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THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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IN THE MATTER OF THE COMPLAINT
FILED BY ROBERT A. FOGG, JR.,
MARTIN, SOUTH DAKOTA, AGAINST
CELLULAR ONE REGARDING BILLING

CT02-032

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Transcript of Proceedings
November 20, 2002

ORIGINAL

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BEFORE THE PUBLIC UTILITIES COMMISSION,
JIM BURG, CHAIRMAN
PAM NELSON, VICE CHAIRMAN
ROBERT SAHR, COMMISSIONER

COMMISSION STAFF
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Michele Farris
Heather Forney
Debra Elofson
Mary Giddings

Reported By Cheri McComsey Wittler, RPR

PRECISION REPORTING

L I M I T E D

APPEARANCES BY TELEPHONE

- Talbot Wieczorek, Western Wireless
- Colleen Sevold, Qwest Corporation
- Mary Hobson, Qwest Corporation
- Larry Toll, Qwest Corporation
- Jeff Carmon, Qwest Corporation
- Tim Goodwin, Qwest Corporation
- Joe Schuele, Martin Group
- Marv Sorensen, MidAmerican Energy Company
- Jean Calligan, MidAmerican Energy Company
- Mary Lohnes, Midcontinent Communications
- Janet Browne, AT&T
- Linn Evans, Black Hills FiberCom
- Jim Blundell, Western Wireless

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TRANSCRIPT OF PROCEEDINGS, held in the
 above-entitled matter, at the South Dakota State
 Capitol, Room 464, 500 East Capitol Avenue, Pierre,
 South Dakota, on the 20th day of November 2002,
 commencing at 10 o'clock a.m.

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1 CHAIRMAN BURG: CT02-032, In the
2 Matter of the Complaint Filed by Robert A. Fogg
3 Junior, Martin, South Dakota Against Cellular One
4 Regarding Billing.

5 Today shall the Commission grant
6 Cellular One's Motion for summary judgment? And I
7 will take discussion on whether we should grant the
8 Motion of Summary Judgment.

9 MR. WIECZOREK: Mr. Chairman, this
10 is Talbot Wieczorek. I made the Motion on behalf
11 of Western Wireless and I briefed it and I'm going
12 to provide a copy, of course, with the filing so
13 I'm just going to hit a couple of highlights on it.
14 I don't believe there's any really disputed facts
15 that are material to the issues that were listed in
16 the Order For and Notice of Hearing.

17 Essentially, walking down those issues, one
18 was an issue that we conducted a credit check on
19 Mr. Fogg before we issued him wireless service.
20 That is true. That was part of the contract when
21 he signed in so we don't believe there's an issue
22 of law or any violation for doing a credit check
23 before initiating service with him.

24 As to the failing to provide the credit
25 report, I believe that's been fully explained.

1 It's not a practice to provide that information if
2 requested in a short period of time. Western
3 Wireless doesn't keep that information. He
4 requested it several weeks after the credit check
5 was done. At that time they didn't have the
6 information anymore, but they did a letter to him
7 that's been attached to the affidavit that was
8 submitted in support of this Motion giving him
9 where he can get his credit information from the
10 two sources Western Wireless obtains that
11 information.

12 There was a \$350 deposit assessed as part of
13 the contract. We believe that's within the legal
14 requirements -- or within the law as provided to
15 Western Wireless. We believe that falls under rate
16 setting with deposits and any interest to be
17 charged on deposits, our rate setting.

18 I raised the issue of whether the Commission
19 would have jurisdiction to even assess what amount
20 of deposit be appropriate given the federal law,
21 and the fact that for commercial mobile service --
22 the fact it's a reasonable deposit, he agreed to it
23 also in his contract before commencing service.

24 The billing -- and these are issues 5.
25 There's some different billing issues. There was a

1 delay in posting the billing because the third
2 party selling the service did not forward the check
3 immediately. As soon as Western Wireless found out
4 about that, they actually sent a driver from -- a
5 manager from Rapid City to go pick up the check and
6 immediately had it posted to his bill. And that's
7 issues 5A and B.

8 As to the double billing, Mr. Fogg has taken
9 it upon himself to send his payment to corporate
10 headquarters as opposed to the payment center,
11 which has delayed posting of his payments and thus
12 the bill will show up unpaid on his next bill
13 because it takes time for it to go to corporate
14 headquarters and then they have to ship it down to
15 Phoenix.

16 That's not how he's supposed to pay it, and
17 he's chosen to do that so as to whether -- I can't
18 see how that can be an issue with Western Wireless
19 when he won't send it to the proper billing
20 location.

21 Other information, I'll just briefly -- as to
22 Item 6, there is a reconnect fee if he's
23 disconnected. He's never been charged that.

24 As to Item 7, it's not common practice and I
25 don't believe there's any law that requires

1 Western Wireless to give out full name and
2 addresses of Western Wireless customer service
3 representatives.

4 As to Item 8, we don't know of any tape
5 recordings that we did. The only time that we
6 record stuff is for customer assurance. They don't
7 keep those recordings so if they had recorded
8 anything, it doesn't exist to date.

9 And then, finally, as to interest, that kind
10 of drops back into whether the Commission has
11 jurisdiction. But the contract does not allow for
12 interest paid and specifically states that it can't
13 be modified verbally. And we're not exactly sure
14 where he came up with the rate of 28 percent.

15 I would take any questions you might have on
16 the briefing or just for summary of the issues.

17 CHAIRMAN BURG: Mr. Fogg, what we're
18 doing is a summary judgment is saying that we will
19 make a determination based on all the facts that
20 are in front of us today. And so the question
21 being today is do you have an argument of why we
22 should not use the summary judgment proceedings to
23 determine this question?

24 MR. FOGG: The simple point becomes
25 I have forwarded sufficient data to this Commission

1 to hear this matter in its fullest detail and in
2 complying with a Ms. Rachel Kronewitter, the only
3 individual of Cellular One, not Western Wireless,
4 as people are being misled, has instructed me to
5 forward payments to her in and Issaquah,
6 Washington. I complied with that, contraindicating
7 stories being told this morning.

8 Further, with respect to jurisdiction, I
9 reside in the City of Martin, County of Bennett,
10 the County of Bennett thereby defined SDCL 7-1-4,
11 Bennett County boundaries beginning on the boundary
12 line between the states of South Dakota and
13 Nebraska where the east boundary line of the
14 Pine Ridge Indian Reservation intersects the same,
15 that's north and along the east boundary line of
16 the Pine Ridge Indian Reservation to the township
17 line separating the Townships 39 and 40, east
18 Black Hills meridian, and that's west along said
19 township line to the fifth guideline meridian west
20 of the sixth principal meridian, that's south and
21 along said fifth guide meridian to the boundary
22 line between the states of South Dakota and
23 Nebraska, that's east and along the same state
24 lines placed at the beginning clearly defining
25 Bennett County to be within the jurisdiction of the

1 State of South Dakota for this matter.

2 Thank you.

3 CHAIRMAN BURG: Okay. With that,
4 I'm going to move that we take the matter -- that
5 we do settle this matter through a Motion of
6 Summary Judgment and that we'll take that under
7 advisement with a decision at a time and place to
8 be noticed to the parties.

9 COMMISSIONER SAHR: And I'll second
10 that.

11 COMMISSIONER NELSON: I'd concur.

12 CHAIRMAN BURG: Okay. So we will
13 determine the answer of this matter through summary
14 judgment at a later date. Thank you.

15 MR. FOGG: Thank you.

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STATE OF SOUTH DAKOTA)

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CERTIFICATE

COUNTY OF HUGHES)

I, CHERI MCCOMSEY WITTLER, a Registered Professional Reporter and Notary Public in and for the State of South Dakota:

DO HEREBY CERTIFY that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 20th day of November 2002, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Pierre, South Dakota this 25th day of November 2002.



Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter

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