

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Proposed Rule for)	<u>DOCKET NO. 98-R365-01</u>
Intercarrier Service Quality)	
In the Matter of the Request by U.S. WEST)	<u>DOCKET NO. 99-049-05</u>
COMMUNICATIONS, INC., for)	
Declaration of Compliance with)	
R746-365-4(B)(2)(c)(iv) or Alternative)	
Temporary Exemption)	<u>ORDER DENYING REHEARING</u>

ISSUED: July 1, 1999

By The Commission:

On March 30, 1999, US West Communications, Inc. (US West), filed a supplemental petition (March 30th filing) in which it sought additional and alternative relief to multiple, previous requests for agency action filed with the Commission, relative to Rule 365 -Intercarrier Service Quality. Contained in the March 30th filing was US WEST's request for a declaratory order indicating that the collocation provisions of Rule 365 did not supersede collocation provisions contained in interconnection agreements approved prior to the effective date of Rule 365. On June 21, 1999, US West filed a Petition for Rehearing, requesting rehearing or reconsideration on US West's request for declaratory order relief contained in the March 30 filing. US West maintains that the March 30 filing's declaratory order relief is deemed denied, pursuant to U.C.A. §63-46b-21(7), as the Commission has not issued a declaratory order within the 60 days following receipt of the March 30 filing. US West seeks rehearing/reconsideration pursuant to U.C.A. §§54-7-15, 63-46b-13 and Administrative Rule R746-100-11(F).

First, we address US West's continued filing of requests for agency action in Docket 98-R365-01. Docket No. 98-R365-01 was instituted to receive comments in the rulemaking process for proposed rule 365. Once the rulemaking process was completed and Rule 365 was made effective on January 13, 1999, we considered Docket No. 98-R365-01 closed. No further agency action in that docket was contemplated. US West has initiated an appeal of our rulemaking through which Rule 365 was promulgated. See, Utah Supreme Court Case No. 99 0222. We believe that Utah follows the rule that an appeal of a lower tribunal's action to an appellate court generally divests the lower tribunal of jurisdiction in the matter. See, e.g, Skeen v. Pratt, 48 P.2d 457 (Utah 1935). The lower tribunal does not have the ability to make further substantive rulings or orders pertaining to the matter. Cf., Baker v. Western Surety Co., 757 P.2d 878 (Ut. Ct. App. 1988). Hence, to the extent that US West has requested the Commission to grant various permutations of relief in Docket 98-R365-01, including the March 30th filing, we conclude that we have no jurisdiction to entertain such requests in that docket; assuming that the requested relief is even appropriate relief in a rulemaking proceeding.

Where we determined that US West has requested variances or modifications from the provisions of Rule 365, specific for US West, we gave notice of our intent to consider US West's requested relief in Docket No. 99-049-05. Unlike Docket No. 98-R365-01, we believe that we do have jurisdiction in Docket No. 99-049-05 to consider US West's various requests for relief. Interested parties have opposed US West's requests, so we have set the issues for hearing set to begin July 14, 1999. This adjudicative hearing was set at a scheduling conference with the participation of US West and the other parties. The March 30th filing's request for a declaratory ruling was specifically opposed by parties who claimed that they would be substantially prejudiced by entering the declaratory order requested. See, AT&T/TCG response filed April 19, 1999, and ELI response filed April 8, 1999. Because of this opposition, we were precluded from issuing a declaratory order due to the prohibition contained in U.C.A. §63-46b-21(3)(b). Assuming that the parties have not resolved the matter prior to the July 14, 1999, hearing, it will be a matter to be considered by the Commission. We believe that US West is premature in considering that the Commission has made a final determination on whether Rule 365's provisions concerning collocation installations supersede collocation provisions contained in prior approved interconnection agreements. We will not be able to make a determination on US West's contentions in that regard until

after the July 14, 1999, hearing.

While we recognize the seeming conundrum faced by US West of having the merits of its requested relief relating to collocation installation time periods set for hearing after a date on which its request for declaratory ruling may be deemed as denied, under U.C.A. §63-46b-21(7), we believe that US West's Petition for Rehearing is procedurally flawed. Assuming that U.C.A. §63-46b-21(7)'s presumption of denial applies to a request for a declaratory ruling which is precluded by U.C.A. §63-46b-21(3)(b), a request for reconsideration, pursuant to U.C.A. §63-46b-13 is improper. U.C.A. §63-46b-21(5) provides "that other provisions of Sections 63-46b-4 through 63-46b-13 apply to declaratory proceedings" only to the extent provided by agency rule or order. The Commission has no rule or order which indicates that U.C.A. §63-46b-13 is applicable to declaratory ruling requests submitted to the Commission.

Wherefore, because we have not had a hearing on the merits of US West's opposed request for relief concerning installation periods for collocations, upon which a final Commission determination may be based, and because U.C.A. §63-46b-13 is inapplicable, we deny US West's Petition for rehearing, filed June 21, 1999.

DATED at Salt Lake City, Utah, this 1st day of July, 1999.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary