

N.D.A.G. Letter to Enget (Aug. 15, 1990)

August 15, 1990

Mr. Wade G. Enget
Mountrail County State's Attorney
P.O. Box 369
Stanley, ND 58784

Dear Mr. Enget:

Thank you for your April 25, 1990, letter concerning billing and collection services provided by local exchange companies in North Dakota. I apologize for the delay in responding.

As you noted in your letter, the Public Service Commission addressed related issues in its order in Case No. 10,883, dated March 16, 1988. Case No. 10,883 was an application by Northwestern Bell Telephone Company (now doing business as US WEST Communications) to deregulate its carrier billing and collection services. Billing and collection services are provided by local exchange companies to interexchange carriers.

Prior to the order in Case No. 10,883, US West's billing and collection services were regulated by the Public Service Commission as are many other telecommunication services. Some Public Service Commission rules relate to billing and collections services. For example, N.D. Admin. Code § 69-09-05-02 (copy attached for your reference) allows the disconnection, under certain circumstances, of local exchange service as a means of collecting an unpaid account due an interexchange company.

In 1985 the legislature authorized the Public Service Commission to deregulate telecommunication services which the Public Service Commission found either "of limited scope" or "subject to effective competition" so long as regulation was not necessary to carry out the law's stated purposes. See N.D.C.C. §§ 49-21-02, 49-21-02.1.

As explained in the order in Case No. 10,883, the Commission determined that certain aspects of billing collection services were subject to effective competition.

In re: Application of Northwestern Bell Telephone Company, No. 10,883 Findings of Fact, Conclusions of Law, and Order (March 16, 1988) at 5. The Commission also found that US West would have a competitive advantage against other providers of billing and collection services if US West could disconnect, or offer to disconnect, local service as a means of collecting accounts for interexchange companies. Id. at 6. For this reason the Commission ordered US West not to disconnect, or offer to do so, while authorizing deregulation of US West's billing and collection services. This order concerned only US West, because no other applied for deregulation of its billing and collection services.

In 1989, the legislature amended N.D.C.C. § 49-21-01.1 to remove billing and collection services from the definition of telecommunications service thereby excepting billing and collection services from the scope of Title 49. At the same time the legislature amended N.D.C.C. § 49-21-01 for the purpose (among others) of defining "essential telecommunications service". N.D.C.C. § 49-21-01(3)(c) provides that essential telecommunications services include "billing and collection of the billing company's own essential telecommunications services."

Read together, these two provisions provide that the Public Service Commission no longer has statutory authority to regulate, or deregulate, a telecommunications company's billing and collection services provided to other organizations. Billing and collection for a company's own essential services are subject to Commission jurisdiction. However, the Commission still has authority over local service. Therefore, the Commission may still require that US West not disconnect, or offer to disconnect, local service as a collection device.

The order in Case No. 10,883 was not binding on other telecommunications companies because it concerned only US West. The Commission's rule allowing service disconnects does apply to all local exchange companies in North Dakota. Since all billing and collection for others is now unregulated, perhaps other local exchange companies are enjoying the same unfair competitive advantage that the Commission sought to prohibit US West from enjoying. In addition, in this era of technological advances, emerging competition and relaxed regulation, perhaps the relationship between local and long distance service, for both companies and customers, merits reconsideration. I understand that the Commission staff is currently drafting a rule proposal concerning this matter for consideration by the Commission. Interested persons can request the Commission to reconsider its rule in light of these new developments.

Also, it is possible that local exchange companies wishing to collect unpaid accounts for others must be licensed as collection agencies under N.D.C.C. ch. 13-05. N.D.C.C. § 13-05-02 provides that only licensed collection agencies may advertise or solicit the right to collect or receive payment of any claim for another. Whether or not a local exchange company falls within the scope of N.D.C.C. ch. 13-05 is a question of fact to be determined in the first instance by the Department of Banking and Financial Institutions which is the agency which licenses collection agencies.

In summary, a telecommunications company's billing and collection services provided to other organizations is now beyond the scope of the Public Service Commission's authority. Local service is within the Public Service Commission's authority and local service disconnects for collection purposes are covered by N.D. Admin. Code § 69-09-05-02. Until that rule is amended, revoked or overturned, it has the force and effect of law.

I hope this discussion is helpful to you.

Sincerely,

Nicholas J. Spaeth

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