the rate of return being 9.51 percent. Making the necessary adjustments, for increases in net operating income and deferred taxes, if the proposed rates are granted, the intrastate original cost depreciated rate base will be \$1,847,498 net operating income will be \$280,804 and the rate of return will be 15.2%.

11) The result of Applicant's interstate operation for the year ended December 31, 1974, shows that its original cost depreciated rate base was then \$979,139 and its net operating income was \$78,219, the rate of return being 7.99 percent.

12) The results of Applicants total operation for the year ended December 31, 1974, show that its original cost depreciated rate base was then \$2,832,261 and its net operating income was \$254,381, the rate of return being 8.98 percent. Making the necessary adjustments, the total original cost depreciated rate base would have been \$2,823,337 (adjusted to reflect increased amount of deferred taxes that would have accrued under proposed rates.) the net operating income would have been \$280,804 (adjusted to reflect increase net revenue that would have accrued under proposed rates) and the rate of return would have been 9.95 percent.

13) The rates of return as calculated in Findings 10, 11, and 12, do not take into account Consumer Counsel's suggested treatment of taxes paid or refunded to show either an accrual or a credit of Federal and State Income Taxes in order to reflect actual experience of the utility. If that were done, the rates of return as calculated would be even higher for the Applicant.

14) The rates sought would have initially provided additional annual revenue of \$42,373 under Step I. Under Step II, upon completion of all construction and upgrading of service in the Hysham and Ennis exchanges, there would have been an additional annual increase in revenue of \$4,243.

15) The Applicant is endeavoring to upgrade and improve the service in the Ennis area and in its 1975 construction budget the Applicant has allocated the following amounts for improvements in the respective areas:

Harrison	\$ 67,200
Ennis	472,400
Hysham	150,800
Big Sky	225,300
All Exchanges	<u>150,800</u>
TOTAL	\$1,066,500

16) The utility has stated in the Advice Letter No. 19 that the purpose of this filing is to obtain new basic service rates for the Montana Telephone Company in order to meet Rural Electrification Administration loan requirements.

17) While the loan may or may not originally have been contingent upon a rate increase, the Applicant furnished data to the REA which indicated that anticipated toll revenues would be more than the amounts which the REA had projected in its original studies. And, based on this updated analysis the REA approved the loan (telegram dated March 11, 1975). It is clear that some advances on the REA loan have been made. A late filed exhibit—a letter to Mr. Miles over the signature of Ralph Mills of the REA dated May 23, 1975--discloses that the REA loan is not contingent upon the outcome of these proceedings.

18) The utility has not shown either credit or accrual of current Federal and State Income Taxes in its adjusted figures before proposed rates.

19) The utility will pay no income taxes for 1975 and none are anticipated for 1976, because of loss carry forward privileges.

20) The \$42,373.20 increase in revenue asked for by the Applicant does not take into account increased toll revenue resulting from recent FCC deliberations or miscellaneous revenue and expenses which will result from the additional 1379 telephones referred to in the letter from the REA dated October 11, 1973.

21) The Applicant's parent Company, Continental Telephone Company, will not

accommodate Applicant as a co-signer to aid Applicant in negotiating for lower Interest rates on short term money on the open market.

22) The rate of return currently enjoyed by Applicant is just and reasonable and is sufficient to insure continued adequate service to Applicant's customers and to allow for continued upgrading of Applicant's facilities and service.

FINDINGS OF FACTS DENIED

1. Consumer Counsel's Finding No. 4 and Applicant's Finding No.6 are irrelevant because of the Commission's Ruling Nos. II, III and VIII and Findings 7 and 10.
2. Applicant's Finding No. 4 is denied, because of Findings 5 and 17.

CONCLUSIONS OF LAW

1. This Commission has jurisdiction over the parties and the subject matter in these proceedings.
2. An original cost depreciated rate base may be used in the determination of a fair rate of return to Montana Telephone Company in these proceedings under Section 70-106, R.C.M. 1947.
3. In light of Findings of Fact 10 and 11, increases in rates of return on intrastate service seem inappropriate while return on intrastate service remains above return on interstate service.
4. The disallowance of plant under construction and of materials and supplies in Finding Number 9 is supported by the principle in Denver Union Stock Yard Co. v. U.S., 3'4U.S. 470, 475, 83L.Ed. 1469,58 S.Ct. 990, 994 (1938), that a utility is entitled to rates to yield a reasonable rate of return upon the value of property used, at the time It is being used, to render the services. (citations omitted) But it is not entitled to have included any property not used and useful for that purpose.(citation omitted)."
5. With regard to Findings of Fact Nos. 9 a 13, it would have been error to ignore tax accruals and fail to offset them against working capital. City of Alton v. Commerce Comm'n., 19111.2d 76, 165 N.E.2d 513, 33 P.U.R.3d 76, 82-83 (1960). This Commission chooses to rely on actual available test year data. When the entire tax law is taken into account, this data is not abnormal. Re United Telephone Co. of Kansas, Inc., 6 P.U.R.4t11 350, 353 (Kan. St. Corp. Comm'n. 1974).

The Applicant requests the Commission to speculate concerning what tax burdens or benefits may accrue to the Applicant. We choose not to do so and follow the Connecticut Public Utilities

Commission which has held It cannot establish rates based upon assumption of events that may or may not happen.” Re The Hartford Electric Light Co., 6 P.U.R.4th 209, 2 235 (Conn. Pub. Serv. Comm’n. 1974).

6. The return already earned by the Applicant here meets the criteria established by the United States Supreme Court in F.P.C. v. Hope Nat. Gas Co., 320 U.S. 591, 88L. Ed. 333, 645.Ct. 281, 51P.U.R. (n.s.) 193 (1944).

It is reasonable in light of the return allowed in the Re United8 Telephone Co. of Kansas, supra headnote 6 at 351, for example. The rate of return currently enjoyed by Montana Telephone Company is a just and reasonable rate of return sufficient to insure continued adequate service to the consumers and customers of Montana Telephone Company, and to allow for continued upgrading of that utility’s facilities and service.

ORDER

1. The requested increase of Montana Telephone Company in Docket No. 6285 is denied in its entirety.

2. The Commission contemplates that the projected construction budget as indicated in Finding of Fact 15 and the construction plant expenditures indicated in the five year projection submitted by Robert W. Winchester. (that is, \$1,032,000 for 1976, \$845,000 for 1977, \$751,000 for 1978 and \$845,000 for 1979.) Will be implemented to improve service in Applicant’s Montana service area.

DONE IN OPEN SESSION in Helena, Montana on Deccmber 10, 1975, by a 5-0 vote.

GORDON E. BOLLINGER, Chairman

P.J. GILFEATHER, Commissioer

THOMAS G. MONTAHAN, Commissioner

JAMES R. SHEA, Commissioner

GEORGE TURMAN, Commissioner

NOTICE: You are entitled to judicial review of this order. Judicial review niay be obtained by filing within thirty (30) days from the service of this order, a petition for review pursuant to Section 82-4216, R.C.M. 1947.