

TC97-169

CH/DS/LH

DOCKET NO.

TC97-169

In the Matter of

IN THE MATTER OF THE COMPLAINT
FILED BY AVERY AND DIXIE
THOMPSON, RELIANCE, SOUTH
DAKOTA, AGAINST U S WEST
COMMUNICATIONS, INC. REGARDING
DELAY IN SERVICES

Public Utilities Commission of the State of South Dakota

DATE	MEMORANDA
10/6/97	Received,
10/6/97	Accepted,
10/30/97	TC For Filing;
11/3/97	Order Finding Public Cause and Notice Requiring Answer;
11/14/97	Order Appointing Non-Resident Attorney (William P. Beaton);
11/25/97	Answer to Complaint and Certificate of Service;
12/30/97	Order for and Notice of Hearing;
1/22/98	Transcript of Hearing filed on 1/14/98;
1/26/98	U.S. West's Motion for Late Filed Exhibits;
1/26/98	U.S. West's Brief;
1/28/98	Objection to U.S. West's Motion for Late Filed Exhibits and Rebuttal Brief;
2/3/98	Response to Staff's Objection to U.S. West's Motion for Late Filed Exhibits;
2/4/98	Letter Brief of SDPUC;
2/11/98	Notice of Filing by U.S. West of Late Filed Exhibits;
3/27/98	Finding of Fact, Conclusions of Law, Order and Notice of Entry of Order;
3/31/98	Docket Closed

South Dakota
Public Utilities Commission
State Capitol 500 E. Capitol
Pierre, SD 57501-5070
Phone: (800) 332-1782
Fax: (605) 773-3809

TELECOMMUNICATIONS SERVICE FILINGS

These are the telecommunications service filings that the Commission has received for the period of:

10/17/97 through 10/30/97

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five days of this filing.

DOCKET NUMBER	TITLE/STAFF/SYNOPSIS	DATE FILED	INTERVENTION DEADLINE
REQUEST FOR CERTIFICATE OF AUTHORITY			
TC97-168	Application by Atlas Equity, Inc. d/b/a Performance Telecom for a Certificate of Authority to operate as a telecommunications company within the state of South Dakota. (Staff: TS/CH) "Applicant seeks statewide authority to provide intra- and interLATA interexchange telecommunications services...Applicant intends to provide interexchange intrastate voice message telephone services."	10/27/97	11/14/97
TC97-170	Application by iTELSA (USA), Inc. for a Certificate of Authority to operate as a telecommunications company within the state of South Dakota. (Staff: TS/CH) "The Applicant will provide interexchange services as a non-facilities-based reseller. Applicant proposes to offer 1+ and prepaid phone card services to both business and residential users."	10/27/97	11/14/97
TC97-171	Application by New Media Telecommunications, Inc. for a Certificate of Authority to operate as a telecommunications company within the state of South Dakota. (Staff: TS/KC) "New Media, proposes to provide intrastate long distance service in conjunction with its interstate long distance service."	10/27/97	11/14/97
TC97-172	Application by Long Distance of Michigan, Inc. d/b/a LDMI Long Distance for a Certificate of Authority to operate as a telecommunications company within the state of South Dakota. (Staff: DJ/KC) "LDMI offers outbound telecommunications services to residential and business customers, utilizing switched access. Switched access service is available on a presubscription basis from equal access originating end offices. LDMI will also offer travel card and inbound toll-free services. Service is offered as an add-on to LDMI's interstate service."	10/27/97	11/14/97
FORMAL COMPLAINT FILED			
TC97-169	Avery and Dixie Thompson vs U S WEST Communications, Inc. On October 24, 1997, the Commission received a complaint filed by Avery and Dixie Thompson, Complainants, Reliance, SD, against U S WEST Communications, Inc. (Respondent) regarding delays in the provisioning of new services. According to the complaint, Complainants contacted Respondent in April of 1997, requesting phone service at a new location. Complainants state they were informed by Respondent that they should call the Respondent two weeks prior to the date they wanted service. Complainants indicate that their service at the new residence was needed on September 12, 1997. Complainants contacted Respondent on September 12, 1997, and were informed that Respondent did not have adequate facilities at the Complainants' new location. On or about September 23, 1997, Complainants were told by Respondent that services would not be provisioned until late October, 1997. Respondent provisioned services to Complainants in late October but the complaint does not indicate whether those services are working as of the date of the complaint. Complainants are asking that Respondent provision the services requested; that Respondent reimburse Complainants for certain expenses relating to the delayed service; and that Respondent compensate Complainants for the inconvenience caused by the delay in provisioning service.	10/24/97	NA

Important Notice: The Commission is compiling a list of internet addresses. If you have an internet address please notify the Commission by E-mailing it to Terry Norum at: terryn@pu.state.sd.us Faxing the address to the Commission at: 605-773-3809

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

IN THE MATTER OF THE COMPLAINT FILED)	ORDER FINDING
BY AVERY AND DIXIE THOMPSON,)	PROBABLE CAUSE AND
RELiance, SD, AGAINST U S WEST)	NOTICE REQUIRING
COMMUNICATIONS, INC. REGARDING)	ANSWER
TELEPHONE LINE LOCATION)	TC97-169

On October 24, 1997, the Commission received a complaint filed by Avery and Dixie Thompson, Complainants, Reliance, SD, against U S WEST Communications, Inc. (Respondent) regarding delays in the provisioning of new services. According to the complaint, Complainants contacted Respondent in April of 1997, requesting phone service at a new location. Complainants state they were informed by Respondent that they should call the Respondent two weeks prior to the date they wanted service. Complainants indicate that their service at the new residence was needed on September 12, 1997. Complainants contacted Respondent on September 12, 1997, and were informed that Respondent did not have adequate facilities at the Complainants' new location. On or about September 23, 1997, Complainants were told by Respondent that services would not be provisioned until late October, 1997. Respondent provisioned services to Complainants in late October but the complaint does not indicate whether those services are working as of the date of the complaint. Complainants are asking that Respondent provision the services requested; that Respondent reimburse Complainants for certain expenses relating to the delayed service; and that Respondent compensate Complainants for the inconvenience caused by the delay in provisioning 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 meeting, the Commission reviewed the complaint.

The Commission finds that it has jurisdiction over this matter pursuant to Chapters 49-13 and 49-31 SDCL and ARSD 20:10:01.08.01 and 20:10:01.09. The Commission voted unanimously to find probable cause, it is therefore

ORDERED, that pursuant to ARSD 20:10:01.09, the Commission finds that there is probable cause of an unlawful or unreasonable act, rate, practice, or omission and that the complaint shall be forwarded to U S WEST and U S WEST shall file with the Commission its answer in writing within twenty (20) days of service of this order.

Q 144-5333

Dated at Pierre, South Dakota, this 3rd day of November, 1997.

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 Melanie Kelso

Date 11/5/97

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

0144-534
U S WEST, Inc.
1801 California Street, Suite 5100
Denver, Colorado 80202
303 672-2716
Facsimile 303 295-7059
email: lmaez@uwest.com

Luke Maez
Legal Secretary

Via Overnight Delivery

November 13, 1997

Mr. William Bullard Jr.
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

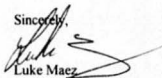
**Re: In the Matter of the Complaint Filed by Avery and Dixie Thompson,
Reliance, SD, Against U S WEST Communications, Inc. Regarding
Telephone Line Location
Docket No. TC97-169**

Dear Mr. Bullard:

Enclosed for filing in the above referenced docket is an original and ten (10) copies of the
Sixth Judicial Circuit Order Admitting William Heaston as Non-Resident Attorney for
U S WEST Communications, Inc. to appear in this matter.

Please file stamp the enclosed extra copy of this letter and return to me in the enclosed self-
addressed stamped envelope. Thank you.

Sincerely,



Luke Maez
Legal Secretary to
William Heaston

Encl

U S WEST

RECEIVED

NOV 14 1997

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES)

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

NOV 14 1997

IN THE MATTER OF THE COMPLAINT FILED)
BY AVERY AND DIXIE THOMPSON,)
RELANCE, SD, AGAINST U S WEST)
COMMUNICATIONS, INC. REGARDING)
TELEPHONE LINE LOCATION)

TC97-163 SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

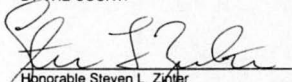
ORDER ADMITTING
NON-RESIDENT ATTORNEY

It is hereby

ORDERED that the Motion for Admission for William P. Heaston, a non-resident attorney, to appear on behalf of U S WEST Communications, Inc., before the Public Utilities Commission and this Court relating to this matter is granted.

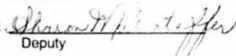
Dated: November 10th, 1997.

BY THE COURT:


Honorable Steven L. Zinter
Circuit Court Judge
Sixth Judicial Circuit

ATTEST:

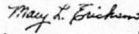
Mary L. Erickson
Clerk of Courts

BY: 
Deputy

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.

FILED

NOV 10 1997

 CLERK
Deputy

(SEAL)

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

IN THE MATTER OF THE COMPLAINT)	ORDER FOR AND NOTICE OF
FILED BY AVERY AND DIXIE THOMPSON,)	HEARING
RELIANCE, SD, AGAINST U S WEST)	
REGARDING TELEPHONE LINE LOCATION)	TC97-169

On October 24, 1997, the Public Utilities Commission (Commission) received a Complaint from Avery and Dixie Thompson (Complainant) 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.

TAKE NOTICE that a hearing in this matter will be held on January 14, 1998, at 1:00 o'clock P.M. in the Brule County Courthouse, Jury Room, 300 S. Courtland, Chamberlain, SD.

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. The Commission may rely upon any or all of these or other laws of this state in making its determination.

The issue at the hearing is whether U S WEST committed an unlawful or unreasonable act, rate, practice or omission.

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; and (3) Staff.

The hearing is an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to attend and represent themselves or be represented by an attorney. However, such 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 testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20.

The Commission, after examining the evidence and hearing testimony presented by the parties, shall make Findings of Fact, Conclusions of Law, and a Final Decision. As a result of the hearing, the Commission may determine whether U S WEST committed an

7:00:44:00

unlawful or unreasonable act, rate, practice, or omission and may determine damages, fines or other remedies for service quality as provided by law. The Final Decision may be appealed by the parties to the Circuit Court and the South Dakota Supreme Court as provided by law. It is therefore

ORDERED that a hearing shall be held on the complaint of Avery and DixieThompson as specified above.

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 30th day of December, 1997.

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>William Kalko</u>
Date	<u>12/30/97</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:
Commissioners Burg, Nelson and
Schoenfelder

William T. Bullard, Jr.
WILLIAM BULLARD, JR.
Executive Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

JAN 22 1998

IN THE MATTER OF THE COMPLAINT
FILED BY AVERY AND DIXIE THOMPSON,
RELIANCE, SD, AGAINST U S WEST
REGARDING TELEPHONE LINL LOCATION

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

HEARD BEFORE THE PUBLIC UTILITIES COMMISSION

PROCEEDINGS:

January 14, 1998
1:00 P.M.
Brule County Courthouse
Chamberlain, South Dakota

PUC COMMISSION:

Jim Burg, Chairman
Laska Schoenfelder, Commissioner
Pam Nelson, Commissioner

COMMISSION STAFF
PRESENT:

Rolayne Ailts Wiest
Camron Hoseck
David Jacobson

Reported by: Lori J. Grode, RMR

A P P E A R A N C E S

For US West: Thomas J. Welk
P.O. Box 5015
Sioux Falls, South Dakota,
57117-5015

Also Present for USW: Jon Lehner
Colleen Sevold

For the Thompsons: Pro Se

I N D E X

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P R O C E E D I N G S

CHAIRMAN BURG: We will begin the hearing in TC97-169. I will begin the hearing for this docket in the Matter of the Complaint Filed by Avery and Dixie Thompson, Reliance, South Dakota, against U S West Communications, Incorporated, Regarding Telephone Line Location.

The time is 1 o'clock. The date is January 14, 1998; and the location of the hearing is in the Brule County Courthouse, Jury Room, 300 S. Courtland, Chamberlain, South Dakota.

I am Jim Burg, Commission Chairman. Commissioners Laska Schoenfelder and Pam Nelson are also present. I'm presiding over this hearing. This hearing was noticed pursuant to Commission's Order For and Notice of Hearing issued December 30, 1997. The issue at this hearing is whether U S West committed an unlawful or unreasonable act, rate, practice or omission.

All parties have the right to be present and to be represented by an attorney. All persons so testifying will be sworn in and subject to cross-examination by the parties. The Commission's final decision may be appealed by the parties to the state Circuit Court and State Supreme Court.

1 Rolayne Wiest will act as Commission
2 Counsel. She may provide recommended rulings on
3 procedural and evidentiary matters. The Commission may
4 overrule its counsel's preliminary rulings throughout
5 the hearing. If not overruled, the preliminary rulings
6 will become final.

7 At this time I will turn it over to Rolayne
8 to conduct the hearing.

9 MS. WIEST: I'll take the appearances of the
10 parties. U S West.

11 MR. WELK: Thomas J. Welk from Sioux Falls,
12 and appearing are Colleen Sevold and Jon Lehner present
13 for U S West.

14 MS. WIEST: Mrs. Thompson, you can just
15 introduce yourself for the record.

16 MRS. THOMPSON: Dixie Thompson.

17 MR. THOMPSON: Avery Thompson.

18 MS. WIEST: Staff.

19 MR. HOSECK: Camron Hoseck on behalf of
20 staff.

21 MS. WIEST: Do any of the parties wish to
22 make an opening statement? Thompsons?

23 MRS. THOMPSON: No.

24 MS. WIEST: Mr. Welk?

25 MR. WELK: Just very short. At today's

1 hearing U S West is not going to be contesting
2 essentially most of the complaint of the Thompsons in
3 this matter. This is an unfortunate incident, and
4 we're not going to be contesting most of what was
5 contained in the original complaint.

6 What we want the focus of the hearing to be
7 is what are the damages that are sustained by the
8 Thompsons as a result of their not having phone service
9 when they wanted to have it. And we have made offers
10 of settlement in this case and which we believe exceed
11 the amount of the damages that have been requested.

12 And so one of the essential issues that I
13 want to explore is why we are here, because we have
14 made a substantial offer to try to compensate these
15 customers for the service that should have been
16 provided and wasn't.

17 So we're not going to be at this hearing
18 denying most of what the Thompsons said. We've read
19 the complaint. We've investigated. And except for
20 some preliminary questions on some of the facts, what
21 the focus is going to be is what damages they
22 sustained. And that's the purpose of what we're going
23 to be exploring, at least from our standpoint.

24 MS. WIEST: Mr. Hoseck.

25 MR. HOSECK: I have no opening.

1 MS. WIEST: Okay. We'll start with the
2 Thompsons. Who will be your first witness? Will you
3 be, Mrs. Thompson?

4 MRS. THOMPSON: Yes, I will.

5 MS. WIEST: Okay. If you would go up there
6 and take your exhibits with you and be sworn in by the
7 Court Reporter.

8 DIXIE THOMPSON,
9 called as a witness, being first duly sworn,
10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 A. I'm just going to begin with giving the
13 overview of what our complaint was based on.

14 MR. WELK: Are we going to have just a
15 narrative?

16 MS. WIEST: Is there a problem with having
17 narrative?

18 MR. WELK: At this point they're not
19 representing Thompsons? Mr. Hoseck is not going to ask
20 questions?

21 MR. HOSECK: If I ask questions, it will be
22 on behalf of staff.

23 MR. WELK: So she's not -- they're not
24 represented by counsel?

25 MS. WIEST: No, they're not.

0144:53:14

1 MR. WELK: Okay. That's fine.

2 A. Okay. In April of '97 we contacted U S West
3 to inform them of our upcoming move to the rural
4 Reliance area and asked what we needed to do to get
5 phone service at that residence. We were informed at
6 that time by U S West that we just needed to contact
7 them two weeks prior to our planned move date.

8 So our planned move date was September 12th.
9 I contacted U S West on disconnecting service from our
10 current residence here in Chamberlain at 607 1/2 South
11 Sanborn Street and requested that service be connected
12 at our new residence in rural Reliance. The new
13 service should have been connected and operable on
14 Friday, September 12th. And on the second we did give
15 a legal description of the property location, and we
16 were quoted \$25 for the new hookup fee.

17 On Friday, September 12th, the service was
18 disconnected from our residence in town, but the
19 telephone company was unable to re -- or connect our
20 service at our rural Reliance residence because they
21 discovered that all their lines were full and the
22 problem would need to be referred to an engineer. And
23 they thought it would be approximately three to four
24 days before they'd be able to provide us with service
25 at our Reliance address. So we did request that they

1 just hook our -- reconnect our service at our Sanborn
2 residence just to enable us to retrieve messages. And
3 we were expecting to have service on or prior to the
4 16th of September.

5 On the 17th of September I went out of town
6 on business; and I did not contact the phone company
7 on, you know, why we didn't have phone service yet.

8 And then September 18th, Thursday, September
9 18th, our children were in an accident on their way
10 into town; and that was the delay for the reason, that
11 was the delay in my getting back to U S West from
12 September 12th through the 23rd; and that was the next
13 time that I contacted U S West was on Tuesday,
14 September 23rd. I contacted U S West Delayed Services
15 on the status of our land service at our Reliance
16 residence.

17 And at that time I was informed that the
18 earliest possible date that we would have land service
19 would be October of '97, and the reason being that
20 there were no available lines in the area and plans
21 needed to be drawn up by an engineer out of the Denver
22 office. And after the completions of the plans, the
23 work would then be contracted to a general contractor
24 in our area. And I had asked the operator what our
25 financial responsibility would be for that. And she

1 said it would be \$25 and that hookup fee would be
2 charged, just added to our monthly statement when the
3 service was completed.

4 At that time she did inform us that they did
5 have alternate services. One was they could provide us
6 with a cell phone unit and program it to our existing
7 number, which is 605-734-6398. And that monthly
8 service charge would be \$17.00 and we'd have unlimited
9 air time for all incoming local calls and all outgoing
10 calls would be free. She did say that any long
11 distance calls would need to be made by using our
12 calling card.

13 And the second option we were given is they
14 could just credit our account for \$100 for every month
15 that U S West was unable to provide us without service,
16 providing we had a cell phone. And I did tell the
17 operator that we did not have a cell phone, so I was
18 interested in the \$17.00 a month cell phone option.

19 And then she asked where we would like to
20 pick up the phone at. It had to be picked up at one of
21 the following locations: Sioux Falls, Rapid City,
22 Aberdeen, or Pierre, and that's what location I'd like
23 to pick the phone up, because they could have it
24 programmed and waiting for us. And I had mentioned
25 that we were going to be going to Rapid, and I asked if

1 I could pick the phone up in the Rapid area and like
2 return it to the Pierre area because it was a little
3 bit closer for us. And she said that, no, it must be
4 picked up and returned to the same location. And so I
5 said I'll need to speak with my husband Avery to see
6 when he would be going to Pierre so he could get it
7 back there.

8 In the meantime, our children were in this
9 accident, and that I was tied up with that from like
10 September 18th to the 22nd, and I finally ended up
11 borrowing a cell phone unit from my sister. And then
12 we traveled to Rapid City that weekend, and I finally
13 contacted U S West back on October 6th. And between
14 this lapse of time, I did not once hear from U S West
15 informing us that other phone service was going to be
16 any later than like three or four days or the end of
17 October.

18 So on the 6th of October when I contacted U S
19 West, I got put on hold. And I think it was an Omaha
20 number that I called because the lady that -- the
21 office that I called, the U S West representative
22 waited on the phone with me for I think it was 27
23 minutes. And she kept asking me, "Are you sure you
24 want to wait, Mrs. Thompson? Would you rather try back
25 in a little while?" I said, "No, I'd rather wait."

1 I finally did get through Toll Delayed
2 Services and I spoke with Ramona. And I explained the
3 whole situation and asked how much longer we were going
4 to be without service and what we could do. And she
5 looked in her files and she said it was noted that the
6 earliest possible date they'd be able to provide us
7 with service would be the 19th of December. And I
8 said, you know, I informed her that I lived in South
9 Dakota; that in December it's wintertime here and it
10 would be impossible for us to get phone service if we
11 didn't have it prior to that date. I go, "It would
12 probably be spring of the next year."

13 And the operator was very uncaring. She said
14 that, that very well could be the case, but it was
15 really, you know, out of their control. And she
16 informed us that service was being delayed because U S
17 West contracts with independent contractors in our area
18 to install the line, and this is the date that they
19 were given by the independent contractor. And then she
20 proceeded to tell me about my options for alternative
21 service.

22 And after she explained all the options, I
23 informed her that I did want the cell phone and that I
24 requested that U S West waive a surcharge on our
25 calling card for long distance because we weren't going

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1 to have an option to make a long distance call any
2 other way. And she said that wasn't possible and U S
3 West was not able to provide that type of service for
4 us. I also explained -- she then told me that --
5 anyway, we went through this about this long distance
6 charges because I think it's 75 cents on our current
7 card that we have to pay every time we make a long
8 distance phone call using our calling card.

9 And she said, well, you know, if that wasn't
10 acceptable, I could go buy my own cell phone and U S
11 West would just pay me our -- credit our account \$100
12 for every month we were without service. And that was
13 a little upsetting for me, and I told her this wasn't
14 an option and that I was going to file a complaint with
15 the PUC. And she stated to me at that time that U S
16 West is providing us with the same service that they
17 would provide any other customer. And then she went on
18 to ask me where I wanted to pick up this cell phone
19 unit at. And I asked it be sent to me either Fed Ex or
20 UPS because I didn't live too close to any of those
21 locations. And she then checked with her supervisor to
22 see if that could be done. She arranged to have the
23 cell phone unit shipped Fed Ex to my work address, and
24 we received it on October 9th.

25 On October 9th, after we received the cell

1 phone unit, we went to use the phone and we discovered
2 it wasn't programmed to our existing 605-734-6398
3 number. It was programmed to Fort Pierre number; it
4 was not programmed for local use at all. Each time we
5 tried to use the phone, we received messages asking us
6 for our calling card number, and we were not able to
7 receive incoming or outgoing calls on the phone.

8 On the 10th of October I contacted U S West
9 Delayed Services again and spoke with Patricia. I
10 explained the situation. And she checked the work
11 order and said that the order had been written up
12 correctly on their end and she thought the problem was
13 due to the fact that they hadn't disconnected our
14 service at our Sanborn residence. So she sent a work
15 order in to disconnect the Sanborn residence service.
16 And at about 12:30 I checked to see if the -- if our
17 phone at our house in town had been disconnected and it
18 had.

19 But when I went to dial our 605-734-6398
20 number, I kept getting the message that said, "Your
21 call cannot be completed at this time. The cellular
22 customer that you have dialed may have reached their
23 destination or traveled beyond the service area," and
24 it just said to please try later. We were still unable
25 to make any outgoing calls or receive any incoming

1 calls on the cell unit.

2 And by that time, I think it was a weekend
3 because I have a lapse of about two days there.
4 October 13th I contacted U S West Delayed Service
5 again, and I spoke with Kevin. And I reported that the
6 cell phone that they gave us was not programmed
7 correctly. And he checked the work order and said that
8 U S West did not have -- did have the work order
9 written up correctly and that the phone was sent from
10 Pierre, South Dakota, and it was at fault of the
11 cellular company that the unit was not programmed
12 correctly. He said he would contact a Mr. Eric Carr
13 out of the Denver, Colorado, office and ask him to give
14 me a call back later that day.

15 Well, at 4:50 he still hadn't called me, so I
16 put in a call to Mr. Carr. And actually I had to
17 contact U S West Delayed Services, and I spoke with
18 Mary, who referred me to Kevin, who connected me with
19 Mr. Carr. And Mr. Carr said he had sent the work order
20 to Tech Support, who hadn't gotten back to him is why
21 he hadn't returned my call. So I explained the whole
22 situation to Mr. Carr on our cell phone unit, and he
23 thought the problem was an ESN, an electronic serial
24 number, mismatch. So he asked me to get the cell phone
25 unit and read the serial number on the back of the

1 battery pack to him. And the certificate number was
2 DF69438.

3 And he then stated that that was the problem,
4 it was the ESN number in the unit. He said he would
5 make the change immediately, and the cell phone unit
6 should be operable. Well, at 5:20 p.m. that day I did
7 try and make an outgoing call, and the cell phone did
8 work. I can make an outgoing call and that I had asked
9 my niece to call me back and it was programmed for
10 incoming calls.

11 That same evening at about 8:15 p.m. we
12 received a call from the telephone company on the cell
13 phone unit, and they stated that they would be
14 installing our lines for our land service at the rural
15 Reliance area on Wednesday the 15th, and October 15th
16 the cable was laid for our new line. October 16th we
17 hooked up our telephone and we made a call to test the
18 service, and we were able to make outgoing calls.

19 And at first we didn't realize it, but the
20 next day we thought it was kind of strange that our
21 phone didn't ring. We have two teenage boys who are on
22 the phone all the time. So on the 17th we discovered
23 we were unable to receive any incoming calls to that on
24 our newly-installed phone line. All right. Actually,
25 it was on the newly-installed phone line and also the

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1 cell phone unit didn't work at that time either.

2 And then on the 18th the phone line to our
3 home was dead. We were unable to make any outgoing
4 calls or receive any incoming calls on the phone line.
5 And the same was with the cell phone unit. We weren't
6 able to use that for incoming or outgoing calls. And
7 I'm assuming this is a weekend again by my dates,
8 because on the 20th I called U S West services again
9 and spoke with Love, and I explained the problem. And
10 she referred me to repair services and reported the
11 problem to them. And at that time I spoke with
12 Chantel, and she said she'd check the problem; and if
13 it was a problem of U S West, it would be corrected by
14 6:00 p.m. that evening. If the problem was not any
15 fault of the U S West, we would be charged for a
16 service call. Service was restored on the 20th. On
17 the 22nd I filed the complaint with PUC.

18 And October 23rd I received a call from
19 Colleen Seagull (sic), and she stated that they
20 received our complaint, the PUC, and she wanted to know
21 what U S West could do to resolve the problem. And I
22 had borrowed a cell phone unit, so I requested that,
23 you know, they pay that bill. And she said that, you
24 know, they could apply that credit to our bill. And I
25 said I didn't want the credit because it's not my cell

1 phone. I wanted to be able to reimburse my sister for
2 the charges that are on it. Anyway, she was going to
3 check with her service supervisor and get back to me.
4 I also said I had received our October statement from
5 U S West and we were charged for calls made on the cell
6 unit that they loaned us, and it was my understanding
7 that all incoming and outgoing calls should have been
8 free, with the exception of long distance of which we
9 had to use our calling card for.

10 I did receive a return call from Colleen
11 stating that U S West would cut a check for the \$46.59
12 for the bills I submitted. She also asked what I felt
13 U S West could do to resolve the problem. And I told
14 her that we had received our October phone bill and we
15 were billed for a month of service and I didn't feel
16 that we should be responsible for those charges since
17 we were without service for most of the month. And she
18 agreed.

19 She also asked if I would withdraw the formal
20 complaint that I filed with the PUC. And I asked her,
21 you know, what would happen if I withdrew the complaint
22 and why would I want to. And she said that U S West
23 would apply \$100 credit to our account if we would
24 withdraw the complaint. If we did not withdraw the
25 complaint, there would be a hearing with the PUC, U S

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1 West, and ourselves.

2 And I told her that I'd speak with my husband
3 again and get back to her. And I did. I called Avery
4 and we talked about it. And so I returned Colleen's
5 call later that afternoon and I told her that we would
6 withdraw our complaint if U S West would send payment
7 of \$46.59 for the bills submitted, waive our monthly
8 service for October, credit our account for charges
9 incurred for the use of the cell phone unit, and pay
10 damages of \$7,135, plus \$1,000 for inconvenience. And
11 she stated that she wasn't authorized to pay such a
12 high claim.

13 She also stated that U S West did provide us
14 with the same type of delayed service that they would
15 have provided any other customer with. And I told her
16 the whole reason for me filing the claim was just to
17 get U S West to act on their negligence. And not until
18 I did file the complaint did I even receive a return
19 call from U S West on any of these issues. And I
20 refused to withdraw the complaint.

21 On October 22nd the contractors hired by U S
22 West were out and they did dig in the permanent line to
23 our residence. And at that time we were operating on
24 temporary above-the-ground service. We are now on
25 permanent service. On October 24th I returned the cell

1 phone unit that U S West sent to us to the ComNet
2 cellular company, and on the 28th we had -- on October
3 28th we had that conference call with PUC. On Friday
4 November 14th I received a message from U S West and it
5 was on our answering machine. The message stated that
6 they wanted to set up the return of our ComNet phone
7 unit. And that was also Monday I got back with them,
8 and I spoke with Nancy, and I told her that I did
9 return the cell unit on the 14th of November, and I
10 gave her the return shipping information that she
11 needed.

12 Sunday, the 30th, our phone line was dead
13 again. We couldn't make any outgoing calls. And also
14 Monday, December 1st, our phone line was still dead and
15 we couldn't make any outgoing calls that day either.
16 So when I got to work on Monday, I tried to make an
17 incoming call and we weren't able to make incoming
18 calls either. What would happen is we would -- the
19 phone would ring once and then we would receive a busy
20 signal.

21 I contacted U S West on Wednesday, December
22 3rd, and I reported the problem to their service
23 department. I spoke with Kathy. And she said that,
24 you know, they'd have the service restored by 6:00 p.m.
25 that evening, and it was. On December 3rd they

1 restored our service. On December 30th, I received
2 another call from Colleen Seagull (sic) and they wanted
3 to know if we would reconsider withdrawing our
4 complaint with PUC. She said U S West would be willing
5 to pay us for the ads in the paper, the cell phone
6 charges from the borrowed cell phone unit, they'd waive
7 our October phone charges, and pay us \$1,000 in
8 inconvenience. She also stated that if we did have a
9 hearing, that their lawyer would be at this hearing on
10 the 14th and it would be costly and inconvenient for
11 both of us.

12 Again, I told her I needed to speak with my
13 husband to see if we'd be interested in doing that.
14 And I returned her call and told her, no, that we would
15 not be interested. We're going to leave our complaint
16 on file with the PUC. During this period of time, from
17 the 18th through the 22nd, that's the period of time
18 where our sons were in their car accident, and I want
19 to elaborate on that a little bit.

20 Thursday, September 18th, our sons were in a
21 serious car accident on their way in to school. Both
22 boys were hospitalized. Our youngest son, Chris,
23 suffered a concussion and received minor cuts and
24 bruises. He was kept in the hospital overnight for
25 observation and released the next morning. Our oldest

1 son, Avery, underwent emergency surgery for ruptured
2 spleen. He spent two days in the ICU unit -- or not
3 two days, about a 24-hour period, I guess. Anyway,
4 Avery was released from ICU unit on Friday afternoon
5 and moved to a unit on the floor. After a six-day stay
6 in the hospital, Avery was released on Tuesday,
7 September 23rd.

8 During this period of time I wasn't able to
9 take him, when he was released from the hospital -- we
10 live 17 miles out of town. And I wasn't able to take
11 him home because we didn't have any phone service out
12 there, and I didn't want to leave him that far out of
13 town without being able to get in touch with either
14 Avery, myself, or his doctor if he needed to be. So I
15 had to bring him into town with me every day and leave
16 him with a friend.

17 When Chris was released from the hospital on
18 Friday the 19th, instead of us taking him home where he
19 would be more comfortable, I took him to -- because we
20 were still in town with our oldest son. We -- I took
21 him to stay with my sister so that he'd be able to get
22 in touch with us had he needed to. So he was forced to
23 spend four days away from home after his accident
24 because we didn't have phone service at our home for
25 him to go -- for me to feel comfortable leaving him

1 there. Also, when Avery was released from the hospital
2 on September 23rd, I was not able to take him home.

3 I returned to work that afternoon, and I did
4 get in touch with U S West that day. But I did leave
5 him with my sister because I didn't want to take him
6 home because we didn't have phone service. Over the
7 next four-day period, which would have been September
8 24th to the 27th, which should have been a restful
9 recovery period for my oldest son, who had just
10 underwent emergency surgery, my husband and I needed to
11 return back to work, but we were still unable to leave
12 Avery home by himself, which he would have had we had
13 phone service. He's seventeen years old. Instead, I
14 had to get him up every day, have him take that 17-mile
15 trip into town, leave him at my sister's house so I
16 could check in with him throughout the day and he could
17 check with his doctor. And I would to have pick him up
18 every evening and take him back home.

19 Some of the exhibits that I would like to
20 introduce -- let me find my original copies here -- is
21 this is a listing of the total number of days that U S
22 West did not provide us with residential phone
23 service. The time was September 12th was the first
24 day, and it totaled 38 days that we were without phone
25 service. And that's Exhibit 3. I do have copies if

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1 you want them for the PUC. Then I also have a total, a
2 listing of the total number of days we were without any
3 type of phone service at our Reliance address. That
4 would be U S West residential or the cell phone unit
5 that I borrowed from my sister. That was a total of 25
6 days that we were totally without any type of service
7 whatsoever.

8 MS. WIEST: Is that Exhibit 4?

9 A. Yes. And then this is a listing of the days
10 we were without phone service that we specifically
11 traveled into town to access telephone service.
12 Exhibit 5. And this is Exhibit 6, and it's a total
13 number of days we were unable to leave the boys at home
14 after their accident due to the sole fact that we did
15 not have phone service. This is Exhibit 10, and it's
16 an account summary of our October billing. And I've
17 highlighted on here the calls made from October 13th
18 and 14th from the cell phone unit and the number
19 605-222-4383. These are calls that should have been
20 free to us, incoming and outgoing. And there were
21 charges that did appear on our October billing that
22 shouldn't have.

23 MS. WIEST: Did you say that was number ten?

24 A. And this is Exhibit 11, and it's a copy of
25 our November billing. And on the adjustments there's a

8
14
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1 charge for \$14.00. It's item two on the adjustments
2 that I've highlighted. They're charges for \$14.70,
3 which I'm not sure what that charge is for because we
4 were quoted it says residential line, but we were only
5 quoted \$25 for the installation of that line. And
6 there's also a charge for --

7 MR. WELK: Could I have a copy of 11?

8 A. There was also under unregulated services
9 there was also a charge for \$7.31, which I have no idea
10 what that charge is for. And on the second page of
11 that there's also calls 7, 8, 9 that were made on
12 October 14th were calls that were made from the
13 borrowed cell phone unit, and it would be the number
14 605-222-4383. And those calls should have been at no
15 charge to us also. And I think I've covered
16 everything.

17 MS. WIEST: How about Exhibits 7, 8 and 9?

18 A. My husband will give those to you.

19 MS. WIEST: Okay.

20 MS. WIEST: Did you have anything else at
21 this time?

22 A. No. That about summarizes, I think, what I
23 needed to talk about.

24 MS. WIEST: Is there any objection to the
25 exhibits that she has?

1 MR. WELK: No objection.

2 MS. WIEST: And I would also ask if there's
3 any objection to Exhibits 1 and 2 being admitted.

4 MR. HOSECK: None.

5 MS. WIEST: So then we'll admit Exhibits 1,
6 2, 3, 4, 5, 6, 10, and 11. Mr. Welk, do you have any
7 questions?

8 MR. WELK: Yes. Thank you.

9 CROSS-EXAMINATION

10 BY MR. WELK:

11 Q. Good afternoon, Mrs. Thompson.

12 A. Good afternoon.

13 Q. I just had some preliminary questions based
14 upon the complaint that you filed. On September 12th
15 was telephone service restored to your Chamberlain
16 residence?

17 A. Yes, it was, late that afternoon.

18 Q. Now, in your complaint that you file with the
19 Commission, it's Exhibit 1. Do you have that in front
20 of you?

21 A. Not in front of me, no, I don't. I have a
22 copy of it in my folder but -- (Witness given Exhibit
23 1.) Thank you.

24 Q. On the fourth page of your complaint under
25 the description of attachments -- and I'll wait until

1 you get there so we're reading off the same page.

2 A. Okay.

3 Q. Under number two, you attached a bill from
4 the Chamberlain Oacoma Register for some ads in the
5 local paper for the sale of your mobile home and other
6 items. And you were unable to receive any calls due to
7 the fact you did not have any service from Friday
8 October 10th at 12:30 to October 13th at 5:20. From
9 your testimony today, you're saying that you were
10 without service at other times other than that? Is
11 that what I understand?

12 A. Yes, I am saying that.

13 Q. So did you describe any of the exhibits that
14 you brought here today, specifically Exhibits 5 and 6,
15 in your complaint?

16 A. No, I did not describe any of those in my
17 complaint.

18 Q. Now, in the complaint to the Commission, you
19 asked for three things to solve the problem in your
20 complaint; correct?

21 A. Yes, I think I did.

22 Q. Under the formal complaint it says resolution
23 request, you said that you wanted to provide operable
24 land service as soon as possible, a reimbursement for
25 the attached bills, and compensation for inconvenience;

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1 is that correct?

2 A. Yes.

3 Q. And you did not put any dollar amount in your
4 request, did you?

5 A. No.

6 Q. Except for the bills that were attached?

7 A. No, I did not.

8 Q. Now, at the time that you signed this
9 complaint on October 20th, did you have operable land
10 service at that time?

11 A. I did on the 20th, yes.

12 Q. The day you filed the complaint, but was that
13 the drop service or was that the permanent service?

14 A. Let me look. I don't actually know when that
15 line was dug in. You might want to ask me husband that
16 question because I didn't walk over there and look.

17 Q. Now, as I understand it in review of the
18 file, after the drop was placed to your residence and
19 you described that in your testimony, is the service
20 went out?

21 A. Yes.

22 Q. That's when the drop line was laying there?

23 A. To my knowledge, it was laying on top of the
24 ground.

25 Q. Did you ever determine what the reason was

1 that the service got interrupted when the drop line was
2 laid and operating?

3 A. No. I never walked out in the road and
4 looked at it.

5 Q. Now, from September -- as I read your
6 complaint, sometime in September 23 to 25 there was a
7 discussion with you about the cellular option that was
8 available?

9 A. The 23rd was the first date that they
10 informed us about even a cell option, or any
11 alternative option, I guess.

12 Q. And then as I read your complaint, after that
13 was explained to you, you said you would get back with
14 U S West about that option; is that correct?

15 A. Yes, because she informed me that I had to
16 pick it up at either Pierre, Watertown, Aberdeen, or
17 Rapid. And we live in Chamberlain, and I just had a
18 son that came out of the hospital after emergency
19 surgery, and I had no plans of driving anywhere other
20 than to -- I did explain I was going to be going to
21 Rapid and wanted to know if I could pick it up there,
22 but I didn't want to have to return it to that
23 location.

24 Q. Well, in your complaint you said and it's --
25 I'm reading now from the second page, the first

1 paragraph on the top, the last sentence, "I told her I
2 would have to speak with my husband as to what the
3 location would be best to pick the unit up and then I
4 would get back with her." And then the next entry was
5 at October 6th, 1997?

6 A. That's right.

7 Q. That's when your child was in the accident
8 from --

9 A. No. My child was in the accident on
10 September 18th. I had already -- I just decided to
11 borrow a cell phone unit until we could get someplace
12 to get this picked up, because it was my understanding
13 that we would have to drive to one of these locations,
14 pick it up in person, and we weren't going anywhere.

15 Q. So that was the reason it was a delay from
16 September 23 to October 6th?

17 A. Yeah, it was.

18 Q. Now, you said you borrowed the cell phone
19 from your sister?

20 A. Uh-huh.

21 Q. When did you borrow that?

22 A. The 25th of September. Let me look at my --
23 I have it noted on Exhibit 4 of the September 25th I
24 borrowed the cell phone unit.

25 Q. And who was your sister?

1 A. Carol Hutmaker. (sp)

2 Q. And so from September 12th to September 25th,
3 then, the only service you had is were messages left at
4 the old residence, is how I understand it?

5 A. Yes, that is.

6 Q. So you had phone service but not at the new
7 residence, only at the old residence?

8 A. Right, of which I had to come into town, 17
9 miles into town to pick up those messages.

10 Q. To check the answering machine?

11 A. (Witness nodded affirmatively.)

12 Q. Now, how much in damages are you requesting
13 this Commission to award?

14 A. \$6,000.

15 Q. \$6,000. And itemize those damages for me,
16 please.

17 A. Let's see, well, 5,500 of it was for the
18 trailer that we were desiring to sell. And then we
19 just rounded it up to inconvenience charge, you know.

20 Q. So 5,500 is for this trailer. I'll go into
21 that. And 500 is for the other inconvenience, the
22 bills, and everything else; is that correct?

23 A. Mainly inconvenience.

24 Q. So but --

25 A. I didn't --

1 Q. Go ahead and finish.

2 A. I guess I didn't realize I'd needed to
3 itemize my amount, so that's what we felt would --
4 that's what we felt our time was worth during the
5 period of time that we were inconvenienced. Our
6 children were unable to return home after their
7 accident. Our family members were unable to get in
8 touch with us during this period of time. So we just
9 thought that that would be a reasonable amount.

10 Q. That's \$500?

11 A. No, the \$6,000 total. I know I said 5,500
12 for the trailer.

13 Q. Right.

14 A. I'm telling you that I didn't realize I
15 needed to itemize my amount.

16 Q. Well, in the 6,000 is the trailer included or
17 not?

18 A. Yeah.

19 Q. All right. So let's talk about out of the
20 6,000, how much of the 6,000 do you claim is the damage
21 for the trailer?

22 A. I don't know.

23 Q. How much are you claiming is damages for
24 inconvenience?

25 A. I'm claiming \$6,000 damages for the

1 inconvenience. I won't include any trailer into that.

2 Q. Now you've lost me.

3 A. I'm sorry.

4 Q. Is the trailer in or out in this case?

5 A. Would it be possible for you to go over this
6 damage claim with my husband? I mean I wasn't prepared
7 to answer questions on damage claim.

8 Q. But you don't know what the damages are? You
9 can't itemize?

10 A. The damages that I'm asking you for today are
11 solely inconvenience, to clarify your question that you
12 asked me.

13 Q. So you're claiming \$6,000 for inconvenience?

14 A. Yes.

15 Q. All right. Are you claiming additional
16 damages for the cell charges and the other exhibit
17 you've put in here?

18 A. I'm claiming additional charges for the cell
19 charges.

20 Q. Which are how much?

21 A. The cell charges are \$35.25.

22 Q. All right.

23 A. The charges for the ad in our local paper
24 were \$11.32. Our October charges, on our October
25 billing, our charges were \$29.60. And then on our

1 November billing I'm asking for a clarification for the
2 adjustments, the \$14.70, the unregulated services for
3 \$7.31. And I'm requesting that \$1.43 be removed from
4 that bill because it was charges that occurred because
5 we used that cell phone unit.

6 Q. Is that it?

7 A. That's it.

8 Q. So 6,000 plus all these itemized damages?

9 A. Right.

10 Q. Now, when you testified earlier when
11 Ms. Sevold called to try to resolve this matter, I
12 believe your testimony was that you wanted \$7,135
13 damages for the trailer and then \$1,000 inconvenience?

14 A. Right, that's exactly what I told her. At
15 that point in time when I was speaking with her I was
16 more or less angry and venting, and that's what I
17 said.

18 Q. But you wanted her at that time to pay for a
19 trailer that was advertised during the weekend that you
20 didn't have telephone service; correct?

21 A. At that time, yes.

22 Q. And that was a 1972 trailer?

23 A. Right.

24 Q. And you've attached that to your complaint in
25 this action that described it as a 1972 mobile home, 14

1 x 60, two bedroom, one bath, air conditioner,
2 appliances, deck and storage shed at \$5,500?

3 A. Correct.

4 Q. And have you been -- have you sold the
5 trailer yet?

6 A. Not at this time.

7 Q. Did you sell, continue to try to sell the
8 trailer?

9 A. Yes.

10 Q. After the weekend that you didn't have phone
11 service?

12 A. Yes.

13 Q. And at the time you talked to Miss Sevoid
14 back in October you claimed \$1,000 for inconvenience?

15 A. I did.

16 Q. And today you've increased that 5,000 more?

17 A. I have, uh-huh.

18 Q. What has happened between now and then to
19 increase the demand for the same thing that you're
20 asking today \$5,000?

21 A. I sat down and itemized my inconvenience, and
22 those are the exhibits that I provided to you.

23 Q. Today?

24 A. Today.

25 Q. So your inconvenience loss increased from

1 1,000 to 6,000 from October until today?

2 A. It did.

3 Q. And the trailer, you have withdrawn any claim
4 for damages regarding the trailer, as I understand your
5 most recent testimony?

6 A. Yes.

7 Q. Have you told me all the damages that you
8 claim you sustained in this case?

9 A. I believe I have.

10 Q. The settlement offer that was made recently
11 of \$1,200, you discussed that with your husband; is
12 that correct?

13 A. Right, we did.

14 Q. By the way, who typed up these exhibits that
15 you prepared today?

16 A. I did.

17 Q. Exhibit 5, Exhibit 6, you typed all those up?

18 A. I did.

19 Q. And I'm not going to go into the details.
20 Most of them are calendar dates, and your explanation I
21 think is okay on the exhibits. I think I understand
22 those. Did you talk with anybody else about the
23 settlement offer in this case other than your husband?

24 A. No.

25 Q. Have you talked with anybody at the

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1 Commission staff or anything about whether to accept or
2 reject the settlement offer?

3 A. I've talked with staff, but it didn't have
4 anything to do with our settlement.

5 Q. Other than preparing your testimony as you
6 have, have you had any discussions with staff about the
7 settlement and the amounts of money that have been
8 communicated?

9 A. I have not communicated settlement with them
10 other than what I have written on my complaint and what
11 I have -- what I testified today, like on the 30th when
12 Colleen called.

13 Q. The number for the \$6,000 inconvenience, I
14 believe you've called it, have you testified or
15 provided that number to anybody else other than --

16 A. No.

17 Q. -- other than your testimony today?

18 A. Today.

19 Q. And you arrived at that number how, \$6,000?

20 A. There was no scientific arrival at it. My
21 husband and I just sat down and talked about it and
22 said, well, we'll just ask for \$6,000.

23 Q. Just picked it out of the air?

24 A. Somewhat. That's what we felt that --

25 MR. WELK: I have nothing further.

1 MS. WIEST: Mr. Hoseck.

2 MR. HOSECK: Yes. Thank you.

3 CROSS-EXAMINATION

4 BY MR. HOSECK:

5 Q. Mrs. Thompson, when this move was made to
6 your Reliance address, where is that from Chamberlain?

7 A. It's approximately 12 miles north of Oacoma.
8 Where the city of Oacoma is, is you turn north. Rather
9 than turning into the city, you turn north, and it's
10 about 12 miles from that, out on that county road.
11 It's right down along the river.

12 Q. And what was the date of the actual move then
13 to Reliance?

14 A. The 12th of September.

15 Q. Would you tell the Commissioners what the
16 circumstances of your move were? In other words, why
17 were you moving to this particular location?

18 A. Well, we had been -- we had outgrown our home
19 actually, and we had been looking for a place to move
20 for several years. And we moved down to an area where
21 my husband was born and raised. And he had gotten some
22 land there, so we decided to buy a house and move it
23 down there, renovated it, added onto it. And we moved,
24 I guess, home for my husband back to the area where he
25 was grown up -- he grew up.

4 | A. No.

6 A. No, we weren't.

8 A. No, we were not.

11	A.	No.
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13 A. I'm employed at Saint Joseph Indian School as
14 the director of the museum.

17 A. I'm responsible for the day-to-day operations
18 of the museum, oversee all, everything that goes on in
19 the museum.

23 A. We do have a security alarm at the museum.

24 And when that security alarm is activated, it calls my
25 home phone number so that I can -- it's also -- so that

1 I can either let the call go into the police
2 department, or I can turn it off at that point in time
3 and go in myself and check to see what the problem is,
4 whether it be -- when you get the call, you can tell
5 whether or not, you know, someone has broken in through
6 a window. It will give you a code. Or whether someone
7 has opened the front door, or whether it's fire, or
8 whether there's someone in the top level or the bottom
9 level of the museum.

10 Q. So if your telephone service is interrupted
11 or not available, this security system does not keep
12 you informed?

13 A. It does not keep me informed.

14 Q. And it's a part of your job that you be
15 informed; is that correct?

16 A. Yes, it is. I have to respond to all of
17 those calls.

18 Q. Now, during the time that you were without
19 service, did the security system kick in, for lack of
20 better words?

21 A. It did one day, on October 9th, the security
22 alarm went off.

23 Q. And were you able to get that call?

24 A. Well, actually it was set off twice. The
25 first call I was not able to retrieve because I wasn't

1 at my residence in town. It was set off later that
2 afternoon, and I stopped by to show the trailer to a
3 person who was interested in seeing it and I retrieved
4 that second call from our alarm system.

5 Q. On your exhibits -- and I may have the
6 numbering wrong here. I believe it's Exhibit 6 and 7,
7 days that you were without phone service that you
8 traveled to town specifically to access a phone.

9 A. Okay. Actually, that would be Exhibit 5.

10 Q. Is that Exhibit 5?

11 A. Yes.

12 Q. I'm sorry, I had that wrong. Anyway, what is
13 the amount that you have totaled on that exhibit?

14 A. The total amount is \$117.81.

15 Q. And what does that figure represent?

16 A. It represents the 11 trips made into town,
17 and it's a 34-mile round trip, so it's a total of 374
18 miles. And I took it times the standard mileage rate
19 taken out of the IRS publication 463, which is
20 attached, and they allow 31 and a half cents per mile.

21 Q. Would this be an amount that you are also
22 claiming as damages in this matter?

23 A. Yes, it is.

24 Q. Would you tell the Commissioners how not
25 having a phone inconvenienced you?

1 A. Well, of course, I was not able to receive or
2 make any calls. Or I should say make any calls like to
3 911 for medical, fire, or any other type of emergency
4 service. I wasn't able to receive or make calls to or
5 from my family members, whether it be social or
6 emergency. I did not have a phone that allowed me to
7 do that. I was not able to receive calls from our
8 security alarm system or control the alarm system from
9 my home. I was not able to receive calls from staff
10 members, people that I supervise, if they're going to
11 be late for work or off a day. I wasn't able to take
12 those calls.

13 I, myself, was not able to call into work if
14 I didn't go in. I wasn't able to call the school if my
15 children were sick or not going to be in school. And
16 we weren't able to receive any calls on, of course, the
17 ads that we placed in the paper for the items that we
18 desired to sell. We have two teenage children, and
19 it's very difficult to coordinate schedules. We have
20 one car that comes into town each day, and I needed to
21 coordinate schedules with three different people. So
22 it was very difficult to do that without having phone
23 service. Not to mention the number of hours that I had
24 to spend at work during my work time on the phone
25 trying to get through to U S West for Delayed

1 Services. That was --

2 Q. And the experience that you had with your
3 children being hospitalized and having surgery also
4 took place during this period of time; is that correct?

5 A. It did, and we weren't able to -- we weren't
6 able to receive calls from family members at that
7 time. My sister did call. I was out of town at the
8 time. She did contact me and -- actually, my husband
9 contacted me. Avery called my sister and let her know
10 that the boys were in an accident. We had to contact
11 his parents, and we have a rather large family. People
12 were calling wanting to know how our boys were. We
13 really didn't have time to run to the trailer to pick
14 up calls at the time that Avery was in the ICU unit.
15 There was not a phone in that actual room. When we did
16 move him to the floor, they didn't allow calls into the
17 room so we weren't able to use the phone there so we
18 literally had to go to the trailer to check our
19 messages. And we had several messages from concerned
20 family members wanting to know what -- you know, "How
21 are your kids doing. Where are you? How can we get in
22 touch with you?"

23 Q. And so would it be fair to say that it's your
24 opinion that the \$6,000 would compensate you for this
25 inconvenience?

1 A. Yes, I think it's fair to say that.

2 MR. WELK: I have no further questions.

3 Thank you.

4 MS. WIEST: Commissioners?

5 COMMISSIONER NELSON: I have one. Dixie, did
6 I understand you to say that not having a telephone
7 there necessitated staying longer, a longer state in
8 the hospital?

9 A. Not in the hospital. I had to leave my kids
10 in town, though.

11 COMMISSIONER NELSON: Okay. I just wanted to
12 be sure there weren't additional hospital days, too,
13 and they would have let him out sooner.

14 CHAIRMAN BURG: Did you keep track of just
15 how many times you called U S West?

16 A. I have it itemized here. I could probably
17 count it up for you.

18 CHAIRMAN BURG: I might like that as a late
19 exhibit and maybe just an estimate of the amount of
20 time you spent on the phone with them, too, because you
21 indicated a couple times that it was very long waits.

22 A. Okay.

23 CHAIRMAN BURG: I didn't gather from what you
24 said that you kept track of the time, but if you have a
25 rough estimate. I had several other questions but I

1 think they've all been answered.

2 COMMISSIONER SCHOENFELDER: I need to clarify
3 a couple things. You said -- I'm a little familiar
4 with the area so -- very little though. You said the
5 new place you moved to is on the river?

6 A. Uh-huh.

7 COMMISSIONER SCHOENFELDER: But when you go
8 past Al's and go north up that road --

9 A. You would go right, north, past the -- west
10 to the convenience store is right there. You go north
11 up that county road. It's about seven or eight miles
12 and then you turn and go down the hill.

13 COMMISSIONER SCHOENFELDER: Down the hill
14 instead? The road goes both ways.

15 A. Right, right, it kind of forks off there.

16 COMMISSIONER SCHOENFELDER: Okay. When
17 you're out there, I see that for your husband's work
18 phone number you have 473 as a prefix and yours is
19 734. 734 is Chamberlain, is that true?

20 A. It's Chamberlain, yes.

21 COMMISSIONER SCHOENFELDER: Is the phone out
22 there at the farm that you have now or the acreage,
23 whatever it is, is that a Chamberlain phone?

24 A. Yes, it is.

25 COMMISSIONER SCHOENFELDER: But it's in Lyman

1 County?

2 A. Right.

3 COMMISSIONER SCHOENFELDER: And it isn't a
4 Reliance phone then, it's a Chamberlain phone?

5 A. It's Chamberlain.

6 COMMISSIONER SCHOENFELDER: And it's within
7 the -- your neighbors around there all have Chamberlain
8 phones?

9 A. Right, they do. Actually, we kept the exact
10 same phone number through the move.

11 COMMISSIONER SCHOENFELDER: I wanted to make
12 sure. I thought so but I wanted to make sure. Now,
13 you talked about the calling card surcharges when
14 you're using the cellular phone. Now, if you don't
15 know the answer to this, I'll ask someone from U S
16 West. But the cellular phone I have, I do long
17 distance and it comes on the same bill and there's no
18 long distance toll charges within the state of South
19 Dakota. So I didn't know if that was a different kind
20 of a phone that you had.

21 A. It had a call card, a calling card, and when
22 you use the calling card, rather than dialing direct,
23 it's roughly 75 cents.

24 COMMISSIONER SCHOENFELDER: But I want to
25 know why you had to use the calling card rather than

1 dial direct. Do you know why?

2 A. I don't know why. She said we couldn't make
3 any long distance phone calls on the --

4 COMMISSIONER SCHOENFELDER: Okay. That's all
5 I need to know. How often does that alarm system go
6 off at your museum?

7 A. We hope it neve. goes off, but sometimes it
8 can be set off by the weather, electrical storms.
9 We've had some problems with the front doors where if
10 they're not locked -- we have two, like a double door
11 system. If someone doesn't lock the last door, even
12 one of the kids from Saint Joseph's goes by and opens
13 it, it sets off our alarm.

14 COMMISSIONER SCHOENFELDER: So the alarm
15 system itself is not perfect?

16 A. The alarm system is perfect. It's if you --
17 it's a human error usually.

18 COMMISSIONER SCHOENFELDER: Okay.

19 A. But electrical storms do set off that system
20 like if lightning strikes.

21 COMMISSIONER SCHOENFELDER: Thank you.

22 CHAIRMAN BURG: I just have one that was
23 along the same line. What happened on those two times
24 when it went off that one day?

25 A. Actually, it was in the upper unit. And we

1 had just gotten new windows, and they put new blinds on
2 the windows upstairs, and they were a vertical blind,
3 similar to what's on these windows. And they were
4 closed like that, but they were turned open. And when
5 the air-conditioner kicked in, it moved those blinds
6 and that caused our system -- it's motion detected.

7 CHAIRMAN BURG: But more than that, I was
8 getting at what happened when you did not respond?
9 What happened?

10 A. It calls over to like the -- I want to say
11 the S.E.J. residence, and someone else comes in to
12 answer that call instead of me.

13 CHAIRMAN BURG: Did you have any problem with
14 your employment with the fact that you did not have a
15 home phone available?

16 A. I explained to him to why I didn't come in is
17 because I just got to the -- I wasn't at my trailer at
18 that point in time.

19 CHAIRMAN BURG: Did you have any -- generally
20 speaking, over this period of time, did you have any
21 trouble with the employer?

22 A. NO, I didn't have any trouble with the
23 employer. I'm not the only person on that calling tree
24 either. Because should I be out of town at some point
25 in time it goes ahead and calls the next number on

1 there.

2 CHAIRMAN BURG: Thank you.

3 MS. WIEST: I just had one clarifying
4 question. You probably already answered it. I just
5 can't find it. You said you borrowed a cell phone from
6 your sister on the 25th of September, and how long did
7 you have that?

8 A. Actually I gave it back to her -- let me look
9 -- when we got our cell phone unit from U S West. Let
10 me look and see.

11 COMMISSIONER NELSON: So would that be the
12 25th of September through October 9th?

13 A. Right. The 25th through the 9th, because I
14 gave that back to my sister right away when we got our
15 cell phone unit.

16 MS. WIEST: Okay. Any other questions?

17 CHAIRMAN BURG: What was the nature of the
18 charge that you wanted to repay them? Was that for air
19 time?

20 A. Yes, those charges are air time.

21 CHAIRMAN BURG: While you had the phone?

22 A. Right.

23 MS. WIEST: And that would be attached to
24 your original complaint?

25 A. No, those weren't attached to my -- I think

2 MS. WIEST: I think I have one.

5 MS. WIEST: On your sister's phone?

9 MS. WIEST: Charges for your sister's phone?

12 MS. WIEST: At one time you mentioned or in
13 your complaint that you wanted to be reimbursed for
14 your sister's phone.

16 MS. WIEST: Charges that you rang up on that
17 so that would be --

20 MS. WIEST: And what is the amount then?

22 MS. WIEST: Okay. Thank you. Any other

24 MR. WELK: Yes, I have some questions based
25 upon the others.

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RECROSS-EXAMINATION

BY MR. WELK:

Q. Mrs. Thompson, do I understand in answering Chairman Burg's question that you did not lose any work or docked any pay during this period of time; is that correct?

A. What period of time are you speaking?

Q. Well, from when the phone was supposed to be in on September 12th until you got telephone service, did you lose where you -- were you damaged by the loss of any work?

A. I didn't. There was a period of time I didn't work there because my children were in the hospital, yes.

Q. But the time that your children -- was there any loss of work that arose not from your children but from the fact that you didn't have telephone service?

A. No, huh-uh, there wasn't.

Q. When your boys got out of the hospital, why didn't you stay in town if that was the only place where there was a telephone?

A. Pardon me?

Q. When the boys got out of the hospital, what was the situation? You moved them to the new place; is that correct? They came out of the hospital and went

1 to the new residence?

2 A. No, I did not take them home. I left them in
3 town with my sister.

4 Q. And that's what the damages are or -- oh,
5 with your sister. When you moved out of the old
6 residence, you had to vacate that entirely? Somebody
7 else moved into it?

8 A. No, but we vacated it entirely.

9 Q. When did you vacate the premises?

10 A. September 12th.

11 Q. Was there anybody living in there after you
12 vacated it?

13 A. No, but there wasn't anything in there
14 either.

15 Q. Just the answering machine?

16 A. Just our telephone, you know, stove and
17 refrigerator, the appliances that go with it, but we
18 had them all shut off.

19 Q. So you moved everything out to the new place?

20 A. Yes.

21 Q. Have the boys recovered from --

22 A. Yes, they have.

23 Q. Was there any problem that you had with the
24 boys after they got out of the hospital that required
25 -- other than routine follow-up?

1 A. No, just routine follow-up.

2 Q. Now, Ms. Wiest asked some questions on these
3 numbers; and I'm not going to go back into a lot of
4 them, but you added some additional numbers to the ones
5 I went over with you during my testimony as to the
6 specifics. And you added in response to Mr. Hoseck's
7 question, the trips into town for \$117.81. And I want
8 to make sure I got all the bills. All right? I'm
9 going to go over quickly what you told me before, and
10 if I've made a mistake, I'm sure you will tell me. You
11 had cell charges for 25.35 that you listed before. Are
12 those the charges on your own phone?

13 A. Those are on the borrowed cell phone unit.

14 Q. Your sister's?

15 A. My sister's.

16 Q. And then you had 11.32 for charges; correct?

17 A. Correct.

18 Q. You had 29.60 on your October bill, and then
19 you have some questions on your November bill. And we
20 have the IRS of \$117.81. Is there any other specific
21 damages that you can recall that we haven't gone over?

22 A. No, other than the -- you know, the other
23 exhibits that I submitted to you.

24 Q. But do any of those translate into money?

25 A. No, there's no dollar figures on those.

1 MR. WELK: I have nothing further.

2 MS. WIEST: Any other questions?

3 MR. HOSECK: Nothing further.

4 MS. WIEST: Do you have anything to add, Miss
5 Thompson?

6 A. Not that I can think of.

7 MS. WIEST: Thank you. We'll just take a
8 very short break, five minutes.

9 (AT THIS TIME A SHORT RECESS WAS TAKEN.)

10 MS. WIEST: Let's go back on the record. You
11 can call your next witness.

12 AVERY THOMPSON,

13 called as a witness, being first duly sworn,
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 A. Well, we've gotten here generally quite a bit
17 of paperwork over something that should have been very
18 simple, normal procedure, as I understand it, to get
19 phone service.

20 MS. WIEST: Could you state your name for the
21 record?

22 A. Avery Thompson.

23 MS. WIEST: And your address?

24 A. HC 5, Box 16BB, Reliance.

25 MS. WIEST: Thank you.

1 A. Something that should only take a phone call
2 to get service has turned into all these documents,
3 recordkeeping, which we didn't start keeping records at
4 the beginning because we didn't anticipate anything
5 would be this drawn out and lengthy. It's been a case
6 of people passing the buck, not accepting
7 responsibility for giving us service on the dates that
8 were promised to us.

9 It seems like the left hand doesn't know what
10 the right hand is doing as far as, for an example, the
11 one person told us it was no problem to connect. The
12 lines run past our house. Well, they come to find out
13 the lines were full. There was no capacity for
14 additional phone service. Who keeps records of these
15 things? Shouldn't somebody know this before they
16 promise you service? I'd like to put these pictures
17 in, these exhibits in. It shows phone lines that were
18 moved. They're already --

19 MS. WIEST: Could you give me the number and
20 then describe the exhibit?

21 A. Seven and eight and nine are photographs of
22 one site where phone lines were moved to facilitate a
23 water line construction north of Oacoma. And the
24 reason I mentioned that is because we called in April.
25 They told us that they would give us phone service on

1 two weeks' notice. Well, during the summer, I would
2 say June or July -- I'm not exactly sure they came into
3 the same general area -- moved lines, you know, changed
4 the location of the phone lines about two miles down
5 the road. They needed to add a 3,000-foot length of
6 cable. After that was put in place, then we would then
7 have the phone service established at our residence.

8 It seems to me that the people should have
9 known that we're in this area working, why not -- why
10 don't we go down the road here, put in a 3,000 feet.
11 These people are out of our hair. Everything is done.
12 Everything is taken care of. Somehow the people that
13 we talked to on the phone in Omaha, or whatever
14 offices, aren't aware of what it's actually like in the
15 field, the conditions that the contractors face and the
16 local technicians. That's my complaint. I guess that
17 they should know that. They should be better managed.
18 There should be better control over what they say
19 they're going to do and what happens.

20 We've been delayed several times. The people
21 would tell us this is the date. No, we can't do it
22 now. Now this is your date. Then it's one thing after
23 another. And I got fed up with it. It was suggested
24 that we file our complaint with the PUC so we did.

25 And, you know, it's turned into more problems

1 than what it's worth almost from what the idea of what
2 I think it could be a phone call to get service. You
3 know, we've taken time out of our lives, our personal
4 lives, our work lives, trying to get this phone service
5 established. And it's just been runaround basically,
6 you know, and it's frustrating. You know, we have been
7 impacted negatively by the lack of service, rudeness on
8 some points, from people that we talked to.

9 We've talk about the inconvenience that we've
10 experienced each time we've had to go to town to use
11 the phone. It's not just the mileage, it's not just
12 the time it takes to drive to down. You got to quit
13 whatever you're doing at home. We moved there to make
14 it a home. We didn't move there to be driving to town
15 to be using the telephone. The time you make your
16 calls; the time you come back, it takes a lot of the
17 day to do that then. We've been working on our house
18 on the basement, finishing it and stuff. And, you
19 know, if we got to quit, we're inconvenienced to the
20 point that we're not getting our house done, for one
21 thing.

22 I will talk about the responsibilities of
23 work. I'm also a supervisor where I work. And just
24 the same as my wife's experience where people need to
25 call me if they can't make it to work, or if I need to

1 call them and tell them I can't make it to work or, you
2 know, similar to that.

3 Also, I'm a member of the volunteer fire
4 department there. I'm a first responder. We have the
5 jaws of life on our fire truck. If a serious accident
6 occurs, we have a pager system. Sometimes the pagers
7 don't reach all the areas. If we can't be contacted by
8 pager, they go down the list and call each person by
9 telephone and get people to the scene of the accident
10 scene. We go on search and rescue missions, that type
11 of thing, emergencies, drowns, anything like that. So
12 I need the telephone so people can get ahold of me that
13 need to.

14 I don't know. We're asking for damages. The
15 amount is certainly not set in stone by any means. It
16 could be a starting point. Go up or down, either way.
17 I think everybody understands that. But that's about
18 all I got, I guess, for questions.

19 MS. WIEST: Mr. Welk.

20 CROSS-EXAMINATION

21 BY MR. WELK:

22 Q. Good afternoon, Mr. Thompson.

23 A. Sir.

24 Q. Did you talk with anybody at U S West, or did
25 your wife do all the communicating?

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1 A. I did. I made the initial call on April.

2 Q. And is that the only time you talked to
3 someone?

4 A. No. I called them again probably in June.
5 As I said, we don't have records and dates. We didn't
6 expect it to go this far.

7 Q. But you were the ones making the call telling
8 when you were moving, is that what I understand you're
9 telling me?

10 A. I started the process. I thought it would be
11 taken care of.

12 Q. Did you lose any work because of the
13 inconvenience of not having a telephone?

14 A. No, I didn't.

15 Q. Were you unable to respond to any accident,
16 fire, or search and rescue mission because you didn't
17 have a telephone?

18 A. I was delayed in responding because we didn't
19 have a telephone on two different occasions. People
20 would contact our neighbors, and the neighbors would
21 drive over and found me and told me to get ahold of
22 police department.

23 Q. So you didn't get there as soon as you could
24 if you had a phone?

25 A. Correct.

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1 Q. But you got there a little bit later?

2 A. Right.

3 Q. In regard to this complaint, other than
4 discussions with your wife, have you had discussions
5 with anyone else about the settlement in this case?

6 A. What do you mean, as far as the amount or --

7 Q. Right. Other than you and your wife
8 discussing it, did you discuss the settlement with
9 anybody?

10 A. No. We figured we don't know what amount to
11 settle on. I mean for ourselves. And when we
12 discussed what may happen at the hearing today, Camron
13 says, "I can't tell you what to ask for. You ask for
14 what you think is right," you know. And he would not
15 give any indication of higher or lower or any at all.

16 Q. And the number of \$6,000 is what your wife
17 testified is you just kind of pulled that out of the
18 air; correct?

19 A. It could be described as that, yeah.

20 MR. WELK: I have nothing further.

21 MS. WIEST: Mr. Hoseck?

22 MR. HOSECK: Yeah.

23 CROSS-EXAMINATION

24 BY MR. HOSECK:

25 Q. Avery, just a couple questions. What is your

1 job? Would you describe for the Commission what your
2 job is?

3 A. Okay. I have a title. It's engineering
4 equipment operator leader man. I'm in charge of road
5 maintenance at Lower Brule. I work for the Bureau of
6 Indian Affairs.

7 Q. Okay. And you talked a little bit about how
8 this job related to your needing to have a phone. And,
9 typically, who calls you with regard to your job and
10 would have a need to use a phone to call you with
11 regard to your job?

12 A. Okay. Example recently here with the snowy
13 weather, the high school principal needed to know what
14 our plans were for snow removal, sanding, based on the
15 weather forecast, so he needed to know whether to hold
16 school, delay school, or even call it off. My
17 superintendent, the agency superintendent is who I work
18 directly under, he will call me on matters similar to
19 that. I would get calls from my secretary. She gets,
20 you know, information from people in the community; and
21 she will contact me at times. I get called by the
22 police department, if they'll give road reports,
23 they'll tell us if a road is flooded. We had a lot of
24 flooding this year. A lot of times we got to go out in
25 the middle of the night and close roads so people don't

1 run into hazards. That type of thing.

2 Q. And does your work involve any type of
3 cleanup after vehicular accidents, for instance?

4 A. At times it does. If there's a vehicle left
5 on the road, a disabled vehicle, we're again called to
6 move it off the road, sure.

7 Q. And, hypothetically, if you don't have phone
8 service, you aren't going to be able to barricade a
9 road if there's been a flash flood or an accident or
10 anything of that nature, are you?

11 MR. WELK: Objection. It's hypothetical.
12 There's no facts relative to this action if that
13 occurred.

14 MS. WIEST: Sustained.

15 Q. Well, let me ask you this, Mr. Thompson,
16 then: If an accident occurred, what would normally be
17 the state of events in terms of your job
18 responsibility?

19 A. The first thing you got to look at is the
20 severity of the accident, any injuries that may be
21 involved. For example, if a car is damaged to the
22 point where the ambulance people can't get the
23 occupants out, we got the jaws of life on our fire
24 truck, and I'm called to operate the jaws. We may need
25 that to extricate the victim. We take fire trucks with

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1 water and foam in case there would be a fire, you know,
2 if there was gas spills, gas leaks, around the accident
3 scene.

4 Q. And those matters, as I understand it, relate
5 to your membership on a volunteer fire department; is
6 that correct?

7 A. Right. I'm a member of the Lower Brule Fire
8 Department because it's a collateral duty of my job.
9 It's kind of you don't have much of a choice, but you
10 got some choice. They'll say, "We think you ought to
11 be on the fire department," and we get training so
12 we're qualified to do it.

13 Q. I want you to describe for the Commissioners
14 what the temporary service was like when it was first
15 hooked up, the land line into your house. How was that
16 installed?

17 A. When they connected the service, about 300
18 feet down the road from our house there's a pedestal.
19 They tied the line into there temporarily, wrapped it
20 around a fence post, then ran across a gravel road and
21 across a mowed hay field and then into our lot and
22 connected to our house laying above ground. We were a
23 little dissatisfied with that that the hay field had
24 been mowed but not yet baled. So I mean it's -- a lot
25 of people, I guess, would look at what might happen

1 next. But you mow a field and it's probably going to
2 be baled some time. We had concerns about that. I
3 tried to locate the person that was farming it to let
4 him know there's a line going across their field.

5 It worked for a few days and then we didn't
6 have service. So my brother-in-law and I went down
7 that night to check the line going across the road to
8 make sure and it was still connected to the pedestal
9 and it was still connected to the house. And we looked
10 as best we could on the road to see if it was broken,
11 you know, from traffic driving over it or anything like
12 that. Couldn't see anything. But when the technician
13 came down they got it going. You know, I don't know
14 what they did. Then we'd have service again for a few
15 days and then it would be out again. We didn't know.
16 It wasn't dependable. We didn't know when we'd have it
17 or for how long. That's all I can tell you about that,
18 I guess.

19 MR. HOSECK: I don't believe I have any
20 further questions.

21 MS. WIEST: Commissioners?

22 CHAIRMAN BURG: Can we see the pictures?

23 COMMISSIONER NELSON: I have a question. How
24 long did you have this above the ground, over the road,
25 tied to the fence, kind of installation?

1 A. Is it on the -- It might be there.

2 MRS. THOMPSON: No.

3 A. It was about the middle of October when they
4 buried it, middle to about the third week of October
5 when they buried it.

6 MRS. THOMPSON: So it would have been from
7 the 13th.

8 COMMISSIONER NELSON: From October 13th to?

9 MS. WIEST: I'm sorry, if you're not on the
10 stand, we can't have you talk.

11 A. I would say it was three or four weeks above
12 ground roughly.

13 COMMISSIONER SCHOENFELDER: Tell me again how
14 far from the pedestal to your house?

15 A. I would estimate three hundred feet.

16 COMMISSIONER SCHOENFELDER: But I thought
17 they were on pairs in a pedestal, so they didn't have
18 enough --

19 A. They were.

20 COMMISSIONER SCHOENFELDER: Was it patchwork
21 going to the pedestal too?

22 A. Between the time we ordered service and the
23 time they put the temporary drop in, they did supply
24 the adequate addition of line that they needed between
25 -- well, it's between John Blum's and Roy Kenobbie's

1 out there. They had to add about 3,000 feet of line
2 between two pedestals and they could add us after that.

3 CHAIRMAN BURG: I have a couple. You said it
4 was about 300 feet that they run across the field --
5 or, no, that they had to plow yours in?

6 A. Well, whether when they plowed it, they put
7 in a pedestal right in front of our house. You know,
8 they cut in a pedestal.

9 CHAIRMAN BURG: So there were additional
10 lines that went past your house by that time?

11 A. Oh, yeah, there's three people live on past
12 our house, yeah.

13 CHAIRMAN BURG: How far are you from where
14 your employment is?

15 A. It's about 16, 17 miles.

16 CHAIRMAN BURG: Are you employed at Lower
17 Brule?

18 A. Right.

19 CHAIRMAN BURG: So you drive to Lower Brule
20 for your work?

21 A. Right.

22 CHAIRMAN BURG: And your wife comes into
23 Chamberlain?

24 A. (Witness nodded affirmatively.)

25 CHAIRMAN BURG: Do you have any -- have you

1 found out that you missed any calls for the opportunity
2 to sell your trailer when you didn't have service?

3 A. Well, not -- we've missed calls of inquiry,
4 people that would call and be interested in it. We
5 have found that out. We've missed calls of people
6 trying to get ahold of us for various reasons. I don't
7 know. You asked about the trailer but there was -- we
8 missed a lot of calls.

9 CHAIRMAN BURG: Did you know after you had
10 the phone re-hooked up in the trailer and had the
11 answering machine, is that how you found out there were
12 calls and you were not able to contact them, or did you
13 find out otherwise that people had tried to call?

14 A. Otherwise through personal contacts or calls
15 to my work, you know, people who would get ahold of me.

16 CHAIRMAN BURG: That's all I have.

17 MS. WIEST: Any other questions of this
18 witness?

19 MR. HOSECK: Just one.

20 RECROSS-EXAMINATION

21 BY MR. HOSECK:

22 Q. Mr. Thompson, is the \$6,000 that's being
23 claimed for inconvenience, is that your opinion as to
24 what it would take to fairly compensate you for the
25 inconvenience that you and your wife have suffered in

1 this matter?

2 MR. WELK: Objection. It's leading. It's
3 been asked and answered.

4 MR. HOSECK: It's asking an opinion as to
5 whether or not this is what the witness considers to be
6 a fair amount to compensate him for damages.

7 MS. WIEST: Overruled. Go ahead.

8 A. Well, I would start out by saying telephone
9 service is pretty basic to all of us now. I'm not old
10 enough to remember when we didn't have phone service,
11 so I've grown up with it my whole life. And you depend
12 on it to be there and be working when you need to call,
13 when people need to contact you for social contacts
14 between the family and friends. We've been without it
15 for quite a few days, and I wouldn't guess how many
16 dollars per day you would put on something like that.

17 But just the not knowing that people can get
18 ahold of you, not knowing it's dependable and it's
19 there for you to use when you need it, you know, I
20 think it's worth a lot. And it certainly can't be tied
21 to the amount of our monthly phone bill, you know.
22 That doesn't tell us how much a phone service is
23 worth. It's a lot more than that, I think, for all of
24 us. You can ask yourselves if you were without phone
25 service for 25 days, would that negatively affect your

1 personal life, your business life? You know, it's easy
2 to answer. So to answer your question, yes, \$6,000
3 would be an amount we would settle for.

4 MS. WIEST: Any other questions? Thank you.
5 Do you have any further witnesses, Miss Thompson?

6 MRS. THOMPSON: No, I don't.

7 MS. WIEST: U S West.

8 MR. WELK: Yes. The first thing I would like
9 to do is have the Commission take judicial notice of
10 the Commission's decision in 97-107 in the matter of
11 the complaint filed by Kathy Rottenbucher. This has
12 been marked as Exhibit 12.

13 MS. WIEST: Yes, the Commission will take
14 judicial notice of this.

15 MR. WELK: That will be admitted Exhibit 12?

16 MS. WIEST: Okay.

17 MR. WELK: Is that correct?

18 MS. WIEST: Yes.

19 MR. WELK: We'd call Colleen Sevold, please.

20 COLLEEN SEVOLD,
21 called as a witness, being first duly sworn,
22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. WELK:

25 Q. Would you please state your name.

1 A. My name is Colleen Sevoid.

2 Q. Where do you live?

3 A. I live in Sioux Falls, South Dakota.

4 Q. By whom are you employed?

5 A. U S West Communications.

6 Q. And how long have you been employed by U S
7 West Communications?

8 A. About eighteen and a half years.

9 Q. What is your current position?

10 A. Currently I'm the manager of regulatory.

11 Q. And what are your duties and responsibilities
12 in that position?

13 A. I am responsible for the filings to the
14 Commission. I also have some work dealing with
15 customer complaints that do go before the Commission.

16 Q. Your involvement in this matter that brings
17 us here today, did you have any involvement prior to
18 the complaint being filed with the Commission?

19 A. No. I was not aware of it until the formal
20 complaint was filed.

21 Q. After the complaint was filed, did you
22 undertake an investigation as to the facts and
23 circumstances described by Mrs. Thompson in her
24 complaint?

25 A. Yes, I did. After I received the complaint,

1 I read it over, and I did work with the various
2 departments that had been involved in the complaint.

3 Q. And, generally speaking, what did your
4 investigation reveal about the facts and circumstances
5 described in the complaint?

6 A. I did find that we were unable to provide
7 them service on September 12th and that we did not
8 offer the cellular option. After the seven days we did
9 offer it, or I believe at about a ten-day period; and
10 that we were not able to provide service until I
11 believe it was October 16th.

12 Q. What is the current policy? Is this
13 situation a complaint called a held order complaint?

14 A. That is correct.

15 Q. What is a held order complaint?

16 A. When a customer places an order for service
17 and we are not able -- we do not have the facilities
18 available to fulfill that order, it becomes a held
19 order.

20 Q. After you investigated the complaint, what
21 steps, if any, did you take in regard to what you
22 discovered the processes have been?

23 A. A couple of things that disturbed me that I
24 took action on is the customer said that they had
25 called in in April to place their order. We have

1 instructed our service reps to take those orders when
2 customers do call in no matter what the time period
3 is. So we immediately were in touch with that
4 department, the director that's in charge of those
5 people. We put bulletins out to all the service reps
6 stating that you must take these orders when the
7 customers call in.

8 Q. So when Mr. Thompson called in in early April
9 to give them sort of a heads up that we're moving, you
10 could not find any record of that call?

11 A. We do not generate a record for a customer
12 until a phone number is given to that customer. Our
13 records are by phone numbers. So, in other words, we
14 have to take the order in order to have any record.

15 Q. Well, what Mr. Thompson testified is that he
16 was told to call back when he was going to make the
17 move. Is that the normal process that should occur?

18 A. No, it is not. We should take the order when
19 the customer calls in.

20 Q. So he should not have had to call back two
21 weeks prior to the time he made the move?

22 A. That's correct.

23 Q. So that was the first mistake that was made?

24 A. That's right. And we did take steps to get
25 the information out to all of our representatives.

1 Q. And when you said you contacted somebody at a
2 director level, what do you mean?

3 A. This director has direct supervision over all
4 of the service reps that are connected with taking
5 orders for South Dakota. In other words, she manages
6 all of those people.

7 Q. The director is within the phone company?

8 A. That's correct.

9 Q. As to a higher level supervisor?

10 A. That's correct.

11 Q. Did you see the communications that were made
12 from that director to make sure that Mr. Thompson, that
13 he wouldn't have to call back again?

14 A. Yes. I saw a communicator go out to all of
15 our service reps that instructed them to do that.

16 Q. Now, as a result of your investigation, did
17 you determine the mistakes that were made in this
18 instance? Did you detect any evidence in your mind,
19 Colleen, that was anything woeful or intentional with
20 regard to these mistakes?

21 A. Absolutely not. We would not want any of
22 those to be intentional and none of them are.

23 Q. This is not the type of service U S West
24 wants to provide to the Thompsons?

25 A. Absolutely not.

1 Q. They should have had their phone when they
2 wanted it?

3 A. They should have, yes.

4 Q. Now, in looking at the statistics for 1997,
5 how many complaints did the PUC have in 1997 for held
6 order complaints?

7 A. In looking at the data, they had 46 held
8 order complaints in 1997 for held orders.

9 Q. And which date are you looking at?

10 A. I have taken this data from the PUC's
11 database.

12 Q. So that's not U S West's database?

13 A. That is correct.

14 Q. In 1997 how many transactions did U S West
15 have that requested new services or repairs?

16 A. For South Dakota alone we had 435,000
17 transactions, which were strictly for new service,
18 change of service, or repair calls.

19 Q. And of that 435,000, how many requests were
20 made for dial tone?

21 A. 61,000 of those requests were for dial tone
22 service.

23 Q. Now, of the 435,000 transactions that
24 required request for new services, did you exclude any
25 -- did you not include certain numbers of customer

1 contacts with the company?

2 A. Yes. I did not include any disconnect
3 orders. I did not include any what we call record
4 orders, which are customers calling in to change
5 something on the record; maybe change a responsibility,
6 maybe address. None of those are included in the
7 435,000.

8 Q. How many requests for record changes occurred
9 in South Dakota according to U S West's record for
10 1997?

11 A. Approximately 65,000.

12 Q. And how many transactions where there was a
13 disconnect order? And what is that?

14 A. A disconnect order is when a customer simply
15 calls in to disconnect their service. It's still taken
16 by a service rep. And there were approximately 45,000
17 of those.

18 Q. So if you add those up, there were over half
19 a million transactions?

20 A. In South Dakota, that's correct.

21 Q. And out of the 61,000 requests for dial tone,
22 how many held order complaints did you say there were?

23 A. 46.

24 Q. And what percentage is the number of held
25 order complaints to the Commission of the request for

1 dial tone?

2 A. Out of the 61,000, .0008 resulted in a PUC
3 complaint about a held order. Said another way, 99.92
4 percent were handled without complaints.

5 MR. WELK: I don't have anything further.

6 MS. WIEST: Mr. Hoseck?

7 MR. HOSECK: Yes. Thank you. Just a minute,
8 please.

9 CROSS-EXAMINATION

10 BY MR. HOSECK:

11 Q. Miss Sevold, did you do any investigation at
12 all to see why no order was taken in April '97 when the
13 call was first made by Avery Thompson?

14 A. Because we cannot generate a record, as I
15 explained, until we actually take the order. That's
16 what generates the customer's record. We have no way
17 of going back and seeing who took that call. That is
18 why we initiated this important communicator to say for
19 anyone who does not understand it, this is the way it
20 has to be.

21 Q. So, in other words, you have no recordkeeping
22 system -- at least, you had none in April '97 that
23 would indicate when a customer calls in and requests
24 service of the nature that the Thompsons did; is that
25 correct?

1 A. As I explained --

2 Q. A simple yes or no would do.

3 A. We need a phone number to create a record.

4 Q. So, in other words, you did not have a
5 recordkeeping system that was functional in April of
6 1997 that would record or request such as made by Avery
7 Thompson?

8 A. I cannot answer that by yes or no.

9 Q. You don't know?

10 A. I cannot answer it yes or no.

11 Q. Do you know if there was a recordkeeping
12 system?

13 A. Our records are kept by phone numbers; and
14 until an order is generated, we do not have a way of
15 putting a record on because we record by phone numbers.

16 Q. I want to discuss with you a little bit, too,
17 the cellular replacement policy of U S West. Is it the
18 policy of U S West that a customer who cannot get phone
19 service has to pick this up at some location in a large
20 city in South Dakota?

21 A. U S West does not have cellular service. So
22 this program we contract with vendors around the
23 state. In other words, the Rapid City vendor is
24 probably not the same one as the Pierre vendor. So we
25 contract. And so when the customer did ask, it's my

1 understanding we said, yes, we would have a vendor ship
2 it to them. But U S West does not. We contract with
3 the vendor to do the programs.

4 Q. Does your contract provide that that vendor
5 is supposed to get a phone to these people who did not
6 have service?

7 A. It's my understanding we agreed the vendor
8 agreed to send one when the customer asked.

9 Q. Do you have any idea why there was a failure
10 in this particular case?

11 A. Excuse me, a failure?

12 Q. In other words, that there was nothing
13 shipped to the Thompsons.

14 A. Well, it's my understanding that she was
15 asked if she wanted to pick it up at several locations;
16 and she said that they would get back to our business
17 office and let us know.

18 Q. Was she offered the opportunity of it being
19 shipped to her?

20 A. At the first -- apparently not at first.

21 Q. Okay. So that would be contrary to either a
22 contract or an internal policy of U S West then; is
23 that correct?

24 A. I am not sure what the contract for the
25 cellular company says.

1 Q. I thought you just told me that provided that
2 they were supposed to ship it to the people that
3 requested it?

4 A. What I said was when the customer asked if we
5 could ship it, the vendor agreed to ship is what I said
6 in this case.

7 Q. Can you give me the name of one person in U S
8 West who was responsible for getting service to Avery
9 and Dixie Thompson when they requested it? Who is
10 responsible?

11 A. Maybe this would be a time when I could say
12 that we are a very, very large company. One person
13 cannot be responsible for every piece of getting
14 service. It is a big company. It is several
15 departments. It is several systems in order to get
16 service to a customer. There cannot be one person
17 responsible.

18 Q. No one in the entire system assumes
19 responsibility? Is that what you're telling me?

20 A. I'm saying that we have many departments
21 involved. This order goes through many systems and
22 many departments, many. This is a big company. It's
23 not a small company where we're in one little office
24 with several people sitting around saying, "This is
25 your turn to do this order." We're a big company. We

1 take these into our systems. They flow into a lot of
2 departments. And in the end the service is given to
3 the customer, but there is not one person that takes
4 the order and installs the phone.

5 Q. Well, let me ask the question this way, Miss
6 Sevold: You said that you were a manager of regulatory
7 matters with U S West; is that correct?

8 A. That's correct.

9 Q. And you would be considered a management
10 level employee; is that correct?

11 A. That is correct.

12 Q. And I'm assuming there are many management
13 level employees within U S West, and let's keep this
14 within South Dakota. Forget about the other states or
15 Denver or wherever else U S West has management level
16 employees. Who is the management level employee in
17 South Dakota who is responsible for getting service to
18 Dixie and Avery Thompson? Where does the buck stop?
19 That's what I want to know.

20 A. It's a process. In this particular case an
21 engineer was involved. In this particular case an
22 installation person was involved. In this case a
23 business office was involved, translation people were
24 involved, assignment people were involved. The end
25 person is the technician, but the technician alone does

1 not do the entire process.

2 Q. So there's no one managing whether or not
3 Dixie and Avery Thompson get a telephone, is that what
4 you're telling me?

5 A. No, that's not what I'm telling you.

6 Q. I want to know who manages the company to
7 make sure these people got phone service? That's all
8 I'm asking, a very simple question. Who's in charge?

9 A. And I will answer that question that there
10 are many, many departments and many people in charge.

11 Q. In the answer filed by U S West, and I
12 believe it's indicated in there that the records show
13 the -- or the order was placed on the 3rd of September,
14 1997. And it shows a due date of September 12, 1997.
15 But your answer also indicates that on the 4th, the day
16 after that service was requested, this matter was
17 designated a held order, one day after the service was
18 requested by the Thompsons. Why was this designated a
19 held order one day after it was requested?

20 A. Well, and I'll try to explain our systems a
21 little bit. I know that if you're not familiar with
22 our systems, it may be difficult to understand. But
23 when this order is taken and put in our system, it then
24 travels through to be assigned to a facilities. When
25 this order went through the system, it was unable to be

1 assigned because there were no facilities. It
2 therefore becomes a held order due to lack of
3 facilities.

4 Q. Who makes that decision that it's a held
5 order?

6 A. When the system is not able to assign it,
7 when there are no facilities to assign to it, it
8 automatically becomes a held order because there are no
9 systems there -- or no facilities there.

10 Q. When you say "system" are we talking about
11 some computer, or are we talking about a human being
12 with management capabilities?

13 A. Once again, you know, this is -- we operate a
14 large corporation. We put the order in through our
15 business office and this flows through our systems to
16 be assigned. It will be assigned automatically if
17 there are facilities there. If there are not
18 facilities, it becomes a held order. Therefore, it
19 takes manual intervention at that point.

20 Q. And where is this determination made that
21 this is a held order? Physically, where is that
22 located?

23 A. I believe for South Dakota it would be up in
24 Minnesota, the systems itself.

25 Q. And your answer, I think, also indicates that

1 this order wasn't drawn until September 30, 1997, by
2 engineering. Why did it take until September 30 to get
3 this matter drawn by engineering?

4 A. All I can say is I do know that it was --
5 after it was designated a held order, it is sent to
6 engineering. Our engineers in this particular case
7 were in Rapid City. They had to make a site visit, and
8 that was done and drawn by September 30th.

9 Q. Who's the person in charge of engineering in
10 South Dakota that would have responsibility for drawing
11 this?

12 A. The actual engineer?

13 Q. Yes.

14 A. I don't know which particular engineer was
15 involved in this. We have more than one.

16 MR. WELK: You mean the manager of
17 engineering or the particular person?

18 MR. HOSECK: I'm asking for the engineer that
19 had responsibility for drawing this.

20 MR. WELK: This job?

21 MR. HOSECK: Yes.

22 A. And I'm not sure which one it was.

23 Q. If there was a held order, do you have any
24 policy for notifying people like the Thompsons that
25 this phone was not going to be installed on time?

1 A. I believe that we said right up front that we
2 believed it was in error that the customers were not
3 called and notified, yes. We have a policy that within
4 seven days after it becomes a held order we will call
5 the customer and offer them the alternative service
6 options.

7 Q. And so there was a failure in notifying the
8 Thompsons. Would you agree with me on that?

9 A. We did not dispute that.

10 Q. And as succinctly as you possibly can, would
11 you please tell the Commissioners what it would take
12 for this not to ever happen again?

13 A. Just as the Commission and staff, I am sure,
14 cannot sit here today and say there will never be
15 another error made by them, we cannot sit here and say
16 this will never happen; that there will never be
17 another error. There are always going to be errors in
18 any business you operate, in any business you operate.
19 So I cannot sit here and say that it will never happen
20 again.

21 Q. I didn't ask you that question, Miss Sevold,
22 and I'll restate it in case I stated it in an
23 inarticulate manner. What I'm asking you is what would
24 it take within U S West for this not to happen again?
25 What remedy has to occur?

1 A. We -- to explain maybe a little bit to people
2 who don't understand --

3 Q. Just tell me.

4 A. There aren't facilities -- there are not
5 facilities throughout the state of South Dakota. These
6 have to be put in the ground. They are not going to be
7 put in the ground in places where there is no need. So
8 there are always going to be times when customers move
9 somewhere where the facilities are not going to be
10 ready. There are always going to be some of those
11 cases.

12 Q. That's not what I've asked. I'm sorry if I'm
13 not getting my question across to you. What I am
14 asking is what remedy has to occur within U S West for
15 this to never happen again? What's wrong here?

16 A. There is nothing wrong except an error was
17 made, just as you make errors, just as anyone in this
18 room make errors. An error was made. The second thing
19 is there were no facilities there. There simply were
20 no facilities there, and there are not always
21 everywhere going to be facilities. It's very
22 expensive, and you're not going to have them where
23 there is no need for them.

24 Q. Who made the -- excuse me, go ahead.

25 A. I'm simply saying there are not -- many

1 people believe that phone facilities just literally
2 exist everywhere, and that's just simply not the case.
3 They're expensive, and they have to be put in.

4 Q. Who made the error?

5 A. Well, I would say that a couple errors
6 occurred. Number one, the customer should have been
7 notified sooner that there were no facilities in the
8 ground.

9 Q. Okay. What was the second?

10 A. And they should have been offered the
11 cellular option after the seven days.

12 Q. Okay. And where in the organization was that
13 error made?

14 A. Well, as I explained, I believe, once before,
15 the business office should have notified the customer
16 that there may be a problem with facilities. And it's
17 called the Delayed Service Group that did not call the
18 customer after seven days.

19 Q. Where is this business office in this Delayed
20 Service Group located?

21 A. They're both in Minneapolis. Well, the
22 business office can be several places. It can be
23 Omaha, it can be Des Moines, it can Minneapolis.

24 Q. Who's in charge?

25 MR. WELK: Of what?

1 MR. HOSECK: Of the business office.

2 A. There's many people in charge. I guess I'm
3 not sure what level you're looking for.

4 Q. I want to know who's ultimately responsible.

5 MR. WELK: I'm going to object. This has
6 been asked and answered about four different times.
7 She's answered it four different times.

8 MS. WIEST: Sustained.

9 MR. HOSECK: Well, then I'll go to a second
10 area.

11 Q. How much money would it take within U S West
12 to have properly handled this matter? In other words,
13 how much money would have to have expended to properly
14 handle this request for service?

15 MR. WELK: Objection as to relevancy.

16 MR. HOSECK: I think it's very relevant as to
17 the management of this company. And this is a
18 complaint, and I think that the Commission has a right
19 to look into the management. The Commission has a
20 supervisory responsibility here, and we have a
21 complaint by two citizens and taxpayers of South Dakota
22 that relate to service that this Commission has a
23 supervisory and a regulatory control over. And I'm
24 trying to find out if there's an expenditure of money
25 that would have remedied this, I want to know how much.

1 And that's the basis for my question.

2 MS. WIEST: Objection overruled.

3 A. Then I guess I would ask for clarification.
4 Are you asking how much more money would it be for us
5 to have offered her the cellular sooner?

6 Q. No. What I'm asking you is how much money
7 would it have taken for U S West to expend to get
8 service to the Thompsons when they requested it?

9 A. We did put the facilities in, so I don't know
10 how much the facilities -- how much money we spent to
11 get them there. It would have cost the same when we
12 spent it as it would have cost to do it before, but we
13 aren't going to put it there if there's no need for it.

14 Q. Do you know if any disciplinary action was
15 taken against any employees of U S West with regard to
16 the failure to take the Thompsons order when it came in
17 in April 1997?

18 A. I believe that I explained that we have no
19 means of even knowing who they talked to.

20 Q. And you talked about a policy change in terms
21 of telling the people that take these orders that it's
22 now essentially to be taken seriously and the order is
23 to be processed when it first comes in?

24 A. No, that's not a correct statement. I said
25 that that is the policy. We've reinforced it for new

1 people, for anyone that was misunderstanding it.

2 Q. When you reinforced it, what do you mean by
3 reinforce?

4 A. In other words, well, we sent a communicator
5 out. So listen, read this, this again tells you this
6 is how they are to be handled. It was not a policy
7 change. It was simply to reinforce to everyone this is
8 how it needs to be handled.

9 Q. Do you as a management employee of U S West
10 have any responsibility as far as getting this service
11 to the Thompsons in this particular case?

12 A. With half a million transactions, I simply
13 cannot be involved in all of them.

14 Q. Well, were you involved in this one?

15 A. Only after it became a formal complaint.

16 MR. HOSECK: I have no further questions of
17 this witness. Thank you.

18 MS. WIEST: Commissioners?

19 COMMISSIONER NELSON: I have one or two. Did
20 I understand you to say you did not know what your cell
21 phone policy was on how people pick up or how people --
22 if you make a cell phone offer, what the policy is on
23 how they get it?

24 A. No. I'm not involved in actually getting it
25 to the customers. What I know of the program is that

1 after seven days, if we've not given them service, we
2 offer them unlimited local calling on a cell phone.
3 The actual getting the phone to the customer is taken
4 care of by a different department. And I can certainly
5 get some information on it, but I don't know what our
6 contracts with the vendor is. We have several
7 different vendors throughout the state. I don't know
8 what those contracts state. But I do know what U S
9 West's cellular policy is.

10 COMMISSIONER NELSON: Would you not -- I
11 think the answer to my question is you don't know what
12 your policy is in terms of how the customer gets it,
13 but somewhere it is in your policy you have an
14 agreement that says that they do it one way or another?

15 A. I am assuming there is a contract between,
16 yes.

17 COMMISSIONER NELSON: Could you let us know
18 what that policy is?

19 A. Certainly.

20 MR. WELK: Do you want a copy of the
21 contract, Commissioner?

22 COMMISSIONER NELSON: I'll settle for her
23 word on how you handle it. I want to know if you're
24 requiring these people to pick it up. If they -- I
25 mean I want to know if you have to go get it or if

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1 they'll ship it. If you have a policy that says if you
2 request to have it shipped, they'll ship it; and your
3 policy says unless they ask the right question, they
4 don't get the service.

5 In this systems, Camron asked about a systems
6 problem and what he thought -- what you thought it
7 would take to remedy this from never happening again.
8 One question I might have is -- and if I didn't lead to
9 the right conclusion, tell me how I arrived at the
10 wrong conclusion. It seems to me that had there been a
11 system that said that when somebody calls and requests
12 the service, there's some record of that. And that
13 first contact was made like in April. So would you
14 agree that if there was some system in place that
15 started that in April versus starting it in September,
16 maybe some of these problems might have been
17 eliminated? Because from April to September is a
18 lengthy period of time. That might have allowed for
19 the engineers to do the design work, to get -- if there
20 was a right-of-way issue, they could have got the
21 right-of-way issue. That would allowed for more time
22 to get wire, or more time if there wasn't any, a time
23 to get the installation. So would you agree that that
24 would be --

25 A. And I don't think, Commissioner, that we're

1 disputing that. That's why we're saying take these
2 orders because that would have sent the order into the
3 system. That's correct, we're not disputing that.

4 COMMISSIONER NELSON: So your position is
5 that you always had this system in place that said that
6 it starts right away when the first contact is made;
7 that your people just weren't doing it?

8 A. In this particular case, that's right, they
9 did not take it. But had they taken it, that would
10 have given us more lead time to get the engineering
11 done and everything, exactly.

12 COMMISSIONER NELSON: But you're saying the
13 policy always was to take the order and deal with it?

14 A. Uh-huh, yes.

15 COMMISSIONER NELSON: Oh, that's a good
16 question. I guess I didn't articulate it exactly.

17 A. Okay.

18 COMMISSIONER NELSON: Because at that point
19 where you're saying now phone numbers are given -- like
20 say I called when I went to Pierre I -- say I called
21 them in November. I got the same advice that Avery
22 did; that was call back closer to January when you want
23 your phone installed, because I wanted my phone
24 installed in January 4th. I called in November. And
25 so I did not -- I was not assigned a number when I

1 called in November, but I was assigned two weeks later
2 because they called me two weeks later. I was assigned
3 that number two weeks later. So, I guess, assigning a
4 number is important. So if you're not really assigning
5 the numbers when the person makes the first contact,
6 you haven't eliminated this problem.

7 A. That's what we're saying, so we're saying to
8 the service reps take the record, which does
9 automatically the minute you place an order, a number
10 is generated. We can't take an order without giving
11 you a number. So that's what we are saying, taking the
12 order when you call it, it gives the customer a order.

13 COMMISSIONER NELSON: Is that a new policy?

14 A. No. I'm saying we're reinforcing it to all
15 the reps.

16 COMMISSIONER NELSON: So they were always
17 supposed to be assigning and not telling me to call
18 back in two weeks?

19 A. That's correct.

20 COMMISSIONER NELSON: Okay. Thank you.

21 CHAIRMAN BURG: How far back does that policy
22 go, do you know?

23 A. I don't believe that it's any new policy. I
24 believe we've always told the reps to take it. Now, if
25 you called in and said, "I want it in a year and a

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1 half," or something like that, you have to use some
2 judgment. But we're saying when the customer calls in
3 and says, "I'm going to be moving in three, four
4 months, two months," take the order.

5 CHAIRMAN BURG: I asked that because I've had
6 several situations where they've called far out ahead,
7 especially at a new construction, and they've said,,
8 "Call back closer." So I was wondering if that was a
9 policy change from what I've heard it.

10 A. Uh-huh. And we admit we should have taken it
11 here. But some customers call in just say, "I was just
12 curious, what should I do?" They're not really ready
13 to place an order. So, you know, what the service rep
14 has to do is listen to what the customer is saying.
15 And if they're saying they're going to be moving in two
16 months, take the order.

17 CHAIRMAN BURG: How do you handle that if
18 it's transfer of a current number like in the case of
19 the Thompsons where they kept their number? Does that
20 still generate on their number that they have now?

21 A. Maybe I'm not understanding your question.

22 CHAIRMAN BURG: Well, the Thompsons indicated
23 they were able to take the number they had in
24 Cnamberlain and apply that to their home out there.

25 A. Yeah.

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1 CHAIRMAN BURG: So if you would have taken
2 the order in April like you should have --

3 A. It would have shown right up on their record.

4 CHAIRMAN BURG: It would have shown the
5 number they have at their home? That didn't cause any
6 kind of confusion of how you got to the new location?

7 A. Well, it would have -- if we would have taken
8 the order, it would have pulled up that number. We
9 would have made a record of it right there while we're
10 talking to the customer. We take the record right
11 there then and then it would have started the order
12 going through the system.

13 CHAIRMAN BURG: Now, one thing that I've
14 gotten confused is with the pictures Mr. Thompson
15 showed us. They installed some new facilities and that
16 made it possible for them to have an available line.
17 When were those installed, do you know?

18 A. Well, the actual fact is that while we were
19 doing this job to get the Thompsons service, the
20 hunting lodge disconnected their phone. We immediately
21 gave that line to the Thompsons. Now, we went on to
22 finish the job, but they were able to get that phone
23 that day because the hunting lodge disconnected their
24 line.

25 CHAIRMAN BURG: So they went back to the

1 pedestal where the hunting lodge took their line from,
2 took that particular line --

3 A. And gave to the Thompsons.

4 CHAIRMAN BURG: -- to the exchange and gave
5 it to the Thompsons and brought a line in for that?

6 A. We simply gave them the cable pair. I gave
7 the Thompsons the cable pair that the lodge was using.
8 We still engineered the job and took a 25-pair cable
9 out there, so the facilities are thought there.

10 CHAIRMAN BURG: Did the 25 cable get
11 installed after the Thompsons?

12 A. Yes, after the 16th, I believe. And I don't
13 have the exact date. What I'm saying we didn't stop
14 doing the job. We went ahead and did the job.

15 CHAIRMAN BURG: The 16th of what month?

16 A. The 16th of October is when the hunting lodge
17 disconnected and we were able to get --

18 CHAIRMAN BURG: You indicated you had
19 435,000, did you call them contacts?

20 A. No, transactions. This is actual orders or
21 repair tickets.

22 CHAIRMAN BURG: How many customer lines does
23 U S West have in South Dakota?

24 A. I'd say around 260,000.

25 CHAIRMAN BURG: So you're generating close to

1 two per customer transactions, is that what you're
2 saying?

3 A. (Witness nodded affirmatively.)

4 CHAIRMAN BURG: And you went into -- there
5 was quite a bit of discussion by your attorney who
6 asked several questions about the numbers of contacts,
7 held orders percentages, several different things. Is
8 there any situation in trying to indicate that the
9 percentage was very, very small and that that was
10 acceptable is the way I took it. Now, if you don't
11 agree --

12 A. I'm saying that's very, very good.

13 CHAIRMAN BURG: That acceptable to the
14 company?

15 A. Well, I think everyone of us in life would
16 like to never make a mistake or never have any
17 problems. But the truth is, you know, just as I
18 explained, you cannot run a business and have your
19 facilities sitting out there constantly not being
20 used. You're going to have to -- you're going to have
21 situations sometimes where you're going to have some
22 problems.

23 CHAIRMAN BURG: The thing that is giving me
24 trouble is this distinction, though, between the fact
25 of not having facilities available and not being able

1 to tell the customer in a timely manner that that's the
2 case. And are you saying that's also impossible to
3 achieve?

4 A. I'm saying that it's not -- you know, we have
5 mechanisms that can sometimes pull up and show whether
6 facilities are available. There are so many
7 variables. Like, for instance, this hunting lodge
8 disconnected. We wouldn't know that they were going
9 to, so it happens that sometimes you put the order in,
10 there aren't facilities. Maybe three days later there
11 are facilities there. There's a lot of variables. But
12 we have to some degree some ability to tell you whether
13 you have facilities, but there are a lot of variables
14 there. So to say that it will absolutely never happen
15 is not --

16 CHAIRMAN BURG: Is there any way in the
17 system that immediately when that hunting lodge line
18 became available, that that flag that we no longer need
19 to have a held order, we can assign that now, or does
20 it still have to go through a process of handling the
21 Thompsons?

22 A. Chairman Burg, I guess I'm not that familiar
23 with that process. But I have to believe that, yes,
24 somehow right away it triggers it for that held order,
25 but I couldn't tell you exactly how that happens.

1 CHAIRMAN BURG: One other problem I have is
2 you indicated that when that on the 3rd it was
3 requested; on the 4th there was a held order. With
4 your policy you're not required to notify them the
5 phone would be available, the cell phone, for seven
6 days; is that correct?

7 A. What I believe that should have happened is
8 on the 4th we would notify the customer that that order
9 was going to be held, that we did not have facilities.
10 And that if it remained held for seven days, we have a
11 policy that after the seventh day you are eligible for
12 unlimited local usage on a cell phone or your choice of
13 \$100 credit per month. So, no, we should have notified
14 them on the 4th that it was held and then contacted
15 them and let them know about the cellular policy.

16 CHAIRMAN BURG: When you notified them on the
17 4th, when it became a held order on the 4th in your
18 records, at that time did you have any idea how long it
19 would be held?

20 A. No, they wouldn't. Because after it becomes
21 a held order, it goes to the engineering department.
22 They would have to make that determination. So I
23 believe that when they said three or four days, what
24 they were saying is in three or four days we will know
25 after engineering has looked at it, but we need to send

1 an engineer on site to see what needs to be done.

2 CHAIRMAN BURG: You consider the provisioning
3 of the cellular phone as adequate service or equivalent
4 service to a land line?

5 A. I would say that I believe it's alternate
6 service. We believe that the customer should have
7 alternate service so that they can dial emergency
8 numbers and have the ability to receive calls, and I
9 believe a cell phone offers that to you.

10 CHAIRMAN BURG: As far as company policy, is
11 that considered satisfactory indefinitely?

12 A. Indefinitely, no.

13 CHAIRMAN BURG: I mean we've had situations
14 of complaints where a cell phone had been the only
15 source of phone for quite a lengthy period of time.
16 And is there any policy in the company that, you know,
17 beyond -- that is strictly temporary and beyond that
18 it's not acceptable?

19 A. You know, I mean, I guess I can't speak for
20 any circumstance. Like if it was going to cost a
21 million dollars to serve two customers, I suppose we
22 look at that on a case-by-case basis. But the
23 intention of the cellular program is to provide a
24 temporary alternative solution until we can get them
25 land line service.

1 CHAIRMAN BURG: My concern and the reason I'm
2 pursuing this is that we've had indications where the
3 customer says that the response is, "Why are you
4 complaining? You have a cellular phone;" and, you
5 know, when they feel it is not adequate. I'm wondering
6 if company policy is once we get them the cellular
7 phone, is that still considered a held order?

8 A. Oh, absolutely. We are continuing to work
9 that, absolutely.

10 CHAIRMAN BURG: That's all I have.

11 COMMISSIONER NELSON: I have another one.

12 COMMISSIONER SCHOENFELDER: Go ahead.

13 COMMISSIONER NELSON: Do you have a policy
14 that says at what point you offer the cell phone?

15 A. After seven days.

16 COMMISSIONER NELSON: So you're saying seven
17 days is a reasonable wait?

18 A. The reason the seven days, we established
19 that, Commissioner, is in many cases we can find an
20 alternative means to work that order without sending an
21 engineer out. In other words, maybe in the meantime
22 somebody has disconnected. Maybe we have what we can
23 call a defective pair that we can recover. Sometimes
24 we have a way of working that order maybe a day or two
25 or three later. So the policy has been established

1 that after seven days you are eligible for this
2 cellular option.

3 COMMISSIONER NELSON: In your earlier
4 testimony you said that you wouldn't provide facilities
5 if they weren't needed.

6 A. What I was trying to explain is that so many
7 times people think that simply no matter where you
8 move, facilities are there. And what I'm saying is
9 they're very, very, very expensive; and we don't simply
10 just put facilities out there hoping one will move out
11 there. You put facilities where the growth is and
12 where they're needed.

13 COMMISSIONER NELSON: I guess I'd be
14 interested in getting the date at which you installed
15 the 25-pair.

16 A. And I can certainly get that for you.

17 COMMISSIONER NELSON: You did say you didn't
18 put facilities where you needed and now you've put in
19 25-pair?

20 A. Because they have determined that is an area
21 where they're going to need more. In other words, the
22 job was started. We didn't pull the job back because
23 we were able to fill this particular order because we
24 believe we have growth out there. If we can see
25 growth, we're going to put facilities there. But what

1 I'm trying to explain is many times customers move 40
2 miles from town and they simply think that facilities
3 are there, and a lot of people think that. And they're
4 not always there until we have customers requesting
5 them out there. So we have to look at -- we look
6 constantly at the growth areas. We look at where we
7 need facilities, and we're constantly doing that. But
8 my point was is that the inference was that you
9 literally should have facilities in your entire
10 territory at every place there is. And that does not
11 exist.

12 COMMISSIONER NELSON: You said, though, that
13 you now have put in the 25-pair and because you see the
14 growth. Are you telling me that you saw the growth at
15 the point when Avery applied you didn't know there was
16 need for growth? You didn't see any growth before that
17 so the Thompson complaint was what generated your
18 seeing the growth or the need or the facilities?

19 A. When the decision was made to do that job,
20 you know, that would be an engineer's call, you know.
21 And when they were -- whether they were -- I expect
22 that this held order showed them that people are moving
23 out there; they need more facilities out there. The
24 engineer went out, drew the job up. Even though we
25 could work the held order, they went ahead so we have

1 facilities there now for other people.

2 COMMISSIONER NELSON: Do you have a statewide
3 plan that says that, you know, this is where we see the
4 growth and we have like a five-year plan or a ten-year
5 plan and whatever plan?

6 A. We have planners, we have engineers, we have
7 many people looking at that all the time. Our managers
8 in the small towns give feedback. We have many means
9 of getting forecasting growth areas. Yes, we work on
10 that all the time.

11 COMMISSIONER NELSON: Okay. So you're saying
12 you have a formal written plan. For instance, like
13 governments are required to have transportation
14 improvement plans projected over five years or more,
15 ten years actually, and then you get on a ten-year list
16 and then you get to a five-year's list, and every year
17 you upgrade your plan. So do we have that kind of
18 planning for facilities in South Dakota?

19 A. The only thing I can speak to, I know they're
20 constantly doing that. What type of a written plan, I
21 mean, what I'm saying is that is our business. That's
22 what we're out there doing. That's what the engineers
23 are doing. I don't know what written plan they go by
24 to do that.

25 COMMISSIONER NELSON: And you're not aware of

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1 a written plan that upgrade ten years, five years, one
2 year? You have no priorities of revenue that you have
3 available for this year's construction, poured revenue
4 you have available for next year's construction
5 period? Do you have anything like that in South Dakota
6 for revenues available for South Dakota that says that
7 these are what we're going to do this year; this is
8 what we're going to do next year?

9 A. That exist, I'm sure, but I can tell you I do
10 not manage that process so I'm not involved.

11 COMMISSIONER NELSON: Do you know that there
12 is such a plan, or are you -- or do you not know?

13 A. Absolutely we have people. That is their
14 job.

15 COMMISSIONER NELSON: I didn't say do you
16 have people. I say do you have a written plan and a
17 policy that says that you look at this plan every year
18 and you do this?

19 A. And I can can't speak to that. I don't know
20 that.

21 COMMISSIONER NELSON: Thank you.

22 MS. WIEST: Anything else?

23 COMMISSIONER NELSON: No.

24 COMMISSIONER SCHOENFELDER: Colleen, let's go
25 back to the cellular phone. Why don't you get toll and

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1 just bill the customer for toll on the cellular? Why
2 did they have to use this credit card? Can you explain
3 it to me?

4 A. Yes. Because we pay the vendor for the, you
5 know, for X number dollars. We cannot provide
6 out-of-state toll, as you know. We have no means of
7 letting them have instate toll and blocking
8 out-of-state toll. In other words, when you have toll
9 option, we cannot -- you know, I mean, it simply has to
10 go through their carrier, whatever carrier they
11 choose. If we had a way of giving them instate toll
12 and not out-of-state toll, we could do it, but we don't
13 have that. So, plus, they would have to pay their long
14 distance charges. The difference is the credit card
15 charge. But they would still, whether they had land
16 line service or cellular service, they would have to
17 pay.

18 COMMISSIONER SCHOENFELDER: Do these
19 cellulars have a toll block on them?

20 A. Yes.

21 COMMISSIONER SCHOENFELDER: Okay. Because
22 it's your opinion that the MFJ will not allow you to
23 even contract with someone that provides interstate
24 services?

25 A. Well, I believe that the customer should have

1 a choice. I mean if we contracted with one carrier, I
2 believe the customer should have a choice who they want
3 as their --

4 COMMISSIONER SCHOENFELDER: But you're
5 contracting as a cellular company; is that not true?

6 A. And they tell the customer that they need to
7 contact their carrier. The cellular company doesn't do
8 that. They tell the customer you need to call AT&T,
9 MCI, whomever you want.

10 COMMISSIONER SCHOENFELDER: My cellular
11 doesn't work that way. That's why I'm confused. My
12 cellular says I can call anybody I want to and they're
13 going to bill me and I don't know whether it's AT&T,
14 MCI, or U S West?

15 A. And the cellular company probably contracts
16 with them. But U S West does not. See, that's not U S
17 West Cellular.

18 COMMISSIONER SCHOENFELDER: You think that's
19 the problem. Because I was just confused by that a
20 little bit. Let's go back and beat a dead horse to
21 death.

22 A. Okay.

23 COMMISSIONER SCHOENFELDER: When the
24 Thompsons called -- when Mr. Thompson called and the
25 person, whoever took that call, failed to generate a

1 phone number, if they had generated a phone number, to
2 your knowledge, do you know how soon the red flag would
3 have come up on the system and said there's no
4 facilities available?

5 A. Well, I can't explain exactly how it works
6 because I'm not involved in it.

7 COMMISSIONER SCHOENFELDER: I need to
8 understand it, though. Can you find a way to explain
9 that to me through some other person or something
10 because I don't think until I understand how that
11 system works -- I understand the person who answered
12 the phone failed; okay?

13 A. Okay.

14 COMMISSIONER SCHOENFELDER: But someplace
15 along the line -- I mean, if I called and said I want
16 my number and I want to move it here on such and such a
17 date, that seems to me a lot easier than if you were
18 generating a new number for me. And I guess I need to
19 know when in this system the red flag would have gone
20 up and said no facilities where you want to move this
21 number to. And since obviously we're struggling trying
22 to understand this, I need to know if the system would
23 have worked the way your policies are in place and the
24 way it should have, when someone would have known?

25 A. I will tell you what my understanding of how

1 it works is. Okay? Had X taken the order in April,
 2 they would have generated an order because that's the
 3 only way the phone number can come out. So they would
 4 have generated an order. That would have said service
 5 wanted now. You know, they would have to give a firm
 6 due date though to generate an order. In other words,
 7 it won't flow through the system if you just say two
 8 months or three months. You need to say September 1.
 9 So as I take an order, put a September 1 due date in
 10 it, then it goes in the system. If there were no
 11 facilities -- back in April if there wasn't back in
 12 April, then it would be my understanding that it would
 13 generate something that would say no facilities. It
 14 would become just like it did, a held order. It would
 15 go to engineering.

16 COMMISSIONER SCHOENFELDER: Now, just to
 17 follow up just a little bit, the major problem always
 18 seems to be communication.

19 A. Sometimes.

20 COMMISSIONER SCHOENFELDER: And for a
 21 communication company, that seems a little strange to
 22 me. But when is it that you tell a person -- if I call
 23 in -- and I know nothing about this -- and I call in
 24 and does your representative then say you need to give
 25 me a firm date before I can tell you whether we can

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1 provide you with a phone, or do they just give a
2 standard answer?

3 A. You mean like call back?

4 COMMISSIONER SCHOENFELDER: Yeah. If I call
5 in and I say I'm going to move and it's going to be the
6 first part of September and this is April, and I need
7 this phone number transferred -- this is what I think
8 the Thompsons did. And I'm not trying to repeat what
9 they said. I'm just doing it the way I would do it.
10 Then would your representative say to me, "You need to
11 give me a firm date before I can tell you whether we
12 can provide phone service there or not," or do your
13 phone representatives sort of -- do your
14 representatives sort of assume that there's phone
15 facilities available everywhere and it's an automatic,
16 it's going to be 25 bucks, and, yeah, we'll stick it
17 over that day?

18 A. The procedure is that they have mechanisms to
19 the best of everyone's ability and the records and the
20 who disconnected, who didn't disconnect, because
21 there's so many variables. But if they can determine
22 -- they're supposed to pull up what we call a facility
23 check. And if they can determine there are not
24 facilities there, or there are facilities there, they
25 should instruct the customer that there may be a

1 problem getting facilities to you. Because like I say,
2 in the meantime, with so many variables, someone could
3 disconnect. So we don't want to be a problem or alarm
4 them, but they should instruct them there may be a
5 problem with facilities at your new location.

6 COMMISSIONER SCHOENFELDER: And, of course,
7 the customer doesn't care whether you're a large
8 company with a lot of orders or whether you're a
9 company that only services them. All they care is
10 about it being transparent and the fact they're going
11 to get service when they ask for it.

12 A. Absolutely. And when I give these 1997
13 results, I'm not saying that that means that the
14 Thompsons aren't important. And that is why I made two
15 attempts -- I mean, I felt I was being more than fair
16 in my last settlement. I mean, I feel badly that they
17 went through this. I told Mrs. Thompson that a couple
18 of times that I feel -- you know, I understand what
19 frustrations you went through, and I wasn't disputing
20 that. But what I want everyone to understand is this
21 is not a willful account. We did not intentionally do
22 it. 99.92 percent of the time we don't do it. And I'm
23 sorry that we did it. And I think I offered a very
24 good settlement because we did do it. I can't undo it.

25 COMMISSIONER SCHOENFELDER: Thank you.

1 That's all I have.

2 CHAIRMAN BURG: I want to just come back with
3 one clarification. In your answer to the complaint,
4 certificate of service, item number one, it says U S
5 West admits that, as alleged in the complaint of Avery
6 and Dixie Thompson, address, customer on or about
7 September 3rd, 1997, placed an order. You have not
8 affirmed in this that they contacted you in April, but
9 are you disputing that at all?

10 A. We have no way of disputing it or saying it's
11 a fact.

12 CHAIRMAN BURG: I just wanted that
13 clarified. Thank you.

14 MS. WIEST: Did excess construction charges
15 apply in this case?

16 A. No. I would just say that the \$25 charge
17 that she was quoted is the charge that every resident
18 pays to have their phone serviced. It's a one-time
19 hookup charge. That's what the customer was billed,
20 plus their monthly service.

21 MS. WIEST: Any other questions?

22 MR. WELK: Maybe we should ask her what
23 Mrs. Thompson wanted to know about those charges. She
24 had a question that she didn't understand. Was that on
25 your November bill didn't you want an explanation? I

2 Can you answer? Do you remember what the
3 question was?

7 MS. WIEST: What exhibit are we on?

8 MR. WELK: 11?

9 A. I don't have a number.

10 MR. WELK: Is that the November bill, the
11 December?

12 MS. WIEST: Exhibit 11 has a \$25 charge.

13 MRS. THOMPSON: It would be that under other
14 charges and credits, item two, that residential line,
15 it says per month 15.75 and then over there it goes
16 14.70.

17 A. Okay. And so, no, and then if you drop down
18 one line there's a \$25 charge.

19 MRS. THOMPSON: What's that 14.70?

20 A. Then the 14.70 is just your monthly
21 residential charge.

22 MRS. THOMPSON: Isn't that up on local
23 charges monthly service November 30 through December 12
24 15.75?

25 | A. Well, the way that U S West billing works is

1 your first bill is going to have two months. We bill a
2 month in advance.

3 MRS. THOMPSON: But this isn't my first
4 bill. I have an October bill. I mean I've never not
5 had a bill from U S West in all my married life.

6 A. Well, I will just tell you this: That I
7 would not like to try to explain this bill until I've
8 had a chance to sit down and itemize it through and
9 understand it myself because I don't want to give you
10 incorrect information. But I would be glad to go back,
11 take these bills back, and go through every single line
12 and determine exactly what it is and if it should be on
13 there. But I would not feel like I could adequately
14 describe it without spending some time looking at your
15 account.

16 MR. WELK: Are you willing to go back and do
17 that and call her later and go through the bill?

18 A. I'll do that tomorrow.

19 MRS. THOMPSON: Will that apply to the
20 unregulated services? Excuse me.

21 A. I'll go through it line by line and explain
22 every bit of it. And if that's in error, I will get
23 that taken care of.

24 MS. WIEST: Did you have a question?

25 MR. THOMPSON: Sure. Could I ask a question

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1 about the hunting lodge there? Colleen, what did you
2 find out that they did need their service, or what was
3 the circumstances around that?

4 A. I only know what the engineers told me. But
5 I'm assuming that it's a seasonal line. In other
6 words, they connect, they disconnect. And so I suppose
7 they disconnected at that time.

8 MR. THOMPSON: The reason I ask is the
9 building that was there was a double-wide mobile home
10 fixed up pretty nice. It's been gone for over a year
11 so I was wondering if they had been paying monthly, you
12 know, bills up to that time and decided to disconnect
13 or --

14 A. Maybe they had it going into someone else's
15 house, you know. I mean, it wouldn't necessarily have
16 been at the hunting lodge, it may have been transferred
17 into someone else's house answering the phones. I only
18 know they said the hunting lodge disconnected.

19 MR. THOMPSON: Thank you.

20 MS. WIEST: Do you have any other questions?
21 Does anyone have any questions for this witness?

22 MR. THOMPSON: No.

23 COMMISSIONER NELSON: Could we document when
24 the hunting lodge disconnected and if it was being sent
25 to somewhere else?

1 A. I can certainly find out the situation.

2 COMMISSIONER NELSON: Thank you.

3 MS. WIEST: Thank you. Do you have any other
4 witnesses, Mr. Welk?

5 MR. WELK: No, I do not.

6 MS. WIEST: Do you have any witnesses,
7 Mr. Hoseck?

8 MR. HOSECK: No.

9 MS. WIEST: Do any of the parties wish to
10 make a closing statement? Mr. and Mrs. Thompson? It's
11 optional.

12 MR. THOMPSON: Just that it's turned into a
13 lot more than I expected when the whole thing started
14 so I'll be glad when it's over, and hopefully the
15 outcome will be that everybody gets good service we
16 expect.

17 MS. WIEST: Mr. Welk.

18 MR. WELK: I want to apologize to Mr. and
19 Mrs. Thompson. You shouldn't have to gone through
20 this. But I'm going to tell you this: As long as
21 human beings are on this earth, there's going to be
22 mistakes. I wish it wouldn't have happened, but it
23 did. And I'm not going to tell you and anybody who
24 thinks that the world operates infallibly, you ought to
25 go to a different world because it isn't going to

1 happen. All we can do is do our best.

2 I would say to the Commission the reason I
3 put in Exhibit 12, which is your prior decision, is
4 that as a matter of law, the damages must be something
5 that can be ascertained. And I'm not saying that the
6 Thompsons didn't incur any inconvenience. I'm not
7 trying to suggest that in any manner.

8 The dollar amounts that they have proven,
9 we've never disputed. We were willing to pay those
10 amounts. I do think a \$6,000 number picked out of the
11 air, as they have described, is speculative as a matter
12 of law. And if a Circuit Judge heard that in the
13 testimony in a trial, that testimony would be stricken
14 because it's a principle of law that testimony does not
15 get any better than out of the mouths of the person
16 that bring the claim, and you cannot recover
17 speculative damages. And when they say "we picked the
18 number out of the air," as a matter of law, that's
19 speculative. I'm not saying they shouldn't get
20 something, but it's purely speculative.

21 And why I put Exhibit 12 in, as you yourself
22 in another proceeding have determined what the basis
23 for the damage recovery is; and I would say that I
24 think that that standard applies to future damages.
25 When you try a case and you talk about reasonable

1 certainty, that applies to future damages. They must
2 prove actual pecuniary losses, and they should be paid
3 for those, and we are not disputing those. So the
4 amount of the damage, as I started the hearing, is
5 what's at issue; and they are entitled to something. I
6 just think that you need to utilize your good judgment,
7 award a fair amount.

8 And I hope that service is good for you, Mr.
9 and Mrs. Thompson; that you get a fair sum of money.
10 I'm not saying you shouldn't get, but I think \$6,000 is
11 too much. And I'll leave it to the best judgment of
12 the Commissioners. And I would say, I guess, could I,
13 Rolayne, just have a day or so to check out Camron's
14 research that he provided to me in the brief? I'd like
15 to have --

16 MS. WIEST: Yes. If you want, you can file
17 something with the Commission. We'll give you that
18 option within ten days. And if you don't, that's
19 fine. It's just optional.

20 MR. WELK: I wanted a chance to go check it.
21 And Camron gave it to me, it was no requirement. I
22 want a chance to go back to my office.

23 MS. WIEST: One thing I forgot, 7, 8, and 9
24 exhibits, is there any objection to any of those?

25 MR. WELK: No.

1 MS. WIEST: 7, 8, and 9 have been admitted.
2 And I'm sorry, Commissioner Burg, has another question
3 for you.

4 CHAIRMAN BURG: I'd like to recall Colleen.
5 And you can stay where you're at. Given the comments
6 that were just talked about, levels of damages, did you
7 have some basis for the offer that was made to the
8 Thompsons?

9 A. Well, just to -- I first offered them
10 approximately \$200, and they refused. So when I called
11 Mrs. Thompson back, I said to her, "I am willing to
12 give you -- you've asked for \$1,000 inconvenience and
13 then this \$200," which are kind of miscellaneous
14 bills. I said, "I'm willing to give you that because,"
15 I said, "we're going to have a hearing. I'm going to
16 have pay for an attorney. The Commission, the state of
17 South Dakota, is going to have expenses." If I'm going
18 to pay that attorney, I would rather pay it to a
19 customer and maybe make them satisfied. I believe that
20 1,200 was probably more than generous, but I was
21 willing to pay that because we're going to incur those
22 expenses today. We all have incurred those expenses
23 today.

24 MR. WELK: Some of us have to work, Colleen.
25 We have children to support.

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1 A. But I would rather give that to the customer
2 so that is why I gave the \$1,200. I cannot say that if
3 you asked me to itemize, that makes up nothing except
4 what she asked for.

5 CHAIRMAN BURG: Did you indicate you felt
6 that was a fair amount for inconvenience?

7 A. She had mentioned to me that they thought
8 \$1,000 was for inconvenience and so that's what I --

9 CHAIRMAN BURG: Did you agree?

10 A. I cannot speak to her inconvenience. I can
11 only speak to what I was willing to offer.

12 CHAIRMAN BURG: Okay.

13 MS. WIEST: Mr. Hoseck.

14 MR. HOSECK: Thank you. Mr. Chairman,
15 members of the Commission, we have in front of you
16 today a case where the company here, U S West, was
17 contacted in good faith in April for September
18 installation by Avery and Dixie Thompson. It contains
19 an all too familiar litany of promise and missed
20 commitments. And in this case it adds another
21 dimension and that is the substitute cellular service
22 was not provided in a correct manner. The facts of
23 this case are especially serious.

24 This family on moving to their new residence
25 north of Chamberlain, to Reliance Post Office address,

1 were deprived of the convenience of, in fact, the
2 necessity of a phone. They were unable to call law
3 enforcement, fire departments, doctors, ambulances,
4 emergency 911 numbers. And in the middle of this
5 scenario, two of their sons were injured in an
6 automobile accident, which serious injuries -- from
7 which serious injuries resulted and there was a period
8 of recuperation.

9 We look at the facts as they've come out
10 today. And one that sticks out primarily in my mind is
11 the statement by U S West employee to Mrs. Thompson
12 that said this was out of their control. The providing
13 of service to these people was out of their control.
14 The question then becomes in whose control is it? From
15 the questioning of Colleen Sevold, I think it's rather
16 apparent that no one person is accountable or
17 responsible or in a managerial position of
18 responsibility for getting service to the Thompsons.
19 It raises a question who's running this company and do
20 they know what they're doing.

21 You have in front of you some damage issues,
22 and I have provided a brief for your consideration on
23 this. And I would leave it to you as to what you
24 determine is fair and proper. I'm asking you as
25 Commissioners to visit and maybe even revisit this

1 issue of inconvenience as that is the essence of the
2 brief that I have provided to you. If there was ever a
3 case for this Commission to consider awarding damages
4 for inconvenience, this is it.

5 I would also ask the Commission to consider
6 in your deliberations an order ordering U S West to
7 change its mode of operations so that this type of
8 activity does not occur again in the future. In this
9 particular case public safety has not been promoted.
10 Convenience has not been promoted. The economic
11 well-being of the Thompsons has not been promoted. In
12 fact, all of these have been hindered. And I think
13 that these are all proper elements for you to consider
14 on this issue of inconvenience.

15 And when you have time to read that brief, I
16 think you'll see that the law says that in this
17 business of providing telephone service, inconvenience
18 is something that you cannot attach a specific price
19 tag to. It is something known only to the people who
20 suffer it. And I believe that the record indicates to
21 what extent the Thompsons have been inconvenienced. I
22 would suggest that any damages awarded to the Thompsons
23 can and should be substantial on this business of
24 inconvenience.

25 Thank you.

1 MS. WIEST: If there's nothing else, that
2 would close the hearing. And the Commission will make
3 a decision at a later time. You'll be notified of that
4 time period.

5 (THE HEARING CONCLUDED AT 3:35 P.M.)
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1 STATE OF SOUTH DAKOTA)
2 COUNTY OF HUGHES)

3

4 I, Lori J. Grode, RMR, Notary Public, in and
5 for the State of South Dakota, do hereby certify that
6 the above hearing, pages 1 through 122, inclusive, was
7 recorded stenographically by me and reduced to
8 typewriting.

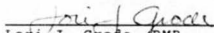
9 I FURTHER CERTIFY that the foregoing
10 transcript of the said hearing is a true and correct
11 transcript of the stenographic notes at the time and
12 place specified hereinbefore.

13 I FURTHER CERTIFY that I am not a relative or
14 employee or attorney or counsel of any of the parties,
15 nor a relative or employee of such attorney or counsel,
16 or financially interested directly or indirectly in
17 this action.

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand and seal of office at Pierre, South Dakota, this
20 22nd day of January, 1998.

21

22


Lori J. Grode, RMR

23

24

25

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 PLEASE TYPE OR PRINT CLEARLY

TC97-169

BEFORE THE PUBLIC UTILITIES COMMISSION
 OF THE STATE OF SOUTH DAKOTA

RECEIVED

OCT 24 1997

SOUTH DAKOTA PUBLIC
 UTILITIES COMMISSION

COMPLAINT

Complainant(s): (The party filing the complaint)		Respondent(s): (The person or Company complained against)	
Name	Avery & Dixie Thompson	Contact Person	US West Direct Comm.
Address	HC 5 Box 16BB	Company	US West Direct Comm.
City, State, Zip	Reliance, SD 57569	Address	PO Box 2560
Work Phone	Avery - 605-473-5354 Dixie - 605-734-3454	City, State, Zip	Omaha, NE 68103
Home Phone	605-734-6398	Work Phone	800-873-5970
Cellular Phone	N/A	Cellular Phone	
Fax	N/A	Fax	

If the Complainant is represented by an attorney, please list the attorney's name, address, telephone number and fax number below:
 If Complainant is not represented by an attorney, please leave blank:

The facts giving rise to my complaint:

SEE ATTACHED SHEET

NOTE: Please attach additional pages, if necessary, to explain your situation. Also enclose copies of any bills which may pertain to your complaint.

EXHIBIT

RESOLUTION REQUEST

I ask that the Public Utilities Commission grant the following relief. (What do you think the Commission should do to solve this problem?)

Provide operable land service as soon as possible

Reimbursement for attached bills

Compensation for inconvenience

NOTE: Please attach any additional pages, if necessary.

SEE ATTACHMENTS

VERIFICATION

Signature must be witnessed by a notary public.

Dixie Thompson
 Complainant's Signature

10-20-97

Date

State of South Dakota

County of

Burdick

:SS

On this 20 day of October, 1997, before me personally came and appeared Dixie Thompson known to me to be the individual described herein and who executed the foregoing instrument, and who duly acknowledged to me that he/she executed same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Quinn Busack
 Signature of Notary Public

(SEAL)

My commission expires:

1999

PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA
COMPLAINT

Complainant(s)

Avery & Dixie Thompson
HC 5 Box 168B
Reliance, SD 57569
Home Phone: 605-734-6398
Avery Work Phone: 605-473-5354
Dixie Work Phone: 605-734-3454

Respondent(s)

US West Communications
Delayed Services
PO Box 2560
Omaha, NE 68103-02560
1-800-873-5970

April 1997 - contacted US West to inform them of our upcoming move to the rural Reliance area; they informed us that we did not need to contact them until 2 weeks prior to our planned move date.

Sept. 2, 1997 - contacted US West on disconnecting service from our current residence at 607 1/2 S. Sanborn St., Chamberlain, SD 57325 and requested that service be connected at our new residence, HC 5 Box 168B, Reliance, SD 57569. Our new service was to be connected and operable on Friday, Sept. 12, 1997. A description of the property location was given to the operator and we were quoted \$25 for new hook-up fee.

Sept. 12, 1997 - service was disconnected from our Sanborn residence but the telephone company was unable to connect service at rural Reliance residence because they discovered all the lines were full and that the problem would need to be referred to an engineer, it would be approximately 3-4 days before they were able to provide us with land service at our rural Reliance residence. We requested that our service be reconnected at our Sanborn residence to enable us to retrieve messages from our answering machine.

Sept. 23-25, 1997 - contacted US West Delayed Services on the status of our land service at our rural Reliance residence. We were informed that the earliest possible date they would be able to provide us with land service would be the end of October, 1997. The reason for the delay being that there was no available lines in the area and plans for new lines needed to be drawn up by an engineer out of the Denver office, after completion of the plans the work would then be contracted to a general contractor in our area. I asked the operator what our financial responsibility would be for getting land service. We were informed that US West would be responsible for the new line we would only be billed a \$25 new hook up fee and that this charge would be added to our monthly statement when the service was completed.

They then informed us of alternative service options: 1.) they would provide us with a cell phone unit; program the unit to our existing 605-734-6398 number; the monthly service charge would be \$17 and we would have unlimited air time, all local incoming and outgoing calls would be free; any long distance calls would need to be made by using our calling card 2.) they could credit our account \$100 for every month they were unable to provide us with land service, providing we had a cell phone.

I told the operator that we did not have a cell phone unit so I was interested in the \$17 monthly cell phone option. She then asked what location I would like to pick the phone up at so that she could have it programmed and ready for us. We were traveling to Rapid City, South Dakota and I asked if I could pick the phone up in Rapid City and return it to Pierre, South Dakota. She said no that it must be picked up and returned to the same location. I told her I would have to speak with my husband as to what location would be best for us to pick the unit up at and that I would back with her.

Oct. 6, 1997 - contacted US West delayed services and after waiting over 27 minutes I finally got through and spoke with Romona. I explained our situation and asked how much longer we were going to be without service. She informed me that the earliest possible date they would be able to provide us with land service would be Dec. 19, 1997. I informed her that I lived in South Dakota and in December the ground is frozen hard, that if I did not have land service prior to that date that we probably would not have service until spring of the next year. She said that could very well be case but it is really out of their control. She then informed us that our service was being delayed because US West contracts independent contractors in our area to install the line and this is the date they were given by the independent contractor. She then proceeded to inform me of my options to alternative service that US West could provide while we were without land service. (see Sept. 23-25 for alternative service options.) After explaining our options, I informed her that I did indeed want the cell phone option and asked that US West waive the sur-charge on our calling card since our land service was going to be delayed for much longer than we had expected. I requested this because we will not have the option of making long distance calls unless we use our calling card due to the fact that US West is unable to provide us with land service to our home. I was informed that US West could not waive this sur-charge that I could get in touch with my long distance provider and speak with them on the best way of placing long distance calls. I explained to her that I felt this was not acceptable since we will not have the option not to use our calling card when placing long distance calls. She then told me I could go buy my own cell phone and US West would credit our account \$100 each month and I wouldn't need to use my calling card. I told her this was not an option and that I was going to file a complaint with the PUC. She stated that US West is providing us with the same service that they would provide to any other customer.

She then asked what location I would like to pick the cell phone up at, Pierre, Rapid City, Aberdeen, Watertown or Sioux Falls. I asked that she send it to us either Fed-Ex or UPS since we did not live close to any of the above cities. She then arrange for our cell phone shipped Fed-Ex to my work address on Oct. 9, 1997.

Oct. 9, 1997 - Fed-Ex delivered the cell phone, however when we went to use the phone we discovered that it was not programmed to our existing number, 605-734-6398. It was not programmed for local use at all. Each time we tried to use the phone we received a message asking for our calling card number. We were unable to use the phone for any local calls.

Oct. 10, 1997 - contacted US West Delayed services spoke with Patricia; explained the situation. She checked the work order and said that the order had been written correctly on their end and she thought the problem was due to the fact that they had

not disconnected our service at our Sanborn residence. She then sent in a work order to disconnect our Sanborn residence service. At about 12:30 PM I checked to see if our Sanborn service had been disconnected, it had been. However, when I dialed our number, 605-734-6398 I kept getting the following message: Message 1 "Your call cannot be completed at this time, the cellular customer that you have dialed may have reached their destination or traveled beyond the service area, please try your call later." We were unable to receive or make any local calls on the cell phone unit that US West provided us with.

Oct. 13, 1997 - contacted US West Delayed services spoke with Kevin; reported that the cell phone they gave us was not programmed correctly; he checked the work order and said that US West did have the work order written up correctly, that the phone was sent to us from Pierre, South Dakota and the cellular company from that area did not have the unit programmed correctly. He would contact them and have a Mr. Eric Carr out of their Denver, Colorado office give me a call at my work number today.

4:50 PM - I had still not received a call from Mr. Carr on our phone service. I again contacted US West Delayed Services and spoke with Mary who referred me to Kevin who connected me with Mr. Eric Carr. Mr. Carr said he sent the work order to Tech Support who hadn't got back with him. I again explained the situation to Mr. Carr and he felt the problem was a 'ESN' (electronic serial number) mis-match. He asked that I get our cell phone unit and read the serial number on the back of the battery pack to him -- DF69438. He then stated that the problem was with the 'ESN' the number the unit was programmed to was DF6948A8. He said he would make the change immediately and within 10-15 minutes our cell unit should be operable.

5:20 PM - checked cell phone service, it was operable for both incoming and outgoing local calls.

8:15 PM - received call from telephone company stating that they would be installing our lines for our land service at our rural Reliance address on Wednesday, Oct. 15, 1997.

Oct. 15, 1997 - US West laid cable for our new phone line.

Oct. 16, 1997 - Hooked up our home telephone and made a call to test service. We were able to make outgoing calls.

Oct. 17, 1997 - Discovered that we were unable to receive any incoming calls on our newly installed phone line or the cell phone unit that was loaned to us by US West.

Oct. 18, 1997 - Phone line to our home was dead we were unable to make any outgoing or receive any incoming calls on our new phone line. We also were unable to receive any incoming calls on our cell phone unit.

Oct. 20, 1997 - Called US Delayed Services spoke with Love explained the problem she referred me to repair and reported the problem spoke with Chantel and she said that she would check out the problem and if it was a US West problem it would be corrected by 6:00 PM tonight. If the problem was not any fault of US West we would be charged for the service call.

Attachments:

1.) Telephone bill - borrowed a cell unit from a relative to use until US West could provide us with alternative service.

2.) Bill from the Chamberlain-Oacoma Register - placed ads in local paper for sale of our mobile home and other personal items. Were unable to receive any calls due to the fact that we did not have any service at all from Friday, Oct. 10 at 12:30 PM until Monday, Oct. 13 at 5:20 PM.

NEXT

DOCUMENT (S)

DISREGARD

BACKGROUND

Midstate News, Inc.

120 S. Main, P.O. Box 550, Chamberlain, SD 57325
Phone 605-734-6360

Publishers of the Brule County News
Chamberlain-Oscoma Register and Kennebec Advocate-Leader

10-15 1997

Name Dick Thompson

Address _____

Non-Taxable	Paid-on Account	Cash	Charge	Paid Out
Description				Amount
Subscription to				
Classified Adv. (2)				4.26
Newspapers				
Stationery and Supplies				
Job Work				
Sales Tax				
Display Adv.				
Legal Adv.				
Received on Account				
Discount				

CL 10521

Rec'd By 4-7

11.32

Printer Labels Printing, Chamberlain, SD 57325 (605) 734-1100



Being all "wrapped up" is r excuse not to use the Classifieds

Classified ad charges are 10 cents per word. Minimum charge is \$3.00.

You can order an 18-cent per word. Minimum charge is \$3.00.

A 75-cent billing charge will be added to classified ads or thank you ads not paid for, submitted. This also applies to "all further notice" ads which are not paid by the end of the month, when billed.

Errors that are not the fault of the advertiser, must be brought to our attention before the second run. A correction will be made and credit given one time, for ad space used.

Deadline for classified ads is 12 noon Tuesday.

Nonexclusive For Sale

ONE CORNED-BEEF REEF for sale, cut and wrapped, pick up at 888 E. Irving, Gregory. Call 465-635-6711.

FOR SALE: Gibson heavy duty auto water vacuum. \$75.00. Phone 734-5106.

FOR SALE: Pioneer in-dash pull out CD player - \$200, 200 watt boom box, amplifier - \$75, 200 watt Kitchn rock speaker - \$100, 100 watt 100 watt Jumbo \$75, 60 channel color TV - \$100. Martin Tiger Compound bow 30-30 Bow - \$85. All in excellent condition. Call after 8 p.m. 734-4282.

FOR SALE: 12 pc. wet and under Area EZBike - Brock, Made in Italy. \$300. Call 734-5872.

FOR SALE: Springfield 30-06 rifle, with scope. 685-724-3116.

FOR SALE: Nordic Track di machine - \$200, baby cot with mattress - \$150, both are in excellent condition. Call 734-4284.

BEST REASONABLE FARE on a very clean or a looking 31 C.E. above Dayton or in love getting 734-6801. Jose Anderson.

3 DAY RETURN \$2.50 Per Hour Caring Sales Service. There, and for. Call 8-10. Save up to 30% off on all items.

NOW STOCKING 500 bags of horse quality oats and several we rabbits and lots of lock hand. Ray's West.

DARTON
Dave Nelson Realty
Professional Real Estate Services
120 N. Main
(920) 734-4145
David E. Nelson, Broker

North of Chamberlain
50 acres, River Bluffs
(can be split)

Farmland
4.75 acres

one Wear in Thomas, MD. 1-800-455-0608

815/5
FOR SALE: Large selection of good used 13, 14, 15 and 16 inch metal for cars and light trucks. A.B. Equipment, Chambersburg, MD 405-734-5724.

3216
FOR SALE: Calligrapher electric and solar furnace, peridot and power focus. Red Petroleum. 914-4278.

3265
FOR SALE: 82 Dodge 1-50-50, everything works. 734-5128.

109
FOR SALE: 1983 International Scout, half cab, 4 wheel drive, works well, glass all good. Call 734-5128.

102-1816
WE EAGLE VISION EXT. 60,000 n.a., 3.5L, alloy wheels, leather, child seat, Ortel wheel, sharp, over our Robin. 302-520-0000.

9116
FOR SALE: 1983 International Scout, half cab, 4 wheel drive, works well, glass all good. Call 734-5128.

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WE EAGLE VISION EXT. 60,000 n.a., 3.5L, alloy wheels, leather, child seat, Ortel wheel, sharp, over our Robin. 302-520-0000.

9116
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9116
FOR SALE: 1983 International Scout, half cab, 4 wheel drive, works well, glass all good. Call 734-5128.

CAR SALE: Moved in and have two more things, near antique, some furniture, refrigerator, metal desk, hand saw. Sat. 1-7 p.m. Sun. 9 a.m. 1000 W. Chambersburg, MD.

1099
BUNNAGE SALE: For Ext. 12 and Sat. Ext. 13, 10 to 5 p.m. Electric typewriter, 3.5 L. gold shoes, children's clothes, bedframe, telephone answering machine, child car seat, box, box of paperback books, 3.5 L. Kitchn & Co. 1100 N. Main, Gregory. 1-500-455-0608.

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For Rent

1099
Mobile home - 2 bedrooms with 1 ad. room, kitchen appliances, large deck, fenced yard, private lot, no pets. Red cross (Phon) 734-5724. 1100 N. Main, Gregory. 1-500-455-0608.

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FOR RENT: 2 bedrooms house with basement, water, sewer and garbage. Handicapped accessible. \$300 10 month. 734-4726.

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1099
FOR RENT: 2 bedrooms apt. includes stove, refrigerator, water, sewer and garbage. Hand

CELLULARONE®

Page 2

Invoice Date 10/14/97
Account Number 0000875141
Mobile Number 605-730-0665
Account Name HUTMACHER DRILLING INC

For Billing
Inquiries Call
800-635-0304

SUMMARY OF CHARGES FOR ACCOUNT 0000875141

PREVIOUS BALANCE		.00
PAYMENTS RECEIVED THROUGH 10/10/97		.00
ADJUSTMENTS		.00
BALANCE FORWARD		.00
CURRENT MONTHLY ACTIVITY - LIST ENCLOSED		
SERVICE CHARGES - BUSINESS ADV POOLED 5-2	29.99	
TAXES	3.78	
AIRTIME	1.50	
LONG DISTANCE	.00	
TOTAL CURRENT MONTHLY CHARGES/CREDITS		35.27
TOTAL AMOUNT TRANSFERRED TO 0000471304	-35.27	
TOTAL AMOUNT DUE BY NOVEMBER 3, 1997		.00

SERVICE CHARGES

BUSINESS ADVANTAGE POOLED MONTHLY ACCESS	10/11/97 - 11/10/97	29.99
CONFERENCE CALLING	10/11/97 - 11/10/97	.00
CALL WAITING	10/11/97 - 11/10/97	.00
TOTAL SERVICE CHARGES		29.99

TAXES

FEDERAL TAX	3.0000%	.94
S. DAKOTA SALES TAX	4.0000%	1.26
CHAMBERLAIN CIT. TAX	2.0000%	.63
S.D. GROSS RECEIPTS TAX	0.1500%	.06
BRULE COUNTY 911 SURCHARGE	0.7500%	.75
SD TELECOM RELAY SERVICE	0.1500%	.15
TOTAL TAXES		3.78

HOME AIRTIME AND LAND CHARGES

Line	Date	Time	Called Place	Called Number	Feat	Dir	-----Airtime-----	Rate	Mins	Type	Charge	Total Charge
1	9-10	4:10P	YANKTON SD	605-665-6655	LR	M-L	1 5	Free			.00	
2	9-10	4:57P	TOLL FREE	CL 800-568-2515	LR	M-L	1 3	Free			.00	
3	9-12	3:39P	TOLL FREE	CL 800-568-2515		M-L	1 1	Free			.00	

CALL CHARACTERISTICS
 Of-Call Forwarding CV-Call Waiting CC-Conference Calling CL-Call LR-Local Roaming VR-Voice Mail Retrieval 1-Peak
 2-Off Peak 3-Weekend 0-Operator Assisted OI-North American Cellular Network IN-Incoming Call M-Periods Overlap

CELLULARONE®

Invoice Date 10/14/97
Account Number 0000875141
Mobile Number 605-730-0665
Account Name HUTMACHER DRILLING INC

Page 3

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Inquiries Call
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HOME AIRTIME AND LAND CHARGES

Line	Date	Time	Called Place	Called Number	Feat	Dir	Per	Mins	Charge	Rate	Mins	Type	Charge	Total Charge
4	9-12	2:40P	TOLL FREE	CL 800-568-2515		M-L	1	2	Free					.00
5	9-12	3:40P	TOLL FREE	CL 800-439-8544		M-L	1	2	Free					.00
6	9-14	1:07A	CHAMBERLAN SD	605-734-0635		M-L	3	2	Free					.00
7	9-14	2:06P	CHAMBERLAN SD	605-734-0634		M-L	3	2	Free					.00
8	9-14	2:06P	CHAMBERLAN SD	605-734-0634		M-L	3	2	Free					.00
9	9-14	4:11P	LYCAL	CL 605-285-3451		M-L	3	1	Free					.00
10	9-16	5:27P	CHAMBERLAN SD	605-734-0635	LR	M-L	1	2	Free					.00
11	9-18	9:48A	FT PIERRE SD	605-222-2376	LR	M-L	1	1	Free					.00
12	9-18	5:19P	CHAMBERLAN SD	605-734-0635	LR	M-L	1	3	Free					.00
13	9-20	7:55P	CHAMBERLAN SD	605-734-0634	LR	M-L	3	1	Free					.00
14	9-23	6:44A	INCKING CL	605-730-0665		L-M	2	1	Free					.00
15	9-23	6:45A	INCKING CL	605-730-0665		L-M	2	1	Free					.00
16	9-23	7:26A	CHAMBERLAN SD	605-734-6631		M-L	2	1	Free					.00
17	9-23	7:46A	NAON	605-730-0665	CL	L-M	2	1	Free					.00
18	9-23	7:46A	NAON	605-730-0665	CL	L-M	2	2	Free					.00
19	9-23	3:26P	CHAMBERLAN SD	605-734-1535		M-L	1	2	Free					.00
20	9-23	5:00P	KIMBALL SD	605-778-6311		M-L	1	1	Free					.00
21	9-23	5:00P	KIMBALL SD	605-778-6375		M-L	1	1	Free					.00
22	9-23	5:04P	KIMBALL SD	605-778-6735		M-L	1	3	Free					.00
23	9-23	5:08P	VORNER SD	605-842-3100		M-L	1	3	Free					.00
24	9-25	4:42P	CHAMBERLAN SD	605-734-3416	LR	M-L	1	1	Free					.00
25	9-25	4:51P	INCKING CL	605-730-0665	LR	L-M	1	1	Free					.00
26	9-25	4:59P	FT PIERRE SD	605-222-2376	LR	M-L	1	2	Free					.00
27	9-26	7:15P	CHAMBERLAN SD	605-734-6504		M-L	1	2	Free					.00
28	9-27	8:04A	INCKING CL	605-730-0665	LR	L-M	3	2	Free					.00
29	9-27	8:08A	INCKING CL	605-730-0665	LR	L-M	3	1	Free					.00
30	9-27	10:22A	CHAMBERLAN SD	605-734-4002	LR	M-L	3	5	Free					.00
31	9-27	11:37P	TOLL FREE	CL 800-321-4141	LR	M-L	3	3	Free					.00
32	10-02	6:10P	INCKING CL	605-730-0665	LR	L-M	1	3	Free					.00
33	10-02	6:14P	CHAMBERLAN SD	605-734-6504	LR	M-L	1	2	Free					.00
34	10-02	6:14P	PUNAWA SD	605-894-4359	LR	M-L	1	5	Free					.00
35	10-02	8:22P	VISORC	605-326-5258	LR	M-L	2	2	Free					.00
36	10-03	6:52P	CHAMBERLAN SD	605-734-4002	LR	M-L	1	24	.75					.75
37	10-03	9:41P	CHAMBERLAN SD	605-734-5496	LR	M-L	3	21	Free					.00
38	10-03	10:28P	INCKING CL	605-730-0665	LR	L-M	3	2	Free					.00
39	10-04	10:20A	CHAMBERLAN SD	605-734-5496	LR	M-L	3	5	Free					.00
40	10-04	11:57A	CHAMBERLAN SD	605-734-5496	LR	M-L	3	6	Free					.00
41	10-04	2:21P	INCKING CL	605-730-0665	LR	L-M	3	3	Free					.00
42	10-04	3:13P	CHAMBERLAN SD	605-734-5496	LR	M-L	3	1	Free					.00
43	10-04	5:18P	INCKING CL	605-730-0665	LR	L-M	3	2	Free					.00
44	10-04	5:20P	CHAMBERLAN SD	605-734-6798	LR	M-L	3	1	Free					.00
45	10-04	5:50P	INCKING CL	605-730-0665	LR	L-M	3	2	Free					.00
46	10-06	12:23P	INCKING CL	605-730-0665	LR	L-M	3	5	Free					.00
47	10-06	12:28P	INCKING CL	605-730-0665	LR	L-M	3	2	Free					.00
48	10-07	6:15P	CHAMBERLAN SD	605-734-6504	LR	M-L	1	1	.25					.25
49	10-07	9:42P	CHAMBERLAN SD	605-734-6504	LR	M-L	2	2	.50					.50
Total Home Airtime and Land Charges											148	1.50	.00	1.50

CALL CHARACTERISTICS

OF-Call Forwarding CV-Call Waiting CC-Conference Calling CL-Call LR-Local Roaming VO-Voice Mail Retrieval 1-Peak
2-Off Peak 3-Weekend O-Operator Assisted IN-North American Cellular Network IN-Incoming Call M-Periods Overlap

CELLULARONE®

Invoice Date 10/14/97
Account Number 0000875141
Mobile Number 605-730-0665
Account Name HUTMACHER DRILLING INC

Page 4

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Inquiries Call
800-635-0304

SUMMARY OF HOME AIRTIME AND LAND CHARGES

Plan P52 *BUSINESS ADV POOLED 5-2* From 9/11/97 Through 10/10/97

Rate Period	Minutes	Rate	Charge	Type of Long Distance Usage	Charge
Peak	65	Free (Plan)	.00	Total Long Distance Charges	.00
	4	.25	1.00		
Off Peak	3	Free (Other)	.00		
	5	Free (Plan)	.00		
	2	.25	.50		
Weekend	69	Free (Other)	.00		
Plan P52 Totals	148		1.50		
Home Airtime Total	148		1.50		

3,000 WDS50000 MIN AVAILABLE THIS CYCLE

69 WDS50000 MIN USED THIS CYCLE

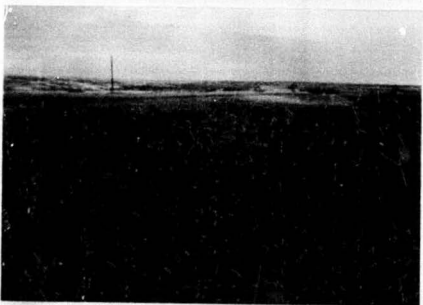
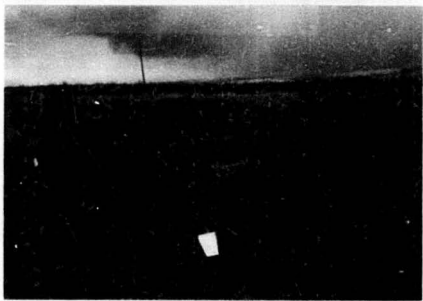
2,931 WDS50000 MIN AVAILABLE THRU 02/15/98

NEXT

DOCUMENT (S)

BEST IMAGE

POSSIBLE



BOYCE, MURPHY, McDOWELL & GREENFIELD, L.L.P.
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Telephone 605 336-2424
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Of Counsel
John R. McDowell

J.W. Boyce (1884-1915)
John S. Murphy (1924-1966)

November 25, 1997

VIA FACSIMILE - 605-773-3809

William Bullard, Executive Director
S.D. Public Utilities Commission
500 E. Capitol
Pierre, SD 57501

Re: Avery & Dixie Thompson v. U S West Communications, Inc.
PUC #97-169
Our File No. 2104-97-169

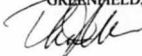
Dear Mr. Bullard:

Please find enclosed U S West's Answer to Complaint together with the Certificate of Service. The original Answer and three copies are being mailed to you today along with the original Certificate of Service.

Best regards.

Sincerely yours,

BOYCE, MURPHY, McDOWELL &
GREENFIELD, L.L.P.



Thomas J. Welk

TJW/vjj
Enclosures

cc: Avery and Dixie Thompson

RECEIVED

DEC 01 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

FAX Received NOV 25 1997

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

DEC 8 1 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE
COMPLAINT FILED BY AVERY
AND DIXIE THOMPSON,
RELiance, SD, AGAINST U S WEST
COMMUNICATIONS, INC.
REGARDING TELEPHONE LINE
LOCATION

TC97-169

ANSWER TO COMPLAINT AND
CERTIFICATE OF SERVICE

FAX Received NOV 25 1997

Pursuant to the November 3, 1997 Order of the South Dakota Public Utilities Commission ("Commission") in this docket, served on November 5, 1997, and pursuant to ARDS 20:10:01.11.01, U S WEST Communications, Inc. ("U S WEST") provides the following Answer to the Complaint in this matter:

1. U S West admits that, as alleged in the Complaint of Avery and Dixie Thompson, HC 5, Box 16BB, Reliance, SD 57569 ("Customer"), Customer on or about September 3, 1997 placed an order for the installation of residential telephone service at the Customer's home located in a new development in a rural area of Reliance, SD.

2. Customer's service order was taken with a due date of September 12, 1997. However, the job was designated as a held order on September 4, 1997 due to a lack of facilities. The job was drawn by engineering on September 30, 1997.

3. Due to Customer's relocation to Reliance from a residence in Chamberlain, at Customer's request U S WEST disconnected Customer's service at the Chamberlain residence on September 12, 1997. Unfortunately, due to the lack of facilities, service was not available and could not be connected at the Reliance residence concurrent with the Chamberlain

EXHIBIT

2

disconnect. Thus, on September 12, 1997 telephone service at the Chamberlain residence was restored. On September 25, 1996 U S WEST offered Customer the authorized cellular option until such time as service could be provided, or a \$100 credit per month, and the Customer indicated that they would advise U S WEST later. The Customer made no contact with U S WEST until October 7, 1997 when Customer was advised that cellular telephone service would commence on October 9, 1997. The cellular telephone was delivered by overnight delivery on October 9, 1997 and the Chamberlain residence was then disconnected. The Customer notified U S WEST on October 13, 1997 that the cell phone was not working and U S WEST referred the trouble report to the cellular provider.

4. Installation was performed on October 15 and the Customer was provided landline service on October 16 for the new residence.

5. On October 20 Customer called in a trouble report. U S WEST's technician discovered that the temporary drop which had been placed on the ground to provide immediate service to Customer had been snagged by unknown persons and had caused a service outage. The repair was made and service was restored. No further trouble or repair calls have been made by Customer.

6. On or about October 23, 1997, U S WEST's representative contacted Customer to apologize for the delay in phone service provision and to offer good faith restitution, i.e. offer to pay for the interim cellular phone service, offer to reimburse for Customer's advertising statements for the customer's trailer house which was located in Chamberlain, offer to waive the installation charge and present the offer of a \$100 phone service credit.

7. On October 24, 1997, Customer contacted U S WEST with a settlement proposal that U S WEST considered unreasonable. The Customer was advised that U S WEST could not entertain their settlement proposal which included: \$5,500 for a trailer Customer had advertised for sale while the cellular phone did not work; \$635 for other miscellaneous items Customer desired to sell; free October phone service, \$50 of miscellaneous bills, including advertising and expense for the borrowed cellular phone, and \$1,000 for the inconvenience Customer experienced.

8. U S West has demonstrated that it entered into good faith negotiations with Customer to provide Customer interim cellular service, and to provide landline service to Customer's residence as soon as possible and to settle the Customer's complaint.

AFFIRMATIVE DEFENSES

Customer's complaint is barred, in whole or in part, by contributory negligence and by a failure to mitigate damages. In addition, U S West denies damages alleged by the Customer and remits Customer to prove damages sustained.

WHEREFORE, U S WEST, having provided landline telephone service to Customer's home, and having offered adequate recompense for the delay in providing service, respectfully requests that the Complaint of Customer against U S WEST be dismissed or alternatively, that the Customer recover only actual damages sustained.

Dated this 25th day of November, 1997.



Thomas J. Welk
Tamara A. Wilka
BOYCE, MURPHY, MCDOWELL &
GREENFIELD, L.L.P.
P.O. Box 5015
Sioux Falls, SD 57117-5015
(605)336-2424

William P. Heaston
U S WEST Communications, Inc.
1801 California, Suite 5100
Denver, Colorado 80202
Telephone: (303) 896-0752

Attorneys for U S WEST Communications, Inc.

CERTIFICATE OF SERVICE

I, Thomas J. Welk, do hereby certify that I am a member of the law firm of Boyce, Murphy, McDowell & Greenfield, and on the 25th day of November, 1997 a true and correct copy of U S West's Answer to Complaint was sent via US mail, postage prepaid, to the following address:

Avery and Dixie Thompson
HC 5, Box 16BB
Reliance, SD 57569



Thomas J. Welk

Exhibit
PUC Hearing TC97-169
Dixie & Avery Thompson
January 14, 1998

Total number of days US West did not provide us with residential phone service:

Sept. 12
Sept. 13
Sept. 14
Sept. 15
Sept. 16
Sept. 17
Sept. 18
Sept. 19
Sept. 20
Sept. 21
Sept. 22
Sept. 23
Sept. 24
Sept. 25
Sept. 26
Sept. 27
Sept. 28
Sept. 29
Sept. 30
Oct. 1
Oct. 2
Oct. 3
Oct. 4
Oct. 5
Oct. 6
Oct. 7
Oct. 8
Oct. 9
Oct. 10
Oct. 11
Oct. 12
Oct. 13
Oct. 17
Oct. 18
Oct. 19
Nov. 30
Dec. 1
Dec. 2

cell phone service available at 5:20 pm

TOTAL = 38 days with out phone service

EXHIBIT

3

Exhibit
PUC Hearing TC97-169
Dixie & Avery Thompson
January 14, 1998

Total number of days we were without any type of phone service at our residence: (US West residential or borrowed cell unit)

Sept. 12
Sept. 13
Sept. 14
Sept. 15
Sept. 16
Sept. 17 (stayed in town)
Sept. 18 (stayed in town)
Sept. 19 (stayed in town)
Sept. 20 (stayed in town)
Sept. 21 (stayed in town)
Sept. 22 (stayed in town)
Sept. 23 w/o phone service; were given the option of a cell phone unit
Sept. 24
Sept. 25 borrowed cell phone unit
Oct. 9
Oct. 10
Oct. 11
Oct. 12
Oct. 13 w/o phone service until 5:20 pm
Oct. 17
Oct. 18
Oct. 19
Nov. 30
Dec. 1
Dec. 2

TOTAL = 25 days

EXHIBIT

4

Exhibit
PUC Hearing TC97-169
Dixie & Avery Thompson
January 14, 1998

Days we were without phone service that we traveled to town
specifically to access a phone:

<u>Date</u>	<u>#miles - round trip</u>
Sept. 12	34
Sept. 13	34
Sept. 14	34
Oct. 10	34
Oct. 11	34
Oct. 12	34
Oct. 13	34
Oct. 17	34
Oct. 18	34
Oct. 19	34
Nov. 30	<u>34</u>

TOTAL 374 miles

374 miles x .315 per mile = \$117.81

Standard Mileage Rate taken from the 1997 IRS Publication 463

EXHIBIT

5

NEXT

DOCUMENT (S)

DISREGARD

BACKGROUND



Department
of the
Treasury

Internal
Revenue
Service

Publication 463
Cat. No. 11081L

Travel, Entertainment, Gift, and Car Expenses

For use in preparing
1997 Returns



Get forms and other information faster and easier by:
COMPUTER

- World Wide Web > www.irs.ustreas.gov
- FTP > [ftp.irs.ustreas.gov](ftp://ftp.irs.ustreas.gov)
- IRIS at FedWorld > (703) 321-8020

FAX

- From your FAX machine, dial > (703) 368-9694
- See *How To Get More Information* in this publication.

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Important Changes for 1997

Increase in standard meal allowance. The standard meal allowance for most areas in the United States has increased to \$30. Use of the standard meal allowance is explained in chapter 1.

Standard meal allowance for travel days you depart and return. When you travel away from home, you can claim 1/4 of the standard meal allowance for the days you

location of the meeting is temporary and you have one or more regular places of work.

If you ordinarily work in a particular metropolitan area but not in any specific location and the reserve meeting is held at a temporary location outside that metropolitan area, you can deduct your daily transportation expenses.

If you travel away from home overnight to attend a guard or reserve meeting, you can deduct your travel expenses. These are discussed in chapter 1.

Commuting expenses. You cannot deduct the costs of taking a bus, trolley, subway, or taxi, or driving a car between your home and your main or regular place of work. These costs are personal commuting expenses. You cannot deduct commuting expenses no matter how far your home is from your regular place of work. You cannot deduct commuting expenses even if you work during the commuting trip.

Example. You had a telephone installed in your car. You sometimes use that telephone to make business calls while commuting to and from work. Sometimes business associates ride with you to and from work, and you have a business discussion in the car. These activities do not change the trip's expenses from commuting to business. You cannot deduct your commuting expenses.

Parking fees. You may pay to park your car at your place of business are nondeductible commuting expenses. You can, however, deduct business-related parking fees when visiting a customer or client.

Advertising display on car. The use of your car to display material that advertises your business does not change the use of your car from personal use to business use. If you use this car for commuting or other personal uses, you can't deduct your expenses for those uses.

Car pools. You cannot deduct the cost of using your car in a nonprofit car pool. Do not include payments you receive from the passengers in your income. These payments are considered reimbursements of your expenses. However, if you operate a car pool for a profit, you must include these payments from passengers in your income. You can then deduct your car expenses (using the rules in this publication).

Hauling tools or instruments. If you haul tools or instruments in your car while commuting to and from work, this does not make your car expenses deductible. However, if you have additional costs for hauling tools or instruments (such as for renting a trailer you tow with your car), you can deduct those additional costs.

Union members' trips from a union hall. If you get your work assignments at a union hall and then go to your place of work, the costs of getting from the union hall to your place of work are nondeductible commuting expenses.

Example. You are a banquet waitress who works at several locations in your hometown area. You must appear at the union hall to get your work assignment for the day. Although you need the union to get the job, you are employed where you work, not where the union hall is located. You cannot deduct the cost of the trips from your union hall to your place of work.

Office in the home. If you have an office in your home that qualifies as a principal place of business, you can deduct your daily transportation costs between your home and another work location in the same trade or business. (See Publication 587, *Business Use of Your Home*, for information on determining if your home office qualifies as a principal place of business.)

If your home office does not qualify as a principal place of business, follow the general rules explained earlier in this chapter.

Examples of deductible local transportation. The following examples illustrate when you can deduct local transportation expenses based on the location of your work and your home.

Example 1. You regularly work in an office in the city where you live. Your employer sends you to a one-week training session at a different office in the same city. You travel directly from your home to the training location and return each day. You can deduct the cost of your daily round-trip transportation between your home and the training location.

Example 2. Your principal place of business is in your home. You can deduct the cost of round-trip transportation between your qualifying home office and your client's or customer's place of business.

Example 3. You have no regular office, and you do not have an office in your home. In this case, the location of your first business contact is considered your office. Transportation expenses between your home and this first contact are nondeductible commuting expenses. Transportation expenses between your last business contact and your home are also nondeductible commuting expenses. Although you cannot deduct the costs of these trips, you can deduct the costs of going from one client or customer to another.

Car Expenses

If you use your car for business purposes, you may be able to deduct car expenses. You generally can use one of two methods to figure your expenses: actual expenses or the standard mileage rate. In this publication, "car" includes a van, pickup, or panel truck.

TIP You may be entitled to a tax credit for an electric vehicle or a deduction from gross income for a part of the place of a clean-fuel vehicle that you place in service during the year. The vehicle must meet certain requirements, and you do not have to use it in your business to qualify for the credit or the deduction. However, you must reduce your basis for depreciation of the clean-fuel vehicle property by the amount of the credit or deduction you claim. See Depreciation Deduction, later. For more information on clean-fuel vehicles, see chapter 15 of Publication 535.

Standard Mileage Rate

You may be able to use the standard mileage rate to figure the deductible costs of operating your car for business purposes. You can use the standard mileage rate only for a car that you own.

—For 1997, the standard mileage rate is

31¢ cents a mile for all business miles (47¢ cents a mile for U.S. Postal Service employees with rural routes). These rates are adjusted periodically for inflation.

A If you choose to use the standard mileage rate, you cannot deduct your actual car expenses. These include depreciation, maintenance and repairs, gasoline (including gasoline taxes), oil, insurance, and vehicle registration fees.

You generally can use the standard mileage rate whether or not you are reimbursed and whether or not any reimbursement is more or less than the amount figured using the standard mileage rate. See chapter 6 for more information on reimbursements.

Choosing the standard mileage rate. If you want to use the standard mileage rate for a car, you must choose to use it in the first year the car is available for use in your business. Then in later years, you can choose to use the standard mileage rate or actual expenses.

If you choose to use the standard mileage rate, you are considered to have chosen not to use the depreciation methods discussed later. This is because the standard mileage rate includes an allowance for depreciation. You also cannot claim the section 179 deduction (discussed later) if you use the standard mileage rate. If you change to the actual expenses method in a later year, but before your car is considered fully depreciated, you have to estimate the remaining useful life of the car and use straight line depreciation. See the exception to the 179 deduction under Depreciation Deduction, later.

Standard mileage rate not allowed. You cannot use the standard mileage rate if you

- 1) Do not own the car,
- 2) Use the car for hire (such as a taxi),
- 3) Operate two or more cars at the same time (as in fleet operations),
- 4) Claimed a deduction for the car in an earlier year using ACRS or MACRS depreciation (discussed later), or
- 5) Claimed a section 179 deduction (discussed later) on the car.

Two or more cars. If you own two or more cars that are used for business at the same time, you cannot use the standard mileage rate for the business use of any car. However, you may be able to deduct a part of the actual expenses for operating each of the cars. See Actual Car Expenses for information on how to figure your deduction.

You are not using two or more cars for business at the same time if you alternate using (use at different times) the cars for business.

The following examples illustrate the rules for when you can and cannot use the standard mileage rate for two or more cars.

Example 1. Marcia, a salesperson, owns a car and a van that she alternates using for calling on her customers. She can use the standard mileage rate for the business mileage of the car and the van.

Example 2. Tony uses his own pickup truck in his landscaping business. During the year, he traded in his old truck for a newer one. Tony can use the standard mileage rate

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Exhibit
PUC Hearing TC97-169
Dixie & Avery Thompson
January 14, 1998

Total number of days we were unable to leave boys at home after their
accident due to no phone service:

Sept. 19
Sept. 20
Sept. 21
Sept. 22
Sept. 23
Sept. 24
Sept. 25
Sept. 26
Sept. 27

Total = 9 days

EXHIBIT

6

USWEST COMMUNICATIONS
<http://www.uswest.com>

AVERY THOMPSON
 Bill Date: Oct 13, 1997
 Account No: 605 734-6398 340

Balance Forward	New Charges	Total Amount Due	Due Date for New Charges
\$33.04	\$29.60	\$62.64	Nov 2, 1997

Account Summary

▼ Previous Balance
 Charges
 Adjustments
 Balance Forward

▼ New Charges
 U S WEST Communications
 AT&T
 INTEGRETEL INC
 Total New Charges

TOTAL AMOUNT DUE

For questions, call:
 1-800-244-1111 14 06
 1-800-222-0300 12 03
 1-800-736-7500 3 51
\$29.60

We appreciate your business.

A late payment charge of 1.5% or minimum of \$1.00 may apply if
 total amount due does not reach us by Nov 13, 1997.

Do you have problems making operator assisted calls? The
 1-800-4USWEST EXPRESS CALLING CARD is your answer!
 Call your U S WEST business office and order yours today.

U S WEST Communications, PO Box 9301, Des Moines, IA 50306-9301

USWEST COMMUNICATIONS

For questions, call 1-800-244-1111

Page 2

▼ LOCAL CHARGES

FEATURE USAGE 75
 OTHER CHARGES AND CREDITS 1.28%
 TAX: FED 0000R STAG 0000R
 LATE PAYMENT CHARGE ON 33.04 1.00

U S WEST COMMUNICATIONS LOCAL CHARGES

ADJUSTMENTS 10.00%

ADJUSTMENTS APPLIED U S WEST COMM LOCAL
 OCT 10 INCLUDES 10.00 CREDIT FOR MISSED DUE DATE

TOTAL ADJUSTMENTS 10.00%

FEATURE USAGE

NO. DATE TIME DESCRIPTION 75

1. SEP 15 6:22PM LAST CALL RETURN ACTIVATION 75

LAST CALL RETURN USAGE 1 ACTIVATIONS AT \$.75 PER ACTIVATION

LAST CALL RETURN CARRIES A MAXIMUM CHARGE OF .60 PER LINE 75

TOTAL FEATURE USAGE

OTHER CHARGES AND CREDITS

ITEM PER MONTH

OCT 15 2 CREDIT FOR SERVICE AT OLD ADDRESS 19.25 1.28%

FROM OCT 11 97 THRU OCT 12 97

TOTAL OTHER CHARGES AND CREDITS 1.28%

▼ UNREGULATED SERVICES

OTHER CHARGES AND CREDITS 1.7%

TAX: STAG 0000R 1.14

U S WEST COMM UNREGULATED SERVICES CHARGES

1.14

OTHER CHARGES AND CREDITS

ITEM PER MONTH

OCT 15 3 CREDIT FOR SERVICE AT OLD ADDRESS 2.50 1.7%

FROM OCT 11 97 THRU OCT 12 97

TOTAL OTHER CHARGES AND CREDITS 1.7%

▼ LONG DISTANCE SERVICES

LONG DISTANCE 12.68

TAX: FED 38 STAG 78 1.14

U S WEST COMM LONG DISTANCE SERVICES CHARGES

\$13.82

LONG DISTANCE CALLS

NO.	DATE	TIME	PLACE	AREA-NUMBER	TYPE	MIN	AMOUNT
4	SEP 17	5:00PM	TO FT PIERRE	SD 805 222-2376	LOCAL	1	.40
5	SEP 22	8:15AM	TO FT PIERRE	SD 805 222-2376	LOCAL	1	.40
6	OCT 1	12:34PM	TO FT PIERRE	SD 805 222-2376	LOCAL	1	.40
7	OCT 1	12:34PM	TO FT PIERRE	SD 805 222-2376	LOCAL	1	.40
8	OCT 13	9:10PM	TO FT PIERRE	SD 805 222-2376	LOCAL	1	.40
9	OCT 13	9:10PM	TO FT PIERRE	SD 805 222-2376	LOCAL	1	.40
10	OCT 13	9:10PM	TO FT PIERRE	SD 805 222-2376	LOCAL	1	.40
11	OCT 13	9:10PM	TO FT PIERRE	SD 805 222-2376	LOCAL	1	.40
12	OCT 13	9:10PM	TO FT PIERRE	SD 805 222-2376	LOCAL	1	.40
13	OCT 13	9:10PM	TO FT PIERRE	SD 805 222-2376	LOCAL	1	.40
14	OCT 13	9:10PM	TO FT PIERRE	SD 805 222-2376	LOCAL	1	.40
15	OCT 13	9:10PM	TO FT PIERRE	SD 805 222-2376	LOCAL	1	.40

Type of Long Distance Calls

DATE: WEEKEND

TOTAL LONG DISTANCE CALLS

E-EVENING

53.2

12.68

EXHIBIT

Patent Pending

continued on back

USWEST COMMUNICATIONS
<http://www.uswest.com>

AVERY THOMPSON
 Bill Date: Nov 13, 1997
 Account No: 605 734-6398 340

Balance Forward	New Charges	Total Amount Due	Due Date for New Charges
\$9.60	\$84.56	\$94.16	Dec 4, 1997

Account Summary

▼ Previous Balance	
Charges	62.64
Adjustments	10.00%
Payment	Thank you for your payment 43.04%
Balance Forward	\$9.60

▼ New Charges	For questions, call:
U S WEST Communications	1-800-244-1111 76.34
AT&T	1-800-222-0300 8.22
Total New Charges	\$84.56
TOTAL AMOUNT DUE	\$94.16

We appreciate your business.

A late payment charge of 1.5% or minimum of \$1.00 may apply if total amount due does not reach us by Dec 13, 1997.

The company you have chosen for interLATA calls (long distance calls outside your local toll calling area) is AT&T.

Effective December 18, 1997, U S WEST is discontinuing the All Time Volume Discount Plan. Call 1-800-244-1111 to select a plan that fits your specific needs based on the times you call most.

U S WEST Communications, PO Box 9301, Des Moines, IA 50306-9301

USWEST COMMUNICATIONS

For questions, call 1-800-244-1111

		Page
▼ LOCAL CHARGES		
MONTHLY SERVICE-NOV 13 THRU DEC 12		15.75
734-6398		
BASIC SERVICES		
These services are necessary for you to use your telephone		
RESIDENCE LINE		15.75
FEDERAL ACCESS CHARGE		3.50
611 EMERGENCY SURCHARGE		75
OTHER CHARGES AND CREDITS		42.97
TELECOMMUNICATIONS RELAY SERVICES		15
TAX- FED 1.1% STATE 2.4%		3.61
U S WEST COMMUNICATIONS LOCAL CHARGES		\$68.73
ADJUSTMENTS		
ADJUSTMENTS APPLIED-U S WEST COMM LOCAL		10.00%
OCT 15 INCLUDES 10.00% CREDIT FOR MISSED DUE DATE		
TOTAL ADJUSTMENTS		10.00%
OTHER CHARGES AND CREDITS		
ITEM	PER MONTH	
OCT 15 CHARGE FOR SERVICE ADDED		
FROM OCT 16 97 THRU NOV 12 97		
1 FEDERAL ACCESS CHARGE	3.50	3.27
2 RESIDENCE LINE	15.75	14.70
3 ONE-TIME CHARGE FOR RESIDENCE LINE		25.00
TOTAL OTHER CHARGES AND CREDITS		42.97
▼ UNREGULATED SERVICES		
MONTHLY SERVICE-NOV 13 THRU DEC 12		2.50
734-6398		
OPTIONAL SERVICES		
These services are provided at your request and are not required as part of your basic telephone service.		
LINEBACKER-OPTIONAL INSIDE		
WIRE REPAIR PLAN	2.50	4.47
OTHER CHARGES AND CREDITS		34
TAX- FED 0% STATE 2%		
U S WEST COMM UNREGULATED SERVICES CHARGES		\$7.91
OTHER CHARGES AND CREDITS		
ITEM	PER MONTH	
OCT 15 LINE 97346398		
CHARGE FOR SERVICE AT NEW ADDRESS		
FROM OCT 11 97 THRU NOV 12 97		
4 MARKET EXPANSION LINE	16.00	17.07
OCT 15 CHARGE FOR SERVICE ADDED		
FROM OCT 16 97 THRU NOV 12 97		
5 LINEBACKER-OPTIONAL INSIDE	2.50	2.33
WIRE REPAIR PLAN		
CREDIT FOR SERVICE REMOVED		
FROM OCT 13 97 THRU NOV 12 97		
6 MARKET EXPANSION LINE	16.00	14.92%
TOTAL OTHER CHARGES AND CREDITS		4.47
▼ LONG DISTANCE SERVICES		
LONG DISTANCE		2.15

EXHIBIT

Please Pending

continued on back

TAX-FED 06 STATE 09

U S WEST COMM LONG DISTANCE SERVICES CHARGES

82.30

LONG DISTANCE CALLS

NO	DATE	TIME	SPED	AREA NUMBER	TYPE	MIN	AMOUNT
1	OCT 14	10:00	TO FT. PIERRE	600 222-2478	W	1	2.00
2	OCT 14	10:00	TO FT. PIERRE	600 222-2478	W	1	2.00
3	OCT 14	10:00	TO FT. PIERRE	600 222-2478	W	1	2.00
4	OCT 14	10:00	TO FT. PIERRE	600 222-2478	W	1	2.00
5	OCT 14	10:00	TO FT. PIERRE	600 222-2478	W	1	2.00
6	OCT 14	10:00	TO FT. PIERRE	600 222-2478	W	1	2.00
7	OCT 14	10:00	TO FT. PIERRE	600 222-2478	W	1	2.00
8	OCT 14	10:00	TO FT. PIERRE	600 222-2478	W	1	2.00
9	OCT 14	10:00	TO FT. PIERRE	600 222-2478	W	1	2.00
10	OCT 14	10:00	TO FT. PIERRE	600 222-2478	W	1	2.00
11	OCT 14	10:00	TO FT. PIERRE	600 222-2478	W	1	2.00
12	OCT 14	10:00	TO FT. PIERRE	600 222-2478	W	1	2.00
Type of Log Distance Calls							
E (STANDARD)				N (W/STANDARD)		32	218
TOTAL LONG DISTANCE CALLS							

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT FILED)	FINAL ORDER AND
BY KATHY ROTTENBUCHER, NEWELL, SD,)	DECISION; NOTICE OF
A G A I N S T S T A T E L I N E)	ENTRY OF ORDER
TELECOMMUNICATIONS, INC. REGARDING)	
UNPUBLISHED 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 Telecommunications, 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.

At its 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. At its 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.

At its 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. Rottenbacher 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. Rottenbacher's address to be included in the U S WEST directory was an unreasonable act. Ms. Rottenbacher specifically requested an unpublished address and was told her request would be honored. Stateline subsequently failed to comply with that agreement.

IV

Ms. Rottenbacher 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. Rottenbacher is a customer, the Commission finds that Stateline's refusal to give Ms. Rottenbacher the names of Stateline's Board of Directors was an unreasonable act.

V

Ms. Rottenbacher requested \$1,000.00 in damages. Tr. at 34. The \$1,000.00 was, in part, based on Ms. Rottenbacher'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. Rottenbacher 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. Rottenbacher 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. Rottenbacher'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.

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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. Priority Perfection, Inc., 256 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 1-28-32, 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

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: William K. Kato

Date: 12/4/97

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

JAMES A. BURG, Chairman
dissenting

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

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. Rottenbucher'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. Rottenbucher failed to show that she suffered any damages from this mistake.

BOYCE, MURPHY, McDOWELL & GREENFIELD, L.L.P.
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Of Counsel
John R. McDowell

J.W. Boyce (1884-1915)
John S. Murphy (1924-1966)

RECEIVED

JAN 26 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

January 23, 1998

William Bullard, Executive Director
S.D. Public Utilities Commission
500 E. Capitol
Pierre, SD 57501

Re: Avery & Dixie Thompson v. U S West Communications, Inc.
PUC #97-169
Our File No. 2104-97-169

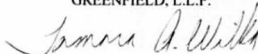
Dear Mr. Bullard:

Please find enclosed the original and ten (10) copies of U S West Communications, Inc's Motion For Late Filed Exhibits and three (3) copies of U S West Communications, Inc's Brief together with the original Certificate of Service.

Best regards.

Sincerely yours,

BOYCE, MURPHY, McDOWELL &
GREENFIELD, L.L.P.



Tamara A. Wilka

TAW/vjj
Enclosures

cc: Avery and Dixie Thompson
Camron Hoseck
William P. Heaston
Colleen Sevold

BOYCE, MURPHY, McDOWELL & GREENFIELD, L.L.P.
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John R. McDowell

J.W. Boyce (1884-1915)
John S. Murphy (1924-1964)

January 23, 1998

Avery and Dixie Thompson
HC 5, Box 16BB
Reliance, SD 57569

Camron Hoseck
SD Public Utilities Commission
500 East Capitol
Pierre, SD 57501

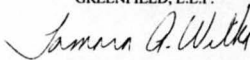
Re: Avery & Dixie Thompson v. U S West Communications, Inc.
PUC #97-169
Our File No. 2104-97-169

Dear Mr. and Mrs. Thompson and Camron:

Please find enclosed copies of U S West Communications, Inc.'s Motion For Late Filed Exhibits and Brief together with the Certificate of Service. This is intended as service by mail upon you.

Sincerely yours,

BOYCE, MURPHY, McDOWELL &
GREENFIELD, L.L.P.



Tamara A. Wilka

TAW/vjj
Enclosures

cc: William P. Heaston
Colleen Sevold

RECEIVED

JAN 26 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

RECEIVED

JAN 26 1998

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

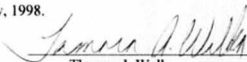
IN THE MATTER OF THE
COMPLAINT FILED BY AVERY
AND DIXIE THOMPSON,
RELIANCE, SD, AGAINST U S WEST
COMMUNICATIONS, INC.
REGARDING TELEPHONE LINE
LOCATION

TC97-169

U S WEST COMMUNICATIONS,
INC.'S MOTION FOR LATE FILED
EXHIBITS

COMES NOW U S WEST Communications, Inc. and hereby moves the Commission pursuant to ARSD 20:10:01:24.03 to admit the attached documents as late filed exhibits. The attached documents are relevant to the damages issue which was briefed by the parties.

Dated this 23rd day of January, 1998.


Thomas J. Welk
Tamara A. Wilka
BOYCE, MURPHY, MCDOWELL &
GREENFIELD, L.L.P.
P.O. Box 5015
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William P. Heaston
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1801 California, Suite 5100
Denver, Colorado 80202
Telephone: (303) 896-0752

Attorneys for U S WEST Communications,
Inc.

U S WEST COMMUNICATIONS, INC.
Exchange and Network
Services Tariff

SECTION 2

Page 25

Release 1

Effective: 12-5-93

State of South Dakota

Issued: 11-5-93

2. GENERAL REGULATIONS - CONDITIONS OF OFFERING

2.4 LIABILITY OF THE COMPANY

2.4.1 SERVICE LIABILITIES

A. Limitations

1. The Company's liability, if any, for its willful misconduct is not limited by this Tariff. With respect to any other claim or suit, by a customer or by any others, for damages associated with the installation, provision, preemption, termination, maintenance, repair, or restoration of service, the Company's liability, if any, shall not exceed an amount equal to the proportionate part of the monthly recurring charge for the service for the period during which the service was affected. This liability shall be in addition to any amounts that may otherwise be due the customer under this Tariff as an allowance for interruptions.
2. The services furnished by the Company, in addition to the limitations set forth preceding, also are subject to the following limitation: The Company shall not be liable for damage arising out of mistakes, omissions, interruptions, delays, errors or defects in transmission or other injury, including but not limited to injuries to persons or property from voltages or currents transmitted over the service of the Company caused by Customer-provided equipment (except where a contributing cause is the malfunctioning of a Company-provided connecting arrangement, in which event the liability of the Company shall not exceed an amount equal to a proportional amount of the Company billing for the period of service during which such mistake, omission, interruption, delay, error, defect in transmission or injury occurs).
3. The customer indemnifies and saves the Company harmless against claims for libel, slander, infringement of copyright arising from the use of material transmitted over its facilities, or infringement of patents arising from combining with or using in connection with, facilities of the Company, apparatus or systems of the customer; and against all other claims arising out of any act or omission of the customer in connection with facilities provided by the Company.
4. Calling Privileges

Company tariffs govern and fix the outgoing service of customers and in no manner guarantees to them the same incoming service. All incoming service of a customer depends upon and is limited by the right of a calling customer to such service.

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
RANDAHN 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. Dobyns, Deadwood, South Dakota against U S WEST Communications, Inc. (U S WEST) (Docket TC95-100). In his complaint, Mr. Dobyns 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. Dobyns 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. Dobyns cancelled his request for phone service. In March of 1995, Mr. Dobyns 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 Dobyns states in his complaint that he was again informed that he needed to pay the \$600.00 land development fee. Mr. Dobyns 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. Dobyns 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 Dirksens, 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 Fourche, 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. Dobyns 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; Norn 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 Dobyns.
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. Rindahl 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 Dobyns 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.

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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 Durksen 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 Durksen, 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

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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 William Karbo

Date 6/4/96

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Kenneth Stofferahn
KENNETH STOFFERAHN, Chairman

James A. Burg
JAMES A. BURG, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE
COMPLAINT FILED BY AVERY
AND DIXIE THOMPSON,
RELiance, SD, AGAINST U S WEST
COMMUNICATIONS, INC.
REGARDING TELEPHONE LINE
LOCATION

TC97-169

U S WEST COMMUNICATIONS,
INC.'S BRIEF

U S WEST Communications, Inc. ("U S WEST") submits this brief in response to the Staff's Brief.

The Staff asserts that if the Commission finds sufficient facts of inconvenience suffered by the Thompsons, it may award damages for inconvenience under SDCL 49-31-1.1. Staff Brief at 3. The Staff's position is contrary to U S WEST's Network Services Tariff which limits damages in this case.

As a telecommunications company providing noncompetitive and emerging competitive services, U S WEST is required to file with the Commission tariffs which set forth "the rates or prices for telecommunications services offered by [U S WEST] which are in force at the time." SDCL 49-31-12.2.¹ The company may not "deviate from any of its

¹ Tariffs filed pursuant to 49-31-12.2 are presumed to be fair and reasonable. SDCL 49-31-12.1.

current published rates. . . ."² Id. Tariffs filed pursuant to SDCL 49-31-12.2 are not mere contracts, but have the force of law. See Final Order and Decision 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, TC96-008 (applying filed rate doctrine to bar refund to customers who received service and paid land development fee while Canceled Land Development Tariff was in effect) attached hereto as Exhibit 1. Accord Corporate Investigative Div. v. American Tel. & Tel. Co., 884 F. Supp. 220 (W.D. La. 1995).

Section 2.4.1(A)(1) of U S WEST's Network Services Tariff provides:

The Company's liability, if any, for its willful misconduct is not limited by this Tariff. With respect to any other claim or suit, by a customer or by any others, for damages associated with the installation, provision, preemption, termination, maintenance, repair, or restoration of service, the Company's liability, if any, shall not exceed an amount equal to the proportionate part of the monthly recurring charge for the service for the period during which the service was affected. This liability shall be in addition to any amounts that may otherwise be due the customer under this Tariff as an allowance for interruptions.

(emphasis added), attached hereto as Exhibit 2.

In this case, there is no evidence of willful misconduct. Accordingly, damages are limited to an amount equal to the proportionate part of the Thompson's monthly recurring charge for telephone service during which the service was affected. Accord Corporate

² SDCL 49-31-12.2 mirrors the filed rate doctrine which forbids a regulated entity from charging rates for its services other than those properly filed with the appropriate federal regulatory authority. Arkansas Louisiana Gas Co. v. Hall, 453 U.S. 571, 576, 101 S. Ct. 2925, 2930, 69 L. Ed. 2d 856 (1981).

Investigative Division, Inc. v. American Tel. & Tel. Co., 884 F. Supp. 220 (W.D. La. 1995).

See also American Tel. & Tel. Co. v. City of New York, 83 F.3d 549 (2d Cir. 1996).

Alternatively, even if the Commission were to determine that the Tariff does not apply, "[f]acts must exist and be shown by the evidence which afford a basis for measuring the loss of the plaintiff with reasonable certainty." Koenig v. Weber, 174 N.W.2d 218 (S.D. 1970). See also Fredrick v. Dreyer, 257 N.W.2d 835 (S.D. 1977) (reversing with respect to damages on grounds that figures given by Plaintiffs witnesses as to value of mobile home were too speculative to form foundation for award of damages). Accord Finding of Fact VI, Final Order and Decision in Docket TC97-107 entitled "In the Matter of the Complaint filed by Kathy Rottenbucher, Newell SD, against Stateline Telecommunications, Inc. Regarding Unpublished Address" ("Damages may not be based on speculation but must be proven with reasonable certainty.").

In this case, the Thompsons seek to recover itemized damages plus an additional sum of \$6,000 for inconvenience. Hearing Transcript at 33. There is nothing in the record which affords a basis for measuring such a loss with reasonable certainty:

Q: The number for the \$6,000 inconvenience, I believe you've called it, have you testified or provided that number to anybody else other than --

A: No.

* * * *

Q: And you arrived at that number how, \$6,000?

A: There was no scientific arrival at it. My husband and I just sat down and talked about it and said, well, we'll just ask for \$6,000.

Q: Just picked it out of the air?

A: Somewhat. . . .

* * * *

Q: And the number of \$6,000 is what your wife testified is you just kind of pulled that out of the air, correct?

A: It could be described as that, yeah.

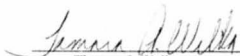
Hearing Transcript at 36, 59 (emphasis added). The Thompsons' testimony is unequivocal: there is no basis for such an award.³

CONCLUSION

Because damages in this case are limited under the Tariff, the Commission is precluded from awarding damages for inconvenience. Even if the Commission were to disregard the Tariff, it would still be precluded from making such an award because there is no evidence which affords a basis for measuring such damages.

³ It is settled law that a party cannot claim a version of the facts more favorable than his own testimony. Guthmiller v. South Dakota Dept. of Transp., 502 N.W.2d 586, 589 (S.D. 1993); State v. Jacobson, 491 N.W.2d 455 (S.D. 1992); Trammell v. Prairie States Ins. Co., 473 N.W.2d 460, 463 (S.D. 1991); Waddell v. Dewey County Bank, 471 N.W.2d 591, 595 n.3 (S.D. 1991); Lalley v. Safway Steel Scaffolds, Inc., 364 N.W.2d 139, 141 (S.D. 1985); Myers v. Lennox Co-op Ass'n, 307 N.W.2d 863 (S.D. 1981); Swee v. Myrl & Roy's Paving, Inc., 283 N.W.2d 570 (S.D. 1979).

Dated this 23rd day of January, 1998.

A handwritten signature in cursive script, appearing to read "Thomas J. Welk", is written over a horizontal line.

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**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)	TC95-001



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
RANDAH, 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. Dobyns, Deadwood, South Dakota against U S WEST Communications, Inc. (U S WEST) (Docket TC95-100). In his complaint, Mr. Dobyns 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. Dobyns 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. Dobyns cancelled his request for phone service. In March of 1995, Mr. Dobyns 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. Dobyns states in his complaint that he was again informed that he needed to pay the \$600.00 land development fee. Mr. Dobyns 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. Dobyns 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 Fourche, 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. Dobyns 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 Dobyns.
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 Bursleson 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 Dobyns 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.

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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 Durksen 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 Durksen, 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

William Kaelo

Date

6/4/96

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Kenneth Stofferahn
KENNETH STOFFERAHN, Chairman

James A. Burg
JAMES A. BURG, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

U S WEST COMMUNICATIONS, INC.
Exchange and Network
Services Tariff

SECTION 2

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Release 1

State of South Dakota

Issued: 11-5-93

Effective: 12-5-93

2. GENERAL REGULATIONS - CONDITIONS OF OFFERING

2.4 LIABILITY OF THE COMPANY

2.4.1 SERVICE LIABILITIES

A. Limitations

1. The Company's liability, if any, for its willful misconduct is not limited by this Tariff. With respect to any other claim or suit, by a customer or by any others, for damages associated with the installation, provision, preemption, termination, maintenance, repair, or restoration of service, the Company's liability, if any, shall not exceed an amount equal to the proportionate part of the monthly recurring charge for the service for the period during which the service was affected. This liability shall be in addition to any amounts that may otherwise be due the customer under this Tariff as an allowance for interruptions.
2. The services furnished by the Company, in addition to the limitations set forth preceding, also are subject to the following limitation: The Company shall not be liable for damage arising out of mistakes, omissions, interruptions, delays, errors or defects in transmission or other injury, including but not limited to injuries to persons or property from voltages or currents transmitted over the service of the Company caused by Customer-provided equipment (except where a contributing cause is the malfunctioning of a Company-provided connecting arrangement, in which event the liability of the Company shall not exceed an amount equal to a proportional amount of the Company billing for the period of service during which such mistake, omission, interruption, delay, error, defect in transmission or injury occurs).
3. The customer indemnifies and saves the Company harmless against claims for libel, slander, infringement of copyright arising from the use of material transmitted over its facilities, or infringement of patents arising from combining with or using in connection with, facilities of the Company, apparatus or systems of the customer; and against all other claims arising out of any act or omission of the customer in connection with facilities provided by the Company.
4. Calling Privileges

Company tariffs govern and fix the outgoing service of customers and in no manner guarantees to them the same incoming service. All incoming service of a customer depends upon and is limited by the right of a calling customer to such service.



BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

JAN 26 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE
COMPLAINT FILED BY AVERY
AND DIXIE THOMPSON,
RELiance, SD, AGAINST U S WEST
COMMUNICATIONS, INC.
REGARDING TELEPHONE LINE
LOCATION

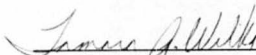
TC97-169

CERTIFICATE OF SERVICE

I, Tamara A. Wilka, do hereby certify that I am a member of the law firm of Boyce, Murphy, McDowell & Greenfield, and on the 23rd day of January, 1998 true and correct copies of U S West Communications, Inc's Motion for Late Filed Exhibits and U S West Communications, Inc's Brief were sent by US mail, postage prepaid, to the following addresses:

Avery and Dixie Thompson
HC r, Box 16BB
Reliance, SD 57569

Camron Hoseck
SD Public Utilities Commission
500 East Capitol
Pierre, SD 57501



Tamara A. Wilka



South Dakota Public Utilities Commission

State Capitol Building 500 East Capitol Avenue, Pierre, South Dakota 57501-5070



January 28, 1998

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Telephone (605)773-3201
FAX (605)773-3809

Transportation/
Warehouse Division
Telephone (605)773-5280
FAX (605)773-3225

Consumer Hotline
1-800-332-1782

TTY Through
Relay South Dakota
1-800-877-1113

Internet
bill@puc.state.sd.us

♦
Jim Burg
Chairman
Pam Nelson
Vice-Chairman

Laska Schornfelder
Commissioner

William Ballard Jr.
Executive Director

Edward R. Anderson
Helen Best
Martin C. Bettmann
Charles Belle
Sue Cichos
Karen E. Cremer
Marlette Fackelbach
Sherleen Fugitt
Lewis Hammond
Katie Hartford
Lem Healy
Camron Hoseck
Dave Jacobson
Bob Knudde
DeLaine Koelbo
Jeffrey P. Lorenzen
Terry Norum
Gregory A. Rinder
Tamara Stangor
Steven M. Wegman
Relaine Ault West

Avery and Dixie Thompson
HC 5, Box 16BB
Reliance, SD 57569

Re Thompson Complaint/U S WEST
Docket TC97-169

Dear Thompsons:

Enclosed you will find a copy of Objection to U S WEST's Motion for Late Filed Exhibits and Rebuttal Brief in the above captioned matter that I have submitted to the Commission for their information.

Very truly yours,

Camron Hoseck
Staff Attorney

CH dk
Enc.



South Dakota Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070



January 28, 1998

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Marlette Fuschbach
Sherleen Fugitt
Lewie Hammond
Katie Hartford
Lemi Healy
Camron Hoseck
Dave Jacobson
Bob Knudde
Deanne Kolbo
Jeffrey P. Lorenson
Terry Norum
Gregory A. Raskin
Tamara Skarqiche
Steven M. Wegman
Folayne Ault West

Ms. Tamara A. Wilka
Attorney at Law
Boyce, Murphy, McDowell & Greenfield, L.L.P.
P. O. Box 5015
Sioux Falls, SD 57117-5015

Re: Thompson Complaint/U S WEST
Docket TC97-169

Dear Ms. Wilka:

Enclosed you will find a copy of Objection to U S WEST's Motion for Late Filed Exhibits and Rebuttal Brief in the above captioned matter. This is intended as service upon you by mail.

Very truly yours,

Camron Hoseck
Staff Attorney

CH dk
Enc

014453.200

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

IN THE MATTER OF THE COMPLAINT)	OBJECTION TO U S WEST'S
FILED BY AVERY AND DIXIE THOMPSON,)	MOTION FOR LATE FILED
RELIANCE, SD, AGAINST U S WEST)	EXHIBITS AND REBUTTAL
COMMUNICATIONS, INC. REGARDING)	BRIEF
TELEPHONE LINE LOCATION)	TC97-169

I

Staff objects to U S WEST's attempt to file late filed exhibits in this case pursuant to ARSD 20:10:01:24.03. These can be admitted if the parties agree to their admission or the Commission or presiding officer orders that they may be submitted. First, staff counsel representing the public interest has not stipulated that the Commission could consider these documents nor is he aware that the Thompsons have so stipulated. Second, there is no order allowing their consideration.

This matter was duly noticed and U S WEST had ample opportunity to prepare for this case. The issues were apparent. These are evidentiary matters, as opposed to legal arguments in the form of a brief which U S WEST had the right to submit in response to staff's brief, see Transcript 117, line 12, et seq. To admit these items now would deprive the Thompsons and staff of the right to cross-examine U S WEST witnesses regarding them or to otherwise propose argument to the Commission relative to the merits of these exhibits. U S WEST should not be allowed to try its case as a matter of afterthought.

II

In the alternative, and in the event the Commission admits these late filed exhibits, then staff submits that the tariff Section 2, Page 25, Release 1, Paragraph A, as proffered is invalid and unenforceable.

SDCL 49-31-12, as paraphrased, provides that the Commission is to make a schedule of reasonable fares and rates or prices for telecommunications companies. Under SDCL 49-31-12.1, rates and prices filed in tariffs are presumed fair and reasonable.

Companies' responsibilities regarding rates and prices are defined by SDCL 49-31-12.2. In other words, tariffs are to cover fares, rates and prices.

This tariff is a limitation of liability. It does not set a fare, a rate or a price. It attempts to shield U S WEST from contract and tort liability. It attempts to define what can be recovered from U S WEST when service is not provided for a variety of reasons. This has nothing to do with what U S WEST may charge customers as a fare, rate or price.

The statutes cited above are clear and unambiguous and should be given their plain meaning and intent. U S WEST Communications, Inc. v. Public Utilities Commission, 505 N.W.2d 115, 123 (S.D. 1993).

III

With regard to damages for inconvenience, the previous authority submitted by staff still presents, it is submitted, an accurate characterization of damages for inconvenience. It is a damage which is difficult to determine because of its very nature. All facts of a case are to be considered. It is to be pointed out that both Dixie Thompson (at Transcript 42-43) and Avery Thompson (at Transcript 66-67) opined that \$6,000.00 would compensate them for their inconvenience. This is their opinion of damages they suffered and is an amount worthy of consideration by the Commission.

U S WEST's witness Sevold testified that U S WEST was at one time willing to pay for inconvenience as claimed by the Thompsons (Transcript 118). It is submitted that the doctrine of estoppel should be applied in this case. U S WEST acknowledged damages for inconvenience and testified about an offer which had an element for inconvenience. U S WEST now claims it cannot pay for inconvenience.

NEW YORK 9440

"To maintain estoppel, there must have been an act or conduct by the party to be estopped which induces reliance by another to his or her detriment, thus creating a condition that would make it inequitable to allow the guilty party to claim what would otherwise be his or her legal rights." D.G. v. D.M.K., 557 N.W.2d 236, 1996 S.D. 144, ¶ 38.

U S WEST should be estopped from asserting that it has no responsibility for damages for inconvenience.

The Commission is authorized to and should, in addition to actual damages, make an award for inconvenience suffered by the Thompsons.

Dated this 28th day of January, 1998.



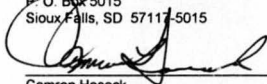
Camron Hoseck
Staff Attorney
South Dakota Public Utilities Commission
500 South Capitol
Pierre, SD 57501
Telephone (605) 773-3201

CERTIFICATE OF SERVICE

I hereby certify that copies of Objection to U S WEST's Motion for Late Filed Exhibits and Rebuttal Brief were served on the following by mailing the same to them by United States Post Office First Class Mail, postage thereon prepaid, at the address shown below on this the 28th day of January, 1998.

Avery and Dixie Thompson
HC 5, Box 16BB
Reliance, SD 57569

Tamara A. Wilka
Attorney at Law
Boyce, Murphy, McDowell & Greenfield, L.L.P.
P.O. Box 5015
Sioux Falls, SD 57117-5015



Camron Hoseck
Staff Attorney
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501

BOYCE, MURPHY, McDOWELL & GREENFIELD, L.L.P.

ATTORNEYS AT LAW

Jessiah D. Murphy
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Valerie R.C. Goldammer
Thomas J. Wells
Terri N. Pondergast
James J. McMahon
Douglas J. Hark
Michael S. McKnight
Gregg S. Greenfield
Tamara A. Wilka
Roger A. Suderick
Caroline A. Thompson
Lisa Hansen-Morris

Norwest Center, Suite 600
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Sioux Falls, South Dakota 57117-5015

Telephone 605 336-2424
Facsimile 605 334-0618

Of Counsel
John R. McDowell

J.W. Boyce (1884-1915)
John S. Murphy (1924-1966)

February 2, 1998

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FEB 03 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

William Bullard, Executive Director
S.D. Public Utilities Commission
500 E. Capitol
Pierre, SD 57501

Re: Avery & Dixie Thompson v. U S West Communications, Inc.
PUC #97-169
Our File No. 2104-97-169

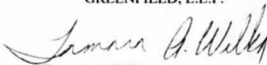
Dear Mr. Bullard:

Please find enclosed the original and ten (10) copies of U S West Communications, Inc.'s Response to Staff's Objection to U S West's Motion for Late-filed Exhibits together with the original Certificate of Service.

Best regards.

Sincerely yours,

BOYCE, MURPHY, McDOWELL &
GREENFIELD, L.L.P.



Tamara A. Wilka

TAW/vjj
Enclosures

cc: Avery and Dixie Thompson
Camron Hoseck
William P. Heaston
Colleen Sevod

BOYCE, MURPHY, McDOWELL & GREENFIELD, L.L.P.
ATTORNEYS AT LAW

Jennah D. Murphy
Russell R. Greenfield
David J. Vickers
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Of Counsel
John R. McDowell

J.W. Boyce (1884-1915)
John S. Murphy (1924-1964)

February 2, 1998

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FEB 03 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Avery and Dixie Thompson
HC 5, Box 16BB
Reliance, SD 57569

✓ Camron Hoseck
SD Public Utilities Commission
500 East Capitol
Pierre, SD 57501

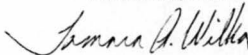
Re: Avery & Dixie Thompson v. U S West Communications, Inc.
PUC #97-169
Our File No. 2104-97-169

Dear Mr. and Mrs. Thompson and Camron:

Please find enclosed copies of U S West Communications, Inc.'s Response to Staff's Objection to U S West's Motion for Late-filed Exhibits together with the Certificate of Service. This is intended as service by mail upon you.

Sincerely yours,

BOYCE, MURPHY, McDOWELL &
GREENFIELD, L.L.P.



Tamara A. Wilka

TAW/vjj
Enclosures

cc: William P. Heaston
Colleen Sevold

RECEIVED

FEB 03 1998

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE
COMPLAINT FILED BY AVERY
AND DIXIE THOMPSON,
RELIANCE, SD, AGAINST U S WEST
COMMUNICATIONS, INC.
REGARDING TELEPHONE LINE
LOCATION

TC97-169

RESPONSE TO STAFF'S
OBJECTION TO U S WEST'S
MOTION FOR LATE-FILED
EXHIBITS

U S WEST Communications, Inc. ("U S WEST") submits the following response to Staff's Objection to U S WEST's Motion for Late-Filed Exhibits and Rebuttal Brief.

Staff objects to the admission of U S WEST's Network Services Tariff and the Commission's Final Order and Decision 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, TC96-008 on the grounds that to admit these items "would deprive the Thompsons and staff of the right to cross-examine U S WEST witnesses regarding them" Objection at 1. Staff misses the point. The Tariff is the law and the Commission is bound to follow the law.¹ There is no need to cross examine U S WEST witnesses, the Tariff speaks for itself.

¹ The Commission previously recognized this in its Land Development decision wherein it applied the filed rate doctrine to bar a refund to customers who received service and paid land development fees while the Canceled Land Development Tariff was in effect. Final Order and Decision 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, TC96-008.

Staff argues that even if the Commission admits the late-filed exhibits, Section 2, Page 25, Release 1, Paragraph A of the Tariff is invalid and unenforceable because it is a limitation of liability and as such "has nothing to do with what U S WEST may charge customers as a fare, a rate or a price." Objection at 1-2. Staff's position is incorrect. The limitation of liability is one of the terms and conditions of the Tariff. See ARSD 20:10:05:03 (12) (defining a tariff as a published schedule of rates and charges for telecommunications services "including associated rules" which is issued by a telecommunications company and filed with the commission)). As such, it is the law.

Staff also argues that U S WEST should be estopped from asserting that "it cannot pay for inconvenience." Objection at 2. Staff's argument misapplies the doctrine of estoppel.

In order to constitute equitable estoppel, false representations or concealment of material facts must exist, the party to whom it was made must have been without knowledge of the real facts, the representations or concealment must have been made with the intention that it should be acted upon and the party to whom it was made must have relied thereon to his prejudice or injury. There can be no estoppel if any of these essential elements are lacking, or if any of them have not been proved by clear and convincing evidence.

D.G. v. D.M.K., 557 N.W.2d 235, 242 (S.D. 1996)(emphasis added).

Here, there is no evidence of false representation or concealment of material facts, nor is there any evidence of detrimental reliance. Thus, estoppel has no application. Applying Staff's logic, the Thompsons should be estopped from claiming damages for inconvenience in excess of \$1,000.

The statements made at the hearing were clearly contingent on settling the Thompson's claim and avoiding a hearing. They were not an admission that any amount of damages was conceded. The actual colloquy was as follows:

Chairman Burg: Given the comments that were just talked about, levels of damages, did you have some basis for the offer that was made to the Thompsons?

Ms. Sevold: I first offered them approximately \$200, and they refused. So when I called Mrs. Thompson back, I said to her, "I am willing to give you -- you've as'ed for \$1,000 inconvenience and then this \$200," which are kind of miscellaneous bills. I said, "I'm willing to give you that because." I said, "we're going to have a hearing. I'm going to have to pay an attorney. The Commission, the state of South Dakota, is going to have expenses." If I'm going to pay that attorney, I would rather pay it to a customer and maybe make them satisfied. I believe that 1,200 was probably more than generous, but I was willing to pay that because we're going to incur those expenses today. We all have incurred those expenses today.

* * * *

Chairman Burg: Did you indicate you felt that was a fair amount for inconvenience?

Ms. Sevold: She had mentioned to me that they thought \$1,000 was for inconvenience and so that's what I --

Chairman Burg: Did you agree?

Ms. Sevold: I cannot speak to her inconvenience. I can only speak to what I was willing to offer.

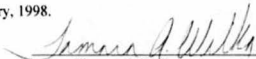
Hearing Transcript at 118-19 (emphasis added).

The Thompsons now seek \$6,000 for damages for inconvenience. They concede they "pulled [this number] out of the air." Hearing Transcript at 36, 59. The test for awarding damages is whether there is evidence in the record "which afford a basis for measuring the loss of the plaintiff with reasonable certainty." Koenig v. Weber, 174 N.W.2d 218 (S.D. 1970). By the Thompsons' own admission, there is none.

CONCLUSION

For all of the reasons stated above, U S WEST requests that the Commission grant its Motion for Late Filed Exhibits and limit any damage award to U S WEST's Network Services Tariff.

Dated this 2nd day of February, 1998.



Thomas J. Welk
Tamara A. Wilka
BOYCE, MURPHY, MCDOWELL &
GREENFIELD, L.L.P.
P.O. Box 5015
Sioux Falls, SD 57117-5015
(605)336-2424

William P. Heaston
U S WEST Communications, Inc.
1801 California, Suite 5100
Denver, Colorado 80202
Telephone: (303) 896-0752

Attorneys for U S WEST Communications,
Inc.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE
COMPLAINT FILED BY AVERY
AND DIXIE THOMPSON,
RELIANCE, SD, AGAINST U S WEST
COMMUNICATIONS, INC.
REGARDING TELEPHONE LINE
LOCATION

TC97-169

CERTIFICATE OF SERVICE

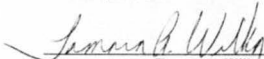
I, Tamara A. Wilka, do hereby certify that I am a member of the law firm of Boyce, Murphy, McDowell & Greenfield, and on the 2nd day of February, 1998 the original and ten (10) copies of the Response to Staff's Objection to U S West's Motion for Late-filed Exhibits were sent via US mail, postage prepaid, to the following:

William Bullard, Jr., Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

and true and correct copies were delivered via U S mail, postage prepaid, to the following:

Avery and Dixie Thompson
HC 5, Box 16BB
Reliance, SD 57569

Camron Hoseck
SD Public Utilities Commission
500 East Capitol
Pierre, SD 57501



Tamara A. Wilka



South Dakota Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070



February 4, 1998

Mr. William Bullard, Jr.
Executive Director
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501

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Bob Knadke
Delaine Kolbo
Jeffrey P. Lorenzen
Terry Norum
Gregory A. Rialor
Tammi Stangor
Steven M. Wegman
Rosalynne Alts Wient

Re: In the Matter of the Complaint filed by
Avery and Dixie Thompson
Docket TC97-169

Dear Mr. Bullard:

Please consider this to be a letter brief rebutting U S WEST's response to staff's resistance, dated February 2, 1998, for filing in this matter.

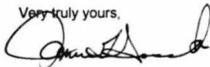
U S WEST makes a couple of points which merit this response.

First, it says the tariff which it is attempting to introduce is the law. Tariffs are not law; they are rates, prices, and fares which U S WEST is authorized to charge. "Tariffs do not carry the weight of law behind them." Newton's Telecom Dictionary, 10th Edition, at p. 1132. Thus, U S WEST is attempting to introduce evidentiary matters.

Second, U S WEST has adopted a newfound position that ARSD 20:10.05(12) somehow makes its liability limiting tariffs valid and enforceable. It is submitted that SDCL 49-31-12, 49-31-12.1 and 49-31-12.2 are explicit as to what a tariff can cover, namely, fares, rates and prices. ARSD 20:10.05(12) cannot bestow more rights than a statute. "All administrative rules must be consistent with laws passed by our legislature." Estate of Dahl v. Department of Revenue, 286 N.W.2d 528 (S.D. 1979). ARSD 20:10.05(12) must be construed in a manner to be consistent with SDCL 49-31-12, 49-31-12.1, 49-31-12.2. This administrative rule does not make valid an attempt to limit liability. A limit of liability is not the equivalent of a fare, rate, or price. The "associated rules" provision of ARSD 20:10.05(12) must be construed as only those rules associated with the setting of a fare, rate or price. It cannot expand upon what the legislature has prescribed.

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In conclusion, suffice it to say, U S WEST had ample opportunity to prepare for this hearing. Supplementing the record should not be permitted. One can only speculate as to why the matter of a tariff and the importance of ARSD 20:10.05(12) are now raised. Whatever the reason, U S WEST's position should be given no credence.

Very truly yours,



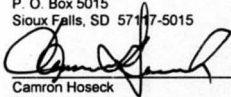
Camron Hoseck
Staff Attorney

CERTIFICATE OF SERVICE

I hereby certify that copies of the above letter brief were served on the following by mailing the same to them by United States Post Office First Class Mail, postage thereon prepaid, at the address shown below on this the 4th day of February, 1998.

Avery and Dixie Thompson
HC 5, Box 16BB
Reliance, SD 57569

Tamara A. Wilka
Attorney at Law
Boyce, Murphy, McDowell & Greenfield, L.L.P.
P. O. Box 5015
Sioux Falls, SD 57117-5015



Camron Hoseck
Staff Attorney
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501

BOYCE, MURPHY, McDOWELL & GREENFIELD, L.L.P.
ATTORNEYS AT LAW

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Russell R. Greenfield
David J. Vickers
Gary J. Tashley
Vance R. C. Goldammer
Thomas J. Walk
Terry N. Pendergast
James E. McMahon
Douglas J. Hank
Michael S. McKnight
Gregg S. Greenfield
Tamara A. Wilka
Roger A. Sudbeck
Caroleen A. Thompson
Lisa Hansen-Marx

Norwest Center, Suite 600
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Sioux Falls, South Dakota 57104
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Telephone 605 336-2424
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Of Counsel
John R. McDowell

J.W. Boyce (1844-1913)
John S. Murphy (1924-1966)

February 5, 1998

William Bullard, Executive Director
S.D. Public Utilities Commission
500 E. Capitol
Pierre, SD 57501

RECEIVED

FEB 09 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Re: Avery & Dixie Thompson v. U S West Communications, Inc.
PUC #97-169
Our File No. 2104-97-169

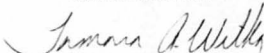
Dear Mr. Bullard:

As we discussed this afternoon, U S WEST Communications, Inc. is still gathering information in response to Commissioner Nelson's request for late-filed exhibits. Once I have received the information, I will forward the same to you for filing.

Best regards.

Sincerely yours,

BOYCE, MURPHY, McDOWELL &
GREENFIELD, L.L.P.



Tamara A. Wilka

TAW/vjj

cc: Avery and Dixie Thompson
Camron Hoseck

BOYCE, MURPHY, McDOWELL & GREENFIELD, L.L.P.
ATTORNEYS AT LAW

Jeremiah D. Murphy
Russell R. Greenfield
David J. Vickers
Gary J. Peltier
Vance A.C. Goldammer
Thomas J. Wilk
Terry M. Friesinger
James E. McMahon
Douglas J. Hawk
Michael S. McLaughlin
Gregg S. Greenfield
Tamara A. Wilka
Roger A. Sadowski
Carolyn A. Thompson
Lara Hansen Martz

Norwest Center, Suite 600
101 North Phillips Avenue
Sioux Falls, South Dakota 57104
P.O. Box 5015
Sioux Falls, South Dakota 57117-5015

Telephone 605 336-2424
Facsimile 605 334-0618

Of Counsel
John R. McDowell

J.W. Boyce (1884-1913)
John S. Murphy (1924-1964)

February 10, 1998

UPS OVERNIGHT

William Bullard, Executive Director
S.D. Public Utilities Commission
500 E. Capitol
Pierre, SD 57501

RECEIVED

FEB 11 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Re: Avery & Dixie Thompson v. U S West Communications, Inc.
PUC #97-169
Our File No. 2104-97-169

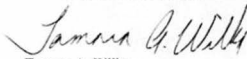
Dear Mr. Bullard:

Please find enclosed the original and ten (10) copies of the Notice of Filing by U S West Communications, Inc. of Late Filed Exhibits together with the original Certificate of Service.

Best regards.

Sincerely yours,

BOYCE, MURPHY, McDOWELL &
GREENFIELD, L.L.P.



Tamara A. Wilka

TAW/vjj
Enclosure

cc: Avery and Dixie Thompson
Camron Hoseck
Jon Lehner
Andrew D. Crain
Tom Welk

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

FEB 11 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE
COMPLAINT FILED BY AVERY
AND DIXIE THOMPSON,
RELiance, SD, AGAINST U S WEST
COMMUNICATIONS, INC.
REGARDING TELEPHONE LINE
LOCATION

TC97-169

NOTICE OF FILING BY U S WEST
COMMUNICATIONS, INC. OF LATE
FILED EXHIBITS

COMES NOW U S WEST Communication.s, Inc. and files the following listed late
filed exhibits:

EXHIBIT I:

Response to Commissioner Nelson's inquiry about policy of providing cellular
telephones to customers.

EXHIBIT II:

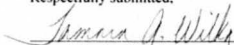
Response to Commissioner Nelson's request to document when the hunting lodge
disconnected.

EXHIBIT III:

Response to Commissioner Nelson's inquiry about the date U S WEST installed a 25
pair cable in the vicinity of the Thompson's new residence.

Dated this 10th day of February, 1998.

Respectfully submitted,



Thomas J. Welk
Tamara A. Wilka
BOYCE, MURPHY, MCDOWELL &
GREENFIELD, L.L.P.
P.O. Box 5015
Sioux Falls, SD 57117-5015
(605)336-2424

William P. Heaston
U S WEST Communications, Inc.
1801 California, Suite 5100
Denver, Colorado 80202
Telephone: (303) 896-0752
Attorneys for U S WEST Communications, Inc.

State: South Dakota
Subject: 97-169
Respondent: Colleen Sevold

U S WEST Communications contracts with several different cellular vendors to provide the Cellular Plan to our South Dakota customers. The cellular option is provided as an alternative service for local calls until landline service can be provided.

Customers are given several choices of cities where cellular phones are available. It is preferable to have customers pick up the phones so they can be programmed correctly while customers are there and also to instruct customer on how the sets work. If a customer cannot pick up a telephone, our vendors can have them delivered. Problems have been experienced in rural areas. Sometimes delivery companies cannot find a rural address and return the telephone to the vendor. Sometimes, just as the Thompsons experienced, the vendor programs the cellular phone incorrectly and this adds more delay. Therefore, a customer is always given the choice of picking up the cellular phone first. In the Thompson case, they indicated they might be going to Rapid City or Pierre and would call back to let us know. Two weeks later they called and asked to have it sent.

EXHIBIT I

State: South Dakota
Subject: 97-169
Respondent: Colleen Sevoid

At the hearing, it was my understanding that the hunting lodge had disconnected freeing up a pair which we were able to use to provide service to the Thompsons. I have since discovered that although one of the lines serving the hunting lodge disconnected it disconnected after service was provided to the Thompsons.

I have thoroughly investigated this matter and have discovered that a customer using the same cross connect box as the Thompson's was disconnected on October 3, 1997 for nonpayment of past-due bills. U S WEST only keep facility records for thirty days. Thus, it is impossible to determine whether the disconnected line was the actual pair used to provide service to the Thompsons.

EXHIBIT II

State: South Dakota
Subject: 97-169
Respondent: Colleen Sevold

U S WEST installed a 25-pair cable near the Thompson's new residence on October 29, 1997.

EXHIBIT III

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

FEB 11 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE
COMPLAINT FILED BY AVERY

TC97-169

AND DIXIE THOMPSON,
RELiance, SD, AGAINST U S WEST
COMMUNICATIONS, INC.

CERTIFICATE OF SERVICE

REGARDING TELEPHONE LINE
LOCATION

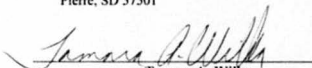
I, Tamara A. Wilka, do hereby certify that I am a member of the law firm of Boyce, Murphy, McDowell & Greenfield, and on the 10th day of February, 1998 the original and ten (10) copies of the Notice of Filing by U S West Communications, Inc. Of Late Filed Exhibits were sent via UPS overnight mail, postage prepaid, to the following:

William Bullard, Jr., Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

and true and correct copies were delivered via U S mail, postage prepaid, to the following:

Avery and Dixie Thompson
HC 5, Box 16BB
Reliance, SD 57569

Camron Hoseck
SD Public Utilities Commission
500 East Capitol
Pierre, SD 57501


Tamara A. Wilka

BOYCE, MURPHY, McDOWELL & GREENFIELD, L.L.P.
ATTORNEYS AT LAW

Jeremiah D. Murphy
Russell B. Greenfield
David J. Vickers
Gary J. Pahlke
Vance R.C. Goldammer
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Of Counsel
John R. McDowell

J.W. Boyce (1884-1915)
John S. Murphy (1924-1966)

February 12, 1998

William Bullard, Executive Director
S.D. Public Utilities Commission
500 E. Capitol
Pierre, SD 57501

VIA FACSIMILE - 773-3809
and mail

FAX Received FEB 12 1998

RECEIVED

Re: Avery & Dixie Thompson v. U S West Communications, Inc.
PUC #97-169
Our File No. 2104-97-169

FEB 17 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

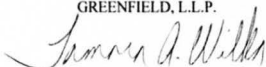
Dear Mr. Bullard:

The purpose of this letter is to clarify Exhibit II which is attached to the Notice of Filing by U S WEST of Late Filed Exhibits which was submitted for filing with the Commission earlier this week.

Exhibit II states that "U S WEST only keeps facility records for thirty days." The statement was made in the context of a disconnection. Although U S WEST maintains facility records with respect to existing service, once service has been disconnected, the records showing which facilities the disconnecting customer was being served by are only kept for thirty days.

Best regards.

Sincerely yours,
BOYCE, MURPHY, McDOWELL &
GREENFIELD, L.L.P.


Tamara A. Wilka

TAW/vjj

cc: Avery and Dixie Thompson
Camron Hoseck

Jon Lehner
Andrew D. Crain

**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: Aldeni Kaito

Date: 3/30/98

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner