

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

IN THE MATTER OF THE COMPLAINT FILED)	ORDER CONTINUING
BY ROBERT A. FOGG, JR., MARTIN, SOUTH)	HEARING
DAKOTA, AGAINST CELLULARONE)	
REGARDING BILLING)	CT02-032

On August 8, 2002, the Public Utilities Commission (Commission) received a complaint filed by Robert A. Fogg, Jr., Martin, South Dakota (Complainant), against Western Wireless Corporation d/b/a CellularOne (CellularOne) regarding billing. On August 12, 2002, the complaint was faxed to CellularOne. Pursuant to ARSD 20:10:01:09, CellularOne was notified that it must satisfy the complaint or file an answer in writing with the Commission by September 3, 2002. On September 3, 2002, the Commission received a Response from CellularOne.

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, 49-31-11, 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.

On October 25, 2002, the Commission issued an Order for and Notice of Hearing setting this matter for hearing on November 7, 2002, at 12:00 P.M. MST in the Court Room, Bennett County Courthouse, Martin, South Dakota. On October 31, 2002, CellularOne filed a Motion for Summary Judgment Pursuant to SDCL 1-26-18 (Motion) asserting that there exists no genuine issue of material fact with respect to the issues raised by the Complaint and requesting judgment as a matter of law.

In order to provide the parties an opportunity to respond to the Motion and to have the Motion considered prior to hearing, the Commission deems it appropriate to continue the hearing scheduled for November 7, 2002, until a date, time and place to be established following the Commission's consideration and disposition of the Motion. It is therefore

ORDERED, that the hearing scheduled for November 7, 2002, in Martin, South Dakota, is continued until a date, time and place to be established following the Commission's consideration and disposition of the Motion; and it is further

ORDERED, that CellularOne's Motion for Summary Judgment Pursuant to SDCL 1-26-18 shall be heard and considered by the Commission at its regular meeting scheduled for November 20, 2002, at 10:00 A.M. in Room 464, State Capitol Building, Pierre, South Dakota, at which time and place the parties may appear either in person or by tele-conference and present their facts and argument for or against the Motion; and it is further

ORDERED, that Complainant and Staff shall file any written affidavits, statements or arguments in opposition to the Motion on or before November 15, 2002.

Dated at Pierre, South Dakota, this 4th day of November, 2002.

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>Alvino Kolbo</u>
Date: <u>11/4/02</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Robert K. Sahr
ROBERT K. SAHR, Commissioner