

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

US West Communications, Inc., ) Formal Complaint No. 1266  
                                  ) )  
                                  ) Complainant, )  
                                  ) )  
v. ) DISMISSED  
                                  ) )  
ICG Communications, Inc., & )  
Netcom On-Line Communications )  
Inc., )  
                                  ) )  
                                  ) Defendant. ) Entered: September 21, 1999

BY THE COMMISSION:

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

On April 14, 1999, US West Communications, Inc. (US West) of Denver, Colorado, filed a formal complaint against ICG Communications, Inc. (ICG) of Englewood, Colorado, and NetCom On-Line Communications, Inc. (NetCom) of Atlanta, Georgia (collectively, Defendants), requesting a declaratory ruling that US West's access service catalog applies to ICG's intrastate interexchange services.

On September 8, 1999, ICG filed a motion to dismiss the formal complaint. ICG argues that Rule 019.05 of the Rules of Commission Procedure, Title 291, Chapter 1, requires the Commission to resolve the questions presented in the complaint in a separate investigative proceeding. Rule 019.05 states:

If a petition for declaratory ruling presents a question of statewide commercial importance or such is noted during or after hearing on the petition, the Commission shall not issue a declaratory ruling but will resolve such question in an investigative proceeding.

The complaint filed by US West clearly falls within the language of Rule 019.05. US West's complaint expressly requests that the Commission issue a declaratory ruling. Furthermore, the Commission has deemed that issues involving the regulatory treatment of Internet service providers, such as the issues presented in this complaint, are of such statewide importance as to compel the creation of Docket No. C-1960 to answer those questions. Therefore, the Commission finds that ICG's motion to dismiss this complaint should be granted and all substantive issues raised in the complaint should be transferred for consideration within Docket No. C-1960.

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O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Formal Complaint No. 1266 be, and it is hereby, dismissed.

IT IS FURTHER ORDERED that the substantive issues presented in this complaint be, and they are hereby, transferred for consideration within Docket No. C-1960.

MADE AND ENTERED at Lincoln, Nebraska, this 21st day of September, 1999.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

  
Chairman

ATTEST:

  
Executive Director

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