

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

IN THE MATTER OF THE COMPLAINT FILED)	FINDINGS OF FACT AND
BY BARRY AND DAWN AUSTIN, WHITE OWL,)	CONCLUSIONS OF LAW;
SOUTH DAKOTA, AGAINST GOLDEN WEST)	NOTICE OF ENTRY OF
TELECOMMUNICATIONS COOPERATIVE, INC.)	ORDER
REGARDING DISCRIMINATORY)	
INSTALLATION FEES)	TC98-179

On September 23, 1998, the Public Utilities Commission (Commission) received a complaint filed by Barry and Dawn Austin, White Owl, South Dakota, against Golden West Telecommunications Cooperative, Inc. (Golden West). The complaint alleges that Golden West discriminates against mobile home owners in its line extension policy. The Austins request that Golden West make an exception to its policy and review each case on an individual basis or abolish the policy entirely.

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 October 15, 1998, at a duly noticed meeting, Ms. Austin explained her complaint to the Commission. Golden West stated its position for having the policy. Commission Staff recommended a finding of probable cause. The Commission voted unanimously to find probable cause and served the complaint on Golden West. Golden West filed its answer on November 16, 1998. In its answer, Golden West asked that the matter be dismissed without a formal hearing.

At its December 30, 1998, meeting, the Commission considered whether to dismiss this matter. After listening to the arguments of the parties the Commission unanimously denied the request for dismissal. The hearing was set for January 12, 1999, beginning at 10:00 o'clock A.M., in the Pierre Community Room, Chamber of Commerce Building, 800 West Dakota, Pierre, South Dakota. The issue at the hearing was whether Golden West committed an unlawful or unreasonable act, rate, practice, or omission and, if so, what relief would be appropriate. The hearing was held as scheduled. At the end of the hearing the Commission took the matter under advisement.

At its March 9, 1999, meeting, the Commission considered this matter. The Commission found that Golden West had not committed an unlawful or unreasonable act, rate, practice, or omission (Commissioner Schoenfelder dissenting).

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

FINDINGS OF FACT

1. On September 23, 1998, the Commission received a complaint filed by Barry and Dawn Austin, White Owl, South Dakota, against Golden West. The complaint alleges that Golden West discriminates against mobile home owners in its line extension policy. The Austins requested that Golden West make an exception to its policy and review each case on an individual basis or abolish the policy entirely.
2. The Austins moved a mobile home onto land owned by Barry Austin's parents in October of 1997. Tr. at 6. Their mobile home does not have a permanent foundation. Id. They have a cellular phone but it is unreliable. Tr. at 8.
3. Golden West adopted a policy for line extensions that provides that homes without a permanent foundation pay a deposit of 20 cents per foot for line extensions that exceed 750 feet. Exhibit 3. All deposits are held for one year after service connection and then a \$10.00 credit is applied monthly until the deposit is reimbursed. Id.
4. For homes with a permanent foundation the customer is required to pay a deposit of 10 cents per foot for line extension that exceed 1 3/10 miles but not over 4 miles. Id. All deposits are held for one year after service connection and then a \$15.00 credit is applied monthly until the deposit is reimbursed. Id.
5. Based on this policy, Golden West would charge the Austins a deposit of \$1,054.00. Exhibit 11; Tr. at 55. This amount was based on a distance of 5,270 feet. Exhibit 11. The total cost to extend the line 5,270 feet was estimated at \$3,530.90. Tr. at 63.
6. If Golden West were to follow Rural Utility Service policies, the Austins would have to pay \$2,938.10, none of which would be refunded. Tr. at 56. The Rural Utility Service policy is based on the total cost of the project minus seven years of local service. Id.
7. The reasons for treating homes with permanent foundations differently than those without permanent foundations is because homes without permanent foundations can be easily moved. Tr. at 64. In addition, a permanent foundation implies that the customer will be there for a number of years. Id.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26, 49-2, 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, 49-31-10, 49-31-11, 49-31-38, 49-31-38.1, 49-31-38.2, 49-31-38.3, 49-31-60 through 49-31-68, inclusive, and ARSD 20:10:01:07.01 through 20:10:01:28, inclusive. The Commission may rely upon any or all of these or other laws of this state in making its determination.
2. Pursuant to SDCL 49-31-11, "[n]o person or telecommunications company may unjustly or unreasonably discriminate between persons in providing telecommunications services

or in the rate or price charged for those services."

3. The Commission finds that Golden West's policy is not unreasonably or unjustly discriminatory. The Commission finds that since homes without permanent foundations may be easily moved, the policy concerning deposits which treats homes without permanent foundations differently than homes with permanent foundation is not unreasonably or unjustly discriminatory. The Commission also notes that the deposit will be refunded over a period of time if the customer remains at the site and that the amount of the deposit is considerably less than the actual cost.

It is therefore

ORDERED, that the Commission finds Golden West has not committed an unlawful or unreasonable act, rate, practice, or omission and, therefore, the Austins request for relief is denied.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 18th day of March, 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 18th day of March, 1999.

<p style="text-align: center;">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: _____</p> <p>Date: _____</p> <p style="text-align: center;">(OFFICIAL SEAL)</p>

BY ORDER OF THE COMMISSION:

JAMES A. BURG, Chairman

PAM NELSON, Commissioner

LASKA SCHOENFELDER, Commissioner
dissenting

Dissent by Commissioner Schoenfelder

I dissent from the majority decision in this docket.

I find that Golden West's policy statement No. 30-15 is clearly discriminatory. Cooperative telephone companies have a special mission, which is to bring affordable telephone service to rural areas. In order to accomplish this mission they are given access to tax supported low interest loans. They also receive Universal Service support for high cost companies. These subsidies are paid for by consumers everywhere in the country so that rural residents can be connected and stay connected to the telephone network.

The policy clearly discriminates against people who live in manufactured housing or trailer houses without a foundation. This includes people who cannot afford a mobile home that is specially constructed to be placed on a foundation or someone who already owns a mobile home that cannot be placed on a foundation. Under this policy, these people are forced to make an additional investment to make the home comply with the cooperative's policy, pay a substantial amount to construct a line to their home, or go without telephone service. South Dakota has many farmers and ranchers who cannot afford to build houses for all family members or employees involved in the operation. Young farmers and ranchers also find it more affordable to live in a mobile home so that they have more income to invest in the operation. Many residents of Indian reservations also may have problems affording telephone service under this policy. It seems to me that this policy denies affordable communications services to those that need them the most. Golden West's witness testified that the cooperative wants to serve people, not prevent them from getting service. However, it would seem that this policy would do just that.

Another way the policy discriminates against people who reside in mobile homes is by charging ten cents per foot if the home were on a permanent foundation, and twenty cents per foot if it were not. In addition, I do not believe that the policy clearly outlines how the cooperative defines a foundation. The cooperative should define what constitutes a foundation so the membership has a clear understanding of the meaning.

Mr. Brown testified that under the current set of circumstances a contribution to line extension is required. However, in another year, when a reconstruction of some plant is planned for the area near the Austins with monies borrowed from RUS, the line extension would be performed free of charge. Even if this practice is not considered discrimination, it would seem to me to be very hard to explain to the membership, as is the practice of donating thousands of dollars to economic development projects. While I agree with the principal of economic development activities, it's hard to rationalize using member's money in such a way and then denying service to a customer based upon a policy that does not seem to encourage development of the economic base of the service territory.

I strongly suggest that the board of directors at Golden West re-examine its policies regarding line extensions because the cooperative's own records do not appear to support this position. In a letter filed as a late filed exhibit in this docket, there is not a great deal of difference between the number of abandoned services for homes on foundations as opposed to those that did not have foundations.

While I dissent from the majority decision in this docket and believe that this policy not only discriminates against the Austins as well as others who find it necessary to live in homes without permanent foundations, I also believe that Golden West has a very challenging job because of the unique territory that it serves and must be commended for providing very good service most of the time.

Laska Schoenfelder
Commissioner (Dissenting)