

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of)
LaVonne and David Truss vs. U.S. Tel)

DOCKET NO. 06-2224-01

)
) REPORT AND ORDER
)

ISSUED: April 10, 2006

By The Commission:

PROCEDURAL HISTORY

On February 3, 2006, Complainants LaVonne and David Truss filed a formal complaint disputing a service reconnection fee and monthly service charge levied by Respondent U.S. Tel (“U.S. Tel” or “Company”). Complainants indicated they had paid a \$49.00 reconnection fee to have their U.S. Tel telephone service restored following disconnection on December 19, 2005, and had subsequently been billed for a month’s service with U.S. Tel even though their telephone service had not been restored. Complainants seek a refund of the \$49.00 reconnection fee and a waiver of the \$22.07 monthly service charge.

On February 3, 2006, Respondent filed its response by email noting U.S. Tel had complied with the applicable provisions of its Utah price list by mailing notice of the pending disconnect to Complainants and charging them the appropriate fees for reconnection and monthly service.

On March 9, 2006, the Division of Public Utilities (“Division”) filed a memorandum recommending the Commission schedule a hearing in this matter. On March 14, 2006, the Commission issued a Notice of Hearing scheduling said hearing to commence before the Commission’s Administrative Law Judge on April 6, 2006.

On March 15, 2006, U.S. Tel filed a memorandum with the Commission clarifying and expanding upon its earlier email, and responding to the Division's March 9, 2006, memorandum.

Hearing commenced at the appointed time on April 6, 2006. Complainant David Truss was present and represented himself. Dennis Kelley, U.S. Tel Director of Operations, appeared by telephone for U.S. Tel. Both provided sworn testimony.

BACKGROUND, DISCUSSION, AND FINDINGS

According to Complainant, his telephone service with U.S. Tel was disconnected on December 19, 2005. Prior to this date, Complainant had not received any bill for the prior month's service, nor had he received a termination notice from U.S. Tel. He contacted U.S. Tel on December 19, 2005, learned his service had been disconnected for nonpayment, and made a credit card payment of the past due balance plus a \$49.00 reconnection charge to have his service reconnected. When his service was not reconnected, he thereafter unsuccessfully attempted to contact U.S. Tel on December 20, 21, and 22, 2005. On December 23, 2005, Mr. Truss was told by a U.S. Tel representative that his service would be reconnected on December 24, 2005. When he still had no service on that date, he attempted to contact U.S. Tel on December 24, 25, and 26, 2005; again, without success. Mr. Truss knows he did not have service during this period because at least three people tried to telephone him but got no answer.

On December 27, 2005, Mr. Truss spoke with U.S. Tel and was told his service had been reconnected and there must exist some condition requiring repair so U.S. Tel attempted

to schedule a repair call for December 28, 2005. Mr. Truss, frustrated by this chain of events, instead requested his U.S. Tel service be terminated.

Following this discussion with U.S. Tel, Mr. Truss contacted Qwest to obtain service. A Qwest technician came to his home on December 28, 2005, confirmed that there was no internal telephone wiring problem with Mr. Truss's home, and successfully connected Mr. Truss to Qwest service. This technician told Mr. Truss there had likely been a problem at the Qwest office resulting in Mr. Truss not being properly reconnected to U.S. Tel's service. Mr. Truss subsequently received a bill from U.S. Tel for \$22.07 for monthly service stemming from U.S. Tel's claimed reconnection of his service.

U.S. Tel testified substantially to the same set of facts regarding its disconnection and reconnection of Mr. Truss's telephone service. However, U.S. Tel claims it satisfied its reconnection obligation to Mr. Truss on December 24, 2005, by properly submitting a reconnection request to Qwest, the underlying carrier, and receiving a confirmation from Qwest indicating the service had been restored. Mr. Kelley testified he attempted to call Complainant's residence on December 27, 2005, but got no answer; the telephone rang repeatedly rather than switching to a "service has been disconnected message", indicating to Mr. Kelley that the problem with Complainant's service was not that it was still disconnected but that some problem must exist requiring a repair.

U.S. Tel testified it sent Complainant's monthly bills and disconnection notice through the US Postal Service, as required by its Utah price list, and had never received any of this mail returned undelivered. U.S. Tel maintains its charges in this matter have been in accordance with those allowed under its Utah price list; Mr. Truss chose to pay the \$49.00 to

have his service reconnected and thereafter decided to have his service terminated rather than repaired so both the reconnection fee and the monthly service fee are warranted.

Having reviewed the facts presented, we find and conclude that U.S. Tel failed to provide the service for which it charged the reconnection fee. Mr. Truss paid to have his telephone service restored. U.S. Tel believes it satisfied its obligation to Mr. Truss when it asked Qwest to reconnect service and received a confirmation number for said request. We disagree. A basic obligation of any telephone company is to provide the service for which it bills the customer. Under any plain meaning of the word, reconnection can only be said to have been completed when service is actually restored to the customer as it existed prior to disconnection. That never occurred in this case. We do not know why Complainant's service was not properly restored, but the fact that it was not restored is sufficient for our resolution of this matter in favor of Complainant. Therefore, we order U.S. Tel to refund Complainant's \$49.00 reconnection fee.

Likewise, since service was never restored, it would be unreasonable to require Mr. Truss to pay the \$22.07 monthly service fee charged by U.S. Tel. This fee was billed prospectively for a period during which Mr. Truss never had service from U.S. Tel. Indeed, Mr. Truss had no ability to make or receive telephone calls using U.S. Tel's service from the time he was disconnected on December 19, 2005, to the time he requested his account be terminated on December 27, 2005. We therefore order U.S. Tel to remove from Complainant's final bill the monthly service charge for any period after December 19, 2005, and terminate any collection activities which may have been initiated regarding this 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 refund the \$49.00 reconnection fee to Complainants LaVonne and David Truss, remove from the \$22.07 monthly service charge from their 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 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 10th day of April, 2006.

/s/ Steven F. Goodwill
Administrative Law Judge

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Approved and Confirmed this 10th day of April, 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

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