

Decision No. R04-0047

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 03F-497T

---

CHARLES H. JORDAN,

COMPLAINANT,

V.

EL PASO COUNTY TELEPHONE COMPANY,

RESPONDENT.

---

**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
DALE E. ISLEY  
GRANTING MOTION TO DISMISS COMPLAINT**

---

---

Mailed Date: January 14, 2004

Appearances:

Charles H. Jordan, *pro se*, Yoder, Colorado, Complainant; and

Eric T. Butler, Esq., Garlin Driscoll & Murray LLC, Louisville,  
Colorado, for Respondent, El Paso County Telephone Company.

**I. STATEMENT**

1. This proceeding was initiated on November 12, 2003, when Complainant, Charles H. Jordan (Jordan), filed a formal complaint (Complaint) with the Colorado Public Utilities Commission (Commission) against Respondent, El Paso County Telephone Company (EPCTC).

2. On November 14, 2003, the Commission served its Order to Satisfy or Answer along with an Order setting this matter for hearing on January 6, 2004, at 9:00 a.m. in Denver, Colorado.

3. EPCTC filed its Answer to the Complaint on December 2, 2003.

4. On December 22, 2003, EPCTC filed a Motion to Dismiss the Complaint or, in the Alternative, to Compel Rule 72 Compliance and to Continue the Complaint Hearing. That motion was denied on January 2, 2004. *See*, Decision No. R04-0002-I. However, that decision imposed limitations on the witnesses Jordan would be allowed to call and exhibits he would be allowed to offer at the hearing as a result of his failure to comply with Rule 72(a) of the Commission's *Rules of Practice and Procedure*, 4 *Code of Colorado Regulations* (CCR) 723-1-72(a).

5. At the assigned place and time the undersigned administrative law judge (ALJ) called the matter for hearing. During the course of the hearing testimony was submitted by Jordan and two customer service representatives employed by EPCTC, Dianne Weir and Wendy Pritchett. Exhibits A through J were identified, offered, and admitted into evidence.

6. At the conclusion of Jordan's case-in-chief, and again at the conclusion of the hearing, EPCTC moved to dismiss the Complaint on the ground that Jordan had failed to establish how it had violated any law, order, Commission rule, or public utility tariff provision. *See*, § 40-6-108(1)(a), C.R.S., and 4 CCR 723-1-61. The ALJ took the motion to dismiss under advisement and it is now resolved by this recommended decision.

7. In accordance with § 40-6-109, C.R.S., the undersigned now transmits to the Commission the record and exhibits in this proceeding along with a written recommended decision.

## **II. FINDINGS OF FACT**

8. EPCTC is a local exchange carrier providing telecommunications services, including basic local exchange services and access to toll (long distance) services on an intra-LATA and inter-LATA basis, within portions of El Paso, Elbert, Pueblo, and Lincoln Counties, State of Colorado.

9. Jordan became an EPCTC telephone customer sometime in 2000, but his service was discontinued in October 2002. In May 2003, Jordan applied to re-connect his telephone service. The allegations contained in the Complaint relate to a dispute between the parties concerning the specific services offered by EPCTC and/or ordered by Jordan when he arranged for that re-connection.

10. Jordan testified that he met with a female EPCTC representative to arrange for the re-connection. The identity of the representative is unknown to him, but he does not believe her to be Ms. Weir or Ms. Pritchett. He believes the meeting occurred in May 2003, but was unable to specify the date. He initially requested local service only since, on the basis of his prior experience, long distance service was too expensive. However, he testified that the EPCTC representative offered him a long distance calling plan that would allow him to make interstate calls for seven cents per minute and intra-LATA intrastate calls for ten cents per minute (the 7/10 plan). He contends that he ordered the 7/10 plan on the basis of that representation. He

also contends that he ordered caller identification and call waiting services. He stated that he advised the EPCTC representative he wanted the “best deal.”

11. Ms. Weir testified that she was the EPCTC representative who met with Jordan to arrange for the re-connection of his telephone service. According to her, the meeting occurred on May 8, 2003, and lasted approximately 45 minutes. She confirmed that Jordan did not order long distance service at that time because of the expense. She contends that she explained various long distance calling plan options to him but that he did not want to pay the flat monthly fee necessary to qualify for such a plan. As a result, he requested that no carriers be specified for long distance calls and that toll-blocking services (TDN) be implemented. She indicated that he also ordered voice mail services but that he did not order caller identification or call waiting. Ms. Weir’s recollection of this meeting is memorialized in notes maintained by EPCTC relating to Jordan’s account (Exhibit A) and the Service Order prepared by EPCTC implementing the re-connection (Exhibit B).

12. The next contact between Jordan and EPCTC occurred on June 5, 2003, when Jordan called EPCTC to request that TDN be removed so he could make long distance calls. Ms. Weir handled the call. She again explained the carriers available to Jordan under various calling plans and encouraged his enrollment in such a plan in order to secure more favorable long distance rates. She also explained that an additional deposit would be necessary in order to secure long distance service through AT&T Communications of the Mountain States, Inc. (AT&T). Nonetheless, Jordan indicated that he did not want to enroll in a calling plan or specify which long distance carriers he wanted to use. Ms. Weir also testified that Jordan did not order caller identification or call waiting services at this time. Ms. Weir’s recollection of this

conversation is memorialized in Exhibit A and the Service Order prepared by EPCTC in connection with Jordan's request to remove TDN (Exhibit C).

13. Ms. Weir testified that Jordan called her again on June 6, 2003, and requested that Qwest Communications (Qwest) be designated as his carrier for his intra-LATA intrastate calls and that AT&T be designated as his carrier for inter-LATA intrastate calls. Jordan authorized an additional \$50 deposit charge that was necessary to secure the AT&T service. She again explained various calling plans, including those that would reduce per minute rates without the imposition of a monthly fee. Nonetheless, Jordan declined to enroll in a calling plan.<sup>1</sup> Again, Ms. Weir's recollection of this conversation is memorialized in Exhibit A and the Service Order prepared by EPCTC in connection with Jordan's request to add Qwest and AT&T as his long distance carriers (Exhibit D). In addition, page 2 of Exhibit H contains a reference to Jordan's change in long distance carriers from "unassigned" to Qwest and AT&T on June 6, 2003.

14. Between June 6, 2003 and August 16, 2003, Jordan was assessed toll charges for intra-LATA intrastate calls through Qwest at the rate of 15 cents per minute for evening and nighttime calls and at the rate of 25 cents per minute for daytime calls. During this period he was assessed toll charges for inter-LATA intrastate calls through AT&T at the rate of 19 cents per minute. Charges for inter-LATA interstate calls made through AT&T were assessed at the rate of 15 cents per minute. These charges are set forth in Exhibits G, H, and I, copies of EPCTC's monthly billings to Jordan for the period in question. The toll charges set forth therein are itemized by date and, among other things, show the length of the call in minutes and the total charge for each call.

---

<sup>1</sup> Notwithstanding this denial, Ms. Weir enrolled Jordan in a calling plan that did not assess a monthly fee since this would serve to somewhat reduce his long distance rates at no additional cost.

15. On September 15, 2003, Jordan called EPCTC again and, initially, spoke to Ms. Weir. He requested that the carrier he had previously designated for his intra-LATA intrastate calls, Qwest, be changed to AT&T. She does not recall Jordan making a request for caller identification or call waiting services at that time. *See*, Exhibit A.

16. Later that day Jordan and an AT&T representative called EPCTC and spoke to Ms. Pritchett. They requested that Jordan be enrolled in the 7/10 plan.<sup>2</sup> Ms. Pritchett explained that a \$5 charge would be assessed for the change from Qwest to AT&T and that a monthly charge of \$4.95 would be assessed for the 7/10 plan. Even though these changes were not requested until September 15, 2003, Ms. Pritchett indicated that they could be “back-dated” to August 16, 2003, so that the lower charges under the 7/10 plan would be assessed for toll calls made by Jordan subsequent to that time. Ms. Pritchett’s recollection of this conversation is memorialized in Exhibit A and the Service Order prepared by EPCTC in connection with Jordan’s request that his intra-LATA intrastate long distance carrier be changed from Qwest to AT&T (Exhibit E). The “back-dating” agreed to by EPCTC is evidenced by Exhibit F, its request to its data management company to implement the subject changes.

17. Subsequent to August 16, 2003, Jordan was assessed toll charges in accordance with the rates called for by the 7/10 plan. These charges are set forth in Exhibits J and K, copies of EPCTC’s monthly billings to Jordan for the period in question.<sup>3</sup>

---

<sup>2</sup> Under the 7/10 plan, charges for intra-LATA intrastate calls are assessed at the rate of 10 cents per minute, inter-LATA intrastate calls are assessed at the rate of 15 cents per minute, and inter-LATA interstate calls are assessed at the rate of 7 cents per minute.

<sup>3</sup> Exhibit J indicates that Jordan continued to be assessed the higher Qwest rates for intra-LATA intrastate calls between August 19, 2003 and September 14, 2003, notwithstanding EPCTC’s agreement to “back-date” the 7/10 plan. However, Exhibit K establishes that Jordan received a credit for the difference between the Qwest rates and the 7/10 plan rates for this period.

### III. DISCUSSION

18. Section 40-6-108, C.R.S., sets forth the legal standards that apply to formal complaint proceedings against public utilities brought before the Commission. In such proceedings, complainants bear the burden of proving "...the act or thing done or omitted to be done by any public utility, including any rule, regulation, or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission." *See also*, Rules 61 and 82 of the Commission's Rule of Practice and Procedure, 4 CCR 723-1-61 and 4 CCR 723-1-82.

19. In the Complaint, Jordan alleges that EPCTC failed to honor his request that he be enrolled in the 7/10 plan at the time he reconnected his telephone service in May 2003. According to Jordan, that failure effectively doubled the long distance charges he incurred between that time and August 16, 2003, the effective date of Jordan's enrollment in the 7/10 plan. Jordan contends that he should not be liable for these additional charges. He also contends that EPCTC failed to honor his request for caller identification and call waiting services.

20. The credible evidence of record establishes that Jordan has failed to bear the burden of proving the above-described allegations. Jordan's recollection of the agreements reached with EPCTC concerning the reconnection of his telephone service is incomplete. He was unable to specify the date of his May 2003 meeting with EPCTC to discuss the terms under which reconnection was to be made or the identity of the EPCTC representative with whom he met. On the other hand, Ms. Weir has a detailed recollection of the date of the meeting and the agreements and understandings reached with Jordan at that time. Ms. Weir's recollection is supported by the notes she made at or shortly after the meeting. *See*, Exhibits A and B.

21. EPCTC's June 30, 2003, bill to Jordan also confirms Ms. Weir's version of events. *See*, Exhibit G. It covers the period of May 15, 2003 through June 14, 2003, and establishes that no long distance calls were made by Jordan until June 6, 2003, the date Ms. Weir testified that Jordan requested removal of TDN so that such calls could be made. Given the volume and pattern of long distance calls made by Jordan in subsequent periods, it seems likely that had he ordered the 7/10 plan at the May meeting he would have attempted to make long distance calls shortly thereafter and would have contacted EPCTC immediately to complain about his inability to do so.<sup>4</sup> However, Jordan presented no evidence indicating that he took issue with his apparent inability to make long distance calls from the date of the May meeting to June 6, 2003. This provides further support for Ms. Weir's testimony that Jordan requested that no carriers be specified for long distance calls and that TDN be implemented at the time he arranged for the reconnection of his service.

22. Although it is unclear from the Complaint and the testimony presented at the hearing, Jordan may also be contending that EPCTC failed to honor a request to be enrolled in the 7/10 plan when he requested removal of TDN on June 6, 2003. If so, the evidence also fails to support that allegation.

23. The information provided on the EPCTC billings subsequent to that date were sufficient to allow Jordan to determine that he was not being assessed long distance charges in accordance with the rates associated with the 7/10 plan; *i.e.*, by dividing the charge for a

---

<sup>4</sup> Exhibits G through K establish that Jordan made 535 toll calls between June 6, 2003 and September 17, 2003, an average of approximately 5 per day.



particular call by the duration of the call to obtain a per minute charge.<sup>5</sup> Jordan would have first received notice of long distance charges incurred after June 6, 2003, on about July 1, 2003, the approximate date he would have received EPCTC's billing for the May 15, 2003 through June 14, 2003, period. *See*, Exhibit G. However, the evidence fails to establish any effort on Jordan's part to correct this oversight until September 15, 2003, a period of approximately 2.5 months after the time he received notice of the long distance rates that were being accessed for calls made after June 6, 2003. This provides further support for Ms. Weir's testimony that Jordan declined to enroll in a calling plan on June 6, 2003.

24. Jordan generally complains that he was unable to make an informed choice of the calling plans and associated long distance charges available to him since EPCTC failed to provide a written explanation of such plans/charges. However, while 4 CCR 723-2-10.1.6 obligates EPCTC to provide information and assistance necessary to enable customers to choose from the lowest cost jurisdictional service or other alternatives it provides which conform to the customer's stated needs, such information need not be provided in written form. *See*, 4 CCR 723-2-10.1.6 (This information **may include** printed explanations of alternate service and rates). Accordingly, the oral advisements provided to Jordan by Ms. Weir and Ms. Pritchett were sufficient to comply with this obligation.

25. In addition, the evidence establishes that EPCTC complied with applicable Commission regulations requiring it to obtain Jordan's authorization prior to implementing the

---

<sup>5</sup> In this regard, EPCTC's bills comply with 4 CCR 723-2-10.1.2(e) which requires that bills include an itemization of all toll calls charged to the account including, but not limited to, the date and time of the call, the length of the call in minutes, the destination of the call, or point of origin for collect and third party calls, and the rate period applicable.

long distance carrier additions or changes he requested on June 6, 2003 and September 15, 2003. *See*, 4 CCR 723-2-25.2.1.

#### **IV. CONCLUSIONS**

26. Jordan has failed to bear the burden of proving how EPCTC has violated any law, order, Commission rule, or public utility tariff provision with regard to either the allegations set forth in the Complaint or those presented at the hearing of this matter. Therefore, the captioned complaint proceeding must be dismissed.

#### **V. ORDER**

##### **A. The Commission Orders That:**

1. Docket No. 03F-497T, being a formal complaint by Charles H. Jordan against El Paso County Telephone Company, is dismissed.

2. Docket No. 03F-497T is closed.

3. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

5. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

---

Administrative Law Judge