

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of	)	
YONGCHANG WANG	)	<u>DOCKET NO. 05-2224-01</u>
Complainant,	)	
vs.	)	
USTEL	)	<u>REPORT AND ORDER</u>
Respondent.	)	
	)	

ISSUED: March 15, 2005

SYNOPSIS

The subject matter of this complaint being international long distance telephone service rates over which this Commission does not have jurisdiction, we dismiss.

By The Commission:

PROCEDURAL HISTORY

On January 4, 2005, Complainant Yongchang Wang filed a complaint alleging that Respondent USTel charged him a higher international long distance calling rate than promised when he switched to USTel's residential telephone service plan. Specifically, Mr. Wang alleges that USTel's salesperson promised a flat international calling rate of \$0.035 per minute but that USTel has actually charged him approximately \$0.28 per minute. Mr. Wang seeks Commission order requiring USTel to accept his offered payment of \$0.035 per minute for international long distance calls made while he was a USTel customer, and demands that USTel stop trying to damage his credit.

USTel filed its response on January 11, 2005, denying Mr. Wang's allegations and noting that its international rates are properly tariffed with the Federal Communications Commission (FCC).

On February 24, 2005, the Division of Public Utilities (Division) filed its recommendation that the complaint be dismissed since international rates are not regulated by the Utah Public Service Commission.

Hearing in this matter commenced on March 10, 2005, before the Administrative Law Judge. Mr. Wang appeared by telephone. Respondent USTel failed to appear.

BACKGROUND, DISCUSSION AND FINDINGS

On August 26, 1997, the Commission granted Certificate of Convenience and Necessity No. 2224 to 1-800-RECONEX, Inc., authorizing it to provide telephone service within the State as a competitive local exchange carrier. On June 16, 2003, 1-800-RECONEX petitioned the Commission to add the assumed name USTel to its Certificate. 1-800-RECONEX now offers Utah customers traditional residential telephone services under the USTel name. Mr. Wang transferred his residential telephone service to USTel on May 24, 2004, after receiving a telephone solicitation from USTel but thereafter transferred his service to another telecommunications company when he realized that USTel was charging him approximately \$0.28 per minute for his international long distance calls.

At hearing, Mr. Wang repeated his allegation that the USTel sales representative convinced him to switch his residential telephone service to USTel by misleading him into believing that he would enjoy an international long distance calling rate to China of \$0.035 per minute, which represented a reduction from the approximately \$0.04 per minute that he had been paying to his previous telephone provider. Mr. Wang testified that the USTel representative mentioned the \$0.035 rate after Mr. Wang told the USTel representative that he was currently paying \$0.04 per minute. Mr. Wang thereafter agreed to switch to USTel's residential telephone service but admits that the \$0.035 per minute rate was not discussed during the subsequent telephone service transfer confirmation process. Mr. Wang concluded his testimony by stating that no reasonable person would voluntarily change his long distance telephone service from \$0.04 per minute to \$0.28 per minute, although he also admitted that USTel's basic residential service charge of \$19.95 per month was approximately \$4.00 less per month than the charge for his previous telephone plan.

In its filings prior to hearing, USTel admitted that Mr. Wang was solicited for USTel services on May 24, 2004, and that he accepted USTel's offer of a \$19.95 per month residential telephone plan. However, USTel claimed that no where in its standard customer service script does USTel advertise international calling rates, nor does USTel promote its international rates as a cost-saving feature of its residential service. USTel noted that it had previously offered to accept a reduced amount from Mr. Wang to settle his outstanding bill, but that Mr. Wang refused.

At hearing, the Administrative Law Judge explained to Mr. Wang that the Commission lacks jurisdiction over the international long distance rates charged by USTel as those rates are properly tariffed with the FCC. Therefore,

any complaint regarding those rates must be made to the FCC. Utah Code Ann. §54-7-30 provides in relevant part that “Neither this title nor any provisions thereof, except when specifically so stated, shall apply to or be construed to apply to commerce with foreign nations or commerce among the several states . . .” USTel’s international calling rates are properly tariffed with the FCC, not this Commission. The complaint in this matter deals with international calling rates not under the jurisdiction of this Commission. As a result, this Commission does not have jurisdiction to address this complaint, and the complaint must be dismissed.

However, in dismissing this complaint, we do not dismiss Mr. Wang’s allegations. We remain concerned by any allegation that a residential telephone service provider certificated to operate in this State has engaged in misleading business practices in order to attract new customers. We note that neither we nor the Division have received similar complaints concerning USTel, but we will not hesitate to investigate this matter further and take appropriate action should such complaints be forthcoming. Should Mr. Wang wish to pursue his complaint, he may do so via the FCC website at <http://www.fcc.gov/cgb/complaints.html> or by telephone at 1-888-225-5322. In addition, Mr. Wang may contact the Utah Division of Consumer Protection at <http://www.commerce.utah.gov/dcp/enforcement/complaint.html> or by telephone at 1-800-721-7233 or (801) 530-6601 to file a complaint alleging deceptive business practices.

The Administrative Law Judge, having been fully advised in the premises, now recommends and the Commission enters the following

#### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

- The complaint of YONGCHANG WANG against USTel is dismissed.
- Pursuant to Utah Code 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained

by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order.

Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission’s final agency action may be

obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

Dated at Salt Lake City, Utah, this 15<sup>th</sup> day of March, 2005.

/s/ Steven F. Goodwill

Administrative Law Judge

Approved and Confirmed this 15<sup>th</sup> day of March, 2005, as the Report and Order of the Public Service Commission of Utah.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/Julie Orchard

Commission Secretary

G#43284