

Service Date: February 2, 1984

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER Of The Application	)	
of The MOUNTAIN STATES TELEPHONE	)	UTILITY DIVISION AND TELEGRAPH
COMPANY (MOUNTAIN	)	DOCKET NO. 83.12.85
BELL) For Authority to Offer Inside	)	ORDER NO. 5042a
and Complex Wiring on a Fully	)	
Compensatory Basis.	)	

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ORDER ON MOTION  
FOR RECONSIDERATION

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FINDINGS OF FACT

1. On December 30, 1982, the Commission issued Order No. 4951b in Docket No. 82.6.37. In that Order, the Commission found that inside wiring should be provided by nonregulated entities at competitive prices. If the regulated utilities wished to remain in the inside wiring business after January 1, 1984, then they would have to do so within a fully separate subsidiary (FSS). The Order provided calendar year 1983 as a transition period for purposes of avoiding potential service and workforce disruptions. (Findings of Fact No. 28 and 38).

2. On December 2, 1983, Mountain Bell requested authority to continue to offer inside wiring. The application for authority proposed nontariffed, fully compensatory charges, and cited potential service disruption, the absence of FSS operations and a recent District Court finding in support of its application. (Application pp. 2-4).

3. On December 30, 1983, the Commission issued Order No. 5042 in Docket No. 83.12.85. In that Order, the Commission found that “for purposes of avoiding any potential additional disruption... the transition period provided in Order No. 4951b should be extended indefinitely. The indefinite extension allows for continued wiring operations per the tariffed provisions of the fully compensatory premise work service charge element per Docket No. 83.3.18” (Finding No. 3).

4. On January 9, 1984, Mountain Bell filed a Motion For Reconsideration of Order No. 5042. Mountain Bell requests that the Commission alter the Order, allowing Mountain Bell to perform wiring on a non-regulated/non-tariffed basis.

5. In its original application, Mountain Bell argues that it does not anticipate a fully separate wiring subsidiary and the resulting “availability of service will be substantially diminished, especially in rural areas, if Mountain Bell is precluded from offering inside wiring services” (Application p. 4). In its Motion For Reconsideration, Mountain Bell argues that “if the price of service in a low cost area is overpriced, competitors will undercut Mountain Bell. Unless Mountain Bell is capable of responding promptly to competitive pricing, it will lose such markets to lower price competitors” (Motion, p. 3).

6. The Commission rejects the Motion for Reconsideration. The Application requests wiring authorization based on a provider - - of-last - resort argument - - authorization would avoid potential service disruptions. Now, and in direct contrast, the Motion argues for detariffing based on a loss - of-market theme. This apparent contradiction leaves the Commission without an understanding of what the corporate objectives are.

7. The only apparent connection between the provider – of – last - resort and loss – of - market arguments can be found in Paragraph No. 5 of the Motion: “as Mountain Bell loses such markets, there will be no ability to subsidize price for the high cost areas (Motion p. 3). The Commission finds this argument peculiar. It appears to imply that (1) allowing the Company to reduce rates in low cost areas will allow the Company to “subsidize” rates in high cost areas, and (2) subsidizing rates in high cost areas is not only achievable and acceptable, but is desirable. While the former implication appears to be a contradiction, the latter appears to argue in support of continued

regulatory review. The function of rate regulation is to prevent subsidies - - not sanction them. The Company's asserted ability to selectively "subsidize" high cost areas, especially given the lack of any clear statement of corporate objectives, makes a good case for continued rate regulation.

8. The Commission also questions the de-averaging argument. The Company's testimony in support of the recently adopted Dual Element Service Charge structure was primarily its de-averaging properties (See Docket No. 83.3.18, Exhibit MBT-16). The premise work element now features time sensitive labor and direct material charges based on the Company's own time and motion studies and estimates of direct costs thereof. It is not clear what component of the redesigned DESC structure, particularly the premise work element, features unacceptable averaging.

9. If the Company so desires, it can make a subsequent request for detariffing. However, any subsequent request should be accompanied with (1) a clear and elaborate statement of corporate wiring objectives; (2) an analysis of where the DESC causes unacceptable averaging and the cost variance therein; and (3) an analysis demonstrating how abandoning the DESC will somehow allow the company to meet competition and subsidize high cost areas.

#### CONCLUSIONS OF LAW

1. Mountain Bell furnishes telephone service within the State of Montana and is a "public utility" under the regulatory jurisdiction of the Montana Public Service Commission. 69-3-101, MCA.

2. The rate levels provided herein are reasonable and just. 69-3-330, MCA.

#### ORDER

1. IT IS HEREBY ORDERED that Mountain Bell's Motion For Reconsideration be denied.

DONE IN OPEN SESSION at Helena, Montana, this 16th day of January 1984, by a 4 - 1 vote.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION.

THOMAS J. SCHNEIDER, Chairman

JOHN B. DRISCOLL, Commissioner

HOWARD L. ELLIS, Commissioner

CLYDE JARVIS, Commissioner

DANNY OBERG, Commissioner (Dissenting)

ATTEST:

Madeline L. Cottrill  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

DISSENT OF DANNY OBERG

DOCKET NO. 83.12.85

MOTION TO RECONSIDER

As regulators, the Montana Public Service Commission has an obligation defined by statute and case law to regulate the utilities under their jurisdiction to insure reasonable rates and adequate service. Government regulation is designed to insure that the monopoly granted to the public utility does not abuse its protection from competition by extracting excess revenues from its customers. As utilities have diversified and expanded into non-utility areas, regulators have also sought to protect ratepayer interests by insuring that utilities do not cross subsidize their unregulated business activities (competitive) with revenues derived from the regulated (monopoly) sector of the company. Without careful regulatory supervision, the utility has an incentive to extract maximum revenues from the monopoly where the effects of price have little effect on demand and to under-price in the competitive markets where a reduction in price may result in increased revenues by increasing total market share. Carried to the extreme, a utility could conceivably seek to stifle or end competition in the unregulated area by subsidizing the competitive service.

In its implementation of FCC decisions dealing with the AT&T divestiture and the consent decree the Montana Public Service Commission has recognized that a new era in telecommunications has arrived. The concept of competition has changed the way regulation is enforced. State commissions have attempted to protect ratepayers from effects they view as detrimental and extend to them the full benefits of competition.

In this instance, the PSC had before it an application by Mountain Bell to continue offering inside and complex wiring services on a fully compensatory, unregulated basis. The record of the Commission has been to promote competition in areas that may benefit the end consumer.

Commission reluctance to allow Mountain Bell to offer this service seems to stem from a

concern that the utility will be able to use its inherent advantage of customer loyalty, inertia to change, or lack of understanding of their options to stifle competition from developing by other vendors. Although the Commission's desire to promote a competitive telecommunications environment may be worthy, its manner of doing so is not. In this instance, the Commission seeks to promote development of a competitive inside wiring market by insisting upon a restriction (tariffing) that Mountain Bell says will not allow it to compete in competitive areas and yet will be forced to provide services remote areas.

The question that troubles me is whether the Commission should be promoting competitive vendors by imposing restrictions upon the regulated telephone company that its competitors will not have. One should not think that the time and materials charges in the Bell tariff would hinder the telephone company's ability to compete, but evidently Mountain Bell believes it will. Their proposal is to offer the services on a fully compensatory basis that will be competitive without the tariff provisions.

Benefits of competition accrue to the ratepayer when the customer has a choice among vendors from whom to purchase a service. In this particular instance, I believe that customer will benefit in his purchase of wiring services if he has a choice among vendors. If Mountain Bell believes they can provide the services at competitive rates without cross subsidization from the monopoly services they should have that opportunity. The customer, not the Commission, should make the choice of which vendor to use.

The responsibility of the Commission is to use its authority in the next rate case to examine the accounting procedures to insure no cross subsidization occurs from the ratepayer. As far as the fear that the telephone company will seek to prevent or destroy competition, if the Commission has made adjustments in its rate cases to require stockholders to bear any losses, I doubt if prudent management will allow that situation to occur.

I am dissenting from the Commission majority in denying Mountain Bell's Motion for Reconsideration as I believe there is a strong possibility that the consumer might experience lower

wiring prices if Mountain Bell is allowed to offer that service on a de-tariffed basis. At the very least, I see no indication that the ratepayer or the purchaser of wiring services will experience detrimental effects if the motion is granted. I also suspect that attempts by the Commission to protect customers from antitrust or unfair pricing in competitive areas may exceed our authority. Although a fully separate subsidiary would be preferable, accounting methods are available to track the program to protect the ratepayer from deleterious effects from possible cross subsidization.

cross subsidization.