

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the matter of the complaint of:
DALE HOFFER/HOFFER ELECTRIC,
Complainant,
vs.
AT&T BROADBAND,
Respondent

DOCKET NO. 02-2383-04
REPORT AND ORDER

ISSUED: January 15, 2003

SYNOPSIS

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

By The Commission:

PROCEDURAL HISTORY

Complainant filed the subject complaint on October 15, 2002. Respondent filed, as its response, its complaint resolution records for this customer. The Division of Public Utilities also filed, on December 17, 2002, a memorandum containing the results of its investigation, and its recommendation that the complaint be dismissed. 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 had three telephone lines with Qwest. After solicitation from Respondent, Complainant agreed to switch his service on those lines to Respondent.
2. Respondent is a telephone corporation subject to the jurisdiction of this Commission. Respondent only provides residential telephone service.
3. One of the three lines was a residential line. The other two lines were business lines. Service on the residential line was transferred to Respondent. Service on one of the business lines was also erroneously switched to Respondent. Since Respondent does not provide business lines, the other line was not switched. Also because Respondent could not provide the business line service, all three lines were subsequently switched back to Qwest. Respondent issued a credit to Complainant for all charges incurred with Respondent.
4. Complainant claims that the switching, and temporary loss of service on one of the business lines caused a loss of business and sales. Complainant seeks compensation for the alleged lost sales, and compensation for advertising in phone books.

DISCUSSION

AT&T Broadband does not provide business line service, it only provides residential service. AT&T Broadband, therefore, could not provide service on two of the three subject lines. The attempted change of service providers, and subsequent restoration of service with Qwest, caused a temporary loss to Complainant of telephone service on one business line. It appears that AT&T, and Qwest, remedied the situation and switched Complainant's service back to Qwest in a timely fashion. That still left Complainant without service temporarily. Complainant seeks compensation for business losses during the time the line was out of service.

This Commission's jurisdiction is created and limited by statute. With respect to monetary disputes between a public utility and its customers, the relevant statute is *Utah Code Ann.* § 54-7-20, which states in pertinent part:

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.

Under this statute, this Commission may issue a money judgment only if a public utility has deviated from its published tariffs and afford refunds if it has. The Commission also, of course, has authority to deal with other issues, such as service adequacy or utility practices.

In this case, however, Complainant has not alleged that Respondent has deviated from its tariffs. Complainant also seeks compensation not in the nature of charges made in violation of Respondents tariff, but for business losses. This Commission lacks jurisdiction to award such damages. Since we lack jurisdiction to grant the relief Complainants seek, we will dismiss the complaint.

CONCLUSIONS OF LAW

The relief sought by Complainant is not within the jurisdiction of this Commission. Respondent has already issued a credit to Complainant for all charges it made to Complainant. We cannot address a claim for further compensation. The complaint must be dismissed.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

- The complaint of DALE HOFFER/HOFFER ELECTRIC against AT&T BROADBAND is dismissed.
- If Complainant wishes to proceed further, Complainant 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.

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#32126