

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

**IN THE MATTER OF THE
COMPLAINTS FILED BY CUSTOMERS
OF S&S COMMUNICATIONS**

) **MOTION TO DISMISS WITH
) RESPECT TO
) MATT SWEARINGEN
)
)
) **CT05-005****

The Staff ("Staff") of the South Dakota Public Utilities Commission ("Commission") moves the Commission to dismiss Matt Swearingen as a party respondent to the complaints consolidated in this docket. The grounds for this motion are:

1. On May 17, 2005, the Commission issued its order consolidating all of the complaints filed by customers of S&S Communications ("Complaints") into this docket.

2. During the entirety of the period covering the events giving rise to the Complaints, Les Sumption and Matt Swearingen were the owners and principals of the for-profit business known as S&S Communications, the named respondent in this consolidated case. As of the time all of the events giving rise to the Complaints occurred, "S&S Communications" was a registered fictitious name for Les Sumption and Matt Swearingen in Brown County, South Dakota.

3. The named respondent in this case, S&S Communications ("S&S") is a South Dakota partnership pursuant to SDCL 48-7A-202. During the entirety of the period covering the events giving rise to the Complaints, Les Sumption and Matt Swearingen were partners in S&S. To the best knowledge and belief of Staff, Les Sumption and Matt Swearingen were and are the only partners in S&S.

4. S&S was at no time a corporation, limited liability company, limited partnership or other entity that would limit the personal liability of its principals and/or partners. As principals of S&S and partners in S&S, Les Sumption and Matt Swearingen were S&S, and would be jointly and severally liable to Complainants for any damages awarded by the Commission in this consolidated case under SDCL 48-7A-306 and/or other applicable law.

5. On December 6, 2005 in Bankr. Case No. 05-10284 ("Swearingen Bankruptcy"), the United States Bankruptcy Court for the District of South Dakota entered an Order Discharging Debtor(s) granting Matthew R. Swearingen and Monica G. Swearingen a discharge of Debts pursuant to 11 U.S.C. § 727 (see Exhibit A). Matthew R. Swearingen is the same person as the Matt Swearingen who was a principal and partner in S&S and thus a respondent in this case. The damages which Complainants seek in this case and which the Commission has the power to award are compensatory in nature and are therefore a dischargeable debt under 11 U.S.C. § 727.

6. Under 11 U.S.C. § 524(a), the discharge of Matt Swearingen:

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, . . .

7. On September 9, 2005, the Bankruptcy Court in the Swearingen Bankruptcy issued an Order Dismissing Partnership Debtor dismissing S&S Communications, a partnership, from the case (see Exhibit B). The order states, "that S&S Communications is dismissed from this case and that no relief under Title 11 of the United States Code shall be given to this entity." The Commission is therefore not precluded from proceeding with the Complaints against S&S or Les Sumption.

WEREFORE, Staff requests that the Complaints be dismissed as against Matt Swearingen and that any order that the Commission may issue in this case for monetary relief accordingly not impose personal liability on Matt Swearingen.

Dated this 15th day of September, 2008.

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