

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

<b>IN THE MATTER OF THE COMPLAINT FILED</b>	)	<b>ORDER GRANTING MOTION</b>
<b>BY BASEC.NET, HURON, SOUTH DAKOTA,</b>	)	<b>TO AMEND, DENYING</b>
<b>AGAINST U S WEST COMMUNICATIONS, INC.</b>	)	<b>MOTION TO SUPPLEMENT</b>
<b>AND FIRSHEL, INC. REGARDING BILLING</b>	)	<b>ARGUMENT, AND</b>
<b>ISSUES</b>	)	<b>GRANTING MOTION TO</b>
	)	<b>DISMISS CROSS-CLAIM</b>
	)	<b>TC98-194</b>

On October 26, 1998, the Public Utilities Commission (Commission) received a complaint by Marvie Tschetter of Basec.Net, Huron, South Dakota (Basec.Net), against U S WEST Communications, Inc. (U S West) and FirsTel, Inc. (FirsTel). Basec.Net states that it purchased an existing business and contacted U S WEST to continue customer access through T-1 lines. U S WEST informed Basec.Net it could not take over payment of the lines unless the previous owner's debt was paid in full. Basec.Net decided to move the equipment and obtain services through FirsTel. After obtaining the services, Basec.Net was informed by U S WEST that they would be charged for installation/construction fees, the old billings of the previous owner, and additional charges for monthly service until other options were available. Neither U S WEST nor FirsTel disclosed these costs prior to providing service. FirsTel offered a plan with minimal installation fees but could not offer the service for 15-20 days which would not allow Basec.Net's customers access to their services. Basec.Net seeks the following relief: "1) Require U S WEST to inform promptly of facilities issues. 2) Some sort of financial compensation for loss of revenue."

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 November 3, 1998, at its duly noticed meeting, the Commission reviewed the complaint. The Commission voted unanimously to find probable cause and served the complaint on U S WEST and FirsTel. U S WEST filed its Answer to Complaint and Counterclaim on November 30, 1998. FirsTel filed its Answer to Complaint of Basec.Net and Cross-Claim against U S WEST Communications, Inc., on November 30, 1998. Basec.Net filed its Answer to U S WEST's Counterclaim on December 11, 1998. U S WEST filed its Answer to Cross-Claim of FirsTel on December 18, 1998.

A hearing was set for this matter for March 31 to April 1, 1999, beginning at 8:30 o'clock A.M., on March 31, in Room 412 of the State Capitol Building, 500 E. Capitol, Pierre, South Dakota. The issues at the hearing were: (1) whether U S WEST and/or FirsTel committed an unlawful or unreasonable act, rate, practice or omission in providing or failing to provide services to Basec.Net and, if so, what relief would be appropriate; (2) whether Basec.Net is liable to U S WEST for payment for services provided by U S WEST; and (3) whether FirsTel is entitled to complete indemnity against U S WEST or, alternatively, a determination of proper contribution.

On March 1, 1999, U S WEST filed a Motion to Amend U S WEST's Answer to Cross-Claim of FirsTel. On March 3, 1999, U S WEST filed a Motion to Dismiss Cross-Claim of FirsTel against U S WEST. On March 8, 1999, FirsTel filed a response. At its March 9, 1999, meeting, the Commission considered this matter. 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. After listening to the arguments of the parties the Commission unanimously voted to grant U S WEST's Motion to Amend. The Commission took the Motion to Dismiss Cross-Claim under advisement.

On March 9, 1999, FirsTel filed a Motion to Supplement Argument. On March 10, 1999, U S WEST filed its Opposition to Motion of FirsTel to Supplement Argument. On March 11, 1999, FirsTel filed its supplemental memorandum. At its March 11, 1999, meeting, the Commission again considered the matter. The Commission voted 2-1 to deny FirsTel's Motion to Supplement Argument (Chairman Burg, dissenting). The Commission then unanimously voted to grant U S WEST's Motion to Dismiss Cross-Claim of FirsTel against U S WEST. The Commission noted that FirsTel's Cross-Claim specifically states that it is asking for indemnification pursuant to the Agreement for Service Resale Between FirsTel, Inc. and U S WEST Communications, Inc. (Resale Agreement). The Commission found that since this is a claim for a specific remedy contained in the Resale Agreement, paragraph VII(Q) applies which provides that a claim between the parties is to be resolved by arbitration conducted by a single arbitrator under the American Arbitration Association rules.

It is therefore

ORDERED, that the Motion to Amend U S WEST's Answer to Cross-Claim of FirsTel is granted; and it is

FURTHER ORDERED, that FirsTel's Motion to Supplement Argument is denied; and it is

FURTHER ORDERED, that U S WEST's Motion to Dismiss Cross-Claim of FirsTel against U S WEST is granted.

Dated at Pierre, South Dakota, this 18<sup>th</sup> day of March, 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: Hellaine Kalbo

Date: 3/19/99

(OFFICIAL SEAL)

**BY ORDER OF THE COMMISSION:**

James A. Burg

JAMES A. BURG, Chairman  
(dissenting on denial of Motion to Supplement Argument)

Pam Nelson

PAM NELSON, Commissioner

Laska Schoenfelder

LASKA SCHOENFELDER, Commissioner