

In the Matter of the Complaint of)
Gayle and Roger Bray,)
Complainant)
vs.)
MOUNTAIN STATES TELEPHONE AND)
TELEGRAPH COMPANY, dba U.S.)
WEST COMMUNICATIONS,)
Respondent)

DOCKET NO. 99-049-27

REPORT AND ORDER

ISSUED: August 26, 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:

Jill M. Pohlman For MOUNTAIN STATES TELEPHONE
AND TELEGRAPH COMPANY, dba
U.S. WEST COMMUNICATIONS

By the Commission:

PROCEDURAL HISTORY

Complainant above-named filed their complaint July 12, 1999, and Respondent filed its answer, together with a motion to dismiss, August 11, 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. Complainants are residential customers of Respondent, a telephone corporation certificated by this Commission.
2. Complainants allege that Respondent wrongfully withheld service from them at their residence in Mendon, Utah, for a period of approximately two months. Complainants also dispute their liability for charges for cellular service owing to AirTouch Communications, the charges having been incurred while Complainants participated in Respondent's "loaner" program mandated by the Commission.
3. In its answer, Respondent asserts it has established service on Complainant's primary line and should have established service on Complainant's secondary line by the date of this order. It has also rated all of Complainants' intra-LATA toll charges owing to Respondent the same as its wire line charges during the held order period. It asserts further it has no

authority over AirTouch and cannot afford Complainants relief in that regard.

CONCLUSIONS OF LAW

The Commission has party and subject-matter jurisdiction. On the assumption that, as of the date of the issuance of this order, Complainant has established service on both lines for which Complainants have sought service, that branch of the Complaint is moot and must be dismissed, since the Commission could afford Complainants no relief beyond that which Respondent has already given them.

Likewise, since Respondent has imposed only its wire line charges for long distance calls from the cell phone, charges to which Respondent is entitled, that branch of the complaint must be dismissed.

Finally, unfortunately, the Commission has no jurisdiction over AirTouch Communications, since the Commission has authority to regulate wire line phone companies only. Accordingly, that branch of the complaint must also be dismissed. Complainants will have to pursue the matter directly with AirTouch Communications.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

the complaint of Gayle and Roger Bray against MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, dba U.S. WEST COMMUNICATIONS, be, and the same hereby is, dismissed.

If Gayle and Roger Bray wishes to proceed further, Gayle and Roger Bray 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 26th day of August, 1999.

/s/ A. Robert Thurman
Administrative Law Judge

Approved and Confirmed this 26th day of August, 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