

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

IN THE MATTER OF THE COMPLAINT FILED) BY LOREN K. DOBYNS, DEADWOOD, SOUTH) DAKOTA, AGAINST U S WEST) COMMUNICATIONS, INC., FOR INSTALLATION) AND DEVELOPMENT FEES)	FINAL ORDER AND DECISION; NOTICE OF ENTRY OF ORDER TC95-100
IN THE MATTER OF THE COMPLAINT FILED) BY STEVEN C. ANDERSON, BELLE) FOURCHE, SOUTH DAKOTA, AGAINST U S) WEST COMMUNICATIONS, INC., FOR) HOOKUP FEE CHARGES)	TC95-118
IN THE MATTER OF THE COMPLAINT OF RAY) AND KAREN POPHAM AGAINST U S WEST) COMMUNICATIONS, INC., REGARDING) PHONE TRANSFER FEES)	TC95-119
IN THE MATTER OF THE COMPLAINT FILED) BY MINI MART, INC. ON BEHALF OF LINDA) WHITE AGAINST U S WEST) COMMUNICATIONS, INC., REGARDING) INSTALLATION FEES)	TC95-127
IN THE MATTER OF THE COMPLAINT OF) KENT POPHAM, BELLE FOURCHE, SOUTH) DAKOTA, AGAINST U S WEST) COMMUNICATIONS, INC., REGARDING) PHONE HOOKUP FEES)	TC95-135
IN THE MATTER OF THE COMPLAINT OF) RUSSELL CRAMER, BELLE FOURCHE,) SOUTH DAKOTA, AGAINST U S WEST) COMMUNICATIONS, INC., REGARDING) PHONE HOOKUP FEES)	TC95-136
IN THE MATTER OF THE COMPLAINT OF) TERRY AND DEBBIE SARGENT, LEAD,) SOUTH DAKOTA, AGAINST U S WEST) COMMUNICATIONS, INC., REGARDING) PHONE HOOKUP FEES)	TC96-001

IN THE MATTER OF THE COMPLAINT OF)	TC96-002
WAYNE W. BURLESON, LEAD, SOUTH)	
DAKOTA, AGAINST U S WEST)	
COMMUNICATIONS, INC., REGARDING)	
PHONE HOOKUP FEES)	
IN THE MATTER OF THE COMPLAINT OF)	TC96-003
JAMES AND ROBIN DIRKSEN, LEAD, SOUTH)	
DAKOTA, AGAINST U S WEST)	
COMMUNICATIONS, INC., REGARDING)	
PHONE HOOKUP FEES)	
IN THE MATTER OF THE COMPLAINT OF)	TC96-004
WAYNE AND SHARI BURLESON, LEAD,)	
SOUTH DAKOTA, AGAINST U S WEST)	
COMMUNICATIONS, INC., REGARDING)	
PHONE HOOKUP FEES)	
IN THE MATTER OF THE COMPLAINT OF)	TC96-005
NORM AND LORA BURLESON, LEAD,)	
SOUTH DAKOTA, AGAINST U S WEST)	
COMMUNICATIONS, INC., REGARDING)	
PHONE HOOKUP FEES)	
IN THE MATTER OF THE COMPLAINT OF)	TC96-006
RANDAHL AND JACQUELINE SARGENT,)	
LEAD, SOUTH DAKOTA, AGAINST U S WEST)	
COMMUNICATIONS, INC., REGARDING)	
PHONE HOOKUP FEES)	
IN THE MATTER OF THE COMPLAINT FILED)	TC96-008
BY ROBERT ALLAN SOMERVOLD, BELLE)	
FOURCHE, SOUTH DAKOTA, AGAINST U S)	
WEST COMMUNICATIONS, INC., REGARDING)	
PHONE HOOKUP FEES)	

On September 21, 1995, the Public Utilities Commission (Commission) received a formal written complaint from Loren K. Dobyms, Deadwood, South Dakota against U S WEST Communications, Inc. (U S WEST) (Docket TC95-100). In his complaint, Mr. Dobyms alleged that in July of 1994, he ordered phone installation from U S WEST and was quoted a price of \$18.75 and an installation date of a few days. U S WEST did not provide the services as promised and Mr. Dobyms was later informed that he would be assessed a land development fee of \$600.00. There was to be a 60-90 day delay also. Upon hearing this, Mr. Dobyms cancelled his request for phone service. In March of 1995, Mr. Dobyms again requested phone service and was again quoted a fee of \$18.75. The customer representative could give no explanation as to why he had previously been quoted the

\$600.00 land development fee. Telephone service was not provided as promised. Mr Dobyms states in his complaint that he was again informed that he needed to pay the \$600.00 land development fee. Mr. Dobyms contended that no trenching is required to provide phone service to his lot as he would be served by overhead lines. He requested that the Commission deny U S WEST the \$600.00 land development fee and order his phone to be installed at the normal installation rate for a residential customer.

By order dated November 13, 1995, the Commission found probable cause of an unlawful or unreasonable act, rate, practice, or omission and ordered U S WEST to answer the complaint. On December 4, 1995, the Commission received U S WEST's response. In its response, U S WEST stated that Mr. Dobyms was properly quoted a land development fee of \$600.00 pursuant to its General Exchange Tariff, Section 8, Original Sheet 6, which was effective February 15, 1984 and was cancelled on November 15, 1993.

On October 26, 1995, the Commission received a formal written complaint from Steven and Stella Anderson, Belle Fourche, South Dakota against U S WEST (Docket TC95-118). In their complaint, the Andersons alleged that they were told on two separate occasions that phone service would cost \$35.00 and that they would receive service. The Andersons placed an order and moved their trailer to their lot. It was then that they were told it would cost \$744.00 to obtain phone service. The Andersons requested that U S WEST be required to connect telephone service for the regular hook up fee of \$35.00 or, in the alternative, have U S WEST pay for the property (\$11,000), their moving expenses, and all the expenses involved in moving to where they could receive telephone service for \$35.00.

By order dated November 7, 1995, the Commission found probable cause of an unlawful or unreasonable act, rate, practice, or omission and ordered U S WEST to answer the complaint. On November 28, 1995, the Commission received U S WEST's response. In its response, U S WEST stated that the Andersons were properly quoted a land development fee of \$744.00 pursuant to its General Exchange Tariff, Section 8, Original Sheet 6, which was effective February 15, 1984 and was cancelled on November 15, 1993.

On November 7, 1995, the Commission received a formal, written complaint from Ray and Karen Popham, Belle Fourche, South Dakota against U S WEST (Docket TC95-119). In their complaint, the Pophams alleged that they were told several times that the fee to hook up service at their new address would be \$25.00. After they went to the expense of moving, they were told phone service would cost \$744.00.

By order dated November 29, 1995, the Commission found probable cause of an unlawful or unreasonable act, rate, practice, or omission and ordered U S WEST to answer the complaint. On December 12, 1995, the Commission received U S WEST's response. In its response, U S WEST stated that the Pophams were properly quoted a land development fee of \$744.00 pursuant to its General Exchange Tariff, Section 8, Original Sheet 6, which was effective February 15, 1984 and was cancelled on November 15, 1993.

On December 4, 1995, the Commission received a formal, written complaint from Mini Mart, Inc., filed on behalf of its employee Linda White, Belle Fourche, South Dakota against U S WEST

(Docket TC95-127). In its complaint, Mini Mart alleged that Ms. White was quoted a price of \$34.00 for installation of service but was later told the amount was \$744.00. Mini Mart's complaint was that "1) the installation fee is too high (no new poles or underground wiring was required); 2) original quote so far off from actual; and 3) such a long delay in installation."

By order dated December 19, 1995, the Commission found probable cause of an unlawful or unreasonable act, rate, practice, or omission and ordered U S WEST to answer the complaint. On December 28, 1995, the Commission received U S WEST's response. In its response, U S WEST stated that Ms. White was properly charged a land development fee of \$744.00 pursuant to its General Exchange Tariff, Section 8, Original Sheet 6, which was effective February 15, 1984 and was cancelled on November 15, 1993.

On December 20, 1995, the Commission received a formal, written complaint from Kent Popham, Belle Fourche, South Dakota against U S WEST (Docket TC95-135). Mr. Popham alleged that he was told that the hook-up fee would be the usual amount. He later found out that each person in the development would be assessed a fee of \$744.00. He requested that U S WEST be required to "charge a fair and equitable fee to each of the renters instead of the outlandish amount wanted by the phone company."

By order dated January 12, 1996, the Commission found probable cause of an unlawful or unreasonable act, rate, practice, or omission and ordered U S WEST to answer the complaint. On January 5, 1996, the Commission received U S WEST's response. In its response, U S WEST stated that Mr. Popham was properly quoted a land development fee of \$744.00 pursuant to its General Exchange Tariff, Section 8, Original Sheet 6, which was effective February 15, 1984 and was cancelled on November 15, 1993.

On December 20, 1995, the Commission received a formal, written complaint from Russell Cramer, Belle Fourche, South Dakota against U S WEST (Docket TC95-136). Mr. Cramer alleged that he was told the hook-up fee would be \$35.00. After he moved his mobile home on the lot, he was told that the fee was \$744.00.

By order dated January 12, 1996, the Commission found probable cause of an unlawful or unreasonable act, rate, practice, or omission and ordered U S WEST to answer the complaint. On January 5, 1996, the Commission received U S WEST's response. In its response, U S WEST stated that Mr. Cramer was properly quoted a land development fee of \$744.00 pursuant to its General Exchange Tariff, Section 8, Original Sheet 6, which was effective February 15, 1984 and was cancelled on November 15, 1993.

On January 3, 1996, the Commission received a formal, written complaint from Terry and Debbie Sargent, Lead, South Dakota against U S WEST (Docket TC96-001). The Sargents alleged that they requested service in May of 1992 and were quoted a fee of \$1553.00. But before they could send their check, U S WEST stated that it did not have sufficient cable to put in service. In June of 1994, they again called U S WEST and were quoted a hook-up fee of \$35.00. Later U S WEST said the fee was \$1553.20 which the Sargents paid. However, they were given party line service at that time. The Sargents claimed that another couple in the same development paid \$25.00 for telephone service.

By order dated January 12, 1996, the Commission found probable cause of an unlawful or unreasonable act, rate, practice, or omission and ordered U S WEST to answer the complaint. On February 9, 1996, the Commission received U S WEST's response. In its response, U S WEST stated that the Sargents were properly charged a land development fee of \$1553.20 pursuant to its General Exchange Tariff, Section 8, Original Sheet 6, which was effective February 15, 1984 and was cancelled on November 15, 1993.

On January 3, 1996, the Commission received a formal, written complaint from Wayne W. Burleson, Lead, South Dakota against U S WEST (Docket TC96-002). Mr. Burleson alleged that he was quoted a price of \$25.00 for service. Later he was told it would cost over \$1553.00.

By order dated January 12, 1996, the Commission found probable cause of an unlawful or unreasonable act, rate, practice, or omission and ordered U S WEST to answer the complaint. On February 9, 1996, the Commission received U S WEST's response. In its response, U S WEST stated that Wayne Burleson was properly quoted a land development fee of \$1553.20 pursuant to its General Exchange Tariff, Section 8, Original Sheet 6, which was effective February 15, 1984 and was cancelled on November 15, 1993.

On January 3, 1996, the Commission received a formal, written complaint from James and Robin Dirksen, Lead, South Dakota against U S WEST (Docket TC96-003). The Dirksens alleged that they were informed that the fee for telephone service would be \$1556.00 and even if they paid the fee it would be at least one year before they would receive service. After waiting a year they were then told it would be another year. They eventually received service and found out that a neighbor was charged only \$25.00. The Dirksens requested a refund.

By order dated January 12, 1996, the Commission found probable cause of an unlawful or unreasonable act, rate, practice, or omission and ordered U S WEST to answer the complaint. On February 9, 1996, the Commission received U S WEST's response. In its response, U S WEST stated that the Dirksens were properly charged a land development fee of \$1553.20 pursuant to its General Exchange Tariff, Section 8, Original Sheet 6, which was effective February 15, 1984 and was cancelled on November 15, 1993.

On January 3, 1996, the Commission received a formal, written complaint from Wayne and Shari Burleson, Lead, South Dakota against U S WEST (TC96-004). Wayne and Shari Burleson alleged that they paid \$1553.20 in 1986 and were told it was a deposit that would be refunded when the land was fully developed. In November of 1995, they found out that a neighbor in the same development was charged only \$25.00. They requested a refund.

By order dated January 12, 1996, the Commission found probable cause of an unlawful or unreasonable act, rate, practice, or omission and ordered U S WEST to answer the complaint. On February 9, 1996, the Commission received U S WEST's response. In its response, U S WEST stated that Wayne and Shari Burleson were properly charged a land development fee of \$1553.20 pursuant to its General Exchange Tariff, Section 8, Original Sheet 6, which was effective February 15, 1984 and was cancelled on November 15, 1993.

On January 3, 1996, the Commission received a formal, written complaint from Norm and Lora Burleson, Lead, South Dakota against U S WEST (Docket TC96-005). Norm and Lora Burleson alleged that they were charged \$1553.20 for telephone service in 1986 and were told that the fee would go down and that they would receive a refund. In November of 1995, they discovered that neighbors in the same development area were charged only \$25.00 for service. Norm and Lora Burleson requested a refund.

By order dated January 12, 1996, the Commission found probable cause of an unlawful or unreasonable act, rate, practice, or omission and ordered U S WEST to answer the complaint. On February 9, 1996, the Commission received U S WEST's response. In its response, U S WEST stated that Norm and Lora Burleson were properly charged a land development fee of \$1553.20 pursuant to its General Exchange Tariff, Section 8, Original Sheet 6, which was effective February 15, 1984 and was cancelled on November 15, 1993.

On January 3, 1996, the Commission received a formal, written complaint from Randahl and Jacqueline Sargent, Lead, South Dakota against U S WEST (TC96-006). Randahl and Jacqueline Sargent alleged that they paid a fee of \$1553.20 to receive telephone service and were told it would be refunded when the land had become a development. When they received service they got a party line. Later they found out a neighbor had been charged only an installation fee, not the land development fee. They requested a refund.

By order dated January 12, 1996, the Commission found probable cause of an unlawful or unreasonable act, rate, practice, or omission and ordered U S WEST to answer the complaint. On February 9, 1996, the Commission received U S WEST's response. In its response, U S WEST stated that Randahl and Jacqueline Sargent were properly charged a land development fee of \$1553.20 pursuant to its General Exchange Tariff, Section 8, Original Sheet 6, which was effective February 15, 1984 and was cancelled on November 15, 1993.

On January 4, 1996, the Commission received a formal, written complaint from Robert Somervold, Belle Fourchē, South Dakota against U S WEST (Docket TC96-008). Mr. Somervold alleged that he was told that it would cost \$26.10 to receive telephone service. Later he was told it would cost \$744.00. Mr. Somervold stated that the \$744.00 fee was too high.

By order dated January 24, 1996, the Commission found probable cause of an unlawful or unreasonable act, rate, practice, or omission and ordered U S WEST to answer the complaint. On February 9, 1996, the Commission received U S WEST's response. In its response, U S WEST stated that Mr. Somervold was properly quoted a land development fee of \$1553.20 pursuant to its General Exchange Tariff, Section 8, Original Sheet 6, which was effective February 15, 1984 and was cancelled on November 15, 1993.

On January 22, 1996, the Commission received a formal, written complaint from Rosemarie Green, Helendale, California against U S WEST (Docket TC96-012). By order dated March 13, 1996, the Commission allowed Ms. Green to withdraw her complaint without prejudice due to her inability to attend the hearing.

Due to the common issues involved, the Commission consolidated all of the above-listed complaints and held a hearing on the complaints on March 4, 1996, in Spearfish, South Dakota.

The following complainants testified at the hearing: Karen Popham (Mrs. Popham's husband Ray died shortly before the hearing); Linda White; Kent Popham; Russell Cramer; Terry and Debbie Sargent; Wayne Burleson; Jim Dirksen; Shari Burleson; Lora Burleson; Randahl and Jacqueline Sargent; and Robert Somervold. Mr. Dobyms was not present but filed an affidavit that was marked as SDPUC Exhibit 2 and received into evidence. The following witnesses testified on behalf of U S WEST: Dennis Serfling; Colleen Sevold; and Jim Ahl. Greg Rislov testified on behalf of Commission staff.

A hearing was held on the complaints at 6:00 p.m., on Monday, March 4, 1996, at the Spearfish Ramada Inn, Spearfish South Dakota. Rosemarie Green was allowed to withdraw her complaint without prejudice before the hearing due to her inability to attend the hearing on March 4, 1996.

By order dated April 19, 1996, the Commission asked U S WEST to answer additional questions. The Commission received the answers on April 29, 1996. On May 15, 1996, the Commission found that the land development fees may not be charged to those complainants who do not currently have telephone service or who received service after November 14, 1993, because the tariff under which U S WEST charged or attempted to charge those complainants was cancelled by U S WEST on November 15, 1993, and the new tariff that took the place of the cancelled tariff did not allow for these type of charges.

Based on the evidence received by the Commission in these dockets, the Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The complainants all live in three different development areas. These three different developments are: Wolff Subdivision located near Lead, South Dakota; High Country Subdivision, located near Deadwood, South Dakota; and Redwater Ranchettes Subdivision, which includes the Sandstone Foothills, located near Belle Fourche, South Dakota.
2. The following complainants live in the Wolff Subdivision: Terry and Debbie Sargent; Wayne W. Burleson; Jim Dirksen; Wayne and Shari Burleson; Norm and Lora Burleson; and Randahl and Jacqueline Sargent. The following complainants live in the Redwater Ranchettes Subdivision which includes the Sandstone Foothills: Karen Popham; Linda White; Kent Popham; Russell Cramer; Robert Somervold; and Steve Anderson. The following complainant lives in the High Country Subdivision: Loren Dobyms.
3. Karen Popham lives in the Sandstone Foothills Subdivision. TR. at 17. She first requested service around October of 1995. TR. at 17-18. She was repeatedly told by representatives of U S WEST that the cost of moving her phone from town to the Subdivision was either \$25.00 or \$35.00.

TR. at 13-14. After they moved she was told it would cost \$744.00. TR. at 14. A temporary line was put in pending the outcome of this hearing. TR. at 20.

4. Linda White lives in the Redwater Ranchettes Subdivision and rents a lot. TR. at 22. She knew it would cost \$744.00 when she moved there although she was quoted another price to start with. *Id.* After she paid the fee, it took five months to get telephone service. *Id.* She moved there in June of 1995 and received service in October of 1995. TR. at 21, 22.

5. Kent Popham lives in the Redwater Ranchettes Subdivision and rents a lot. TR. at 30. He knew it would cost \$744.00 to receive telephone service when he moved there although his wife was quoted \$45.00 when she checked on the fee. TR. at 29-30. He believes that the fee is too high. TR. at 30.

6. Russell Cramer lives in the Redwater Ranchettes Subdivision and owns a lot. TR. at 36. He contacted U S WEST around August 14, 1995, gave U S WEST a legal description of his property, and was told the hookup fee was \$35.00. TR. at 34, 39. U S WEST later cancelled the work order and told his wife that they had to pay a \$744.00 land development fee and then also disconnected their service in Spearfish. TR. at 34. When U S WEST reconnected their service in Spearfish it gave them a new number so they did not receive calls for two or three days. *Id.* When that mistake was discovered, U S WEST reconnected them with their old number. *Id.*

7. Debbie and Terry Sargent live in the Wolff Subdivision. U S WEST Exh. 9 at page 10. In May of 1992, the Sargents were quoted \$1553.00 to receive service but were told that the amount was refundable. TR. at 43, 48. On the day they planned to send their check, U S WEST called and said it did not have enough cable to put their phone line in. TR. at 43. In June of 1994, they called U S WEST again and were quoted a price of \$35.00 by three different consumer representatives. *Id.* Later they were told it would be \$1553.20 and that they would be on a party line. They received service in August of 1994. *Id.* In November of 1995 a neighbor received service for \$25.00. TR. at 44.

8. Wayne W. Burleson lives in the Wolff Subdivision. TR. at 50. He requested telephone service in 1986 and was told it would cost \$1553.00. He has gone ten years without a phone because of the price. *Id.*

9. Jim Dirksen lives in the Wolff Subdivision. U S WEST Exh. 9 at page 9. He first requested service in July of 1992, but was told by U S WEST that it did not have enough lines. TR. at 54-55. U S WEST said to call back in the fall of 1993 because U S WEST would have lines by then. TR. at 55. He called back in the fall of 1993, and was told that U S WEST still did not have a line available. *Id.* After he contacted the Commission, U S WEST found an available line within a week. He paid the \$1553.20 and received service on November 16, 1993. *Id.* He was also told that the fee was refundable when the land was fully developed. TR. at 56.

10. Wayne and Shari Burleson live in the Wolff Subdivision. TR. at 60. They paid the land development fee and received service in February of 1987. TR. at 60-61. When she asked U S

WEST why one of their neighbors only paid \$25.00 she was told that their neighbor had won the lottery. TR. at 63.

11. Norm and Lora Burleson live in the Wolff Subdivision. TR. at 64. They paid the land development fee and received service in October of 1986. TR. at 65. At the time they purchased the lot the developer said he would not sell anything less than 10 acre lots. However, the developer is now selling them as five acre lots. TR. at 64-65. She was told that the fee was refundable. TR. at 68.

12. Randahl and Jacqueline Sargent live in the Wolff Subdivision. TR. at 72. They ordered telephone service in June of 1994, and were first quoted a price of \$35.00 and then told it would be \$1553.00. *Id.* They paid the fee and received service in August of 1994. TR. at 73. They were required to have a party line and had many problems with their party line. TR. at 74-75. They received single party service on November 22, 1995. TR. at 75. Jacqueline Sargent was told the fee was refundable after the area was developed. TR. at 76. Later, the Sargents discovered that a neighbor received service for \$25.00.

13. Robert Somervold lives in the Sandstone Foothills, Redwater Ranchettes Subdivision. TR. at 83. He called U S WEST for service in November of 1995, and was told the price would be \$25.00. TR. at 85. After giving the legal description for his property, he was told a surveyor would be out there the next day. *Id.* The surveyor never showed and he never heard from U S WEST as to why no one showed up. TR. at 84. When he called U S WEST 10 days later he was told it would cost \$744.00. *Id.* He asked if he could do the trenching to reduce the price and he was told it would not reduce the price unless the line needed to be run more than a quarter of a mile. TR. at 84, 88.

14. Loren Dobyas submitted an affidavit which was received into evidence at the hearing. SDPUC Exh. 2. He lives in the High Country Subdivision. *Id.* He applied for telephone service in June of 1994 and March of 1995, and both times he was quoted a hook-up charge of \$18.75, was assigned a telephone number, and given an installation date. *Id.* After U S WEST failed to meet the installation date, he was told the fee was actually \$600.00. *Id.* He believes the \$600.00 fee is discriminatory and excessive. *Id.*

15. Steven Anderson lives in the Redwater Ranchettes Subdivision. U S WEST Exh. 9, page 2. He received telephone service on November 3, 1995, without paying a land development fee due to the pending decision to be made by the Commission. *Id.*

16. The tariff that U S WEST applied to all of the complainants was effective on February 15, 1984, and was cancelled effective November 15, 1993. General Exchange Tariff, Section 8, Original Sheet 5, Original Sheet 6, and First Revised Sheet 7, SDPUC Exh.1 [hereinafter referred to as Cancelled Land Development Tariff]; TR. at 141. The tariff that is currently in effect and took the place of the Cancelled Tariff was originally found in the General Exchange Tariff, Special Construction, Section 8, First Revised Sheet 5, and was effective November 15, 1993. This tariff page was subsequently moved to a different tariff page and is now found in the Exchange and Network Services Tariff, Section 4, Page 4, Release 1 [hereinafter referred to as Current Land Development Tariff].

17. Under the Current Land Development Tariff the developer is required to either provide or pay for the trench and backfill but is not required to pay for the facilities. TR. at 144; see also Current Land Development Tariff. There is no provision for prorating the estimated charges for the entire development and having each person who moves into the development pay a prorated charge. Id.

18. There is no provision in the Current Land Development Tariff to charge any customer pursuant to the terms and conditions of the Cancelled Land Development Tariff. Further, the Cancelled Land Development Tariff was not filed as an obsolete tariff. An obsolete tariff is a tariff that has been approved by the Commission and is in effect but does not apply to new customers. TR. at 142.¹

19. The Commission never approved any tariff that would allow U S WEST to continue to charge customers pursuant to the Cancelled Land Development Tariff. If U S WEST had filed the Cancelled Land Development Tariff as an obsolete tariff, the Commission would have been able to consider whether it would be fair and reasonable to allow new customers to be charged under the terms and conditions of the Cancelled Land Development Tariff. The Commission could have considered the fairness of allowing new customers to be charged pursuant to estimates based on a specified number of lots that was subject to change throughout the years of the development. TR. at 64-66. The Commission could have considered the fairness and reasonableness of a tariff that allowed U S WEST the discretion to determine when it would charge customers a land development fee. See SDPUC Exh. 1, Subsection 7. The Commission could have considered the fairness and reasonableness of allowing a tariff to be applied to new customers that allowed the developer the opportunity to receive annual refunds but charged individual customers non-refundable fees. See SDPUC Exh 1, Subsection 5. However, the Commission was not allowed to consider the fairness and reasonableness of allowing new customers in areas developed prior to November 15, 1993, to be charged land development fees because U S WEST never filed the Cancelled Land Development Tariff as an obsolete tariff. Nor did U S WEST state in its Current Land Development Tariff that customers in areas developed prior to November 15, 1993 would be charged a land development fee pursuant to the terms and conditions of the Cancelled Land Development Tariff. There is no approved current tariff on file that allows U S WEST to charge these land development fees.

20. The problems associated with charging customers pursuant to a cancelled tariff are well-documented in this case. Customers were routinely quoted the wrong price. TR. at 13-14, 22, 29-30, 34, 39, 43, 72, 85. At least one customer was not given the opportunity to provide his own trenching to reduce costs which was specifically allowed under subsection seven of the Cancelled Land Development Tariff. TR. at 84, 88. Perhaps most troubling is the fact that the land development fee was charged to some residents but not to others. U S WEST conceded that it had failed to charge a resident in the Wolff Subdivision the Land Development Fee and U S WEST has no record of charging three residents in the Redwater Ranchettes Subdivision the land development fee. TR. at 133; U S WEST Exh. 9 at pages 2-3.

¹ For an example of an obsolete tariff see U S WEST's Exchange and Network Services Tariff, Section 110, Index Page 1, Release 1, Obsolete Miscellaneous Service Offerings, Effective December 5, 1993.

21. Also disturbing is the fact that some residents in the subdivisions had difficulty getting service. Terry and Debbie Sargent agreed to pay the \$1553.20 land development fee in 1992 but were told U S WEST did not have enough cable and had to wait until 1994 to receive service. TR. at 43. And even then they only received a party line. *Id.* Jim Dirksen had to wait almost one and one half years to receive service. TR. at 54-55. If U S WEST had engineered the development in the 1980's and based the land development fee on the estimates of that engineering, it makes little sense that U S WEST would not have put in sufficient cable pairs to serve future residents in a development area that was originally estimated to have only 12 lots. U S WEST Exh. 11 at page 1.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 49-13 and 49-31, specifically 49-13-1, 49-13-1.1, 49-13-4, 49-13-13, 49-13-14, 49-13-14.1, 49-31-3, 49-31-7, 49-31-7.1, 49-31-11, 49-31-12, 49-31-12.2, and 49-31-12.4.

2. Pursuant to SDCL 49-31-12.2 (1), a telecommunications company must "[p]rint and keep for public inspection in a convenient and publicly accessible place, its tariff showing the rates or prices for telecommunications services offered by the company which are in force at the time" The company may not "deviate from any of its current published rates. . . ." SDCL 49-31-12.2(3).

3. The filed rate doctrine presumes that the utility and its customers know the content of published tariffs. Maislin Industries, U.S., Inc., et al. v. Primary Steel, Inc., et al., 497 U. S. 116, 127, 110 S.Ct. 2759, 111 L.Ed.2d 94 (1990).

4. U S WEST's argument that the filed rate doctrine applies is without merit with respect to U S WEST charging the land development fee to any customer after November 14, 1993, the date the tariff was cancelled. As is evident from its title, the filed rate doctrine requires a rate or tariff to actually be on file in order to have any force or effect.

5. On November 15, 1993, U S WEST cancelled the tariff that allowed it to charge land development fees to customers. U S WEST did not file the terms and conditions of the cancelled tariff as an obsolete tariff which, if it had been approved by the Commission, would have allowed U S WEST to continue to charge new customers a land development fee in the areas developed prior to November 15, 1993.

6. The complainants cannot be presumed to have knowledge of a tariff that is neither current nor published. And, as shown by the evidence, a number of U S WEST employees did not have knowledge of the Cancelled Land Development Tariff either.

7. Since there is no current published tariff that allows U S WEST to charge land development fees to new customers who received service after November 14, 1993, U S WEST shall refund the land development fees paid by the following complainants: Mini Mart Inc. on behalf of Linda White, Terry and Debbie Sargent, Jim Dirksen, and Randahl and Jacqueline Sargent. The other complainants who either received service after November 14, 1993 and did not pay the land development fees or have not yet received telephone service may not be charged under the terms and

conditions of the Cancelled Land Development Tariff. This would apply to the following complainants: Karen Popham, Kent Popham, Russell Cramer, Robert Somervold, Steve Anderson, Wayne Burleson, and Loren Dobyns. Wayne and Shari Burleson and Norm and Lora Burleson will not receive refunds since they received service and paid the land development fee while the Cancelled Land Development Tariff was in effect.

8. The Commission finds that U S WEST may not charge new customers pursuant to the terms and conditions of the Cancelled Land Development Tariff.

It is therefore

ORDERED, that U S WEST shall refund the land development fees paid by the following complainants: Linda White, Terry and Debbie Sargent, Jim Dirksen, and Randahl and Jacqueline Sargent. The other complainants who either received service after November 14, 1993, and did not pay the land development fees or have not yet received services may not be charged under the terms and conditions of the Cancelled Land Development Tariff. This would apply to the following complainants: Karen Popham, Kent Popham, Russell Cramer, Robert Somervold, Steve Anderson, Wayne W. Burleson, and Loren Dobyns; and it is

FURTHER ORDERED, that U S WEST may not charge new customers pursuant to the terms and conditions of the Cancelled Land Development Tariff.

Pursuant to SDCL 1-26-32, this Final Decision and Order becomes effective 10 days after the date of receipt or failure to accept delivery of the decision of the parties.

PLEASE TAKE NOTICE that this Final Decision and Order in Dockets TC95-100, TC95-118, TC95-119, TC95-127, TC95-135, TC95-136, TC96-001, TC96-002, TC96-003, TC96-004, TC96-005, TC96-006, and TC96-008 was duly entered on the 3rd day of June, 1996, and filed in the Commission's dockets.

Dated at Pierre, South Dakota, this 3rd day of June, 1996.

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>Arlene Kalbo</u>	
Date: <u>6/4/96</u>	
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Kenneth Stofferahn
KENNETH STOFFERAHN, Chairman

James A. Burg
JAMES A. BURG, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner