

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Complaint of)	
DARRELL PROWS,)	
Complainant)	<u>DOCKET NO. 00-049-07</u>
vs.)	
MOUNTAIN STATES TELEPHONE AND)	
TELEGRAPH COMPANY, dba U.S.)	<u>REPORT AND ORDER</u>
WEST COMMUNICATIONS,)	
Respondent)	

ISSUED: August 17, 2000

SYNOPSIS

Complainant having failed to show any violation of Respondent's published tariffs or of the applicable statutes and Commission rules, we dismiss.

Appearances:

Jill M. Pohlman	For	MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, dba U.S. WEST COMMUNICATIONS
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By the Commission:

PROCEDURAL HISTORY

Complainant above-named filed his complaint February 8, 2000, and Respondent filed its answer, together with a motion to dismiss, March 9, 2000. Customer complaints being designated informal proceedings under Commission rules, and there appearing to be no disputed factual issue necessary to the resolution of this matter, we deem it ripe for disposition without hearing or submission of further evidence. The Administrative Law Judge, having been fully advised in the premises, now enters the following Report, containing proposed findings of fact, conclusions of law, and the Order based thereon.

FINDINGS OF FACT

1. Complainant is a residential customers of Respondent, a telephone corporation certificated by this Commission.
2. Complainant alleges, and for purposes of deciding Respondent's motion to dismiss, we find that:
 - In January, 2000, Complainant initiated service from Respondent by assuming a telephone number which had previously been in the name of Complainant's room-mate. The service was basic telephone only -- no long distance. When Complainant requested long distance service, Respondent demanded a \$90 deposit based on a negative credit report from Equifax, Inc. Complainant denies he is a credit risk and has favorable credit reports from other reporting agencies to substantiate his claim.
 - By way of relief, Complainant asks the Commission: "U.S. West to comply with all federal credit laws. U.S. West to disclose the positive financial affect (sic) of its credit rules requiring deposits, and to demonstrate that it is properly reporting this income to the PSC. And U.S. West be allowed to have no credit policies that are more

onerous than those that exist in the field of unregulated long distance phone service."

- In its answer, Respondent asserts that it receives no income from customer deposits, since Respondent, by Commission rule, must refund the deposits, with interest, at the termination of service to the customer, if not earlier, and that the Commission has no jurisdiction to afford the other relief sought.

DISCUSSION

For purposes of deciding Respondent's motion to dismiss, we must consider the allegations contained in the complaint and answer in the light most favorable to Complainants. Our findings above do so.

We begin our analysis with the premise that the Commission is a creature of the Utah Legislature and can exercise *only* the authority specifically delegated by the Commission's enabling statutes or fairly infer able from the explicit grant.⁽¹⁾ In regard to *monetary* disputes between a public utility and its customers, the Commission's *only* authority to order payment of money or to abate utility charges derives from § 54-7-20, UCA 1953, as amended, which in pertinent part provides:

When complaint has been made to the Commission concerning any rate, fare, toll, rental or charge for any product or commodity furnished or service performed by any public utility, and the commission has found, after investigation, that the public utility has charged an amount for such product, commodity or service in excess of the schedules, rates and tariffs on file with the commission, or has charged an unjust, unreasonable or discriminatory amount against the complainant, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection.

As the Utah Supreme Court has construed this statute, the Commission's *sole* authority in regard to monetary disputes is to determine whether a utility has deviated from its published tariffs⁽²⁾ and afford refunds if it has. Of course, the Commission has authority to deal with non-monetary issues.

In the instant case, Complainant has not alleged that Respondent has deviated from its tariffs; rather the claim is that Respondent has no right to demand the deposit by virtue of a Federal statute. Even if that were true, Complainant's remedy lies in a Federal forum, not with us.

As to the legitimacy in general of customer deposits, Commission rules specifically authorize utilities to demand such deposits, with the proviso that such deposits earn interest for the customer so long as the utility retains them. Accordingly, they do not constitute utility income.

As to Respondent's choosing to rely on one credit-reporting company as opposed to others, that is a business decision, within the utility management's discretion. It is well-settled utility law that the Commission cannot "micro manage" the utility and substitute its business judgment for that of the company.

Since we lack jurisdiction to grant the relief Complainant seeks, we must dismiss the complaint.

The point is that no matter how compelling Complainant's evidence might be, we would still have no authority to afford him relief. While it is possible a claim such as his would be justiciable by a Federal administrative agency or court of law,⁽³⁾ it is not justiciable by us.

CONCLUSIONS OF LAW

The Commission has party jurisdiction; subject matter jurisdiction is lacking. Complainant has failed to allege facts which would entitle him to relief under Section 54-7-20, UCA 1953, as amended. That statute entitles a customer to reparations only upon a showing of charges beyond Respondent's published tariff, or a discriminatory application of the tariff. The facts alleged by Complainant do not indicate such overcharge or discrimination.

Respondent's motion to dismiss must be granted, and the complaint must be dismissed.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

The motion of MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, dba U.S. WEST COMMUNICATIONS, to dismiss the complaint of DARRELL PROWS be, and it is, granted, and this matter be, and it is, dismissed.

If DARRELL PROWS wishes to proceed further, DARRELL PROWS may file a written petition for review within 20 days of the date of this Order. Failure so to do will forfeit the right to appeal to the Utah Supreme Court.

DATED at Salt Lake City, Utah, this 17th day of August, 2000.

/s/ A. Robert Thurman
Administrative Law Judge

Approved and Confirmed this 17th day of August, 2000, as the Report and Order of the Public Service Commission of Utah.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

1. *Basin Flying Service v. PSC*, 531 P.2d 1303 (Utah 1975).
2. *Denver & RGR v. PUC*, 73 Utah 139, 272P. 939 (1928); *American Salt Co. v. W.S. Hatch Co.*, 748 P.2d 1060 (Utah 1987)
3. *See American Salt Co. v W.S. Hatch Co., id., at 1067* (Concurring opinion.)