

In the Matter of the Complaint of)
JOHN MERRILL, President of MARCLink,)
Complainant)
vs.)
MOUNTAIN STATES TELEPHONE AND)
TELEGRAPH COMPANY, dba U.S.)
WEST COMMUNICATIONS, INC.,)
Respondent)

DOCKET NO. 98-049-46

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:

John M. Eriksson for MOUNTAIN STATES TELEPHONE
AND TELEGRAPH COMPANY, dba
U.S. WEST COMMUNICATIONS, INC.

By The Commission:

PROCEDURAL HISTORY

Complainant above-named filed his complaint December 17, 1998, and Respondent filed its answer, together with a motion to dismiss, January 14, 1999. 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 the Respondent delayed unduly in providing him DSL service and in porting a telephone number from one of Respondent's competing local exchange carriers. Complainant represents that as of January 12, 1999, the DSL service has been installed, but that the number port has not been accomplished. Complainant seeks damages by way of relief.
3. In its answer, Respondent represents that it is working diligently to complete the number port and will complete it as soon as possible. It has credited Complainant's account for one month's service.

CONCLUSIONS OF LAW

The Commission has party jurisdiction; subject-matter jurisdiction is lacking. Complainant has failed to allege facts which would entitle him to relief under Section 54-7-20, UCA 1953, as amended. That statute entitles a customer to reparations, *i.e.*, refund of overcharges, 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.

The Commission may exercise only the powers explicitly granted by the Legislature, or fairly inferable from the express grant. The only authority granted by the Legislature in regard to monetary disputes between a utility and customer is the statute discussed in the preceding paragraph. The Commission has never interpreted the statute so broadly as to allow the awarding of money damages for financial injury attributable to utility failures.

By crediting Complainant's account for the time he was without the DSL service, Respondent has afforded Complainant the only relief which the Commission could order. Accordingly, the complaint must be dismissed. The Commission hereby asks the Division for an update on the number of informal complaints similar to Complainant's to determine the continuing breadth of the problem. If corrective action is warranted we will open a new investigative docket to solve the problem on a wide scale.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

The complaint of JOHN MERRILL, President of MARCLink, against MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, dba U.S. WEST COMMUNICATIONS, INC., be, and the same hereby is, dismissed.

If JOHN MERRILL, President of MARCLink, wishes to proceed further, JOHN MERRILL, President of MARCLink, 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.

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/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary