

Service Date: September 5, 1975

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

JAKE FRANK,)	
Complainant,)	
)	DOCKET NO. 6314
)	
MOUNTAIN STATES TELEPHONE AND)	ORDER NO. 4207
TELEGRAPH COMPANY (MOUNTAIN BELL),)	
a corporation,)	
)	
Respondent)	

FINDINGS, CONCLUSIONS AND ORDER

Notice of Public Hearing in this matter was served by certified mail on all parties on April 30, 1975. It was received by Mr. Frank’s attorney (Gerald D. Christensen) and Mountain Bell on May 1, 1975, and Mr. Jake Frank received his notice on May 5, 1975.

This matter came on regularly for hearing on the 23rd day of May, 1975, on the complaint of Jake Frank.

The Complainant was present in person and represented by his attorney, Paul G. Olsen, of the firm of Jones. Olsen and Christensen, Billings. Montana.

The Respondent appeared through John 3. Buckley, its Montana Assistant Vice President, L. F. Marquardt, its Montana Rate and Forecast Supervisor, and one of its attorneys, George T. Bennett of the firm of Hughes, Bennett and Cain of Helena, Montana.

The matter was heard by the entire Commission, accompanied by its attorney, Russell L. Doty. Jr., of Helena. Montana. In addition, Commissioner Thomas Monahan and Utility Division Administrator Bill Opitz viewed the area of Complainant’s ranch and the area of possible construction routes proposed by Complainant and Respondent.

The Commission having taken evidence and having received written briefs of argument and authority, makes the following findings, conclusions and order.

FACTS NOT IN DISPUTE

1. The Complainant has requested that telephone service be provided to his residence located on the "Valley Creek" ranch north of Park City, in Stillwater County, Montana. There are presently no facilities to provide telephone service to his residence.

2. Respondent has offered to extend telephone service to Complainant's residence by underground cable following the existing county road to Complainant's property line gate and thence along Complainant's private road for a distance of four and one half (4.5) miles at a cost of \$2,400.00 after all allowances.

3. The construction charges of \$2,400.00 quoted by Respondent are computed in accordance with the filed and effective Tariff of Respondent, viz., Section 8: Construction and Installation: Charges and Allowances, Original Sheets 1 to 5 and First Revised Sheets 6 and 7, issued respectively, July 1, 1964 and October 9, 1964; and effective respectively, August 1, 1964 and November 1, 1964.

4. Complainant objects to the route designated by Respondent for the proposed construction of telephone facilities to his residence and contends that such service can be brought to his property by two other possible routes at less expense.

5. The first route contended for by Complainant (hereinafter referred to as Alternative Plan I) is to run a telephone line from the property of a party by the name of Markegard in Section 11, west to a point in Section 10, thence north to a point in Section 3, thence westerly to the Big Timber Livestock Well in section 4 and by use of an existing power line serving the pumps at such well; thence by use of an existing power line to the Complainant's well in Section 32, by passing over the Southwest corner of Section 33,

thence from the Complainant's well to his residence by passing over part of Section 31 to Section 6.

6. The second route contended for by Complainant (hereinafter referred to as Alternative Plan II) is to follow the same route as in Plan I, described above in Paragraph 5, from the Markegard properties to the Big Timber Livestock Well, thence westerly by new construction to Complainant's residence by passing over part of Section 4, all of Section 5 and part of Section 6.

FINDINGS OF FACT

1. The construction of telephone facilities as proposed under Alternative Plan I would require reinforcement of 4,200 feet of existing telephone line; 10,401 feet of joint use construction on existing power poles; 10,560 feet of new construction by use of buried cable; and then 14,458 feet of joint use construction on existing power poles. The total distance covered by the route under Alternative Plan I is 35,415 feet and the total cost to Complainant after all allowances under the applicable tariff, described above in Paragraph 3, is \$3,080.00.

2. The construction of telephone facilities as proposed under Alternative Plan II would require reinforcement of 4,200 feet of existing telephone line; 10,401 feet of joint use construction on existing power poles; and 15,840 feet of new construction by use of buried cable. The total distance covered by the route under Alternative Plan II is 26,241 feet and the total cost to Complainant after all allowances under the applicable tariff, described above in Paragraph 3, is \$2,540.00.

3. The alternative routes contended for by Complainant involve construction over rough terrain and through the rimrock and, in addition, construction by joint use on power poles servicing pumps at water wells which could cause problems with induced noise, affecting not only service to Complainant's residence but also on all lines working in the cable feeding back into Park City.

4. Complainant can, under tariff, construct and own his own telephone facilities and connect to Respondent's system, or in the alternative, Complainant can construct the line or have

it constructed by his own employees or independent contractors, meeting National Electrical Code and Bell standards, and Respondent will furnish engineering services at a cost of \$539.00, supervision at a cost of \$446.00, and materials at the cost to Respondent.

5. Respondent has offered to release Complainant from its service area, allowing him to obtain telephone service from Treasure State Telephone Company, Inc., a member of the Continental Telephone System, operating in a contiguous service area with facilities approximately six (6) miles from Complainant's Valley Creek Ranch residence.

6. In a letter dated May 19, 1975, to Mr. Dennis Crawford, Deputy Administrator of the Utility Division of the Public Service Commission, Dee N. Monsen of Treasure State Telephone Company stated that his company will serve Mr. Frank as a customer at an initial cost of \$4,500.00. Monsen stated in a phone conversation that this would be needed to install about six (6) miles of line and reinforce fifteen (15) other miles of line.

7. The cable which is proposed to be used by Mountain Bell is the lightest "wire" that could provide adequate service and not cause "noise" problems in other parts of the system.

8. No evidence was entered by Mr. Frank to indicate that any other customers of Mountain Bell would be benefited if Mountain Bell paid for a line from existing facilities to Mr. Frank's property.

PROPOSED FINDINGS OF FACT DENIED

1. Complainant's counsel proposed that the Commission find Respondent's extension charge of \$2,400.00 unlawful, arbitrary, unreasonable, insufficient and unjustly discriminate. He also proposed that the Commission find that Respondent engaged in the practice of charging certain parties less than the amount specified in the applicable tariff. Both of these findings are denied as they are not supported by the evidence introduced at the hearing.

An affidavit of Allen Herden was submitted after the hearing as a basis for this proposed finding alleging that two lines, each two and one half (2½) miles long, were strung to give Herden private service in 1971 at a cost of \$165.00. But no opportunity to cross-examine Mr. Herden was afforded because the record had closed. Nevertheless, this Commission's staff conducted an exhaustive search of the old Commission's customer complaint files from 1969 through 1973 in an effort to locate any reference to the events Mr. Herden swears to. No reference was located.

The charges of Mr. Herden's affidavit are answered by a counter-affidavit of Mr. L. F. Marquardt for the telephone company to the effect, that no new construction was needed to serve Mr. Herden, thus his charge for conversion from multiparty to private service cost only \$165.00 - not as much as would have been the case if new construction were required.

2. All other proposed findings of Complainant and Respondent not incorporated herein are denied because they are substantially similar to findings already adopted.

EVIDENTIARY RULINGS

1. All rulings on objections to evidence made at the public hearing in this matter and contained in the transcript are adopted by reference.

2. Any objections to evidence not ruled upon at the hearing are denied.

CONCLUSIONS OF LAW

1. Respondent has not refused to extend telephone service to Complainant's ranch residence.

2. Respondent has offered to extend service to Complainant's ranch residence in accordance with its tariff and at costs established thereby.

3. Respondent has offered to extend telephone service along a public road to

Complainant's ranch gate and entrance, and this is the shortest, most practical and feasible route for Respondent to extend its service and would result in the lowest cost to Complainant.

4. The routes contended for by Complainant involve longer distances, more difficult terrain and more technical difficulties with service than the route chosen by Respondent.

5. Respondent is not applying its tariff in a discriminatory fashion.

6. If Complainant desires, he could be released by this Commission from Respondent's telephone service area.

ORDER

IT IS ORDERED BY THE MONTANA PUBLIC SERVICE COMMISSION that the Complaint of Complainant is dismissed; provided, however, that if Complainant asks to be released from Respondent's telephone service area, his request will be granted.

DONE IN OPEN SESSION, by a vote of 4-0, Commissioner P. J. Gilfeather being absent, at Helena, Montana, on July 8, 1975.

BY ORDER OF THE PUBLIC SERVICE COMMISSION:

GORDON E. BOLLINGER, Chairman

THOMAS G. MONAHAN, Commissioner

JAMES R. SHEA, Commissioner

GEORGE TURMAN, Commissioner

ATTEST:

GAIL E. BEHAN
Secretary

(SEAL)

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