

**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.

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 November 7, 2002, beginning at 12:00 P.M. MST, in the Court Room, Bennett County Courthouse, 202 Main Street, Martin, South Dakota. All persons testifying will be subject to cross-examination by the parties.

In his complaint, Complainant alleges that CellularOne committed the following acts, errors, practices or omissions:

1. Conducted a credit check on Complainant before initiating wireless service to him.
2. Failed to provide a copy of Complainant's credit report upon request.
3. Assessed a \$350 dollar deposit as a condition of initiating service.
4. Failed to post the \$350 deposit payment in a timely manner on the first bill (4/22 - 4/14)
5. Incorrectly billed for services as follows:
 - a. Billed the \$350 deposit on the first monthly bill (4/22 - 4/14) that had already been paid to Western's sales agent at time of sign-up.
 - b. Included an unspecified "continuation of the corrupt double billing scam" on

the 5/15 - 6/14 bill.

- c. Charge of \$100.65 on 6/15 - 7/14 bill is "carryover double billing"
6. Threatened to assess a \$25 reconnection fee if service were disconnected due to non-payment of past due balance of \$100.65.
7. Refused to provide Complainant the full name and address of Western's customer service representative upon request.
8. Refused to provide Complainant with copies of all tape recordings of conversations between Complainant and Western's service representatives.
9. Verbally agreed to pay interest on the deposit at the rate of 28%, compounded monthly, and has not accounted for nor paid this interest.

The issues at the hearing are (i) whether, and to what extent, any of these alleged acts, errors or omissions occurred, (ii) to the extent that any of them did occur, whether CellularOne thereby committed one or more unlawful or unreasonable acts, rates, practices or omissions and (iii) if so, what relief is appropriate.

The hearing will be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights will be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Commission will consider all evidence and testimony that was presented at the hearing. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter. As a result of the hearing, the Commission shall determine whether CellularOne committed an unlawful or unreasonable act, rate, practice, or omission and, if so, order any appropriate relief. The Commission's Final Decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED, that a hearing shall be held at the time and place specified above on the issue of whether CellularOne committed an unlawful or unreasonable act, rate, practice or omission and, if so, what relief would be appropriate.

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 25th day of October, 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: _____

Date: _____

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

JAMES A. BURG, Chairman

PAM NELSON, Commissioner

ROBERT K. SAHR, Commissioner