

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

IN THE MATTER OF THE COMPLAINT)	FINDINGS OF FACT;
FILED BY AVERY AND DIXIE THOMPSON,)	CONCLUSIONS OF LAW;
RELIANCE, SOUTH DAKOTA, AGAINST)	ORDER AND NOTICE OF ENTRY
U S WEST COMMUNICATIONS, INC.)	OF ORDER
REGARDING TELEPHONE LINE LOCATION)	TC97-169

On October 24, 1997, the Public Utilities Commission (Commission) received a Complaint from Avery and Dixie Thompson, Reliance, South Dakota, against U S WEST Communications, Inc. (U S WEST) alleging delays in installation of phone service and inadequacies in providing service.

Pursuant to ARSD 20:10:01:08.01 and 20:10:01:09, if a complaint cannot be settled without formal action, the Commission shall determine if the complaint shows probable cause of an unlawful or unreasonable act, rate, practice or omission to go forward with the complaint.

On October 28, 1997, at its duly noticed ad hoc meeting, the Commission reviewed the complaint. The Commission voted unanimously to find probable cause. On November 25, 1997, the Commission received U S WEST's answer to the complaint.

By Order dated December 30, 1997, the Commission set this matter for hearing for January 14, 1998, at 1:00 o'clock P.M., in the Brule County Courthouse, Jury Room, 300 S. Courtland, Chamberlain, South Dakota. The hearing was held as scheduled. At the end of the hearing, the Commission took the matter under advisement.

On January 26, 1998, the Commission received from U S WEST a Motion for Late Filed Exhibits. The late filed exhibits consisted of pages from U S WEST's Exchange and Network Services Tariff concerning service liabilities and a 1996 Commission order concerning U S WEST's charges for installation of telephone facilities.

At its March 10, 1997, meeting, the Commission considered this matter. The Commission first voted unanimously to deny U S WEST's Motion for Late Filed Exhibits. The Commission also voted unanimously to find that U S WEST has committed an unreasonable act in its failure to provide service to the Thompsons in a timely manner and awarded damages.

Based on the evidence received at the hearing, the Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

I

On October 24, 1997, the Commission received a complaint from Avery and Dixie Thompson against U S WEST alleging delays in installation of phone service and inadequacies in providing service. Exhibit 1.

II

The Thompsons contacted U S WEST in April of 1997, to get phone service for their new residence in rural Reliance. Tr. at 6. They were told to contact U S WEST two weeks prior to their planned moving date. Id. They subsequently contacted U S WEST with their moving date of September 12, 1997, and requested that service be disconnected at their current residence and connected at their new Reliance residence. Id. U S WEST was given a legal description of the property and the Thompsons were quoted a hookup fee of \$25.00. Id.

III

Service was disconnected on September 12, 1997, at their old residence, but U S WEST was unable to connect service at their new residence because U S WEST's lines were full. Id. U S WEST estimated that it would take three to four days to provide service to the new residence so the Thompsons asked to reconnect service at their old residence. Tr. at 7-8.

IV

By September 23, 1997, the Thompsons were still without service and so Ms. Thompson again contacted U S WEST and was told the earliest possible date for service would be sometime in October. Tr. at 8. The Thompsons received service on October 16, 1997; however, on the next day they discovered they were unable to receive any incoming calls. Tr. at 15. By October 18, 1997, the telephone line was dead. Tr. at 16. Service was restored by October 20, 1997. Id. Their telephone line was dead again on November 30, 1997, and was restored by December 3, 1997. Tr. at 19. Ultimately, the Thompsons were without landline telephone service for 38 days. Exhibit 4.

V

Due to the difficulty in obtaining telephone service, the Thompsons were forced to expend time and resources in making and receiving the following contacts:

1. September 23, 1997. Ms. Thompson contacted U S WEST on status of telephone service and discussed the cellular telephone option. She was told she would have to pick up the cellular telephone at Sioux Falls, Rapid City, Aberdeen, or Pierre and must return it to the same location. She replied that she needed to talk to her husband to see if he could go to Pierre to pick it up. Tr. at 8-10.
2. September 25, 1997. Ms. Thompson borrowed cellular telephone from sister. Tr. at 10; Exhibit 4.

3. October 6, 1997. Ms. Thompson contacted U S WEST and was placed on hold for around 27 minutes. Then she was told she could not get service until December 19, 1997. When she told the service representative that it would be difficult to place the line in South Dakota in December the service representative agreed that the Thompsons may not get service until the spring but stated that it was out of U S WEST's control. She also discussed arrangements for obtaining a cellular telephone from U S WEST. Tr. at 10.
4. October 10, 1997. The Thompsons received a cellular telephone on October 9, 1997, from U S WEST. They discovered it was programmed with the wrong number and they were unable to use it for local calls, so Ms. Thompson contacted U S WEST about these problems. Tr. at 13.
5. October 13, 1997. Ms. Thompson called U S WEST again about cellular telephone problem and was told U S WEST would call back that same day. Tr. at 14.
6. October 13, 1997. Ms. Thompson called U S WEST again at 4:50 p.m., since U S WEST had failed to call back. Tr. at 14.
7. October 20, 1997. Landline telephone service was put in place on October 16, 1997. On October 17, 1997, the Thompsons discovered they were unable to receive incoming calls and the line was completely dead on October 18, 1997. Since neither cellular telephone or landline telephone were working, Ms. Thompson called U S WEST on October 20, 1997. Service was restored that same day. Tr. at 15-16.
8. October 23, 1997. Ms. Thompson received a call from Colleen Sevold, a U S WEST employee, concerning possible resolution of complaint that the Thompsons had filed with the Commission. Tr. at 16-17.
9. Ms. Sevold called again about possible resolution of the complaint. (Tr. at 17-18.
10. Ms. Thompson returned call to Ms. Sevold and again discussed possible resolution of complaint. Tr. at 18.
11. October 24, 1997. The Thompsons returned cellular telephone to U S WEST. Tr. at 18-19.
12. November 17, 1997. Ms. Thompson called to inform U S WEST that cellular telephone had been returned. Tr. at 19.
13. December 3, 1997. Ms. Thompson called U S WEST to tell them their landline telephone was dead. Tr. at 19.

14. December 30, 1997. Ms. Thompson received call from Ms. Sevold about settling complaint. Tr. at 20.
15. Ms. Thompson returned call to Ms. Sevold. Tr. at 20.

VI

The Thompsons also showed the following itemized charges as damages: cellular telephone charges of \$35.27 (exhibit 1); charge for advertisement in paper of \$11.32 (exhibit 1); October telephone charges of \$29.60 (exhibit 10); November telephone charges of \$14.70, \$7.31, and \$1.43 (exhibit 11). These charges total \$99.63. The Thompsons also had to travel to town to specifically access a phone. They made 11 trips to town, a 34 mile round trip, for a total of 374 miles and multiplied that by 31½ cents per mile for a total amount for mileage of \$117.81. Exhibit 5. The 31½ cents per mile was taken from IRS Publication 463. *Id.* The Thompsons also requested an additional \$6,000.00 for their inconvenience. Tr. at 33, 41-43.

VII

U S WEST's attorney stated that U S WEST would not be contesting most of what the Thompsons had stated in their complaint and that the focus should be on what damages were sustained by the Thompsons. Tr. at 5. U S WEST's attorney stated that "[w]hat we want the focus of the hearing to be is what are the damages that are sustained by the Thompsons as a result of their not having phone service when they wanted to have it." *Id.* At the close of the hearing, U S WEST's attorney stated that U S WEST was not disputing the dollar amounts that the Thompsons had proven and that U S WEST was willing to pay those amounts. Tr. at 116. He further stated that the Thompsons "are entitled to something" and that they should "get a fair sum of money. . . ." Tr. at 117. Notwithstanding these admissions, five weeks after the hearing U S WEST moved to admit, as a late filed exhibit, a tariff concerning service liability limitations and asked that any damages be limited to the terms of that tariffed provision.

VIII

The Commission denies U S WEST's motion to admit late filed exhibits five weeks after the hearing as untimely. U S WEST could have submitted these exhibits at the hearing; submission after the hearing would be prejudicial to the Thompsons. Moreover, at the hearing, U S WEST admitted that the Thompsons were entitled to damages. Tr. at 5; 116-117.

IX

The Commission finds that U S WEST has committed an unreasonable act in its failure to provide service to the Thompsons in a timely manner. The Commission finds that the Thompsons have suffered damages. These damages consist of \$99.63 for telephone and advertisement charges and \$117.81 for mileage for trips to town in order to use a

telephone. In addition, the Commission finds that the Thompsons need to be compensated for their time. Thus, the Commission assigns a cost of \$35.00 for each of their 11 trips to town for a total of \$385.00. The Commission also assigns the cost of \$35.00 for 12 of the events listed in Finding of Fact V. Although there are 15 events listed that caused an expenditure of time by the Thompsons, the Commission finds that three of those events coincide with trips to town for which the Thompsons have already been compensated for in the \$385.00 amount listed previously. Thus, the Commission multiplies \$35.00 by 12 events for a total of \$420.00. The amount of damages total \$1022.44.¹

CONCLUSIONS OF LAW

I

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26, 49-13, including 49-13-1 through 49-13-27, inclusive, and 49-31, including 49-31-3, 49-31-7, 49-31-7.1, 49-31-7.2, 49-31-10, 49-31-11, 49-31-38, 49-31-38.1, 49-31-38.2, 49-31-38.3 and ARSD 20:10:01:07.01 through 20:10:01:15.01, inclusive.

II

The Commission denies the late filed exhibits as being untimely and prejudicial and are further barred by judicial admissions made by U S WEST through its attorney.

III

The Commission concludes U S WEST has committed an unreasonable act in its failure to provide service to the Thompsons in a timely manner and that the Thompsons have suffered damages in the amount of \$1022.44.

It is therefore

ORDERED, that U S WEST's Motion for Late Filed Exhibits is denied as being untimely and prejudicial and is further barred by judicial admissions made by U S WEST through its attorney; and it is

FURTHER ORDERED, that U S WEST has committed an unreasonable act in its failure to provide service to the Thompsons in a timely manner and that the Thompsons have suffered damages in the amount of \$1022.44; and it is

FURTHER ORDERED, that U S WEST shall pay the Thompsons damages of \$1022.44.

¹At the Commission meeting, the Commission found damages of \$1032.44. However, this was in error as the actual number is \$1022.44.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 27th day of March, 1998. 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 27th day of March, 1998.

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><i>Helaine Kalkes</i></u>
Date:	<u>3/30/98</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner