

Service Date: March 19, 1981

DEPARTMENT OF PUBLIC SERVICE REGULATION
MONTANA PUBLIC SERVICE COMMISSION

In the Matter of the Investigation of) UTILITY DIVISION
Rates and Charges for Private Line)
Services Rendered-by Mountain States) DOCKET NO. 80.10.85
Telephone and Telegraph Company) ORDER NO. 4713a

APPEARANCES

FOR THE COMPANY:

J. Walter Hyer, III, Attorney at Law, 600 North Park,
Helena, Montana, appearing on behalf of Mountain States
Telephone and Telegraph Company.

FOR INTERESTED PARTIES

James C. Paine, Montana Consumer Counsel, 34 West Sixth
Avenue, Helena, Montana.

Alan L. Joscelyn, Attorney at Law, P. O. Box. 1721,
Helena, Montana, appearing on behalf of Telephone
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Roger Tippy, Attorney at Law, P. O. Box 475, Helena,
Montana, appearing on behalf of Executone Systems of
Montana.

Milton K. Neegus, Superintendent of Schools, Gallatin
County Courthouse. Bozeman, Montana, on behalf of
Bozeman Public Schools.

William E. Murray, Director, Cascade County Office of
Disaster and Emergency Services, Room 248, CasCo
Building, Great Falls, Montana, on behalf of Cascade
County.

Sam Boggess, Director, Support Services, P. O Box 1178,
Billings, Montana on behalf of the City of Billings.

Kal Kennedy, 201 West Spruce, Missoula, Montana, on behalf of City of Missoula.

Janet M. Dolan, Administrative Assistant, City of Great Falls, P.O. Box 5021, Great Falls, Montana, on behalf of City of Great Falls.

William Willavize, Superintendent, Florence-Carlton Consolidated Schools, Florence, Montana, on behalf of Florence-Carlton Consolidated Schools.

Daniel J. Worsdell, Courthouse, Anaconda, Montana, on behalf of Anaconda-Deer Lodge Consolidated Government.

Joseph G. Wolf, Courthouse, Butte, Montana, on behalf of Butte-Silver Bow Consolidated Government.

Dan K. Mizner, 1728 9th Avenue, Helena, Montana, on behalf of Montana League of Cities and Towns.

Robert W. Schottelkorb, 502 East Broadway, Missoula, Montana, on behalf of Downtown Motel.

Ed White, Great Falls International Airport, Great Falls, Montana, on behalf of Montana Air National Guard.

FOR THE COMMISSION:

Calvin K. Simshaw, Staff Attorney, 1227 11th Avenue, Helena, Montana.

BEFORE:

GORDON E. BOLLINGER, Chairman
CLYDE JARVIS, Commissioner
THOMAS J. SCHNEIDER, Commissioner
JAMES R. SHEA, Commissioner

FINDINGS OF FACT

1. On July 16, 1980, the Montana Public Service Commission issued Order No. 4585a as its final order in Docket No. 6652, Mountain Bell's most recent general rate case. A major portion of that order involved the

restructuring and/or re-pricing of the rates and charges applied to "private line" services.

2. In Order No. 4585a, based upon the testimony of both Mountain Bell and the Montana Consumer Counsel, the Commission found that private line services have historically been significantly under-priced. The Commission found that an increase of \$2, 047, 200 in private line revenues would be necessary to allow private line services to recover their direct costs. However, due to the magnitude of such an increase, the Commission decided to order increased revenues of only \$1,162,000. This was roughly one half the increase that would be necessary to bring private line services into a position where they would be recovering their direct costs.

3. Following the issuance of Order No. 4585a, the Commission received several complaints addressing the reasonableness of the increase in rates and charges for private line services. The Commission recognized that even though it increased revenues from private line services by only half the level necessary to recover direct costs, that increase coupled with the pricing restructure nonetheless had had a major impact on many users of private line services. It was impossible to get an accurate measurement of those impacts at the time of hearing in Docket No. 6652 (general rate case) because the telephone answering services were the only impacted users to participate at that time. Therefore, the Commission instituted this special docket (see Order No. 4713) to allow the Commission to take a closer look at the impacts of private line restructure and re-pricing.

4. Pursuant to public notice a public hearing held in this matter on December 10, 1980, in Helena, Montana.

5. At the hearing, Mountain Bell presented the testimony of Mr. Kenneth Ishoy who is a Mountain Bell staff manager at the Company's headquarters in Denver, Colorado. Mr. Ishoy discussed the implementation of private line pricing restructure and pricing increases directed in Order No. 4585a. Mr. Ishoy presented several examples illustrating how the restructure and re-pricing affects various private line offerings and the effects upon some typical private line configurations. Mr. Ishoy also responded to several specific questions presented by many of the private line users in attendance.

6. Several public witnesses testified on behalf of entities who are private line users. Most of this testimony involved a recitation of private line pricing impacts upon local government entities (cities, counties, schools, etc). The testimony of each witness was very similar and can be fairly characterized as follows:

- a) None of the witnesses took exception with the Commission's general philosophy concerning the pricing of telecommunication services. The witnesses were in agreement that rates should be set at the level necessary to recover the costs of providing the service.
- b) Although the witnesses generally did not object to the Commission's movement towards full-cost pricing, most objected to what they perceived as a lack of notice that such a degree of re-pricing was being considered in Docket No. 6652 (general rate case).
- c) Many witnesses submitted that adequate notice of pending rate increases was especially important to governmental entities such as those they represented because such entities have severe budgeting process restrictions.

- d) Many witnesses expressed their particular displeasure with Mountain Bell for not notifying them that they had proposed in their rate case that the Commission adopted such significant increases in rates for private line services.

- e) Private line services are an integral component of the communications systems selected by many of the entities represented at the hearing. For example, many entities had acquired and installed a Dimension system from Mountain Bell. Many witnesses implied that when obtaining such systems, representatives of Mountain Bell misled them to believe that the costs associated with maintaining such systems would remain fairly stable in the near future or would increase only at a very gradual rate. Some witnesses argued that Mountain Bell made such representations in spite of the fact that its management had already determined through cost studies that private line services were severely under-priced (as testified to by Mr. Ishoy) and that it was possible that the Commission would take steps to correct that situation.

Pricing Restructure

7. The Commission finds that it took appropriate action in Order No. 4585a when it authorized the restructuring of the pricing of private line services. As described by Mr. Ishoy in his testimony, the restructured pricing method gives a much better indication of the plant and equipment necessary to serve any given private line configuration. Under the old pricing method there was very little relationship between the rates and the costs of providing private line service to any given user.

8. However, the Commission is concerned that in the past some private line users may have designed their systems to take advantage of the pricing method in place at that time,

rather than to make the most efficient use of plant and equipment. It is clear that under the old pricing method, the system with the lowest price was not necessarily the most efficient one. The restructured pricing method would appear to match the lowest prices with the most efficient use of plant and equipment. The end result is that some existing systems although they were the least cost system under the old pricing method are now not the most cost effective system under the restructured pricing because of their inefficient use of plant and equipment.

9. The Commission feels that it is the burden of Mountain Bell to assist these users in converting to the most efficient system for their needs which should now also be the least cost system. The Commission will expect Mountain Bell to outline its efforts in this area when it presents its general rate case to the Commission later this year.

Pricing Towards Full Cost

10. The Commission had before it in Docket No. 6652 uncontested evidence that private line services were being severely under-priced. It has consistently been the goal of the Commission in the recent past to price all non-basic exchange services at a level such that they will recover at least their own direct costs. See Docket No. 6496, Order No.4389d; Docket No. 6652, Order No. 4585a; and Docket No. 6714, Order No.4706. Such a policy is necessary to guard against the cross-subsidization of one group of ratepayers by another. Private-line users appearing at the hearing did not dispute this basic pricing philosophy. Almost all witnesses agreed that it was fair to expect private line users to pay

the full costs associated with providing them with their services.

11. Having recognized in Docket No. 6652 that private line services were not meeting their costs, the Commission further recognized that an immediate move to full-cost pricing would probably be more than private line users could absorb at one time. Therefore, the Commission in Order No. 4585a granted only about half of the revenue increase that would be necessary for full recovery of private line direct costs. None-the-less the Commission heard testimony in this Docket which argued that even the Commission's moderated move towards full-cost pricing was too abrupt. There is no doubt that the re-pricing in Order No. 4585a does have a significant impact on many private line users.

12. In Order No. 4585a, the increase in revenues was applied to both recurring and nonrecurring charges. The Order called for recurring charges to be increased by an amount that would recover 74 percent of the additional revenues necessary to bring recurring revenues up to recurring costs. Some of the private line services were already priced above their direct costs. They did not receive price increases. Of those private line services that did receive increases, many had to be increased by 84 percent to achieve the 74 percent figure mentioned above.

13. Although an 84 percent increase in rates for some services is substantial it does not change the fact that they are still under-priced. The Commission's goal remains one of

bringing those services up to full-cost pricing. This has already been achieved in part in Order No. 4585a and a move in that direction will likely continue in the next general rate case (Docket No. 80.12.100, tentatively scheduled for hearing in June, 1981). In other words, additional increases are still necessary to insure that these services recover their full costs.

14. Therefore, even though the increases in Order. No. 4585a were substantial, the Commission does not feel that it would be appropriate to cut back those increases at this time; what with additional increases coming down the road until such time as full cost pricing is reached. Such action would definitely provide a false "price signal."

15. The Commission must balance the current impacts upon private line users with the interests of the general ratepayers who have been historically subsidizing private line services. This cross-subsidization cannot be allowed to continue much longer. Although the Commission does not feel that it is in a position to immediately eliminate the cross-subsidization (through immediate full-cost pricing), the Commission does feel that it is obligated to at least substantially reduce the degree to which it is occurring. This the Commission has done in its Order No. 458Sa.

16. The Commission is further constrained from cutting back private line rates in this Docket by virtue of its ruling in Docket No. 6714 (the vertical terminal equipment pricing docket). Order Nos. 4706 and 4706a found that there

also exists a severe under-pricing of vertical terminal equipment. The Commission decided to defer any corrective re-pricing of vertical equipment at that time. However, the Commission did make it clear that any future revenue requirements should be gathered first from a distributed cost. Therefore, if the Commission were to cut back the rates for private line services in this docket, that would cause a revenue deficiency that would have to be recovered by increasing the rates for vertical terminal equipment.

17. Such a shifting of revenue generation would not provide measurable relief to the entities now absorbing the private line increases because those private line users are generally heavy vertical equipment users as well. Consequently a cutback in private line rates would merely cause a false price signal to be given without providing relief to the impacted users.

18. As the rates and charges for private line services are increased towards full-cost pricing, alternatives to Bell System private line configurations become more feasible. The Commission is further hesitant to give off a false price signal because of the dampening effect it would have on the availability of alternative communication systems which may prove to be more cost effective than Bell private line systems. Only if Bell's private line systems are priced at full cost will the most cost effective and efficient systems available from all sources come to the forefront.

19. Based upon the foregoing, the Commission finds that it would not be appropriate to reduce those rates and charges

for private line services which were approved in Order No. 4585a.

Notice of Pending Application for Rate Increases

20. As was stated in Finding No. 3, there was almost no participation by private line users at the time of hearing in the last general rate case. Many users testified at the hearing in this matter that they could have appeared in Docket No. 6652 had they-been given notice of the magnitude of proposed changes in the private line area.

21. The Commission does not feel that this perceived lack of notice can be blamed upon the form of Notice of Hearing that was published and distributed in Docket No.6652. Telephone rate cases are inherently complex and cover a multitude of rates and charges for literally hundreds of different service offerings . The Notice of Hearing issued in Docket No. 6652 was seven pages long and even at that length could not extend beyond general information concerning the rate case application. A considerably longer notice would be required to give detailed proposed pricing information for specific service offerings. It is likely that such a notice would be even less effective because its very length would frustrate examination by potentially interested persons. The Commission does not feel that modification of the noticing procedure is the answer to the notice problem which arose in this case.

22. The witnesses testifying at the hearing expressed much dissatisfaction with Mountain Bell's failure to notify its customers of the pending proposed increase in private line rates. Several witnesses testified that Mountain Bell representatives had represented to them that they expected only moderate rate increases. Mountain Bell's response at the hearing was that they did not know what level of increases the Commission would grant until the final order was issued.

23. While no one knows for sure until the final order exactly what the rate changes will be, the Commission believes that at a bare minimum the customers are entitled to know what the Company has asked for. Even if inquiries were made in the manner of what the Company expected the rates to be in the final order, the Company should nonetheless have informed the customer as to what it had requested the rates be in its rate case filing. This is particularly so in light of the fact that the Company must think that there is merit to their requested rates or they would not have filed for them. Requested rates are identifiable as such and there is no excuse not to disclose them to the customers and prospective customers.

24. At the beginning of the hearing the Company voiced its proposal to include a bill stuffer describing future rate case filings. In the interim period between the hearing and this Order separate informational pamphlets have been distributed to each residential and commercial customer describing the now pending rate case (Docket No. 80.12.100). The pamphlets give considerable information concerning the pending rate proposals and provide the customer with an

avenue to find out specifically how the proposed rates would affect the particular customer's service.

25. The Commission finds that dissemination of information in this manner goes far towards rectifying the notice problem that occurred in the last general rate case. The Commission feels that such a procedure should be formalized in administrative rules to be applied to future rate case filings of not only Mountain Bell but all other major utilities which this Commission regulates.

Claims of Misrepresentation in Marketing

26. Many witnesses at the hearing described how the entities they represented had recently committed themselves to major telecommunications systems acquired from Mountain Bell, such as the Dimension system. Acquisition of such systems involves a long-term commitment on the part of the customer with penalties for early termination of the service. Private line services, primarily in the form of non continuous property extensions, are often an integral cost component of the operation of such systems.

27. Several witnesses testified that they were lead by Mountain Bell to believe that the system they ultimately installed was the most cost-effective method of meeting their communication needs over the long run. Most of the witnesses indicated that a major factor in the decision to make the long-term commitment to a Dimension-type system was Mountain Bell's representation that cost would remain fairly stable

under such a system. It is clear from the testimony that "cost stabilization" was indeed one of the principal selling points used by Mountain Bell to market such systems.

28. Some witnesses pointed out that Mountain Bell was pushing "cost stabilization" even while it had a case pending before the Commission which specifically asked for substantial increases in the rates and charges for those private line services which are an integral cost component of such systems. Because of this fact many witnesses claimed that Mountain Bell was guilty of misrepresentation which has caused many customers to become tied into systems which they can no longer afford to maintain and operate.

29. The Commission is very concerned by the testimony it has heard concerning Mountain Bell's marketing practices in the area of Dimension-type systems. Although lacking in specifics, the testimony leaves a clear implication that prospective customers did not have the benefit of Mountain Bell's best information concerning future costs of Dimension-type systems. However, the Commission is not equipped or authorized to make a finding of liability for legal misrepresentation.

30. A finding of legal misrepresentation would require specific evidence concerning representations made by Mountain Bell in its marketing process. For example: exactly what was said, who said it, when and where it was said and in what context it was said. Such specifics are not present in the

record of this proceeding because it was not designed to garner that type of information.

31. A finding of legal misrepresentation would also require conclusions of law regarding such legal issues as principal-agent relationships, offer and acceptance, intent of the parties, detrimental reliance, and measurement of damages. Such issues are clearly the province of the courts and not of this Commission. To the extent parties feel they may have justified claims of legal misrepresentation and damages resulting therefrom they should be pursued at the District Court level.

CONCLUSIONS OF LAW

1. The Montana Public Service Commission properly exercises jurisdiction over the rates and operations of Mountain States Telephone and Telegraph Company pursuant to Title 69, Chapter 3, MCA.

2. The rates and charges approved by the Commission in its Order No. 4585a and affirmed herein are just and reasonable.

3. The Montana Public Service Commission lacks jurisdiction to address the issue of legal misrepresentation and damages raised by some parties in this docket.

ORDER

THE MONTANA PUBLIC SERVICE COMMISSION ORDERS THAT:

1. Rates and charges for private line services ordered by this Commission in Docket No. 6652, Order No. 4585a shall remain unchanged at this time.

2. The Commission staff is directed to institute rulemaking proceedings to establish requirements for the dissemination of information concerning pending rate increase applications of major regulated utilities.

3. Mountain Bell is ordered to reexamine all private line installations and to advise each customer respecting the most cost effective configuration under the restructuring and re-pricing affirmed in this order and taking into consideration the terminal equipment pricing methodology derived from Docket No. 6714 with rates as proposed in Docket No. 80.12.100. Mountain Bell is ordered to file bimonthly reports summarizing the results of this reexamination and the customer response to the alternative configuration.

DONE AND DATED this 16th day of March, 1981, by a vote of 3-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION.

GORDON E. BOLLINGER, Chairman

CLYDE JARVIS, Commissioner

THOMAS J. SCHNEIDER, Commissioner

ATTEST:

Madeline L. Cottrill
Secretary

(SEAL)

NOTE: You may be entitled to judicial review of the final decision in this matter. If no Motion for Reconsideration is filed, judicial review may be obtained by filing a petition for review within thirty (30) days from the service of this order. If a Motion for Reconsideration is filed, a Commission order is final for purpose of appeal upon the entry of a ruling on that motion, or upon the passage of ten (10) days following the filing of that motion. cf. the Montana Administrative Procedure Act, esp. Sec 2-4-702, MCA; and Commission Rules of Practice and Procedure, esp . 38.2.4806, ARM.