

In the Matter of the Complaint of NETCONNECT)
INTERNET SERVICES,)
Complainant)
vs.)
U S WEST COMMUNICATIONS, INC.,)
Respondent)

DOCKET NO. 97-049-04

REPORT AND ORDER

ISSUED: January 8, 1998

By the Commission:

Respondent U S WEST's Motion to Dismiss and for Protective Order as to Frame Relay Accounts and its Motion for Leave to Disconnect Local Exchange Service for Failure to Pay Undisputed Amounts in the above matter came on for hearing before the Commission, A. Robert Thurman, Administrative Law Judge, presiding, on January 5, 1998, at 9:00 a.m., pursuant to the Commission's December 19, 1997, Order and Notice of Hearing. Respondent appeared through its attorney, Floyd A. Jensen. The Division of Public Utilities appeared through its attorney, Laurie Noda. Claimant did not appear personally or through counsel. The Commission notes for the record that Claimant's previous attorney of record, William J. Evans, filed a Notice of Withdrawal of Counsel on December 18, 1997.

Having duly considered the said motions, together with materials submitted and argument made in support thereof, being fully advised in the premises, and finding good cause, the Administrative Law Judge hereby recommends as follows:

RECOMMENDATION

1. That the Motion to Dismiss and for Protective Order as to Frame Relay Accounts be granted inasmuch as the Commission lacks jurisdiction over the interstate frame relay services that are the subject of Complainant's First Amended Complaint.
2. That the Motion for Leave to Disconnect Local Exchange Service for Failure to Pay Undisputed Amounts be granted inasmuch as it is uncontested on the record that Claimant has failed to pay any amount to U S WEST for local exchange service in the State of Utah since August, 1997. It is recommended that leave to disconnect service be effective 48 hours after entry of the order herein.
3. That Complainant's First Amended Complaint, and this action, be dismissed in its entirety, with prejudice, unless Complainant takes substantial affirmative action to move the remainder of the case forward within thirty (30) days of the entry of the order herein.
4. That U S WEST's obligation to respond to outstanding discovery requests of Complainant be suspended pending a determination as to whether Complainant demonstrates a serious and good faith intention to pursue the issues remaining in this proceeding.

Finding good cause, the Commission hereby adopts the recommendation of the Administrative Law Judge, and orders as follows:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that

1. U S WEST's Motion to Dismiss and for Protective Order as to Frame Relay Accounts is granted. Accordingly, Complainant's First Amended Complaint is dismissed insofar as it seeks relief with regard to the accounts for frame relay services alleged therein. IT IS FURTHER ORDERED that, U S WEST shall have no obligation to respond to Complainant's discovery requests directed to issues concerning the accounts for frame relay services alleged in its First Amended Complaint.

2. U S WEST's Motion for Leave to Disconnect Local Exchange Service for Failure to Pay Undisputed Amounts is granted. Leave to disconnect service on those accounts specified in U S WEST's Motion will be effective 48 hours after entry of the Order herein.

3. Complainant's First Amended Complaint, and this action, shall be dismissed in its entirety, with prejudice, without further action of the Commission, thirty (30) days after entry of this Order, unless Complainant takes substantial affirmative action to move the remainder of the case forward within thirty (30) days of the entry of the Order herein.

4. U S WEST's obligation to respond to outstanding discovery requests of Complainant is suspended pending a determination as to whether Complainant demonstrates a serious and good faith intention to pursue the issues remaining in this proceeding within thirty (30) days after entry of this Order.

DATED at Salt Lake City, Utah, this 8th day of January, 1998.

/s/ A. Robert Thurman
Administrative Law Judge

Approved and Confirmed this 8th day of January, 1998, as the Report and Order of the Public Service Commission of Utah.

/s/ Stephen F. Mecham, Chairman

(SEAL) /s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary