

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Joint Petition for Declaratory Order and for Amendment of Rule)))	<u>DOCKET NO. 99-R365-03</u> <u>DECLARATORY ORDER</u>
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SYNOPSIS

The Commission enters a Declaratory Order stating that Rule 365-4(B)(1)(a) applies only to per-ordering, ordering, provisioning, maintenance, repair, and billing functions, until further determination. Rule 365-5(C)(2) does not require an ILEC to provide verbatim scripts used by ILEC employees.

ISSUED: September 15, 1999

By The Commission

On August 10, 1999, U.S. West Communications, Inc. (USWC), WWC Holdings Company, Inc., AT&T Communications of the Mountain State, Inc., Electric Lightwave, Inc., Nextlink Utah, Inc., and the Division of Public Utilities (Joint Petitioners) filed a joint Petition for Declaratory Order and for Amendment of Rule (Petition). The Petition seeks a declaratory order which would interpret Utah Administrative Code Rule 746-365-4(B)(1)(a) and requests that the Public Service Commission (Commission) make an amendment to Utah Administrative Code Rule 746-365-5(C)(2).

The Joint Petitioners seek a declaratory order regarding the application of current Rule 746-365(B)(1)(a) to the operational support systems (OSS) of USWC. USWC has asserted that the current rule could be construed in a manner that would impinge upon information which USWC claims is proprietary. Rule 746-365-4(B)(1)(a) reads as follows:

B. Service Quality and Other Network Guidelines Applicable to ILECS

1. Operational support systems

a. OSS interfaces -- each ILEC shall undertake all commercially reasonable efforts to facilitate parity of access to operational support systems the incumbent local exchange carrier uses to store and retrieve information related to network engineering and administration.

The Joint Petitioners request that the Commission enter a declaratory order declaring that the rule applies only to operational support systems or information contained in such systems that, using the lexicon derived from the 1996 Federal Telecommunications Act and Federal Communications Commission Rules, relate to the functions of pre-ordering, ordering, provisioning, maintenance, repair, and billing.

The Joint Petitioners also ask the Commission to amend Utah Administrative Code Rule 746-365-5(C)(2) to add a subsection which would resolve a potential dispute among the Joint Petitioners regarding the application of that rule. Rule 746-365-5(C)(2) provides:

C. Performance Monitoring and Reporting Obligations Applicable to ILECS

2. Service response description -- The ILEC shall develop a detailed narrative description of the procedures it employs in responding to calls from: [retail customers, affiliated customers, and interconnecting telecommunications corporations] . . .

USWC asserts that the rule could be construed in a way that would be a restraint on its free speech. While the other Joint Petitioners do not agree with USWC's free speech concerns, all of the Joint Petitioners believe that the rule should not be construed to require USWC to provide verbatim scripts that USWC employees would use in conversations with the customers or entities identified in the rule. To alleviate USWC's claims, the Joint Petitioners ask the Commission to amend the rule. Their suggested amendment would add a subsection stating that the rule does not require an ILEC to make available verbatim scripts. At a hearing on USWC's requests for exemptions from various provisions of Rule 365, held August 19, 1999, in PSC Docket No 99-049-05, the Joint Petitioners indicated that the Commission was not limited to rule amendment, but could effectively resolve this issue through a declaratory order as well.

The Commission will enter a declaratory order regarding both Rule 365-4(B)(1)(a) and Rule 365-5(C)(2). The Commission's intent in promulgating Rule 365-4(B)(1)(a) was to provide interconnecting telecommunications carriers with parity of access to support systems utilized by the incumbent local exchange carrier for pre-ordering, ordering, provisioning, maintenance, repair, and billing functions. At the time of promulgating Rule 365, the Commission had already identified pre-ordering, ordering, provisioning, maintenance, repair, and billing as essential facilities and services which are required to be made available on an equal, non-discriminatory basis pursuant to Utah Code §54-8b-2.2. *See*, Utah Administrative Code,

Rule 746-348-7. The 1996 Federal Telecommunications Act had also been interpreted by the Federal Communications Commission to require equal access to these six functions. As anticipated by the Commission and Joint Petitioners, operational support systems and information, beyond the pre-ordering, ordering, provisioning, maintenance, repair, and billing functions, for which parity of access by interconnecting telecommunications carriers may be required by state or federal law, is subject to expansion upon a proper showing. Until such a showing, however, it is appropriate to enter a declaratory order identifying pre-ordering, ordering, provisioning, maintenance, repair, and billing as the network engineering and administration operational support systems subject to Rule 365-4(B)(1)(a).

Regarding the application of Rule 365-5(C)(2), the Commission will also enter a declaratory order stating that verbatim transcripts of ILEC employee conversations are not required. The intent of the Commission in promulgating Rule 365-5(C)(2) was to provide information which could assist in determining whether an ILEC is providing adequate service quality to interconnecting telecommunications carriers. At a minimum, parity of service with that which the ILEC provides to itself or an ILEC affiliated entity is required by both state and federal law. In order to measure an ILEC's performance, it is necessary to identify the procedures actually used by the ILEC to provide service. Rule 365-5(C)(2) is intended to provide information by which one can compare the procedures followed by an ILEC in providing service to the ILEC's retail customers, an ILEC's affiliated customer(s), and interconnecting telecommunications carriers.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. Until further determination, Utah Administrative Code Rule 746-365-4(B)(1)(a) is only applicable to operational support systems and information used for one or more of the following functions: pre-ordering, ordering, provisioning, maintenance, repair, and billing.
2. Utah Administrative Code Rule 746-365-5(C)(2) does not require an ILEC to make available verbatim scripts used by ILEC employees.

DATED at Salt Lake City, Utah, this 15th day of September, 1999.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary