

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

IN THE MATTER OF THE COMPLAINT FILED)	FINDINGS OF FACT AND
BY DONALD COOK, HURON, SOUTH)	CONCLUSIONS OF LAW;
DAKOTA, AGAINST BUDGET CALL LONG)	NOTICE OF ENTRY OF
DISTANCE, INC. REGARDING)	ORDER
UNAUTHORIZED BILLING FOR SERVICES)	
AND NOR COMMUNICATIONS, INC.)	CT99-041
REGARDING UNAUTHORIZED SWITCHING OF)	
SERVICES)	

On September 28, 1999, the Public Utilities Commission (Commission) received a complaint filed by Donald Cook, Huron, South Dakota (Complainant), against Budget Call Long Distance, Inc. (Budget), regarding alleged unauthorized charges on his long distance bill. Complainant requests that the unauthorized charges be removed from his bill and that he be awarded \$1000 as provided by law.

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 7, 1999, at a duly noticed meeting, Mr. Cook explained his complaint against Budget. Budget's representatives explained the company's position in this matter. The Commission voted unanimously to find probable cause.

By order dated November 2, 1999, a hearing was scheduled for December 9, 1999, in Redfield, South Dakota. Budget filed its answer on November 8, 1999, requesting dismissal of the complaint and a continuance of this matter. On November 12, 1999, an Order Cancelling Hearing was filed.

On December 1, 1999, the Commission received a letter from Mr. Cook requesting that his complaint be amended to include NOR Communications, Inc. (NOR). At its regularly scheduled December 14, 1999, meeting, the Commission voted to grant the Complainant's request to amend the complaint and add NOR as a respondent. On December 21, 1999, the Commission issued an order granting the amendment and requiring NOR to file an answer or satisfy the complaint in 20 days. NOR did not file an answer. A hearing was scheduled for January 19, 2000.

On January 18, 2000, Commission Staff was contacted by Complainant who informed the Staff that settlement had been reached with both Budget and NOR and he wished to have his complaint dismissed, so therefore the hearing was cancelled.

On January 10, 2000, the Commission received a Motion by Budget for Amendment of Caption of Proceeding. At its January 18, 2000, meeting, the Commission granted the motion and amended the caption regarding Budget to refer to the unauthorized billing of services instead of the unauthorized switching of services.

On February 14, 2000, Mr. Cook notified Commission Staff, that the issue regarding unauthorized switching of services allegedly committed by NOR had not been resolved and he wished to have a hearing in this matter. Mr. Cook further informed Commission Staff that the issue regarding an unauthorized billing by Budget Call Long Distance had been resolved and he wished to have that matter dismissed.

At its regularly scheduled meeting of February 29, 2000, the Commission unanimously voted to dismiss the matter against Budget Call Long Distance and voted to schedule a hearing in the matter against NOR Communications. The hearing was held as scheduled on March 22, 2000, beginning at 1:30 o'clock P.M., in Room 412, State Capitol Building, 500 E. Capitol, Pierre, South Dakota.

At the close of the hearing, the Commission voted 2-0 to find NOR had changed Mr. Cook's telecommunications carrier without his authorization and ordered NOR to pay Mr. Cook \$1000.00. (Commissioner Burg was not present at the hearing.)

Based on the evidence presented at the hearing, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On September 28, 1999, the Commission received a complaint filed by Donald Cook, Huron, South Dakota, against Budget regarding alleged unauthorized charges on his long distance bill. Complainant requested that the unauthorized charges be removed from his bill and that he be awarded \$1000 as provided by law. By order dated October 20, 1999, the Commission found probable cause that Budget had committed an unlawful or unreasonable act, rate, practice, or omission. Exhibit 1. Budget filed its answer on November 8, 1999.
2. By order dated December 21, 1999, NOR was added as a respondent at the request of Mr. Cook. Exhibit 3. NOR failed to file an answer as required by the order.
3. By order dated March 6, 2000, Budget was dismissed as a respondent, at the request of Mr. Cook, based on a settlement reached between Budget and Mr. Cook. Exhibit 5. The order also set the hearing with NOR, as the remaining respondent, for March 22, 2000. *Id.*
4. The hearing was held as scheduled. No representative of NOR appeared at the hearing. Tr. at 5.

5. Mr. Cook testified that his company, Cook Seed Company, was charged for telephone calls by an unauthorized telecommunication carrier. Tr. at 6-13; Exhibits 8-14. He stated that his authorized telecommunications carriers were U S WEST and MCI. Tr. at 6.

6. Mr. Cook's telephone bills show that his company, Cook Seed Co., was charged by Accutel Communications, Inc. (Accutel) for toll calls. Exhibits 8-14. He was charged a total of \$73.00, which he paid, and he never received any credits for these charges. Tr. at 15-16.

7. LaNiece Healy, Director of Consumer Affairs for the Commission, stated that Mr. Cook's telecommunications carrier was switched by NOR. Tr. at 30. Subsequently, NOR's privileges with Frontier, its underlying carrier, were terminated and Accutel took over NOR's customers with Frontier. *Id.* This explains why Accutel was the carrier listed on Mr. Cook's telephone bills for his company even though it was NOR which initiated the unauthorized change in carriers.

8. NOR sent a fax to Mr. Cook stating that it would send him a check for \$1000.00 as settlement for all claims against NOR and Accutel. Exhibit 6. Mr. Cook signed the fax and sent it back, accepting the offer. Tr. at 38-39. Mr. Cook never received the check. Tr. at 39.

9. NOR was sent the Commission's order requiring NOR to file an answer or settle the complaint filed by Mr. Cook. Tr. at 18-19; Exhibit 3. NOR was sent the Commission's order setting this matter for hearing. Tr. at 20-21; Exhibit 5. None of the Commission's orders which were sent to NOR were returned to the Commission as undeliverable. Tr. at 21.

10. The Commission finds that Mr. Cook did not authorize NOR as his telecommunications carrier.

11. The Commission finds that NOR changed Mr. Cook's telecommunications carrier without his authorization. The Commission finds NOR committed an unlawful act.

CONCLUSIONS OF LAW

1. 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, 49-31-10, 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.

2. SDCL 49-31-93 provides as follows:

A subscriber is not liable for any charges imposed by a telecommunications company that initiates a telecommunications carrier change without authorization from the subscriber or for the billing of unauthorized products or services. In addition, the telecommunications company that initiates the unauthorized change or the billing of unauthorized products or services shall pay to the subscriber one thousand dollars.

3. The Commission finds NOR initiated a telecommunications carrier change without authorization from Mr. Cook. The Commission finds that NOR shall pay Mr. Cook the \$1000.00 as prescribed by law.

It is therefore

ORDERED, that NOR shall pay Mr. Cook \$1000.00 as prescribed by SDCL 49-31-93.

Dated at Pierre, South Dakota, this 7th day of April, 2000.

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: _____	<i>Helaine Kaeb</i>
Date: _____	<i>4/7/00</i>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Pam Nelson

PAM NELSON, Commissioner

Laska Schoenfelder

LASKA SCHOENFELDER, Commissioner