

SERVICE DATE

JUN 18 1990

NOTE! An important notice to parties about administrative relief appears at the end of this order.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID PETER, M.T.L.,)	
)	DOCKET NO. UT-900247
Complainant,)	
)	FINDINGS OF FACT,
vs.)	CONCLUSIONS OF LAW AND
)	INITIAL DECISION
U S WEST COMMUNICATIONS,)	DISMISSING COMPLAINT
)	WITH PREJUDICE*
Respondent.)	
)	
.....)	

This matter came on regularly for hearing on due and proper notice to all interested parties on June 14, 1990, in Olympia, Washington, before Administrative Law Judge Heather L. Ballash of the Office of Administrative Hearings.

The parties were represented as follows:

- COMPLAINANT: DAVID PETER, M.T.L., pro se
301 Union St., # GD
Seattle, WA 98101
- RESPONDENT: U.S. WEST COMMUNICATIONS
By Mark Roellig
Attorney at Law
1600 Bell Plaza, Suite 3206
P.O. Box 21225
Seattle, WA 98111
- COMMISSION: WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION
By Robert Cedarbaum
1300 South Evergreen Park Dr. SW
Olympia, WA 98504

*Note to parties: this decision differs from my oral ruling at the hearing. Please see my explanation in the Memorandum.

MEMORANDUM

David Peter, M.T.L. (hereafter "Complainant"), filed a Complaint with the Commission on March 15, 1990, against U.S. West Communications. U.S. West Communications (hereafter "respondent" or "company") filed an answer to the complaint on April 4, 1990. The parties appeared for the hearing and respondent presented itself as ready to go forward with testimony from company witnesses in response to the complainant's case.

Complainant requested a continuance on the basis that he wished to subpoena a number of company employees and other U.S. West customers, all of whom were not present to testify. Complainant also indicated that he would not be testifying in support of his complaint unless he was unable to obtain the evidence he deemed necessary to support his case from these other witnesses.

At this point, the company made a motion to dismiss the complaint with prejudice on the basis that it should not have to provide evidence in support of complainant's case. Commission staff concurred and stated that, unless Complainant was willing to testify in support of his allegations, the complaint should be dismissed.

RCW 80.04.110 states, in part, that:

Complaint may be made by the commission on its own motion or by any person or corporation, chamber of commerce, board of trade, or any commercial, mercantile, agricultural or manufacturing society, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission....

The Commission's procedural rules further state at WAC 480-09-420(5)(b) that:

Formal complaints must be in writing setting forth clearly and concisely the ground of complaint and the relief requested. Facts constituting the basis of the complaint, including relevant dates, should be stated, together with citations of the statutes or rules of the commission involved.

The complaint filed by Complainant fails to adequately state the facts as required by statute and Commission rule. In reading Paragraph VII, Statement of Facts and Allegations, the undersigned was unable to ascertain what the basis for the complaint was. However, the undersigned was willing to give Complainant the opportunity to testify as to his understanding of the facts upon which the complaint is based. Complainant wished to present facts through employees of the company and other customers with similar complaints.

The law in the state of Washington is that the burden of proof in a complaint proceeding lies with the complainant. Complainant cannot expect to prove his case through presentation of evidence by the company. Testimony from other customers with similar complaints against the company would not be relevant as the undersigned can only consider the actions of the company as they relate to the Complainant.

As Complainant was not willing to testify in support of his case prior to presentation of evidence with company witnesses, the undersigned must dismiss the complaint for failure by the Complainant to adequately present facts evidencing an act or omission by the company in violation of the laws, rules and regulations governing telecommunications companies.

At the hearing, the undersigned made an oral ruling to dismiss the complaint without prejudice. Upon reconsideration, the undersigned realizes that this would be tantamount to granting Complainant's original request for a continuance. The continuance request was denied on the basis that the complaint had been dismissed. Further, the company asserted in its answer to the complaint that complainant owes the company a deposit of \$100 and past-due undisputed bills. The company has been unable to collect these past due bills or to disconnect complainant's service for failure to pay these bills pending the outcome of this proceeding. The bills have been increasing each month. If complainant were allowed to refile, this would again preclude the company from taking any action against complainant pending the outcome of such proceeding. Therefore, the undersigned revises her previous decision from a decision to dismiss the complaint without prejudice to a decision dismissing the complaint with prejudice. This means that the undersigned's advice to complainant regarding his ability to refile this complaint is now incorrect. Complainant is precluded by this decision, pending final decision from the Commission, from refiling this complaint against U.S. West Communications with the Commission.

FINDINGS OF FACT

Having previously discussed in detail the oral and documentary evidence considered herein, the undersigned now makes

the following summary of those facts. Portions of the preceding detailed findings pertinent to the ultimate facts are incorporated herein by this reference.

1. On March 15, 1990, Complainant filed a complaint against U.S. West Communications with the Commission. The complaint listed a series of issues and a brief statement of facts and allegations. The undersigned had some difficulty in ascertaining the basis for the complaint from the statement of facts.

2. Pacific Northwest Bell Telephone Company, d/b/a U.S. West Communications, is a telecommunications company providing telecommunications service to customers in the state of Washington. As a public service company, U.S. West is subject to the regulatory authority of the Washington Utilities and Transportation Commission as to its rates, charges, services and practices.

3. On April 4, 1990, U.S. West filed its answer to the complaint.

4. U.S. West made a motion to dismiss the complaint with prejudice. The motion to dismiss was granted without prejudice. The undersigned revises her ruling by this decision to dismiss the complaint with prejudice.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this complaint and the parties thereto.

2. Complainant has failed to support the factual allegations presented in its complaint.

3. The complaint should be dismissed with prejudice pursuant to RCW 80.04.110 as it fails to state a claim upon which relief can be granted. The complaint does not set "forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission...." RCW 80.04.110.

ORDER

WHEREFORE, IT IS HEREBY ORDERED, That the complaint of David Peter shall be, and the same is hereby, dismissed with prejudice.

DATED at Olympia, Washington, and effective this 18th day of June, 1990.

OFFICE OF ADMINISTRATIVE HEARINGS



HEATHER L. BALVASH
Administrative Law Judge

NOTICE TO PARTIES:

This is an initial order only. The action proposed in this order is not effective until a final order of the Utilities and Transportation Commission is entered. If you disagree with this initial order and want the Commission to consider your comments, you must take specific action within a time limit as outlined below.

Any party to this proceeding has twenty (20) days after the service date of this initial order to file a Petition for Administrative Review, under WAC 480-09-780(2). Requirements of a Petition are contained in WAC 480-09-780(4). As provided in WAC 480-09-780(5), any party may file an Answer to a Petition for Administrative Review within ten (10) days after service of the Petition. A Petition for Reopening may be filed by any party after the close of the record and before entry of a final order, under WAC 480-09-820(2). One copy of any Petition or Answer must be served on each party of record and each party's attorney or other authorized representative, with proof of service as required by WAC 480-09-120(2).

In accordance with WAC 480-09-100, all documents to be filed must be addressed to: Office of the Secretary, Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., Olympia, Washington, 98504-8002. After reviewing the Petitions for Administrative Review, Answers, briefs, and oral arguments, if any, the Commission will by final order affirm, reverse, or modify this initial order.