

Decision No. C03-0801

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03F-146T

LARRY GORDON,

COMPLAINANT,

V.

ITD COMMUNICATIONS, COLORADO DEPARTMENT OF CORRECTIONS, AND
MCI WORLDCOM COMMUNICATIONS, INC.,

RESPONDENTS.

DECISION DENYING EXCEPTIONS

Mailed Date: July 23, 2003
Adopted Date: July 16, 2003

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of the Motion of Objection to Administrative Law Judges (sic) Dismissing Complaint for Lack of Subject Matter Jurisdiction filed by Complainant Larry Gordon. The motion objects to the Recommended Decision by the Administrative Law Judge (ALJ), Decision No. R03-0667, which dismissed the complaint here for lack of subject matter jurisdiction. We construe the motion as Exceptions to the Recommended Decision pursuant to § 40-6-109(2), C.R.S., and, being duly advised in the matter, deny the Exceptions.

2. Respondents in this case are ITD Communications, the Colorado Department of Corrections, and MCI WorldCom Communications, Inc. As grounds for the complaint against Respondents here, Complainant Gordon alleges that, while incarcerated at the Limon

correctional facility, he was unable to place one or more collect telephone calls to his attorney. The ALJ dismissed the complaint because the Legislature recently deregulated inmate operator services. *See* Senate Bill 03-303 (SB-303). As such, the ALJ concluded, the Commission lacks jurisdiction over the complaint.

3. The Exceptions contend that the Respondents have failed to comply with their rules of penal discipline apparently by not allowing Complainant to call his attorney. Additionally, the Exceptions appear to suggest that the Commission retains jurisdiction over the complaint because the complaint was filed before SB-303 became effective.

4. We deny the Exceptions. To the extent the complaint raises non-regulatory issues relating to the telephone system at the Department of Corrections (*i.e.*, issues unrelated to the rates, terms, and conditions of telephone service), such as Complainant's alleged denial of access to his attorney, Respondents' alleged failure to comply with rules of penal discipline, and the Colorado Consumer Protection Act, the Commission does not possess jurisdiction over those claims (even prior to enactment of SB-303). To the extent the complaint raises claims relating to the operation of the telephone system at the Department of Corrections, SB-303 removes any pre-existing jurisdiction on the part of the Commission over those matters. Even if the complaint was filed prior to enactment of SB-303, the new statute eliminates any Commission authority to issue relief relating to the operation of the telephone system at the Department of Corrections. Therefore, we agree with the Recommended Decision that the Commission lacks subject matter jurisdiction in this case, and that the complaint must be dismissed.

II. ORDER**A. The Commission Orders That:**

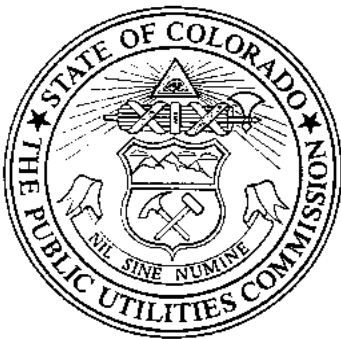
1. The Motion of Objection to Administrative Law Judges (sic) Dismissing Complaint for Lack of Subject Matter Jurisdiction filed by Complainant Larry Gordon is construed as Exceptions under § 40-6-109(2), C.R.S., and the Exceptions are denied.

2. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this Decision.

3. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 16, 2003.**

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners

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