

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

IN THE MATTER OF THE COMPLAINT FILED)	FINAL ORDER AND
BY ERNST HAMANN FOR EVELYN WEAVER,)	DECISION; NOTICE OF
PIERRE, SOUTH DAKOTA, AGAINST)	ENTRY OF ORDER
WESTERN TELECOM REGARDING)	
UNAUTHORIZED BILLING FOR SERVICES)	CT99-024

On August 5, 1999, the Public Utilities Commission (Commission) received a complaint filed by Ernst Hamann for Evelyn Weaver, Pierre, South Dakota, against Western Telecom (Western). Mr. Hamann alleges that he was billed for unauthorized service.

Pursuant to ARSD 20:10:01:08.01 and 20:10:01:09, if a complaint cannot be settled without formal action, the Commission shall determine if the complaint shows probable cause of an unlawful or unreasonable act, rate, practice or omission to go forward with the complaint.

On August 17, 1999, the Commission considered this matter and found there was probable cause of an unlawful or unreasonable act, rate, practice or omission, and ordered that the complaint be forwarded to Western for an answer to be filed within twenty (20) days of service of the order. The order was dated August 26, 1999.

A hearing was held on September 23, 1999, beginning at 8:30 o'clock A.M., in Room 412 of the State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota. No representatives of Western Telecom appeared at the hearing. At the conclusion of the hearing, the Commission took the matter under advisement.

At its November 1, 1999, meeting, the Commission unanimously voted to find that Western Telecom billed Mr. Hamann for unauthorized services in violation of SDCL 49-31-89. Pursuant to SDCL 49-31-93, the Commission ordered Western Telecom to pay to Mr. Hamann \$1000.00 and to absolve him of any charges billed by Western Telecom. In addition, Western Telecom was ordered to pay to Mr. Hamann \$153.00 to compensate him for time spent attempting to resolve the unauthorized billing.

Based on the evidence and testimony received at the hearing, the Commission makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On August 5, 1999, the Commission received a complaint filed by Ernst Hamann for Evelyn Weaver, Pierre, South Dakota, against Western. Mr. Hamann alleges that he was billed for unauthorized service.

2. Mr. Hamann testified that he moved into Evelyn Weaver's apartment and left the telephone in her name. Tr. at 8-9. Evelyn Weaver was the Complainant's mother who died in April of 1998. Tr. at 8.

3. Mr. Hamann testified that he received a call from Western and Western stated that it was affiliated with U S WEST Communications, Inc. (U S WEST). Tr. at 5. Mr. Hamann stated that he only authorized Western to send him information; he did not authorize any services. Tr. at 11.

4. On Mr. Hamann's May 25, 1999, U S WEST telephone bill, Western charged him \$39.99. Exhibit 6. That charge was removed from next month's U S WEST bill but Mr. Hamann subsequently received a separate bill that had both Western's name and the name of TouchTone Communications. Exhibit 5. Mr. Hamann received another bill from Western dated July 11, 1999. Exhibit 1. That bill stated that TouchTone had been purchased by Western and that the logo would change to reflect that purchase. *Id.*

5. In a written letter dated August 23, 1999, Western stated that its service was sold to an unauthorized person and that Western accepted full responsibility and would issue a full credit. Exhibit 2. No representatives of Western appeared at the hearing. Tr. at 4.

6. At the hearing, Mr. Hamann requested \$153.00 for travel to get help to figure out the charges and time involved trying to resolve the issue. Exhibit 3. The \$153.00 was based on 18 hours spent trying to resolve the matter multiplied by \$8.50 per hour. *Id.* He also requested \$500.00 to compensate him for frustration in trying to resolve the matter and \$6.00 in late charges billed by U S WEST. *Id.*

7. The Commission's Order Finding Probable Cause and Notice requiring Answer was sent to Western Telecom on August 30, 1999 at 4955 West Napoleon Ave., Suite 294, Metairie, Louisiana 70001. Tr. at 25-26; Exhibit 7. This was the address listed on the letter from Western. Exhibit 2. The order was not returned to the Commission as being undeliverable. Tr. at 26.

8. On September 10, 1999, the Commission's Order for and Notice of Hearing was sent to Western at the same Louisiana address. Tr. at 27; Exhibit 8. The order was not returned to the Commission as being undeliverable. Tr. at 27-28.

9. The Commission finds that Western charged Mr. Hamann for unauthorized services pursuant to the bills listed under the name of Evelyn Weaver. The Commission finds that the evidence shows that Mr. Hamann did not request any services from Western. Tr. at 5, 11. The Commission finds that Mr. Hamann is not responsible for any of the Western charges listed on the bills.

10. The Commission further finds that Mr. Hamann is entitled to \$153.00 from Western to compensate him for time and travel expended in attempting to resolve this matter.

11. The Commission finds that the request for reimbursement for \$6.00 in late charges billed by U S WEST will be denied because, based on the bills presented at the hearing, the late charges did not total \$6.00 and the late charges that were imposed were not just for failure to pay charges billed by Western but were also for authorized charges billed by U S WEST that were not paid on time. Exhibits 5 and 6.

12. The Commission finds that the request for \$500.00 for frustration in trying to resolve this matter was not sufficiently supported by the evidence. Further, it appears that the amount was based in part on the same rationale used to justify the \$153.00, that is, the time spent trying to resolve the billing dispute. Tr. at 10.

13. The Commission finds that Western has billed for unauthorized services and therefore, is required to pay to Mr. Hamann \$1000.00 as provided by SDCL 49-31-93.

CONCLUSIONS OF LAW

1. The Commission finds that it has jurisdiction over this matter pursuant to SDCL 49-13-1, 49-13-4, 49-13-13, 49-13-14.1, 49-31-3, 49-31-7, 49-31-7.1, 49-31-11, 49-31-89 through 49-31-96, inclusive, and ARSD 20:10:01:08.01 and 20:10:01:09.

2. Pursuant to SDCL 49-31-93, the Commission finds that Western charged Mr. Hamann for unauthorized services pursuant to the bills listed under the name of Evelyn Weaver. The Commission finds that Mr. Hamann is not responsible for any of the charges imposed by Western.

3. Pursuant to SDCL 49-13-14, the Commission further finds that Mr. Hamann is entitled to \$153.00 in damages from Western to compensate him for time and travel expended in attempting to resolve this matter.

4. The Commission finds that the request for reimbursement for \$6.00 in late charges billed by U S WEST will be denied because, based on the bills presented at the hearing, the late charges did not total \$6.00 and the late charges that were imposed were not just for failure to pay charges billed by Western but were also for authorized charges billed by U S WEST that were not paid on time. Exhibits 5 and 6.

5. The Commission finds that the request for \$500.00 for frustration in trying to resolve this matter was not sufficiently supported by the evidence.

6. Pursuant to SDCL 49-31-93, the Commission finds that Western has billed for unauthorized services and, therefore, is required to pay to Mr. Hamann \$1000.00.

It is therefore

ORDERED, that Western shall pay to Mr. Hamann the amounts listed above and shall absolve Mr. Hamann of all charges imposed by Western.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 15th day of November, 1999. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 15th day of November, 1999.

CERTIFICATE OF SERVICE	
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.	
By:	<u><i>Alvin Keels</i></u>
Date:	<u>11/16/99</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner