- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Complaint of ROBERT and ANNE MICHELLE BAKER, Complainants vs. MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, dba U.S. WEST COMMUNICATIONS, INC., Respondent	))))))))	DOCKET NO. 99-049-52 REPORT AND ORDER

ISSUED: December 8, 1999

SYNOPSIS

Complainants 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

Complainants above-named filed their complaint October 25, 1999, and Respondent filed its answer, together with a motion to dismiss, November 24, 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

- Complainants are residential customers of Respondent, a telephone corporation certificated by this Commission.
- Complainant alleges, and for purposes of deciding Respondent's motion to dismiss, we find that:

A. Respondent installed service for Complainants in November 1996 at which time they selected AT&T as their long distance carrier. Respondent is the billing agent for AT&T. On May 12, 1997, due to non-payment of AT&T long distance charges, Respondent placed an involuntary block on the Complainants' AT&T long distance service.

B. On June 2, 1997, Complainant Anne Michelle Baker ("Mrs. Baker") contacted Respondent to ask about the possibility of removing the long distance block. Respondent's representative informed Mrs. Baker that due to the Complainants' credit history, they would need to pay the overdue charges and a deposit of $185 in order to have the

AT&T block removed. Mrs. Baker asserts that at that time, Respondent's representative told her that the block extended to intra-state as well as interstate long distance. Respondent denies so informing Mrs. Baker. For purposes of deciding Respondent's motion, we will assume that Mrs. Baker's version is true. Rather than pay the charges demanded by Respondent to restore long distance service, Complainants chose to leave the block in place. To place long distance calls, both intra- and interstate, they used prepaid calling cards.

C. On October 9, 1997, Complainant Robert Baker ("Mr. Baker") contacted Respondent to request a second line *with the same features* that existed on the Complainants' primary line, and to request that the second line be billed separately from the primary line.

Mr. Baker did not explicitly request a total block of all long distance services on his second line.

D. On October 17, 1997, Complainant installed the second line with the same features as existed on the primary line, *i.e.*, wire maintenance protection plan and a block of AT&T long distance service.

E. In September, 1999, Mr. Baker contacted Complainant regarding intrastate long distance charges on his September 16 billing for the second line. It transpired that Complainants'11-year-old son had changed the properties on their internet service to a long distance number in St. George, Utah, and that they incurred a long distance charge every time they utilized their internet service. Mr. Baker complained that Respondent had not put the same services on their second line as on their primary line and complained that he should not be held responsible for the charges. When asked what services he was referring to, Mr. Baker asserted that there was a total long distance block on the primary line and that they had assumed that there was a total block on the second line.

F. Respondent's representative told Mr. Baker that a block had been placed on their AT&T long distance service due to their credit problems with AT&T and that it had not programmed a block on their U.S. WEST intrastate service since there had never been a credit issue for intrastate long distance services. When Mr. Baker insisted that they were unable to make any long distance calls from their primary line, Respondent's representative could only suggest there might be a problem which needed to be addressed by the repair department.

- In its answer, Respondent asserts, and we find that:

A. The Bakers filed an informal complaint with the Division of Public Utilities on September 28, 1999. Respondent again researched its records and affirmed that nothing other than a block of AT&T long distance service had ever been placed on the Bakers' service.

B. After reviewing the situation at length, Respondent credited Complainants' account by one-half of the August long distance charges incurred on their second line. Because Respondent no longer considered Complainants a credit risk, Respondent also removed the AT&T long distance block, and informed Complainants that because of their current credit rating they would no longer be required to pay a deposit to reestablish long distance service with AT&T.

DISCUSSION

For purposes of deciding Respondent's motion to dismiss, we must consider the allegations contained in the complaint and answer in the light most favorable to Complainants. Our findings above do so.

We begin our analysis with the premise that the Commission is a creature of the Utah Legislature and can exercise *only* the authority specifically delegated by the Commission's enabling statutes or fairly inferable from the explicit grant.[(1)] In regard to *monetary* disputes between a public utility and its customers, the Commission's *only* authority derives from § 54-7-20, UCA 1953, as amended, which in pertinent part provides:

When complaint has been made to the commission concerning any rate, fare, toll, rental or charge for any product or commodity furnished or service performed by any public utility, and the commission has found, after investigation, that the public utility has charged an amount for such product, commodity or service in excess of the schedules, rates and tariffs on file with the commission, or has charged an unjust, unreasonable or discriminatory amount against the complainant, the commission may order that the public utility make due reparation to the complainant therefore, with

interest from the date of collection.

As the Utah Supreme Court has construed this statute, the Commission's *sole* authority is to determine whether a utility has deviated from its published tariffs[(2)] and afford refunds if it has.>

In the instant case, Complainants have not alleged that Respondent has deviated from its tariffs; rather the claim is that through either negligence or intentional misrepresentation, Respondent misled Complainants as to the extent of the long distance block on their primary line, making it possible for their son, without their immediate knowledge, to incur the charges in dispute.

There are legal concepts under which sufficient factual proof might sustain relief to Complainants--equitable estoppel and negligence come to mind. Unfortunately for Complainants, however, our jurisdiction simply does not extend to affording relief under such theories, and therefore an evidentiary hearing on them would be an exercise in futility.

The point is that no matter how compelling Complainants' evidence might be, we would still have no authority to afford them relief. While it is possible a claim such as theirs would be justiciable by a court of law[(3)], it is not justiciable by us.

CONCLUSIONS OF LAW

The Commission has party jurisdiction; subject matter jurisdiction is lacking. Complainant has failed to allege facts which would entitle them to relief under Section 54-7-20, UCA 1953, as amended. That statute 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.

Respondent is, under the law, not only allowed but required to charge in accordance with its tariff in order to prevent invidious discrimination among customers. Accordingly, the charges imposed on Complainant are lawful, and Respondent is entitled to collect the same. Accordingly, Respondent's motion to dismiss must be granted, and the complaint must be dismissed.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

- The motion of MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, dba U.S. WEST COMMUNICATIONS, INC., to dismiss the complaint of ROBERT and ANNE MICHELLE BAKER be, and it is, granted, and this matter be, and it is, dismissed.
- If ROBERT and ANNE MICHELLE BAKER wish to proceed further, ROBERT and ANNE MICHELLE BAKER 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 8th day of December, 1999.

/s/ A. Robert Thurman
Administrative Law Judge

Approved and Confirmed this 8th day of December, 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

1. *Basin Flying Service v. PSC*, 531 P.2d 1303 (Utah 1975).

2. *Denver & RGRR v. PUC*, 73 Utah 139, 272P. 939 (1928); *American Salt Co. v. W.S. Hatch Co.*, 748 P.2d 1060 (Utah 1987)

3. *See American Salt Co. v W.S. Hatch Co., id., at* 1067 (Concurring opinion.)