

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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

DOCKET NO. 99-049-35

REPORT AND ORDER

ISSUED: September 16, 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, INC.

By The Commission:

PROCEDURAL HISTORY

Complainant above-named filed his complaint July 27, 1999, and Respondent filed its answer, together with a motion to dismiss, August 25, 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 residential customer of Respondent, a telephone corporation certificated by this Commission.
2. Complainant alleges Respondent has improperly charged him for expenses incurred by Respondent while repairing its facilities, in its utility easement, on his property.
3. In its answer, Respondent asserts that Complainant encroached on Respondent's easement and that it is entitled to pursue its claim for expenses. Respondent asserts that its pursuit of the claim does not jeopardize continuation of Complainant's telephone service.

CONCLUSIONS OF LAW

The Commission has party jurisdiction; subject-matter jurisdiction is lacking. The Commission's only authority in

Utility-Customer disputes derives from § 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, since they relate to a property or contract dispute which is outside the scope of Respondent's tariff.

The complaint must be dismissed.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

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

If Ray Ipson wishes to proceed further, Ray Ipson 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 16th day of September, 1999.

/s/ A. Robert Thurman
Administrative Law Judge

Approved and Confirmed this 16th day of September, 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