

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of)
 IVM SYSTEMS, INC.,)
)
 Complainant,)
)
 vs.)
)
 QWEST CORPORATION, fka)
 U.S. West Communications, Inc.,)
)
 Respondent)

DOCKET NO. 00-049-28

REPORT AND ORDER

ISSUED: August 25, 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 QWEST CORPORATION, fka
U.S. West Communications, Inc.

By The Commission:

PROCEDURAL HISTORY

Complainant above-named filed its complaint April 20, 2000, and Respondent filed its answer, together with a motion to dismiss, May 23, 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

- Complainant is a commercial customer of Respondent, a telephone corporation certificated by this Commission.
- Complainant alleges, and for purposes of deciding Respondent's motion to dismiss, we find that:

A. On or about April 22, 2000, Respondent replaced the Lucent 1AESS switch in its Bountiful, Utah, Central Office (CO) with a Nortel DMS 100 switch. The latter switch does not have the capability of providing Direct Inward Dialing (DID) service. For Complainant, the advantage of DID is that it allows Complainant to transfer calls for its customers and then leave the connection in place. To provide equivalent service for its customers with the new switch, Complainant is obliged to purchase additional equipment and pay additional monthly charges. Complainant argues that Respondent is obliged under its tariff⁽¹⁾ to provide DID service at the tariffed rates.

B. By way of relief, Complainant asks the Commission to require Respondent to provide Complainant a T1 to Complainant at no cost to Complainant and provide one year's free trunk service. Additionally, Complainant seeks reimbursement for Complainant's costs to conform its own equipment to utilize the new trunk.

- In its answer, Respondent asserts that it replaced the 1AESS pursuant to Commission order; the tariff in question is permissive, not mandatory; and that, in any event, the Commission lacks jurisdiction to order the relief Complainant seeks.

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 inferable from the explicit grant.⁽²⁾ In regard to *monetary* disputes between a public utility and its customers, the Commission's *only* authority to order the payment of money 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 thereof, with interest from the date of collection.

As the Utah Supreme Court has construed this statute, the Commission's *sole* authority to award monetary relief is to determine whether a utility has deviated from its published tariffs⁽³⁾ and afford refunds if it has.

In the instant case, Complainant has alleged that Respondent has deviated from its tariffs in failing to provide an offered service. We disagree with Complainant's interpretation of the tariff. The offering of DID service is discretionary-- Respondent *may* offer such service, and the offering is further contingent on DID-capable facilities being available at a given CO. With the replacement of the Bountiful switch, such facilities are no longer available, and even under a mandatory interpretation of the tariff, the condition for offering such service is no longer met.

Respondent is correct that its replacement of the obsolete switch in the Bountiful CO was pursuant to Commission order.⁽⁴⁾ The reason for the Order is that the switch on which Complainant relied for DID service is obsolete, and in the interest of system integrity, must be replaced. We regret the problems it causes for Complainant, but our mandate is to oversee Respondent's system as a whole, which, unfortunately, may at times conflict with the interests of single customers. We can hardly order Respondent to pay damages for complying with our Order.

CONCLUSIONS OF LAW

The Commission has party and subject-matter jurisdiction. Complainant has failed to allege facts which would entitle it 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 QWEST CORPORATION, fka U.S. West Communications, Inc., to dismiss the complaint of IVM

SYSTEMS, INC., be, and it is, granted, and this matter be, and it is dismissed.

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

DATED at Salt Lake City, Utah, this 25th day of August, 2000.

/s/ A. Robert Thurman
Administrative Law Judge

Approved and Confirmed this 25th 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. "This [DID] feature *may* be provided . . . where CO facilities are available . . ." USWC PSC Utah Exchange and Network Services Tariff, Section 5, Page 78, Release 2, issued January 30, 1988. (Emphasis added.)

2. *Basin Flying Service v. PSC*, 531 P.2d 1303 (Utah 1975).

3. *Denver & RGR v. PUC*, 73 Utah 139, 272P. 939 (1928); *American Salt Co. v. W.S. Hatch Co.*, 748 P.2d 1060 (Utah 1987).

4. *In Re* USWC 1998 Depreciation Technical Update Program, Docket No. 98-049-18 (PSC Utah 1998).