

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

<b>IN THE MATTER OF THE COMPLAINT FILED BY</b>	)	<b>FINDINGS OF FACT,</b>
<b>CATHY FEICKERT AGAINST U S WEST</b>	)	<b>CONCLUSIONS OF LAW,</b>
<b>COMMUNICATIONS, INC. REGARDING THE</b>	)	<b>ORDER AND NOTICE OF</b>
<b>INSTALLATION OF TELEPHONE SERVICE</b>	)	<b>ENTRY OF ORDER</b>
	)	

**TC96-174**

On September 30, 1996, the Public Utilities Commission (Commission) received a Complaint from Cathy Feickert, 38493-132 Street, Aberdeen, SD 57401 (Complainant) against U S WEST Communications, Inc. (U S WEST) alleging delays in installation of telephone service and excessive construction costs.

By order dated November 5, 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. U S WEST answered the complaint on November 22, 1996. A hearing on this matter was held on February 18, 1997.

The Commission having examined the evidence of record and being fully informed in the matter now makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

**I**

In November of 1995, Complainant had a ready-built home moved on to her land. Tr. at 9, lines 1-3. This is located one mile and a half west of the Ramkota in Aberdeen, SD. Id., lines 20-22.

**II**

In the first part of December, 1995, Complainant inquired about telephone service and put in an order for telephone service. Id., line 22 to 10, line 3. The Complainant was informed by U S WEST that there would be no problem getting service and that there would be no additional charge to Complainant. Tr. at 10, lines 4-11.

**III**

In January of 1996, Complainant called U S WEST to ensure all information gathered was correct. Id., lines 12-14. Complainant informed U S WEST that there was no prior service at this new home. Id.,

lines 13-14.

#### IV

In February, Complainant called to make arrangements for dual service. An order was put in for a connection date of February 23, 1996. Id., lines 18-21.

#### V

On February 26, 1996, Complainant called U S WEST to inquire why she did not have dual service at her new home. Id., lines 22-25. Complainant was informed that there weren't any lines available and that she would have to pay an excess construction fee of approximately \$1,100.00 before U S WEST would install telephone service. Id., line 24 to 11, line 6. This fee was later reduced to \$570.84. Tr. at 11, lines 5-6.

#### VI

The Complainant moved into her new home on April 6, 1996. Tr. at 32, lines 2-3.

#### VII

During the months of April, May, and June of 1996, Complainant contacted numerous people at U S WEST inquiring why she was not getting telephone service at her new home. Tr. at 11, lines 20-23. She was informed that no work was to begin until U S WEST was able to secure signed easements, that U S WEST did not have the cable, and that she needed to pay the excess construction fee. Id., line 23 to 12, line 3. However, she did not receive the bill for the excess construction fee until May of 1996 and she paid it before the due date. Tr. at 11, lines 12-15.

#### VIII

U S WEST testified that permission was needed to lay cable across land and that steps were taken to seek a right-of-way. Tr. at 75, lines 10-16. The parties owning the land lived outside of South Dakota. Id., lines 17-22. The firm hired for U S WEST to get the right-of-way and perform the work attempted to secure the signed agreements from the two landowners. Id., line 23 to 76, line 3; Tr. at 77, lines 6-8.

#### IX

The Complainant and her husband were forced to use a cellular phone from husband's business to handle personal as well as business obligations. Tr. at 14, line 7. Complainant also had to make numerous trips to town because the use of the cellular phone was not feasible. Tr. at 13, lines 2-3.

#### X

U S WEST offered Complainant the use of a cellular phone during the latter part of June, 1996. Tr. at 12, lines 6-8. Complainant refused this offer based on the fact that Complainant and husband were going to be on vacation in Canada. Id., lines 8-17. U S WEST reimbursed Complainant \$180.00 for usage of her husband's cellular business phone. Tr. at 15, line 23 to 16, line 3.

#### XI

Complainant was without telephone service for 81 days. Tr. at 14, lines 20-21.

## XII

Due to lack of telephone service at the new home, Complainant incurred expenses for postage, mailings, mileage to and from work, and other business-related expenses, in the amount of \$1274.97. Exhibit 4; Tr. at 13, lines 1-25.

## CONCLUSIONS OF LAW

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-13, 49-31, and ARSD 20:10:01.

### I

Pursuant to SDCL 49-13-14.1, a telecommunications company that permits any act or thing, or omits to do any act or thing required to be done, is liable to the person injured thereby for the amount of damages sustained in consequence of any such violation.

### II

U S WEST failed to take the necessary steps in providing service to the Complainant in a timely manner. Pursuant to SDCL 49-13-14.1, U S WEST is liable to Complainant for damages sustained due to U S WEST committing an unlawful or unreasonable act, rate, practice, or omission by not providing service to the Complainant in a timely manner.

### III

The Commission finds that U S WEST committed an unlawful or unreasonable act, rate, practice, or omission by not providing service to the Complainant in a timely manner, and shall pay the Complainant \$1274.97 in damages.

Based on the foregoing Findings of Fact and Conclusions of Law, It is therefore

ORDERED, that U S WEST shall pay the Complainant \$1274.97 in damages incurred for lack of phone service.

ORDERED, that this record be included in docket TC97-016, which has been opened to review of U S WEST's service quality performance.

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.

## NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Final Decision and Order in Docket TC96-174 was duly entered on this 2nd day of April, 1997 and filed in the Commission's dockets.

Dated this 2nd day of April, 1997.

**CERTIFICATE OF SERVICE**

BY ORDER OF THE COMMISSION:

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.

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JAMES A. BURG, Chairman

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By: \_\_\_\_\_

PAM NELSON, Commissioner

Date: \_\_\_\_\_

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(OFFICIAL SEAL)

LASKA SCHOENFELDER,  
Commissioner

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