

Telecommunications Orders - Issued 1999

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

IN THE MATTER OF THE COMPLAINT FILED BY) AMENDED
BASEC.NET, HURON, SOUTH DAKOTA, AGAINST U S) ORDER
WEST COMMUNICATIONS, INC. AND FIRSHEL, INC.) FOR AND
REGARDING BILLING ISSUES) NOTICE OF
) HEARING

TC98-194

On October 26, 1998, the Public Utilities Commission (Commission) received a complaint by Marvie Tschetter of Basec.Net, Huron, South Dakota (Basec.Net), against U S WEST Communications, Inc. (U S West) and FirsTel, Inc. (FirsTel). Basec.Net states that it purchased an existing business and contacted U S WEST to continue customer access through T-1 lines. U S WEST informed Basec.Net it could not take over payment of the lines unless the previous owner's debt was paid in full. Basec.Net decided to move the equipment and obtain services through FirsTel. After obtaining the services, Basec.Net was informed by U S WEST that they would be charged for installation/construction fees, the old billings of the previous owner, and additional charges for monthly service until other options were available. Neither U S WEST nor FirsTel disclosed these costs prior to providing service. FirsTel offered a plan with minimal installation fees but could not offer the service for 15-20 days which would not allow Basec.Net's customers access to their services. Basec.Net seeks the following relief: "1) Require U S WEST to inform promptly of facilities issues. 2) Some sort of financial compensation for loss of revenue."

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 November 3, 1998, a duly noticed meeting, the Commission reviewed the complaint. The Commission voted unanimously to find probable cause and served the complaint on U S WEST and FirsTel. U S WEST filed its Answer to Complaint and Counterclaim on November 30, 1998. FirsTel filed its Answer to Complaint of Basec.Net and Cross Claim against U S WEST Communications, Inc., on November 30, 1998. Basec.Net filed its Answer to U S WEST's Counterclaim on December 11, 1998. U S WEST filed its Answer to Cross-Claim of FirsTel on December 18, 1998.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26, 49-2, 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, 49-31-10, 49-31-11, 49-31-38, 49-31-38.1, 49-31-38.2, 49-31-38.3, 49- 31-60 through 49-31-68, inclusive, and ARSD 20:10:01:07.01 through 20:10:01:28, inclusive. The Commission may rely upon any or all of these or other laws of this state in making its determination.

A hearing shall be held on ~~January 19 20, 1999, beginning at 8:30 o'clock A.M., on January 19, in the City Commission Room, 222 East Dakota,~~ March 31 to April 1, 1999, beginning at 8:30 o'clock A.M., on March 31, in Room 412 of the State Capitol Building, 500 E. Capitol, Pierre, South Dakota. All persons so testifying will be subject to cross-examination by the parties. The order of the proceeding will be in the following sequence: (1) Complainant; (2) U S WEST; (3) FirsTel; and (4) Staff.

The issues at the hearing are: (1) whether U S WEST and/or FirsTel committed an unlawful or unreasonable act, rate, practice or omission in providing or failing to provide services to Basec.Net and, if so, what relief would be appropriate; (2) whether Basec.Net is liable to U S WEST for payment for services provided by U S WEST; and (3) whether FirsTel is entitled to complete indemnity against U S WEST or, alternatively, a determination of proper contribution.

The hearing shall 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 shall 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 (1) whether U S WEST and/or FirsTel committed an unlawful or unreasonable act, rate, practice, or omission in providing or failing to provide services to Basec.Net and, if so, what relief would be appropriate; (2) whether Basec.Net is liable to U S WEST for payment for services provided by U S WEST; and (3) whether FirsTel is entitled to complete indemnity against U S WEST or, alternatively, a determination of proper contribution. 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 issues of (1) whether U S WEST and/or FirsTel committed an unlawful or unreasonable act, rate, practice or omission in providing or failing to provide services to Basec.Net and, if so, what relief would be appropriate; (2) whether Basec.Net is liable to U S WEST for payment for services provided by U S WEST; and (3) whether FirsTel is entitled to complete indemnity against U S WEST or, alternatively, a determination of proper contribution.

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 January, 1999.

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:

Commissioners Burg, Nelson and
Schoenfelder

WILLIAM BULLARD, JR.
Executive Director

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