

Service Date: June 6, 1986

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

* * * * *

IN THE MATTER of the Connection) UTILITY DIVISION
of Customer Owned Coin Telephones) DOCKET NO. 84.10.68
to the Local Exchange Network.) ORDER NO. 5192a

* * * * *

FINAL ORDER

* * * * *

APPEARANCES

FOR MOUNTAIN BELL:

Dennis Lopach, P.O. Box 1716, Helena, Montana 59624

FOR NORTHWESTERN TELEPHONE SYSTEMS:

C. Eugene Phillips, Murphy, Robinson, Heckathorn & Phillips, Kalispell, Montana 59901

FOR MONTANA TELEPHONE ASSOCIATION:

Calvin Simshaw, P.O. Box 2166, Great Falls, Montana 59403

FOR THE MONTANA CONSUMER COUNSEL:

James C. Paine, 34 West Sixth Avenue, Helena, Montana 59620

FOR THE COMMISSION:

Geralyn Driscoll, Staff Attorney, 2701 Prospect Avenue, Helena, Montana 59620

BEFORE:

CLYDE JARVIS, Chairman
JOHN B. DRISCOLL, Commissioner
HOWARD L. ELLIS, Commissioner
TOM MONAHAN, Commissioner
DANNY OBERG, Commissioner

PROCEDURAL HISTORY

1. In Order No. 5030 issued on November 21, 1983, the Montana Public Service Commission (MPSC) authorized reselling of intraexchange usage. On June 25, 1984 the Federal Commerce Commission (FCC) issued Registration of Coin Operated Telephones 49 Fed. Reg. 27763, allowing Part 68 registration of instrument implemented coin telephones -- coin telephones which contain all the circuitry needed to accept coins and to perform other coin related functions within the telephone instrument itself without central office involvement or operator intervention. In October, 1984 Mountain States Telephone and Telegraph (Mountain Bell) filed a public access line tariff to offer service to owners of coin telephones effective November 11, 1984.

2. The MPSC initiated this docket in November, 1984. The MPSC held a prehearing conference on August 22, 1985, issued a procedural order on September 24, 1985, and noticed an opportunity to propose issues on August 30. The following issues were noticed for hearing:

- 1) Should the regulated telephone companies in the state be required to allow connection of privately owned coin telephones to the telephone company network?

- 2) Should connection be allowed in all exchanges or only where a usage based rate is currently available?
- 3) What rates should be charged for the telephone company access line if connection is allowed?
- 4) Should telephone companies be allowed to charge for certain services now provided coin customers at no charge, such as directory assistance and 911 calls?
- 5) Should Mountain Bell's current Local Public Access Line rates be changed?
- 6) Should any conditions be placed on providing service to coin telephone owners, such as 911 compatibility and operator first service?
- 7) Does allowing customer owned coin telephones constitute competition adequate to justify eliminating some or all of the regulation of telephone company public and semipublic coin phones?

3. After proper notice, a hearing was held on January 28, 1986. The Yellowstone County Sheriff's office testified as a public witness. The Payphone Company, the Montana Telephone Association representing the Regulated Small Independents (RSI), the Northwestern Telephone System (NWTS), and Mountain Bell testified. Written comments were received from Capital Tel Systems and GTE Sprint.

BACKGROUND

4. Currently in Montana three types of coin operated telephones are available --

- 1) utility owned public coin operated telephones,
- 2) utility owned semipublic coin operated telephones, and
- 3) customer owned coin operated telephones (COCOTs) available in Mountain Bell service areas.

5. Utility owned public telephone service is offered at the utility's discretion on public or private property at no charge to the premise's owner. Utility owned semipublic telephone service is offered at the request of business customers, primarily for employee and customer use and sometimes as a substitute for ordinary business line service. The telephone company collects installation and monthly service charges from the business customer on whose premises semipublic service is provided. Public telephone service is provided on a contract basis; semipublic service is a tariffed offering. In both cases, the proceeds of the coin box belong to the telephone company, except for payment of commissions.

6. COCOTs refers to coin telephone equipment owned by a utility's customer. The customer pays for access to the network and keeps the proceeds from operating the pay telephone. Mountain Bell is currently the only regulated Montana telephone utility with a tariff filed with the MPSC to charge COCOT owners for service. This tariff is referred to as LPAL.

FINDINGS OF FACT

Issue No. 1. Should the regulated telephone companies in the state be required to allow connection of privately owned coin telephones to the telephone company network?

7. The MPSC finds that all regulated telephone companies are required to allow connection of COCOTs to the telephone company network. This is based on Montana's legislative policy stated in the Montana Telecommunication Act of promoting a competitive telecommunications market environment, on Order No. 5030 and on three FCC orders: In Re Universal Payphone Corporation, FCC Docket No. 85-222 (released May 6, 1985), Registration of Coin Operated Telephones, 49 Fed Reg 27763 (July, 1984) and Paytel Systems, Inc., 2583 (released February 14, 1986).

8. The FCC permits connection to the network and requires companies to allow connection of COCOTs for interstate service. In Registration of Coin Operated Telephones, 49 Fed. Reg. 27763, the FCC stated:

...the Commission interprets the "coin service" exclusion of §68.2(a)(1), 47 CFR 68.2(a)(1), to extend only to central office implemented coin service. By so doing, coin operated telephones will be registerable, and any person purchasing such a coin telephone will have the right to attach it to the services permitted under §68.2(a).
p. 27763

The FCC continues later in the order -- "A part 68 registration grant constitutes a federal right to interconnect registered terminal service equipment with the public switched network."
P. 27766.

9. Because of the FCC orders, the regulated utilities must allow connection for interstate purposes. Testimony in this docket and Montana statutes establish that it is in the public interest for the MPSC to require the regulated utilities to allow connection of COCOTs for intrastate service. The MPSC finds that upon request by a COCOT owner for connection of a COCOT to the network, regulated telephone utilities must file tariffs offering COCOT access in compliance with the requirements of this order. A utility will have 30 days from receiving the first request for COCOT access to comply with this requirement. If a utility has already received a request for COCOT access it must file a tariff within 30 days of this order.

Issue No. 2. Should connection be allowed in all exchanges or only where a usage based rate is currently available?

10. COCOT connection must be allowed in all exchanges regardless of the availability of usage based rates. The Minnesota Public Service Commission attempted to preclude COCOTs interconnection where special central office measured rate capabilities were not available. In Universal Payphone, FCC 85.222, May 6, 1985, Mimeo. para. 17 the FCC determined that this restriction potentially prohibited COCOT interconnection and use for interstate communication over widespread areas. This unreasonably infringed on the customer's right to interconnect to the nationwide telephone network and violated Registration of Coin Operated Telephones, supra. The FCC stated "the state decisions

before us prohibiting at specified locations any interconnection and use of COCTs necessarily also limits the use of the same instrument at these locations for interstate and foreign communications, as well as intrastate service. Thus the decision of the [Minnesota PSC] restricting interconnection of COCTS to where measured rate facilities are available would potentially prohibit interconnection of COCTs for interstate communications over widespread areas of that state where central offices do not have measured rate capabilities."

11. This FCC order makes it impractical for the MPSC to limit COCOT access lines to exchanges with measured usage because, regardless of state regulation, a COCOT owner may attach a COCOT to an access line for interstate use in an exchange without measured usage. A flat rate offering will resolve most problems but, as the testimony of the RSI shows, COCOT access to the small independent companies' network may involve problems unique to rural areas. The end user's demand for COCOT service may be so small that very few COCOTs are connected. The MPSC is not requiring regulated companies to file tariffs for COCOT access until 30 days after access is requested. Problems that may arise concerning the availability of COCOT service and reasonableness of the terms may be brought to the MPSC's attention before the filing of the tariffs.

Issue No. 3. What rates should be charged for the telephone company access line if connection is allowed?

12. Currently MBT's Local Public Access Line (LPAL) tariffs require COCOTs to subscribe to measured or message business lines. In exchanges served by electronic central offices COCOT customers will receive measured service. In electro-mechanical offices COCOT customers will receive message lines. This is consistent with the tariffs for all resellers of basic exchange services. MBT did not propose any change to the basic rates COCOTs are charged. Both NWTs and the RSIs advocated requiring COCOTs to subscribe to only measured access rates. RSI witness Robert Orr explained:

When someone connects a COCOT he hopes to make a profit by generating as high a usage as possible. If he succeeds, he quite likely will generate higher than average usage. A flat access line rate would nonetheless require him to pay for only average usage. The other customers on the network would subsidize his usage above the average. In other words, one customer could be in a position to make a profit on above-average usage while having the other customers pay the costs associated with the above-average usage. (Exh. p. 7)

At the hearing the RSIs presented an addendum to their testimony which proposed a flat rate alternative for COCOTs in areas where a measured service is not available. The RSIs recommended that the flat rate be equal to one and one-half times MBT's single party flat business rate (1FB) for its smaller exchanges.

13. The MPSC continues to support the requirement that customers reselling telecommunications services subscribe to a usage rated access line for precisely the reasons set forth in the RSI testimony. However, the local exchange company should

not be required to incur significant costs to make a usage rated line available to a very limited number of customers. Therefore, the MPSC finds that developing a flat rate above the usual single party flat business rate is an acceptable alternative to developing usage rated exchange services. A rate that is somewhat higher than the regular flat business rate of a local exchange company will allow the company to recover the costs of higher than average usage from the COCOT. The RSIs proposed a flat rate of one and one-half times MBT's 1FB. The MPSC finds that this proposal is unacceptable. Neither NWTs or the RSIs filed cost data for COCOT access. All of the RSIs have flat business rates that are significantly lower than MBT's 1FB. The MPSC directs NWTs and the RSIs to file a flat rate of no more than one and one-half of the particular local exchange company's flat business rate. This higher rate will adjust for higher usage of COCOT lines. To the extent future federal and state policy changes or competition drive the access rates of local exchange companies upward, the COCOT flat rate can be increased proportionately. If individual companies propose to align COCOT access and usage rates more closely to their actual costs those proposals should be made in future rate cases where parties have an opportunity to examine and comment on cost studies and specific rate levels.

14. The Commission finds that Mountain Bell should continue its current policies of charging usage based services to COCOTs. In the event that Mountain Bell receives a request for

COCOT connection in an office where implementing a measured or message rate would be unduly burdensome, Mountain Bell may file a request to charge a flat rate of not more than one and one-half times its 1FB-1.

Issue No.4. Should telephone companies be allowed to charge for certain services now provided coin customers at no charge, such as directory assistance and 9-1-1 calls?

15. This issue refers to allowing regulated telephone companies to charge COCOT owners for services currently offered at utility owned coin telephones for no charge, such as operator, 9-1-1, Directory Assistance, and 800 Service. As discussed in issue No. 6, these services are not necessarily coin free. The MPSC finds that the regulated telephone companies may charge COCOTs for services offered at utility owned telephones for no charge. As the testimony in this docket clearly establishes, a COCOT owner is a business subscriber to a telephone service not an end user of coin telephones. The rationale that makes no charge services appropriate for coin telephone end users does not apply. The regulated telephone companies must be allowed to charge the COCOTs for all services, regardless of what the COCOTs charge the end user, to avoid subsidization by the basic exchange ratepayer.

16. Testimony on this issue also addressed whether no charge services should be the same for all end users of coin telephones regardless of whether the telephone is a COCOT or utility owned. The Payphone Company, RSI and NWTS testified

that services offered at no charge to end users of coin operated telephones should be the same whether the coin phone is owned privately or by a regulated utility.

17. The MPSC does not have the jurisdiction to determine what a COCOT owner charges for services. Section 69-3-803(3), MCA, states that regulated telecommunication service does not include the resale of telecommunication services. Section 69-3-803(4), MCA, defines resale of communication as the resale of regulated telecommunications, with or without adding value, providing any value added would not be subject to regulation. COCOT owners are resellers of telecommunication service and, as such, are not subject to MPSC regulation. The MPSC continues to have jurisdiction over regulated services offered by public utilities, thus the MPSC has the authority to set rates for utility owned coin operated telephones but not for COCOTs. The service sold by regulated utilities to COCOT owners is a regulated service, thus the MPSC has authority over the regulated companies' tariffs for COCOT access to the network.

18. Mountain Bell's testimony on this issue addressed charging end users of its coin telephones for services such as 800 access, directory assistance and toll calling. This docket was initiated by the MPSC in response to FCC orders allowing registration of customer owned, instrument implemented telephones; it is not intended to resolve every issue relating to public pay telephones. This order does not address what no charge services should be offered to end users of regulated coin

telephones and does not authorize any change in current no charge service.

Issue No. 5. Should Mountain Bell's current Local Public Access Line rates be changed?

19. MBT proposed to offer Guestline service in place of the current local only service. Guestline offers the same protective features as the local only service but additionally allows operator access. The MPSC finds that MBT's proposal is reasonable and directs MBT to include this change when filing compliance tariffs for this docket.

20. The Payphone Company noted that MBT's enhanced measured and message services do not allow the use of 1+ dialing. The Payphone Company testified that all of NWTs' pay stations are assigned numbers in the 9000 series. This allows 1+ dialing but also allows the operator to refuse to bill calls back to that number. The Payphone Company requested the MPSC direct the companies to put some similar procedure in place for COCOTs. The MPSC finds that this request is reasonable. Mountain Bell has filed a tariff to implement a fraud protection option to its Public Access Line tariffs. This tariff would allow direct dialing but would not allow operator assisted calls to be billed to the Public Access Line. This will allow COCOTs to offer the same range of services that telephone company owned coin phones provide. The MPSC finds that the fraud protection tariff filed by Mountain Bell is adequate and will be approved as part of the

compliance tariffs in this docket. The MPSC directs all other companies to provide an identification procedure for coin phones to assist in preventing fraudulent calls.

Issue No. 6. Should any conditions be placed on providing service to coin telephone owners, such as 9-1-1 compatibility and operator first service?

21. To the extent it affects local and intrastate toll service the MPSC has the authority to determine the conditions under which the regulated telephone companies accept COCOTs for connection to the public network. Registration of Coin Operated Telephones, 49 Fed. Reg. at 27766. The FCC has also recognized the state authority to establish requirements for COCOTs to the extent those requirements relate to use of the public network for emergency use and local public health, safety and welfare concerns. The need for some minimum COCOT requirements to protect health, safety and welfare is established by testimony in this docket and by the State Emergency Telephone Act which establish requirements for coin operated telephones in 9-1-1 emergency jurisdictions.

22. The MPSC does not regulate the COCOT owners. The MPSC does regulate the rates and terms of regulated telephone service offered by public utilities. Placing appropriate conditions on public utilities tariffs for COCOT service will enable the MPSC to establish consistent rules for COCOT service relating to public health, safety and welfare concerns. Reviewing the procedures developed by other states to implement COCOT requirements

it appears that placing conditions in the tariffs of public utilities is the most efficient and effective method of establishing minimum COCOT requirements to protect health, safety and welfare. The MPSC finds that regulated telephone companies tariffs for COCOTs access lines must require the COCOT owners to agree to the following conditions before offering services:

- 1) The COCOT is registered in compliance with 47 CFR 68.
- 2) The COCOT will allow access to the following services at no charge:
 - a) 9-1-1 emergency service
 - b) Utility operator
 - c) 300 service
- 3) The COCOT will return deposited coins if the attempted call is not completed. The COCOT owner or agent agrees to make prompt refunds upon reasonable complaints of end users about failure to return coins or other service problems.
- 4) The COCOT will provide the end user with the following information:

Instructions for use
Rates
No charge services available
Owners name, address and telephone number
Instructions on registering complaints with and claiming refunds from owners.
Restrictions or incoming calls if any.
If the rate for toll calls exceed the rate charged for the same service from utility owned coin telephones a clear statement of this.

The COCOT owner has discretion in determining how this information will be displayed but it must be provided in a well displayed, comprehensible manner.

- 5) The COCOT will comply with all Federal and State laws and regulations on disabled and hearing impaired individuals access and use.

23. The MPSC finds that Mountain Bell's current LPAL tariff does not contain these conditions for offering service. Thirty days after the issuance of the final order in this docket the LPAL tariff will be cancelled by the MPSC. By that date Mountain Bell must file a new tariff in compliance with this order. Prior to filing the new tariff, Mountain Bell must inform its COCOT customers of the conditions for offering COCOT service and ensure compliance.

24. Testimony in this docket also raised the issue of utility owned coin phones providing coin free access to 9-1-1. Section 10-4-121, MCA, states:

Every provider of telephone service or other owner of a pay station telephone in an area served by an emergency telephone system established pursuant to 10-4-103 must convert every pay station telephone to permit dialing 9-1-1 or the telephone company operator without deposit of a coin or other charge to the caller. Conversion must be completed by or before the time the emergency telephone system is operational.

The MPSC recognizes that Section 10-4-121, MCA, does not require conversion to coin free access to 9-1-1 or operator services until a 9-1-1 jurisdiction is established.

Issue No. 7. Does allowing customer owned coin telephones constitute competition adequate to justify eliminating some or all of the regulation of telephone company public and semipublic coin phones?

25. The MPSC finds that this matter should be considered using the process established in the rules implementing the Telecommunications Act.

CONCLUSIONS OF LAW

1. Pursuant to Title 69, Chapter 3, MCA, the Montana Public Service Commission has jurisdiction over public utilities offering regulated telephone service in Montana.

ORDER

The Montana Public Service Commission orders:

1. All regulated telephone companies are required to allow connection of customer owned coin operated telephones. Within 30 days of receiving the first request for connection a tariff in compliance with the terms of this order must be filed with the Montana Public Service Commission. If a request for connection has been made prior to the date of this order a tariff must be filed within 30 days of this order.

2. Thirty days after the issuance of this order in this docket Mountain Bell's current LPAL tariffs (tariff pages 72.5-72.8 release 1, 72.9 release 6 and 72.10 release 1), will be invalid and new tariffs must be filed in compliance with this order.

DONE AND DATED this 3rd day of June, 1986 by a vote of
3 - 2 .

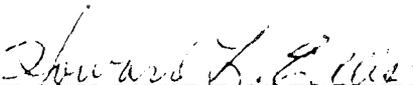
BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION



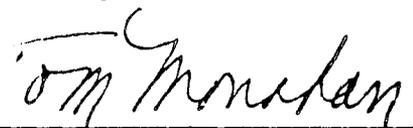
CLYDE JARVIS, Chairman



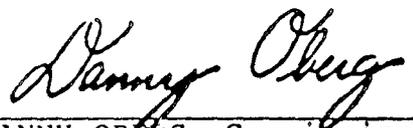
JOHN B. DRISCOLL, Commissioner
(Voting to Dissent)



HOWARD L. ELLIS, Commissioner
(Voting to Dissent)

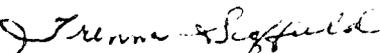


TOM MONAHAN, Commissioner



DANNY OBERG, Commissioner

ATTEST:


Trena Scoffield
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 38.2.4806, ARM.

Dissenting Opinion

Customer Owned Coin
Telephone Order #5192A

We agree with the findings that require regulated telephone utilities to connect private pay phones to the regulated company network. This portion of the order was essentially dictated by earlier decisions of the Federal Communications Commission in Washington, D.C. However, we are in strong disagreement with the general thrust of this order, because it counters the intent of the Montana Telecommunications Act which aims to promote a telecommunications market environment. It appears as though this Commission will approve of competition only if it favors the regulated utility.

While giving the impression that new competitors have been unleashed on the telephone company (for pay phone service), this order actually gives several important cost and market advantages to the company owned pay phones. The three areas that are particularly troublesome are charging the COCOT owner for the Directory Assistance calls made for "free" by the users of his phone, no coin free access to 911 or the operator if you use regulated company telephones, and, in exchanges where measuring capability does not exist, the tariffing of unusually high access line charges to COCOTS because they are seen as somehow being more densely used than the payphones of the telephone companies. What is really troubling is that there is literally no evidence on the record of this proceeding to discriminate so favorably toward the regulated phone companies in each of the three areas.

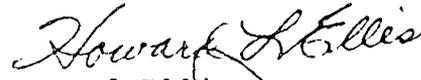
In the first case the COCOT owners will be charged for service that are obtainable on utility owned pay phones free of charge in Montana (FF 15). The services are not directly charged to the user of the COCOT, but the cost to the COCOT owner will certainly have to be passed to the user in the coin charge for an average call. Directory Assistance, for example, is more expensive than even the call itself on a company phone. Making these services available "free of charge" on utility owned pay phones gives those instruments a significant market edge over their so called "competitors". Ironically, the argument for requiring that COCOTS pay for services that are free to the utility pay phone is that COCOTS are "businesses", just like any other. This is in stark contradiction to the argument used in this same order for charging COCOTS considerably more for an access line than a normal "business". The creation of a new customer class that results in unnecessarily high rates for the COCOTS' access to the phone company is our second objection to this order.

In exchanges where call measuring is not available, the cost of the access line for a COCOT is priced as though the person owning the COCOT is a "reseller" and able to group calls to such a volume that the access line's usage is greater than the average business line. This theory is highly questionable in light of the repeated pleas by the phone company for pay phone rate increases, because pay phones on average were being used so rarely (even though the phone company has most of the good locations!). For those not familiar with telephone jargon, a "reseller" has almost acquired a pejorative connotation since by definition they are "competing" for telephone company business. The argument continues: since resellers grouping calls successfully are sure to load a line with higher than average traffic, they should be slapped with greater than average or special tariffs. Suddenly treatment of them as a "business", like any other, has gone out the window. Recall that the business argument was the reason for no free services to the COCOT. It is our belief that the access lines to COCOTS are no different than the lines that go to any business. This is a business that definitely resells service....just like the company owned pay telephones. This order has then saddled the COCOT with an unjustifiably high access line charge, which competitively favors the phone company pay phones.

Finally, we object to the very questionable deletion from the proposed order of the requirement that all new pay phones offer coin free 911 or operator access. This Commission, in advance of the creation of 911 jurisdictions, believed in the interest of public safety that pay phones should offer coin free access. Smart telephones, which will be installed by COCOTS, will offer coin free access to 911 because most other commissions comprising the far larger market area require coin free access. However, because the phone company claimed, with out supporting evidence, that it would cost great sums to change over its central offices this commission deferred to the company and will allow either coin or coin free access. Clearly, the phone company can purchase smart phones just as the COCOTS were expected to buy. The additional cost of smart phones over pay phones can no where approximate one million dollars. If the phone company chooses to change over the central offices so existing dumb phones can participate in the 911, it will have support monies provided for that purposes. If the company were to have smart phones in the mean time at its strictly new installations, they will be as compatible with the central office changeover as the smart phones of the COCOTS. What really has happened here is that the Commission has removed equal treatment from the story, and is now expecting the COCOTS to buy smart phones, but allowing the telephone company to continue installing the far cheaper dumb phones. When the phone company changes over their entire system to meet public safety standards that we initially thought were desirable they will have continued to enjoy a structural competitive advantage over their so called

"competitors". Possibly the most troubling aspect of this knee jerk reaction to telephone company allegations is the complete lack of record. The costs alleged are not proven, nor are they even on the record. It is not even proven that a central office change over will ever occur. In the mean time cheap dumb phones will continue to be installed by the regulated utility, and expensive smart phones will be installed by the COCOTS; all the while we will be moving further away from our desired goal of coin free 911 access.

For these three reasons we dissent from this order, while we agree that COCOTS should be connected after meeting certain minimum standards.


Howard Ellis


John Driscoll
Montana Commissioners