

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT FILED BY RAYMOND) AND GENENE SAND D/B/A SAND CONSTRUCTION, DALLAS,) SD AGAINST U S WEST COMMUNICATIONS, INC. REGARDING) TELEPHONE LINE LOCATION)	FINAL ORDER AND) DECISION; NOTICE) OF ENTRY OF) ORDER) TC97-142)))
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On August 8, 1997, Raymond & Genene Sand d/b/a Sand Construction filed a complaint with the Public Utilities Commission (Commission) against U S WEST Communications, Inc. (U S WEST) regarding a telephone line location. "Our complaint is in reference to telephone line location and moving line for Project AIP 3-46-0048-21 Rapid City Regional Airport County Road Relocation, County Road C232, and Construct Runway 14 Safety Area, Pennington County. Bid date for this project was May 9, 1997. At that time or before, the affected utilities were aware that utility relocation would be necessary. A pre-construction meeting was held on May 30, 1997. U S WEST representative Dennis Serfling was present. Raymond Sand stated that he would like to begin the project as soon as possible--at least by June 9th. Dennis Serfling said U S WEST was waiting for cable to arrive for the fiber optic line move and that expected arrival was June 3, 1997, after which they would proceed to install it. Sand Construction notified One Call Notification shortly after the meeting as a precautionary measure. We were issued ticket #23361. The project owners' project paperwork was not completed as rapidly as expected; therefore, Sand Construction didn't begin work until June 16, 1997. The telephone line relocation work in the county road work area was not completed, we had no choice but to try to work around it...We submit that Sand Construction has suffered losses due to the delay in utility relocation by U S WEST. We request recovery of these losses from U S WEST."

At its regularly scheduled September 9, 1997, meeting, the Commission found probable cause of an unlawful or unreasonable act, rate, practice or omission and served the complaint on U S WEST. U S WEST filed its response on October 7, 1997.

By order dated November 7, 1997, the hearing was set for 1:30 P.M., November 18, 1997, in Room 464, State Capitol, Pierre, South Dakota. The hearing was held as scheduled. The issues at the hearing were as follows: (1) whether U S WEST's actions in relocating the utility line were unlawful or unreasonable acts, rates, practices, or omissions; and (2) whether such actions caused the Sands to suffer damages.

At its December 18, 1997, meeting, the Commission unanimously voted to find that U S WEST had not committed an unlawful or unreasonable act.

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

FINDINGS OF FACT

I

On August 8, 1997, Raymond & Gene Sand d/b/a Sand Construction filed a complaint with the Commission against U S WEST regarding a telephone cable relocation. Exhibit 1. Sand Construction was awarded the bid to move a county road and to extend a runway at the Rapid City Regional Airport. Tr. at 13. Mr. Sand contended that U S WEST breached an oral agreement by not installing fiber cable quickly enough after U S WEST had received the cable. Tr. at 40.

II

The completion date on the contract was September 30, 1997. Tr. at 37. The project was completed by September 10, 1997. Tr. at 51. During the project, Sand Construction did not have any other projects. Tr. at 38.

III

The Notice to Proceed stated that Sand Construction could commence work on or before June 20, 1997. Exhibit 15. Work was commenced on June 16, 1997. Tr. at 20.

IV

In order to complete the project, U S WEST had to move a 25-pair cable and a fiber cable. Tr. at 115-116. U S WEST became aware of the project around May 1, 1997. Tr. at 116-117. A project to relocate the existing cable was issued by U S WEST on May 13, 1997. Tr. at 117.

V

A pre-construction meeting was held on May 30, 1997. Tr. at 118-119; Exhibit 7. Dennis Serfling, design engineer for U S WEST, and Mr. Sand were present at the meeting. Tr. at 119. At the meeting, Mr. Serfling stated that the fiber optic cable was tentatively scheduled to be shipped by June 3, 1997. Tr. at 121. He also stated that the fiber cable would probably not be in place by June 16, 1997, which was the anticipated construction start date. Tr. at 119-121.

VI

The cable actually arrived on June 10, 1997, and installation was complete on June 26, 1997. Tr. at 123. The 25-pair cable was relocated by June 16, 1997. Tr. at 122-123.

VII

Steve Wegman, analyst for the Commission, testified that the placement of the fiber cable was a "fast-track job" and that he was "amazed they got it done as fast as they did." Tr. at 110-111. Generally, a three week period is allowed for cut-over of a fiber cable. Tr. at 123.

VIII

Although there was a question of whether the entire cable was marked or located (Tr. at 108), Mr. Serfling, who was the contact person for U S WEST, stated that he never heard from Mr. Sand that there

was a problem with cable location. Tr. at 130. In addition, when Mr. Sand was asked if he wanted the cable hand-located, he said no. Tr. at 106.

IX

U S WEST received the cable on June 10, 1997, and completed the relocation by June 26, 1997. The Commission finds that this is a reasonable amount of time for a cable relocation. The Commission further finds that U S WEST did not promise that the relocation would be completed by June 16, 1997, and, in fact, had told Mr. Sand that the fiber cable would probably not be relocated by June 16, 1997. Therefore, U S WEST did not commit an unlawful or unreasonable act in relocating the cables.

CONCLUSIONS OF LAW

I

The Commission has jurisdiction over this matter pursuant to SDCL 1-26-18, 1-26- 19, 49-13-1, 49-13-1.1, 49-13-4, 49-13-13, 49-13-14, 49-31-3, 49-31-7, and 49-31-7.1, and ARSD 20:10:01:07.01 through 20:10:01:15.01 and 20:10:01:22.02. Further, the relocation of cable is a noncompetitive service covered under U S WEST's Exchange and Network Services Tariff, Section 4, Page 1, Release 1.

II

Based on the evidence of record, the Commission concludes that U S WEST did not commit an unlawful or unreasonable act in the relocation of cables for the Rapid City Regional Airport construction project.

It is therefore

ORDERED, that the Commission finds that U S WEST did not commit an unlawful or unreasonable act concerning the relocation of cable for the Rapid City Regional Airport construction project.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 21st day of January, 1998. 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 21st day of January, 1998.

CERTIFICATE OF SERVICE

BY ORDER OF THE COMMISSION:

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.

JAMES A. BURG, Chairman

By: _____

PAM NELSON, Commissioner

Date: _____

(OFFICIAL SEAL)

LASKA SCHOENFELDER,
Commissioner