

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Formal Complaint of )  
Jared Beagley vs. U.S. Tel ) DOCKET NO. 05-2224-02  
) REPORT AND ORDER  
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ISSUED: March 1, 2006

By The Commission:

PROCEDURAL HISTORY

On October 31, 2005, Complainant Jared Beagley filed a formal complaint disputing a technician dispatch charge levied by Respondent U.S. Tel (“U.S. Tel” or “Company”). Complainant indicated Respondent’s service technician failed to visit Complainant’s residence at the requested time of day and failed to fix a recurring problem.

In response, on November 7, 2005, Respondent filed a memorandum stating U.S. Tel correctly billed the disputed technician dispatch charge, noting the Company has no record of Complainant’s request that a technician respond at a certain time of day, the technician found no indication of a service problem outside the service demarcation point, service was working at the demarcation point, and the technician dispatch charge applies per U.S. Tel’s tariff.

On December 5, 2005, the Division of Public Utilities filed a memorandum recommending the Commission schedule a hearing in this matter.

On December 20, 2005, the Commission issued a Notice of Hearing scheduled to commence before the Commission’s Administrative Law Judge on January 17, 2006.

Hearing commenced at the appointed time on January 17, 2006. At the start of the hearing, the Administrative Law Judge noted the absence of U.S. Tel and his belief, based

upon a review of the docket, that U.S. Tel may not have received actual notice of the hearing. Attempts by Commission staff to contact U.S. Tel and provide its representative the opportunity to appear by telephone were unsuccessful. Complainant was present and represented himself. The Administrative Law Judge informed Complainant that he intended to take Complainant's testimony during the hearing and thereafter provide U.S. Tel an opportunity to review the transcript of the hearing, request additional hearing in this matter, and otherwise respond as it deemed appropriate. Complainant was then sworn and testified regarding the substance of his complaint.

Following the hearing, Commission staff contacted U.S. Tel on more than one occasion to ensure U.S. Tel was aware of its opportunity to submit additional information, respond to Complainant's testimony, request further hearing, and otherwise present admissible evidence to the Commission in support of its position. On February 24, 2006, U.S. Tel filed a memorandum repeating the assertions of its November 7, 2005, memorandum and a copy of the Terms of Service letter mailed to each U.S. Tel customer.

#### BACKGROUND, DISCUSSION, AND FINDINGS

According to Complainant, during the summer of 2005 he had so much static on his phone line that he could not use the internet or use the telephone to conduct a conversation. Complainant contacted U.S. Tel in July to complain and specified that the static was worst in the morning and the evening. A service technician responded and replaced the network interface device ("NID") located in the basement of Complainant's residence. Complainant was not billed a technician dispatch charged for this visit.

Following this visit, Complainant noticed there was still static on his line and contacted U.S. Tel about a week later to complain. Complainant does not recall whether he specified a time when the technician should come to his home, but he did state that the problem was still occurring between 5:00 p.m. and 9:00 p.m. The U.S. Tel representative instructed Complainant to test his service by plugging his telephone directly into the NID to see if the static disappeared. Complainant did so after he hung up with U.S. Tel and determined that the static remained on the line even when he was plugged directly into the NID.

Complainant testified the U.S. Tel technician must have visited his residence prior to 6:00 p.m. for the second service call because Complainant arrived home by 6:00 p.m. and the technician had already conducted his inspection and departed. The technician found no problem with Complainant's service, but Complainant called U.S. Tel either that same evening or within the next couple of days to report that he still had static on this telephone line. This occurred prior to receipt of the U.S. Tel bill containing the disputed technician dispatch charge. When Complainant failed to pay that portion of his bill, U.S. Tel disconnected his telephone service. He now has service through another provider and has not experienced the static on his line that he had with U.S. Tel.

Complainant does not dispute that U.S. Tel is entitled to charge a fee for a service call if the problem is determined to be on the his side of the NID. However, Complainant believes U.S. Tel failed to find a problem because the technician failed to inspect his line during the evening when the problem was at its worst. He does not think he should have to pay a technician dispatch charge based on U.S. Tel's failure to conduct its inspection during the time of day when he told the Company the problem occurs.

U.S. Tel, on the other hand, asserts technician found no service problem at Complainant's residence and points to Sections 5.1.1 and 5.1.5 of the Company's Utah Price List as justification for the disputed technician dispatch charge. The relevant portion of section 5.1.1. provides the following:

Technician Dispatch Charge – A separate Technician Dispatch Charge applies, in addition to all other charges for the visit, when a visit to the Customer's premises is necessary to isolate a problem reported to the Company but identified by the Company's technician as attributable to Customer-provided equipment or inside wire.

Section 5.1.5 lists the price for the Technician Dispatch Charge for residential service as \$179.00.

As in all cases before the Commission, our findings in this matter are necessarily limited to the evidence of record, such as sworn testimony and properly offered and admitted documentary evidence. *Utah Code Annotated* § 63-46b-10. In accordance with this requirement, Complainant has appeared and provided sworn testimony. In contrast, U.S. Tel has failed to provide any competent evidence in support of its position despite the Commission's provision of ample time and opportunity to do so. As proof of its assertions, the Company might have presented copies of the service technician's work order with accompanying testimony to show the time and result of the second service call to Complainant's residence. It has instead chosen to rest its case on the facts alleged in its memoranda of November 7, 2005, and February 24, 2006. However, these memoranda are not evidence on which we may base findings of fact and a decision in this matter.

Therefore, based on Complainant's testimony, we find that a service problem of excessive static existed on Complainant's telephone line at the time of his second service call to U.S. Tel. Because this static did not subside when Complainant plugged his telephone directly into the NID, we further find and conclude that the static originated on the U.S. Tel side of the demarcation point such that it was improper under price list section 5.1.1 for U.S. Tel to bill Complainant a technician dispatch charge. We therefore order U.S. Tel to remove the disputed technician dispatch charge from Complainant's final bill and account records and to terminate any activities undertaken to collect the charge.

Wherefore, based upon the foregoing information, and for good cause appearing, the Administrative Law Judge enters the following proposed

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. U.S. Tel shall remove the disputed technician dispatch charge from Complainant Jared Beagley's final bill and account records and terminate any activities undertaken to collect said charge.

2 Pursuant to *Utah Code Annotated* §§ 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

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

DATED at Salt Lake City, Utah, this 1<sup>st</sup> day of March, 2006.

/s/ Steven F. Goodwill  
Administrative Law Judge

Approved and Confirmed this 1<sup>st</sup> day of March, 2006, as the Report and Order of the Public Service Commission of Utah.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary  
G#47916