

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

IN THE MATTER OF THE COMPLAINT FILED)	FINDINGS OF FACT AND
BY CURT AND JODY DEWITT ON BEHALF OF)	CONCLUSIONS OF LAW;
DEWITT HOMES, BRANDON, SOUTH)	NOTICE OF ENTRY OF
DAKOTA, AGAINST SPRINT)	ORDER
COMMUNICATIONS COMPANY L.P.)	
REGARDING UNAUTHORIZED SWITCHING OF)	CT00-088
SERVICES)	

On July 19, 2000, the Public Utilities Commission (Commission) received a complaint filed by Curt and Jody DeWitt on behalf of DeWitt Homes, Brandon, South Dakota (Complainants), against Sprint Communications Company L.P. (Sprint) regarding unauthorized switching of services.

On July 19, 2000, the complaint was faxed to Sprint. Pursuant to ARSD 20:10:01:09, Sprint was notified that it must satisfy the complaint or file an answer in writing with the Commission by August 8, 2000. The Commission received an answer from Sprint on August 9, 2000.

A hearing was held on September 26, 2000, beginning at 1:30 P.M., in Room 412 of the State Capitol Building, 500 E. Capitol, Pierre, South Dakota. The issue at the hearing was whether Sprint committed an unlawful or unreasonable act, rate, practice or omission and, if so, what relief would be appropriate.

At the close of the hearing, the Commission voted unanimously to order Sprint to pay the Complainants \$1,000.00 and to pay the Complainants' travel expenses of \$238.50.

Based on the evidence of record, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On July 19, 2000, the Commission received a complaint filed by Curt and Jody DeWitt on behalf of DeWitt Homes, Brandon, South Dakota (Complainants), against Sprint regarding unauthorized switching of services.
2. On July 19, 2000, the complaint was faxed to Sprint. Pursuant to ARSD 20:10:01:09, Sprint was notified that it must satisfy the complaint or file an answer in writing with the Commission by August 8, 2000. The Commission received an answer from Sprint on August 9, 2000.
3. Mr. DeWitt testified that his long distance carrier for his business telephone line was switched to Sprint without his authorization. Tr. at 6-7. Ms. DeWitt testified that she

received several telephone calls from a marketer attempting to convince her to change their telecommunications provider. Tr. at 23. She never authorized a change. Tr. at 24. She stated that her date of birth is February 17, 1961. Tr. at 24.

4. Mr. DeWitt requested reimbursement of \$238.50 for their expenses incurred to attend the hearing. Tr. at 8; Exhibit 1. He also requested \$3,000.00 to \$5,000.00 for his time spent away from his business for the day of the hearing and four hours at \$120.00 per hour for Ms. DeWitt's time spent dealing with this complaint. Id.; Tr. at 24. Mr. DeWitt further requested lost employee wages of \$180.00 to compensate for his employees not working at full efficiency when he was not there to supervise. Exhibit 1; Tr. at 9.

5. Sprint did not present any witnesses at the hearing. Sprint played a tape of what it claimed was a third party verification tape of Ms. DeWitt authorizing the switching of the DeWitt's business telephone line to Sprint. Tr. at 32; Exhibit A. On the tape, a woman identified herself as Jennifer DeWitt and gave her birth date as November 3. Exhibit A.

6. The Commission finds that the voice on the tape did not sound like Ms. DeWitt's voice and the woman on the tape gave the wrong name and birth date. The Commission further finds Ms. DeWitt's testimony to be credible that she did not authorize the change. The Commission finds that the Complainants did not authorize Sprint as their long distance carrier for their business, DeWitt Homes.

7. The Commission finds that Sprint changed the Complainants' telecommunications carrier for their business without their authorization. The Commission finds Sprint committed unlawful acts. The Commission finds that Sprint shall pay the Complainants \$1000.00 as prescribed by SDCL 49-31-93. The Commission further finds that the Complainants incurred expenses of \$238.50 to attend the hearing and these expenses shall be reimbursed by Sprint. Sprint did not object to the awarding of these expenses. The Commission finds the other damages as requested by the DeWitt's to be too speculative to be awarded.

CONCLUSIONS OF LAW

1. The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-13, including 49-13-1 through 49-13-14, inclusive, and SDCL Chapter 49-31, including 49-31-3, 49-31-7, 49-31-7.1, 49-31-7.2, 49-31-7.3, 49-31-7.4, 49-31-10, 49-31-11, 49-31-38, 49-31-38.1, 49-31-38.2, 49-31-38.3, 49-31-89 through 49-31-97, inclusive, and ARSD Chapters 20:10:01 and 20:10:34.

2. SDCL 49-31-93 provides as follows:

A subscriber is not liable for any charges imposed by a telecommunications company that initiates a telecommunications carrier change without

or services. In addition, the telecommunications company that initiates the unauthorized change or the billing of unauthorized products or services shall pay to the subscriber one thousand dollars.

3. The Commission finds Sprint initiated a telecommunications carrier change without authorization from the Complainants. The Commission finds that Sprint shall pay the Complainants the \$1000.00 as prescribed by SDCL 49-31-93. The Commission finds the Complainants incurred expenses of \$238.50 to attend the hearing. The Commission finds that these expenses shall also be paid by Sprint to the Complainants.

It is therefore

ORDERED, that Sprint shall pay the Complainants the \$1000.00 as prescribed by SDCL 49-31-93; and it is

FURTHER ORDERED, that Sprint shall pay the Complainants \$238.50 for expenses incurred in attending the hearing.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 16th day of October, 2000. 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 16th day of October, 2000.

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>Debra Kolbo</u>
Date:	<u>10/17/00</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