



Gary Hanson, Chair  
Steve Kolbeck, Vice Chair  
Dustin Johnson, Commissioner

## **SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**

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September 15, 2008

### **TO ALL PERSONS HAVING COMPLAINTS AT THE COMMISSION AGAINST S&S COMMUNICATIONS:**

We have reached the point here at the South Dakota Public Utilities Commission ("Commission") where the Commission's Staff ("Staff") has decided to bring the Complaints that were filed here at the Commission against S&S Communications ("S&S") before the Commission for final action. We had held off taking this action because we had been advised by the attorney for Les Sumption, the last remaining partner in S&S who has not been discharged in bankruptcy, that Mr. Sumption would be filing for bankruptcy this year. That would have ended the matter, since the other partner, Matt Swearingen has already been discharged. Mr. Sumption has still not filed for bankruptcy, so the Staff has made the decision it is time to bring this matter to a final conclusion and get a judgment in favor of the S&S customers who filed Complaints.

If the Commission decides to accept Staff's recommendations, a decision will be issued ordering S&S to pay damages to most of the persons who filed a Complaint. If S&S fails to pay the damages by the date set in the Commission's order, Staff will take the case to court to obtain a judgment against S&S and Mr. Sumption. If the Staff is then able to locate any non-exempt assets still held by S&S or Mr. Sumption, Staff will execute the judgment against those assets and attempt to recover money for distribution to Complainants. It is possible that there will be no non-exempt assets to levy against, so Staff wants to emphasize that a damages award will not necessarily mean you will receive any money.

As you will see in the enclosed Order for and Notice of Hearing, we have scheduled this matter for hearing at 1:00 P.M. Central Time on October 21, 2008, in Rm. 423 of the State Capitol Building in Pierre, S.D. This notice is to make you aware of the hearing so that you can be present if you wish and to advise you of what the Staff intends to recommend with respect to your Complaint and the Complaint disposition process in general. We urge you to call the Commission Staff if you have questions concerning this Notice, the hearing or your Complaint.

Also enclosed with this letter is Staff's Recommended Disposition of Complaint for your Complaint (your Complaint Number is the same as the Complaint Docket Number on the spreadsheets attached as Exhibits C and D to the Motion). We made every effort to treat all Complaints the same. Staff's position is that amounts approved for all Complaints should be based solely upon the amount of service contracted for that was not received due to S&S's business failure and that things such as front-end connection delays, lost business, inconvenience, the cost of obtaining alternative service, etc. are too indefinite and immaterial and

should not be included in the Damages Awards. We also took the position for all Complaints that the amounts approved should only be for payments actually made by Complainants and that amounts Complainants financed or insured and have not paid and will not have to pay should be deducted from the approved Damages Award amount. We treated all Complaints equally on these issues, and believe the approach we have taken is fair to everyone.

We urge you to carefully review the recommendation for your Complaint to make sure it accurately reflects the information you submitted and your particular situation. We received one hundred forty-five Complaints with varying levels of detail and have done our best to analyze them against the information we received from S&S, AFC and other financing companies. We realize, however, we may have made errors. If you think the information regarding your Complaint is not correct or accurate, it is important that you contact us as soon as possible so we can make corrections. One more thing regarding the Staff's Recommended Disposition of Complaint - the calculated Judgment Fraction shown at the bottom will change if there are changes in the total of all Damages Award amounts approved by the Commission. However, we think any change due to such revisions is highly likely to be very, very small.

You are not required to attend the hearing to have your Complaint considered and approved. At the hearing, Staff will recommend to the Commission that your Complaint and all other Complaints be handled in accordance with Staff's Recommended Disposition of Complaints and the Motion. Although Staff cannot guarantee what the Commission will decide, Staff will strongly urge the Commission to decide all Complaints in accordance with our recommendations, except where a clear error has been demonstrated.

You have a right to be present at the hearing, both to ensure your rights are protected and to disagree with what Staff is proposing in its recommendations and Motion. If you wish to appear at the hearing and dispute Staff's recommendation regarding your Complaint or another Complaint or Staff's general recommendations as stated in the Motion, please fill out, sign and return the Notice of Dispute and Request for Hearing form so we can schedule you onto the hearing agenda.

We urge you to contact the Staff here at the Commission if you believe there is an error in what we are recommending for your Complaint or if you simply have questions or concerns about any of this. Staff's contact information is: South Dakota Public Utilities Commission, State Capitol Building, 500 E. Capitol Ave., Pierre, SD 57501; ph: (800) 332-1782 or (605) 773-3201; fax: (866) 757-6031; Internet: [www.puc.sd.gov](http://www.puc.sd.gov); or email: [puc@state.sd.us](mailto:puc@state.sd.us).

Sincerely,



John J. Smith, Staff Counsel

Enclosures