

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

IN THE MATTER OF THE COMPLAINT FILED) BY BLACK HILLS FIBERCOM L.L.C., RAPID) CITY, SOUTH DAKOTA, AGAINST U S WEST) COMMUNICATIONS, INC. REGARDING) COMPETITIVE PRICING AND PROMOTION) PRACTICES)	ORDER DENYING MOTION TO DISMISS CT00-055
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On March 14, 2000, Black Hills FiberCom, L.L.C. (FiberCom) filed a complaint with the South Dakota Public Utilities Commission (Commission). The complaint was forwarded to U S WEST Communications, Inc. (U S WEST) on March 15, 2000, to attempt to resolve the complaint informally. The informal attempt to resolve the complaint was not successful within the requested time frame. The complaint was formally docketed on March 29, 2000. FiberCom is of the information and belief that as early as the fall of 1999, U S WEST conducted, and continues to conduct, an unlawful pricing and promotion campaign within the local exchange area serviced concurrently by U S WEST and FiberCom. On August 16, 2000, U S WEST (now Qwest), filed a Motion to Dismiss or Alternatively for Summary Judgment.

On March 29, 2000, the complaint was faxed to U S WEST. Pursuant to ARSD 20:10:01:09, U S WEST was notified that it must satisfy the complaint or file an answer in writing with the Commission by April 18, 2000. On April 17, 2000, the Commission received U S WEST's Answer to Complaint. On August 16, 2000, Qwest filed a Motion to Dismiss or Alternatively for Summary Judgment and a Brief in Support of Motion to Dismiss. FiberCom filed a Response on September 20, 2000. Qwest filed a Reply Brief on September 25, 2000.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-13, including 49-13-1 through 49-13-14, inclusive, and SDCL Chapter 49-31, including 49-31-3, 49-31-7, 49-31-7.1, 49-31-7.2, 49-31-7.3, 49-31-7.4, 49-31-10, 49-31-11, 49-31-12 through 49-31-12.5, inclusive, 49-31-38, 49-31-38.1, 49-31-38.2, 49-31-38.3, 49-31-84 through 49-31-86.2, inclusive.

On September 26, 2000, at a regularly scheduled meeting, the Commission considered this matter. The Commission voted unanimously to deny the Motion to Dismiss or Alternatively for Summary Judgment. It is therefore

ORDERED, that the Motion to Dismiss or Alternatively for Summary Judgment is hereby denied.

Dated at Pierre, South Dakota, this 29th day of September, 2000.

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>Aldino Kalbo</u>
Date: <u>9/29/00</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner