

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

Lawrence T. Ferguson, Jr.) Formal Complaint No. 1275
North Platte, Nebraska,)
)
)
)
) COMPLAINT DISMISSED
vs.)
)
US West Communications, Inc.)
Omaha, Nebraska,)
)
) Defendant.) Entered: January 4, 2000

BY THE COMMISSION:

On October 26, 1999, Lawrence T. Ferguson, Jr. (Complainant) of North Platte, Nebraska, filed a formal complaint with this Commission against US West Communications, Inc. (US West or Defendant), Omaha, Nebraska, alleging inadequate and substandard service by US West. Specifically, the complainant alleges that the telephone line running to his dwelling was inadequate because of insufficient transmission speed to allow him satisfactory access to the Internet. Complainant also alleges that he is unable to take advantage of certain vertical features offered by US West, specifically naming caller ID. Notice of the complaint was sent to US West by certified mail on October 27, 1999.

On November 17, 1999, this Commission received an answer by US West denying that service to the complainant is substandard in that US West is not required by law or the Commission to provide to the complainant anything other than satisfactory voice-grade services. The complainant does not allege that US West does not provide voice-grade services to him.

A hearing on the formal complaint was held on December 13, 1999, in the Commission Hearing Room and was video-conferenced to North Platte, Nebraska. Both parties were informed of the hearing by a Notice of Public Hearing sent by first-class mail on November 24, 1999. Lawrence Ferguson appeared pro se. Appearing for the defendant was Dan Swett. Appearing for the Commission was Michael T. Loeffler, staff attorney.

Mr. Ferguson testified that he filed the complaint with the Commission in an effort to require US West to upgrade his telephone service so that he would have the ability to access the Internet. He further testified that he lives near what is known as the Anderson Subdivision, which is five miles south of North Platte.

Mr. Ferguson testified that the area is serviced by an analog system which is about 35 years old. The analog system is unusable for the Internet and for certain vertical features such as Caller ID. He further alleged that other persons in a new subdivision near his home have the ability to access the Internet. His complaint is that he must pay the same rates as those persons but that he has inferior telephone service.

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The complainant submitted a petition containing more than thirty signatures of persons living in the area who requested that telephone service be upgraded to improve access to, and use of, the Internet and complaining of discrimination since superior telephone service is provided to newer areas of the subdivision.

In response to questioning by the Commission, Mr. Ferguson noted that he had contacted US West about his problems in accessing the Internet. He testified that the US West representative "more or less laughed" at his complaint and then indicated there was nothing that she could do about his complaint.

Bob Lanphier, Director of Regulatory Affairs for Nebraska Public Policy, testified for US West, stating that US West is required only to provide voice-grade services. He further stated that Commission regulations do not require US West to provide lines capable of providing access to Internet services. US West networks were not originally designed to provide high-speed Internet access. He further testified that, while US West attempts to constantly upgrade the services of their customers, economics preclude a wholesale upgrading of service to all customers. Tariffs filed by US West do not require US West to provide enhanced services, such as Internet access and vertical features, to all customers.

Ed Peters, an employee in US West's interconnection planning group, testified for the defendant. He indicated that he talked to the engineer who handles the North Platte area and was familiar with the equipment and design being used in the geographic area of the complainant. He indicated that he was unaware of any concerns or complaints with the delivery of voice-grade services in the area. He indicated further that, while US West has not conducted a study directly related to upgrading services to the complainant's area, US West has looked at augmenting services in the area with the required laying and moving of cable costing \$400,000.

When US West makes a decision on whether or not to deploy additional services in an area, he testified, two factors are examined. First is the maintenance of quality voice-grade service to the customers; second, in the wake of the Telecommunications Act of 1996, US West looks to see what services it wishes to offer in light of a competitive environment. The examination of these factors includes a look at potential growth and the capacity of the equipment in a certain area.

Mr. Peters indicated that the engineer with whom he spoke, thought the growth pattern in the area might justify additional capacity and that additional facilities could be anticipated in the next year or two.

The Commission received comments from other area residents. Mr. William Hunt testified to his difficulty in obtaining suitable Internet access. He further testified that persons in the area, such as doctors, are growing increasingly reliant on the Internet to obtain information, especially through the use of e-mail. The

inability of residents to obtain high-speed Internet access is adding to their frustrations. Dan Stubert, Frank Lewis and Sherri Stokey, all residents of the area, also complained about their inability to access the Internet using US West's current network.

O P I N I O N A N D F I N D I N G S

From the evidence adduced in the premises, the Commission finds that the complaint of Lawrence Ferguson, Jr. should be dismissed. US West correctly indicates that Commission regulations only require the provisioning of voice-grade telephone service. Further, representations in the tariff filed by US West with the Commission conditions the provisioning of non-regulated services to US West's ability to obtain, retain and maintain suitable facilities. Complainants acknowledge that they have little or no complaint with the voice-grade access supplied by US West. Rather, his concern, and the concern of others filing a petition with his complaint, is that present facilities are inadequate for the residents of the area to routinely access the Internet in a satisfactory manner and the inability of the local residents to access other features offered by US West, such as Caller ID.

The Commission finds that US West is in compliance with its tariff filed with the Commission. While we find that we must dismiss the complainant's petition, it does not mean that we dismiss his, and his neighbors' concerns about the provisioning of enhanced and advanced services in the rural areas of the state.

Representatives from US West testified in the hearing that US West is looking to upgrade facilities in the service area in which the complainant resides and expects to be able to make such upgrades in the next year or two, although we note that US West stopped short of making a firm commitment that Mr. Ferguson and others similarly situated would have access to the services which they desire.

US West has stated that it is actively and continuously looking at the facilities in the area and that they anticipate that the growth in this area will result in the provisioning of the types of services sought by the complainant. Notwithstanding the dismissal of this complaint, the Commission believes that it must be ready to respond to emerging technologies and advances in telecommunications. Accordingly, the Commission will examine what legislative steps it can and should take with regard to regulating the deployment of advanced services. In the meantime, we encourage US West to continue to evaluate the growth in the area and to provide the requested services in the fastest practicable time period possible. We request that US West keep the Commission informed of improvements and developments regarding the provisioning of access to advanced services in the complainant's area.

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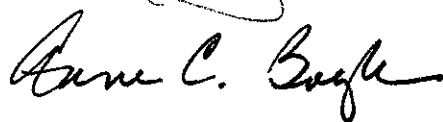
O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Formal Complaint No. 1275 be, and it is hereby, dismissed with prejudice.

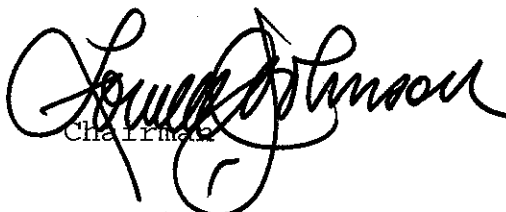
MADE AND ENTERED in Lincoln, Nebraska on this 4th day of January, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

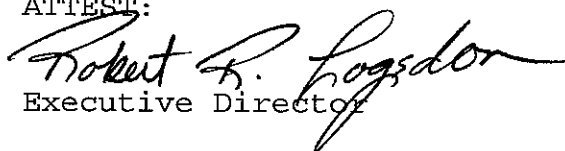
COMMISSIONERS CONCURRING:


Anne C. Bayle

//s//Lowell C. Johnson
//s//Frank E. Landis
//s//Daniel G. Urwiller


Chairman

ATTEST:


Executive Director