

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

In the Matter of the Complaint of)
STEVE HUDSON,)
Complainant,)
v.)
AT&T BROADBAND,)
Respondent.)

DOCKET NO. 02-2383-01
REPORT AND ORDER

ISSUED: January 15, 2003

By The Commission:

PROCEDURAL HISTORY

In this matter Mr. Hudson ("Complainant") complains that for a period of about eighteen months a portion of cable used to provide telephone service by AT&T Broadband ("AT&T") remained unburied and laid down the middle of Complainant's driveway. The cable was installed in October 2000, and was not moved from Complainant's driveway, and buried, until April 2002. Complainant states that he contacted AT&T several times and requested that it bury the cable. Complainant also withheld payment for local phone service while the cable was on his driveway. Complainant paid the long distance portion of his service, which was billed separately. Complainant claims AT&T should pay him \$500 for moving the cable out of a parking space, and \$200 per month for rent from May, 2001, or earlier, to April 2002. As a result of his non-payment for services, Complainant's phone service was disconnected on June 10, 2002.

In response to the complaint, AT&T, through two lawyers, filed a 12 page pleading entitled: *Motion to Dismiss for Lack of Subject Matter Jurisdiction, Insufficiency of Process and Service of Process, Failure to State a Claim; Motion for a More Definite Statement; Motion for Summary Judgment for Respondent AT&T Broadband*. In that pleading AT&T makes numerous legal arguments why this matter should be dismissed. AT&T argues that this Commission does not have jurisdiction to address the allegations in the Complaint. AT&T states that the allegations sound "primarily in contract, tort, and other statutory theories for relief that are outside the statutorily created authority of the Commission." AT&T also claims that the matter should be dismissed due to insufficient process and service of process. AT&T also makes numerous arguments as to why the Complaint should be dismissed for failure to state a claim, or judgment entered for AT&T, including the argument that Complainant accepted a settlement of this dispute.

The Division of Public Utilities filed a memorandum containing the results of its analysis of this matter, and its recommendation. The Division concluded that AT&T had not violated any provision of its tariff, and the Complaint had not alleged any other violations within the jurisdiction of this Commission. On that basis, the Division recommended that the Complaint be dismissed.

DISCUSSION

Customer complaint cases are designated by Commission rule as informal proceedings. While as set forth below we agree with some of the positions asserted by AT&T, it is disconcerting to see a regulated public utility respond to a customer complaint with twelve pages of mostly legal argument, containing five motions, some with multiple theories. A more succinct response would have been sufficient. With that said, we will address the allegations of the Complaint.

Based upon the filings of the respective parties, numerous facts are undisputed. It is undisputed that for about eighteen months a portion of the cable through which AT&T provided telecommunications services to Complainant's residence was not buried, but rather ran across the surface of Complainant's property. During that time Complainant repeatedly requested that AT&T bury the cable. Complainant also sent a "bill" to AT&T purporting to charge AT&T the costs of

moving the cable, and \$200 per month "rent". It is also undisputed that Complainant did not pay for his local phone service, eventually running up a bill in excess of \$370. For those portions of this order where additional facts are relevant, we will accept as true the allegations in the Complaint.

Complainant claims that as a result of AT&T leaving its cable laying across Complainant's property for a year and a half, he suffered various problems, including an injury to Complainant. Complainant also claims that AT&T's cable installation "was not to code." That allegation is very general, without even reference to any specific code, or code provision. Our rule R746-340-3 requires utility plant to be

designed, constructed, maintained and operated in accordance with the provisions outlined in the National Electrical Safety Code, 1993 edition, incorporated by reference.

Rule R746-340-6 also states:

A. Safety - Each telecommunications corporations shall:

1. require its employees to use suitable tools and equipment to perform their work in a safe manner;
2. instruct employees in safe working practices;
3. exercise reasonable care in minimizing the hazards to which its employees, customers and the general public may be subjected.

The acts of AT&T may have violated these rules. We note, however, that this Commission does not have authority over tort claims, such as Complainant's allegations of personal injury.

According to Complainant, he made numerous contacts with AT&T, and unsuccessful attempts to get AT&T to remedy the situation. Complainant's actions included attempting to bill AT&T monthly rent, and refusing to pay his local telephone bill. While we sympathize with the situation AT&T's actions, and inactions, put Complainant in, we cannot condone some of the methods chosen to deal with this problem. The charges and services for AT&T's telephone services are governed by its tariff. Customers are obligated to pay the rates set in those tariffs. The Complainant did not pay. We can find nothing in the tariff, or elsewhere, that would give the Complainant the right to offset charges for his tarified telecommunications services for alleged rent due for the cable on Complainant's property. Nor does this Commission have the authority to award monetary damages, such as the claimed rent, to Complainant. The relevant facts, therefore, are that Complainant did not pay for his local telecommunications services from AT&T, and AT&T consequently terminated service. We find no violation of AT&T's tariff in those actions.

The specific motions of AT&T are addressed as follows:

Motion to Dismiss for Lack of Subject Matter Jurisdiction:

As stated above, this Commission's jurisdiction is limited to the rates and services of public utilities. Included within that jurisdiction are the rules cited above. We do not have jurisdiction to address claims of nuisance, inconvenience, or OSHA regulations concerning the installation of underground cables, or personal injuries. The claims of hazard and building code violations may fall within the requirements of our rules. We do not, however, have the authority to award the requested monetary damages. While the Complainant may have a claim that is justiciable elsewhere, this Commission cannot address claims for nuisance, inconvenience, or OSHA regulations concerning the installation of underground cables, or personal injuries. We grant the motion to dismiss such claims.

Motion to Dismiss for Improper Service:

AT&T claims that service was insufficient "because form and content requirements of Utah Administrative Code R746-100-3(G)(1)(e),(f) and (h) were not met." That claim is without merit. Utah Administrative Code R746-100-1 states in relevant part:

A. Procedure Governed - Sections 1 through 14 of this rule shall govern the formal hearing procedures before the Public Service Commission of Utah, Sections 15 and 16 shall govern rulemaking proceedings before the Commission.

B. Consumer Complaints - Consumer complaints are designated as informal proceedings.

This is a consumer complaint case. The rule sections cited by AT&T are therefore not applicable. AT&T also cites various provisions of the Administrative Procedures Act. One of the cited provisions does not exist, and the others are likewise not applicable to this action.

We deny the motion to dismiss for improper service.

Motion to Dismiss for Failure to State a Claim:

AT&T sets forth three different bases for this motion. All are premised on the argument that the facts, as alleged by the Complainant, do not give the Complainant a right to relief. AT&T's first basis is simply that the Complaint fails to state a legal claim. As discussed above, we agree in part. Even taking the allegations of the Complaint as true, Complainant has not shown a breach of AT&T's tariff such that this Commission could afford him the remedy he seeks. We have dismissed those claims that we do not have jurisdiction over. The remaining claims also fail. Complainant failed to pay the bills for his local telephone service. His service was accordingly terminated. As stated above, we find no violation of AT&T's tariff. With respect to the safety and code violation allegations, those may be within our jurisdiction. However, the remedy sought by Complainant is not. Complainant seeks imposition of rent on AT&T, and credit therefore against his telephone bill. Complainant also uses that claim to justify his not paying his telephone bill. Since we do not have the ability to grant Complainant the remedy he seeks, we will dismiss that portion of the Complaint as well. We therefore grant the motion to dismiss the remaining portions of the Complaint.

This does not mean that we have no jurisdiction over the possible code and safety violations by AT&T. We direct the Division of Public Utilities to further investigate the practices of AT&T with respect to the design, construction and installation of facilities used by AT&T to provide telecommunications services, and recommend further action, including possible fines, if the results of its investigation so warrant.

AT&T further argues that the complaint should be dismissed because it is barred by terms of the tariff, and barred by a settlement agreement. Given our ruling above, we need not address those arguments.

Motion for a More Definite Statement:

AT&T pleads, in the alternative, that Complainant be required to provide a more definite statement if this matter is not dismissed. Given our rulings above, we need not address this motion.

Motion for Summary Judgment:

AT&T moves for summary judgment, again on two different theories closely related to its arguments supporting its Motion to Dismiss. Having addressed those arguments above, and dismissed the remaining allegations of the Complaint, we need not address this motion.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. The Complaint in this matter is dismissed on the basis and for the reasons set forth above.
2. Any person aggrieved by this Order may petition the Commission for review within 20 days of the date of this Order. Failure so to do will forfeit the right to appeal.

Dated at Salt Lake City, Utah, this 15th day of January, 2003.

/s/ Douglas C. Tingey
Administrative Law Judge

Approved and Confirmed this 15th day of January, 2003, as the Report and Order of the Public Service Commission of Utah.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary

G#32127