

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

IN THE MATTER OF THE COMPLAINT FILED)	ORDER FOR AND NOTICE
BY ROBERT A. FOGG, JR., MARTIN, SOUTH)	OF HEARING
DAKOTA, AGAINST CELLULARONE)	
REGARDING BILLING)	CT02-032

On August 8, 2002, the Public Utilities Commission (Commission) received a complaint filed by Robert A. Fogg, Jr., Martin, South Dakota (Complainant), against Western Wireless Corporation d/b/a CellularOne (CellularOne) regarding billing. On August 12, 2002, the complaint was faxed to CellularOne. Pursuant to ARSD 20:10:01:09, CellularOne was notified that it must satisfy the complaint or file an answer in writing with the Commission by September 3, 2002. On September 3, 2002, the Commission received a response from CellularOne.

On October 25, 2002, the Commission served an Order for and Notice of Hearing setting the matter for hearing at 12:00 P.M. MST on November 7, 2002. On October 31, 2002, CellularOne filed a Motion for Summary Judgment Pursuant to SDCL 1-26-18 (Motion) requesting summary judgment in favor of CellularOne on all issues raised by the complaint. On November 4, 2002, the Commission issued an Order Continuing Hearing continuing the November 7, 2002 hearing until further notice in order to consider the Motion. At its regular meeting on November 20, 2002, the Commission considered the Motion. Complainant and CellularOne appeared by teleconference. The Commission voted unanimously to schedule the Motion for decision at a later date.

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, 49-31-11, 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.

A hearing shall be held on the Motion for Summary Judgment Pursuant to SDCL 1-26-18 on December 19, 2002, beginning at 2:00 P.M. CST, in Room 464, State Capitol Building, 500 East Capitol, Pierre, South Dakota. Complainant and Commission Staff shall file any affidavits that they wish to file in opposition to the Motion at least one day prior to the hearing. The parties may appear either in person or by teleconference.

The issues to be determined at the hearing are: (i) whether any genuine issue of material fact is presented with respect to any of the issues raised by the complaint as stated in the Commission's October 25, 2002 Order for and Notice of Hearing (Notice); and (ii) if not, whether summary judgment should be granted pursuant to SDCL 1-26-18 in favor of CellularOne on any or all of the issues raised by the complaint. If summary judgment is granted in favor of CellularOne as to any issue stated in the Notice, such decision shall constitute a final decision as to such issue in accordance with SDCL 1-26-18.

It is therefore

ORDERED, that a hearing shall be held at the time and place specified above on whether CellularOne's Motion for Summary Judgment Pursuant to SDCL 1-26-18 should be granted as to any or all of the issues raised by the complaint as set forth in the Notice.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 5th day of December, 2002.

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: <u>Alain Kalbo</u>
Date: <u>12/5/02</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Robert K. Sahr
ROBERT K. SAHR, Commissioner *dk*