

In the Matter of the Complaint of)
JEFF L. MIDDLETON,)
Complainant)
vs.)
MOUNTAIN STATES TELEPHONE)
AND TELEGRAPH COMPANY, dba U.S.)
WEST COMMUNICATIONS, INC.,)
Respondent)

DOCKET NO. 98-049-30

REPORT AND ORDER

ISSUED: April 13, 1999

SYNOPSIS

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

Appearances:

David J. Jordan

for

MOUNTAIN STATES TELEPHONE
AND TELEGRAPH COMPANY, dba
U.S. WEST COMMUNICATIONS, INC.

By the Commission:

PROCEDURAL HISTORY

Complainant above-named filed his complaint October 25, 1998, and Respondent filed its answer, together with a motion to dismiss, November 25, 1998. 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 is a commercial customer of Respondent, a telephone corporation certificated by this Commission.
2. Complainant alleges that Respondent delayed unreasonably in furnishing him DSL service and connecting him through his Internet Service Provider (ISP) of choice. By way of relief, he seeks monetary damages and regulatory sanctions against Respondent.
3. In its answer, Respondent alleges that the delays were an unfortunate result of communication breakdowns within the company; that Complainant now has the service he ordered, and that the Commission lacks jurisdiction to grant Complainant the damages he seeks.

CONCLUSIONS OF LAW

The Commission has party jurisdiction; to the extent that Complainant seeks monetary damages, or to represent the interests of other parties, the Commission lacks subject-matter jurisdiction.

The Commission may exercise only that authority granted by the Legislature. The only authority (jurisdiction) the Legislature has granted in regard to monetary disputes between utilities and customers is set forth in Section 54-7-20, UCA 1953, as amended. Complainant has failed to allege facts which would entitle him to relief under that statute, which entitles a customer to reparations only upon a showing of charges beyond Respondent's published tariff, or a discriminatory application of the tariff. The facts alleged by Complainant do not indicate such overcharge or discrimination.

To the extent that Complainant seeks monetary relief for other parties, such as ISP's, the Commission likewise cannot grant such relief. The Division of Public Utilities, an agency of state government which acts as the Commission's investigatory arm, is continuing to monitor Respondent's activities regarding furnishing of Internet-related services. The Commission hereby asks the Division for an update on the number of informal complaints against Respondent similar to Complainant's to determine the breadth of the problem. If corrective action is warranted, we will open a new investigative docket to solve the problem on a wide scale.

Since it appears that Complainant now has the service he ordered, this matter is moot and should be dismissed.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

The complaint of JEFF L. MIDDLETON against MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, dba U.S. WEST COMMUNICATIONS, INC., be, and the same hereby is, dismissed.

If JEFF L. MIDDLETON wishes to proceed further, JEFF L. MIDDLETON 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 to the Utah Supreme Court.

DATED at Salt Lake City, Utah, this 13th day of April, 1999.

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/s/ A. Robert Thurman
Administrative Law Judge

Approved and Confirmed this 13th day of April, 1999, as the Report and Order of the Public Service Commission of Utah.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary