

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

William D. & E. L. Neater,) Formal Complaint No. 1270
Wood River, Nebraska,)
)
Complainant,)
)
vs.) COMPLAINT SUSTAINED
)
US West Communications,)
Grand Island, Nebraska,)
)
Defendant.) Entered: December 15, 1999

BY THE COMMISSION:

On June 28, 1999, William D. and E. L. Neater (Complainant) of Wood River, Nebraska, filed a formal complaint with this Commission against US West Communications (US West or Defendant) of Grand Island, Nebraska, alleging that an agent for US West told them that dial tone would be provided to their door for only the cost of the inside jacks notwithstanding that the complainant told the US West agent that the property that the complainant was contemplating purchasing was in a remote rural area. US West's answer to the complaint was to reserve the right to investigate and to ask for a dismissal of the complaint.

A hearing on the formal complaint was held on August 10, 1999. Both parties were informed of the hearing by a Notice of Public Hearing sent by first-class mail on July 28, 1999.

Present at the hearing were William and Lee Neater representing themselves in the complaint. Appearing for the defendant was Jill Vinjamuri. Appearing for the Commission was Michael T. Loeffler, staff attorney.

Mr. and Mrs. Neater testified that they had moved from Montana and that they were thinking about purchasing some real estate near Wood River, Nebraska. Mr. Neater, who has prior real estate experience in Montana, as well as Nebraska, called US West on or about the 30th of September, 1998. At that time, he was negotiating an agreement to purchase the property in question. The property is located near Wood River. Only a trailer, used seasonally, sits on the property and due to a prior inspection, Mr. Neater was aware that the trailer had no telephone. Based on his prior real estate purchases in remote places and his knowledge that there was no phone service to the trailer, Mr. Neater thought it would be prudent to check on the availability and the potential cost of provisioning phone service.

Mr. Neater talked to a female in the Grand Island office of US West and also to a male representative of US West in their Denver office. He testified that he gave the US West representative a legal description of the property. The representative in Denver identified Bosselman's Truck Stop as the nearest phone center, a location that was a mile and one-half away. It should be noted

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that Mr. Neater called US West from the office of the real estate agent who was selling the property.

Over the course of several days of negotiating the property purchase and after being assured that the cost to provision phone service to the property would include only the price of the phone jacks and upon ordering three phone jacks for the trailer, Mr. Neater signed an agreement to purchase the property. Mr. Neater did not make the provisioning of phone service to the property a contingency for purchasing the property. He testified that he did not feel that he had to worry about this since he had just talked with the US West representative on the phone right in the real estate agent's office. In a letter sent to the Commission on August 12, 1999, Jerry L. Urbanski, a sales associate with Cone-stoga Realty, indicated that he was present when the Neaters made their inquiries to US West by phone. He further indicated that, after these calls were made, "Mr. Neater informed his wife and me that phone service could be run to the dwelling at no cost and that there would a (sic) charge for work inside the dwelling only." See *Exhibit 11 filed August 13, 1999.*

Entered into evidence was a letter from US West to the complainants dated October 28, 1998, which confirmed the phone order, recognized that the complainants had ordered some optional vertical services but contained no mention of the additional construction charges that are in dispute. *Exhibit No. 5.*

In the last phone call to US West, the US West representative and the Neaters agreed to a date of November 2, 1998, for installation of the new phone line. Prior to November 2, 1998, Mr. Neater paid a \$100.00 deposit to US West. No US West representative showed up at the property on November 2. After a couple of days of no contact with anyone from US West, during which Bill and Lee Neater resided in the trailer on the property, Mr. Neater made another call to US West.

It was during that follow-up call that the Neaters learned that US West intended to send an engineer to look at the property. It was also during this follow-up call that Mr. Neater became aware that there would be additional charges for the provisioning of phone service to the property. When the engineer arrived at the door of the trailer, he had already estimated a billing for the provisioning of phone service to the trailer. The engineer said it would be in the thousands of dollars - "under ten and over eight". *Transcript of August 10, 1998 hearing at p. 19.*

According to the testimony, it appears that this engineer was told by the complainants that they would not pay that charge for the service. US West then sent a letter offering cellular phone service. Thereafter, a second engineer, whom Mr. Neater believed to be a contractor with US West and not a US West employee, showed up at the trailer and visited with the complainants for a couple of hours. He told the Neaters that he was going to go back to US West and suggest that US West stand behind the prior offer and provide phone service to the property at no charge.

It should be noted that the offer of cellular service made by US West came to the complainants via a letter dated November 16, 1998. The complainants had no knowledge that this offer of cellular service was forthcoming prior to receiving the letter from US West. The agreement regarding the cellular service stated that the offer of cellular phone service was an optional subsidy service offered to customers whose service was delayed due to a lack of facilities in the area.

On November 24, 1998, US West sent a detailed billing to the complainants in the amount of \$7,339.81. The complainants did not sign this billing because of their belief that US West had made a representation to them that phone service would be provided solely for the cost of the phone jacks.

Susan Otto, a team leader for one of the consumer centers for US West, testified for the defendant. Ms. Otto testified that there was no record in US West files evidencing the calls placed by either Mr. or Mrs. Neater in early September and October to US West. She explained that US West does not track calls placed by consumers looking for general information, but that US West does track calls placing an order. When a consumer calls US West, the first task for the US West consumer representative, known formally as a sales consultant, is to determine if the caller is a current US West customer. She testified that the information regarding the legal description of the property would have been requested by the US West sales consultant solely for the purpose of making that determination.

She further testified that a US West sales consultant could not know where a potential customer's property was located in relation to existing phone lines because such information is not contained in a data base accessible to the sales consultant and because a call to US West is randomly assigned to one of three consumer service sites.

Ms. Otto outlined the procedure for handling calls once an order is placed. According to her records, the actual order for the complainants was not received until October 22, 1998. At the time that order was placed, she testified, there would be no way of knowing if additional construction charges would accrue in the provisioning of telephone service to the property unless such property had prior telephone service to that location, a situation that does not exist in these circumstances. The accrual of additional charges does not occur until a technician physically goes out to the location. At the point that a technician determined that there was no existing service to a location, the order for service would go to another department within US West.

Ms. Otto further testified that the delayed service group in Denver handles those situations where it has been determined that no existing telephone lines exist to a specific location.

In response to questioning by Commissioner Landis, Ms. Otto stated that if a customer calls to place an order, the sales consultants are not trained to inquire about a situation that might involve additional construction charges. If a potential customer called and indicated that the location had no service, "[US West] would just encourage the customer to place the order, to start the process." *Transcript at 79.* Ms. Otto also confirmed that many calls seeking general information are not tracked and that there would be no record of such a call.

O P I N I O N A N D F I N D I N G S

From the evidence adduced in the premises, the Commission finds that the complaint of William and E. L. Neater should be sustained. The complainants testified that they were not told about any extra construction charges when they applied for telephone service to be provisioned to their property. In addition to the letter received by the Neaters' real estate agent, the evidence introduced by US West backs up much of the information supplied by the complainants.

Much has been made by US West that William Neater, as a person experienced in real estate dealings, should have known that phone service could not possibly have been provided to such a remote location without additional costs. While it is true that we should judge the actions of the Mr. Neater in light of his experiences with the purchase of real estate, it appears to the Commission that Mr. Neater did take additional and reasonable steps. In short, he made additional inquiries regarding the provisioning of telephone service prior to concluding his negotiations on the property. Satisfied by the information he received from the US West sales consultant, he went through with his plans to purchase the property in question without including a contingency clause on the provisioning of phone service. With ever-changing technology, emerging market environments and the developing regulatory schemes of telecommunications, Mr. Neater need not be charged with knowing that there should have been additional construction charges notwithstanding the information supplied by the initial US West sales consultant.

Further, the Commission finds that the procedures utilized by US West in taking an order fail to adequately inform a prospective customer of the likely additional charges. Testimony from the complainant and US West generally agree on the basic procedures employed in the taking of a phone order by US West.

The complainant supplied, upon request of the US West sales consultant, a legal description of his property. Although US West indicated that this information is intended only to ascertain if the consumer is an existing customer of US West, the consumer reasonably assumes that US West has enough information on the property to determine its location and the need for additional construction. US West sales consultants (a misnomer since these representatives appear to have little sales authority and merely

serve as information gatherers) then attempt to place an order without even considering that the potential customer may face extraordinary additional charges, as occurred here.

In short, a consumer is asked for the description of the location of his or her property, is given his or her "new" phone number, is asked to submit a deposit and is given a potential completion date for service without US West ascertaining the final cost of provisioning the requested service. Complicating the matter, a Nebraska consumer, when inquiring of the cost of service, is told that the "normal installation charge in the state of Nebraska is \$33." *Transcript at 78.* US West, on the other hand, has been put on notice that in such a situation this may not be a "normal installation" because the consumer has told the sales consultant that there is no existing phone service, a fact that the sales consultant can confirm.

The sales consultant, rather than alerting the consumer that the normal installation charges may not apply and that additional charges may be necessary, instead will "just encourage the customer to place the order." The Commission does not understand why US West could not consider an additional step in the process to inform the customer that additional costs will likely occur and to give the prospective customer an estimate of the time that the calculation of such charges will take.

We conclude that the complainant took all responsible steps, even for a person of his real estate experience, to determine the costs of provisioning phone service to the property that he was looking to purchase. Upon getting information that a reasonable person in like circumstances would conclude indicated only nominal charges for phone jacks would be required, entered into an agreement to purchase the property in question. We further conclude that the procedures set in place by US West were inherently responsible for the mistaken assumptions made by the complainant.

We find that the complaint by William and E. L. Neater should be sustained as to the construction charges in question and that US West should be bound by their representation that charges in the provisioning of phone service to the Neater property are limited to the cost of the installation of the requisite phone jacks.

The complainants made additional allegations regarding consequential costs during the hearing. We decline to make any findings regarding their assertion that the US West mistakes cost them Internet business or for further damages to their business as we lack jurisdiction to examine such claims.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Formal Complaint No. 1270 should be, and is hereby, sustained in favor of the complainants, William and E. L. Neater.

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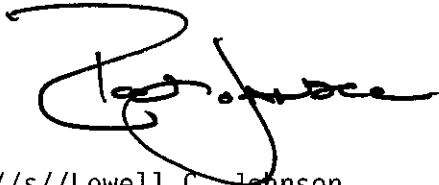
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IT IS FURTHER ORDERED that US West provision phone service to the property of the complainants in question with billed charges to the complainants limited to the provisioning of required and ordered phone jacks to the dwelling on the aforementioned property.

MADE AND ENTERED in Lincoln, Nebraska, on this 15th day of December, 1999.

COMMISSIONERS CONCURRING:

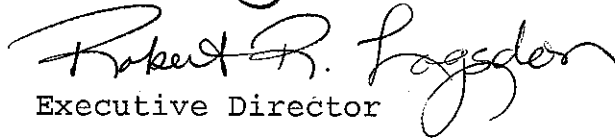
NEBRASKA PUBLIC SERVICE COMMISSION



//s//Lowell C. Johnson
//s//Frank E. Landis
//s//Daniel G. Urwiller


Chairman

ATTEST:


Executive Director