

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE COMPLAINT FILED)	ORDER FINDING NO
BY PHILIP AND DARLENE BESTGEN,)	PROBABLE CAUSE,
WHITEWOOD, SOUTH DAKOTA, AGAINST U S)	DISMISSING COMPLAINT
WEST COMMUNICATIONS, INC. REGARDING)	AND CLOSING DOCKET
LACK OF EASEMENT FOR FACILITY)	
PROPERTY)	CT99-007

On June 11, 1999, the Public Utilities Commission (Commission) received a complaint from Philip and Darlene Bestgen (Complainants), Whitewood, South Dakota, against U S WEST Communications, Inc. (U S WEST) regarding lack of easement for facility property. The Complainants claim that U S WEST buried a cable on their property without an easement. They further claim that when U S WEST was informed of the issue, U S WEST signed a contract to remove the cable by November 29, 1998, and paid \$1600 for indemnification. The cable has not yet been removed. The Complainants seek the following relief: "We ask that U S WEST pay the same daily indemnification from Nov. 29, 1998, to the date of removal as they did from Aug. 29, 1998, to Nov. 29, 1998. We ask that this money be made payable to South Dakota schools of our choice and for the matter to be addressed as personal private property rights as the Constitution intended."

On July 13, 1999, at its regularly scheduled meeting, the Commission considered this matter. Both U S WEST and Complainants appeared.

The Commission finds that it has jurisdiction over this matter pursuant to 49-13-1, 49-13-4, 49-13-13, 49-31-3, 49-31-4, 49-31-7.1, and ARSD 20:10:01:08.01 and 20:10:01:09.

The Commission voted 2-1 to find no probable cause of an unlawful or unreasonable act, rate, practice, or omission on the part of U S WEST and to dismiss the complaint and close the docket. Commissioner Nelson dissented. As the Commission's final decision in this matter, it is therefore

ORDERED that the complaint is dismissed and docket CT99-007 is hereby closed.

Dated at Pierre, South Dakota, this 16th day of July, 1999.

<p>CERTIFICATE OF SERVICE</p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>By: <u><i>Delaine Kalbo</i></u></p> <p>Date: <u>7/16/99</u></p> <p align="center">(OFFICIAL SEAL)</p>

BY ORDER OF THE COMMISSION:

James A. Burg
 JAMES A. BURG, Chairman

PAM NELSON, Commissioner, dissenting

Laska Schoenfelder
 LASKA SCHOENFELDER, Commissioner

July 14, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT
FILED BY PHILIP AND DARLENE BESTGEN,
WHITEWOOD, SOUTH DAKOTA,
AGAINST U S WEST COMMUNICATIONS, INC.
REGARDING LACK OF EASEMENT FOR FACILITY PROPERTY

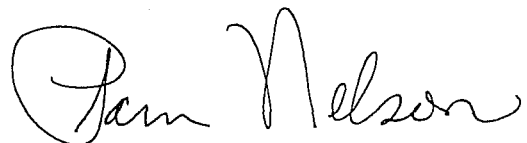
DOCKET CT99-007
DISSENT OF COMMISSIONER NELSON

At our July 13, 1999, Commission meeting the above-named docket was on the agenda. The action considered by this Commission was whether there was probable cause of an unlawful or unreasonable practice or omission. The majority found no probable cause existed. I cannot agree.

U S WEST clearly admitted that it trespassed on the Bestgen's property. A trench was dug. Cable was laid in the trench. U S WEST was informed by Mr. Bestgen, prior to the work being done, that they had no easement or permission. U S WEST then made no attempt to either corroborate Mr. Bestgen's statement or find clear evidence otherwise.

It is not disputed that U S WEST was in error. It is not disputed that the Bestgen's suffered from U S WEST's error. A finding of probable cause is not a ruling on the facts. It is a threshold finding based upon a brief dialectic among the prospective parties and the Commission. The threshold for a finding of probable cause was certainly met. U S WEST clearly admitted errors.

At times our responsibilities in complaint proceedings go beyond the dispute between the parties to the complaint. It is our duty to insist that jurisdictional utilities operate in a lawful and reasonable manner. Complaint proceedings provide a forum for review of utility practices, and if so warranted, directives from this Commission to improve those practices. I don't know how we expect to fulfill our responsibilities when we cannot find probable cause even though the serving utility admitted error, and in my view admitted to engaging in sloppy business practices.

A handwritten signature in cursive script that reads "Pam Nelson". The signature is written in black ink and is located at the bottom right of the page.