

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

**IN THE MATTER OF THE COMPLAINT FILED BY KATHY) FINAL ORDER AND
ROTTENBUCHER, NEWELL, SD, AGAINST STATELINE) DECISION; NOTICE
TELECOMMUNICATIONS, INC. REGARDING UNPUBLISHED) OF ENTRY OF ORDER
ADDRESS)
TC97-107**

On June 23, 1997, the South Dakota Public Utilities Commission (Commission) received a complaint from Kathy Rottenbucher, Newell, South Dakota, against Stateline Telecommunications, Inc. (Stateline) regarding her address being published in a directory. Ms. Rottenbucher stated that she specifically requested an unpublished address, but her address was published in the Rapid City telephone book for West River customers. Stateline provides customer information to U S WEST Communications, Inc. (U S WEST) for the purpose of publishing telephone books. Ms. Rottenbucher requested proof of written reprimands for all parties, proof that changes were made to avoid similar mistakes in the future, access to the Board of Directors, and one thousand dollars for violation of trust, emotional and mental anguish, duress, and inconvenience.

A regularly scheduled July 15, 1997, meeting, the Commission found probable cause of an unlawful or unreasonable act, rate, practice, or omission and served the complaint on Stateline. Stateline filed its Answer and Motion to Dismiss on August 14, 1997. A October 9, 1997, meeting, the Commission considered Stateline's Motion to Dismiss. After listening to the arguments of the parties, the Commission denied the motion.

Pursuant to its Order for and Notice of Hearing, dated October 14, 1997, a hearing was held on October 27, 1997, in the Third Floor West Meeting Room, of the City/School Administrative Center, 300 6th Street, Rapid City, South Dakota. At the end of the hearing the Commission took the matter under advisement.

A November 7, 1997, meeting, the Commission considered this matter. The Commission voted to find that Stateline's mistake in providing the Rottenbucher's address to U S WEST for publication in its directory was an unreasonable act. (Chairman Burg, dissenting.) In addition, the Commission found Stateline's refusal to provide Ms. Rottenbucher with the names of the Board of Directors was an unreasonable act. (Chairman Burg, dissenting.) On the issue of damages, the Commission found that Ms. Rottenbucher failed to prove that she suffered any actual damages as a result of Stateline's unreasonable act and denied the award of any damages.

Based on the testimony and evidence presented at the hearing, the Commission makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

I

On June 23, 1997, the Commission received a complaint from Kathy Rottenbucher, Newell, South Dakota, against Stateline regarding her address being published in a directory. Exhibit 1. Ms. Rottenbucher stated that she specifically requested an unpublished address, but her address was published in the U S WEST Rapid City telephone directory for West River customers. Tr. at 8-10.

II

Stateline provides customer information to U S WEST for the purpose of publishing telephone books. Tr. at 39. Darrell Henderson, general manager of Stateline, agreed that Ms. Rottenbucher requested that her address not be published. Tr. at 38. Stateline mistakenly provided the address to U S WEST for publication in its directory. Tr. at 45-46. Stateline has since implemented a directory search program to identify anyone who has an unusual request in terms of the directory. Tr. at 43.

III

The Commission finds that Stateline's mistake in allowing Ms. Rottenbucher's address to be included in the U S WEST directory was an unreasonable act. Ms. Rottenbucher specifically requested an unpublished address and was told her request would be honored. Stateline subsequently failed to comply with that agreement.

IV

Ms. Rottenbucher requested the names of Stateline's Board of Directors. Mr. Henderson refused to provide those names. Tr. at 41. Mr. Henderson stated that it was Stateline's policy not to give out names of its Board of Directors for solicitations. Tr. at 50. However, since Ms. Rottenbucher is a customer, the Commission finds that Stateline's refusal to give Ms. Rottenbucher the names of Stateline's Board of Directors was an unreasonable act.

V

Ms. Rottenbucher requested \$1,000.00 in damages. Tr. at 34. The \$1,000.00 was, in part, based on Ms. Rottenbucher's estimate of what it would cost to move to a new residence. Id. In addition, the request for damages included compensation for pain and anguish. Tr. at 35. Ms. Rottenbucher had requested that her phone number but not her address be included in any directory because she does not want certain people to know where she lives. Tr. at 29-30. However, Ms. Rottenbucher also stated that she did not have any intention to move at this time. Tr. at 35.

VI

Damages may not be based on speculation but must be proven with reasonable certainty. The Commission finds that Ms. Rottenbucher's allegations of damages are speculative and that she has failed to prove that she suffered any actual damages as a result of her address being published in the U S WEST directory.

CONCLUSIONS OF LAW

I

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-13, and 49-31, and ARSD 20:10:01:07.01 through 20:10:01:15.01.

II

Stateline's act of providing the Rottenbucher's address for inclusion in the U S WEST directory and failure to provide Ms. Rottenbucher with the names of the Board of Directors are unreasonable acts. However, Ms. Rottenbucher failed to prove she suffered any damages as a result of these acts. Damages may be recovered only if facts exist that afford a basis for measuring any loss with reasonable certainty. *Drier v. Perfection, Inc.*, 259 N.W.2d 496, 506 (S.D. 1977).

It is therefore

ORDERED that the Commission finds that Stateline's act of providing the Rottenbucher's address for inclusion in the U S WEST directory and failure to provide Ms. Rottenbucher with the names of the Board of Directors are unreasonable acts; and it is

FURTHER ORDERED that the Commission finds that Ms. Rottenbucher failed to prove she suffered any damages as a result of these acts.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 1st day of December, 1997. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 1st day of December, 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.

JAMES A. BURG, Chairman
dissenting

By: _____

PAM NELSON, Commissioner

Date: _____

LASKA SCHOENFELDER,
Commissioner

(OFFICIAL SEAL)

DISSENT OF CHAIRMAN BURG

I dissent from the findings that Stateline's act of providing the Rottenbucher's address for inclusion in the U S WEST directory and failure to provide Ms. Rottenbucher with the names of the Board of

Directors are unreasonable acts. Although it was a mistake for Stateline to provide Ms. Rottenbacher's address to U S WEST for inclusion in the directory, that mistake does not rise to the level of an unreasonable act. Further, Stateline has taken steps to insure that this type of mistake does not occur again. I agree that Ms. Rottenbacher failed to show that she suffered any damages from this mistake.

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