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August 4, 2008

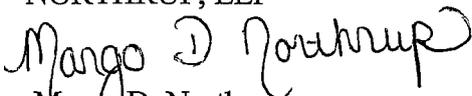
Ms. Patricia Van Gerpen
SD Public Utilities Commission
500 E Capitol Ave
Pierre SD 57501

RE: In the Matter of the Complaint filed by Gary Loudner, Black Hawk, South Dakota,
Against SDN Communications Regarding Telephone Outages (CT08-005)

Dear Patty:

Enclosed herein, please find an Answer to Complaint and Motion to Dismiss and Affidavit of Mark Shlanta. By copy of this letter, service is intended on the parties identified on the Certificate of Service.

RITER, ROGERS, WATIER &
NORTHTRUP, LLP

By: 
Margo D. Northrup

MDN/lma
Enclosure
cc: Client

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

In the Matter of the Complaint filed) CT08-005
by Gary Loudner, Black Hawk,)
South Dakota, against SDN)
Communications Regarding) ANSWER TO COMPLAINT AND
Telephone Outages) MOTION TO DISMISS

COMES NOW, South Dakota Network, LLC (“SDN”), by and through its undersigned attorneys, and for its Answer, defenses to, and Motion to Dismiss the Complaint of Gary L. Loudner, states and alleges as follows:

ANSWER TO COMPLAINT

1) SDN does not have sufficient information or belief to answer the allegations of the Complaint and therefore denies each and every allegation as set forth by the Complainant except as expressly admitted, qualified or otherwise answered and further denies the allegations that it engaged in any wrongdoing in this matter.

2) The Complaint of Gary Loudner fails to state a claim for which relief can be granted, and the Complaint should be dismissed.

3) Gary L. Loudner has alleged that that there was an outage on November 13, 2008. SDN has no record of any SDN circuit problem in the Hills area on November 13, 2008 and specifically denies that it was responsible for the November 13, 2007 outage.

STATEMENT OF UNDISPUTED FACTS

Mr. Loudner is not a customer of SDN. SDN has no record of any SDN circuit problem in the Hills area on November 13, 2007.

MOTION TO DISMISS

The Complaint of Mr. Loudner should be dismissed pursuant to SDCL 15-6-12(b) for failure to state a claim upon which relief can be granted. A complaint should only be dismissed for failure to state a claim if it appears “beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Thompson v. Summers, 1997 SD 103 7, ¶ 5, 567 NW2d 387, 390. Mr. Loudner can not prove any set of facts that would entitle him to relief from SDN. He has not made any specific allegations of wrongdoing against SDN.

Alternatively, the Complaint should be dismissed pursuant to SDCL 15-6-56 because the Complaint does not state any genuine issue of material fact upon which relief can be granted and SDN is entitled to dismissal as a matter of law. The Commission must determine whether the moving party demonstrated the absence of any genuine issue of material fact and showed entitlement to judgment on the merits as a matter of law. The evidence must be viewed most favorably to the nonmoving party and reasonable doubts should be resolved against the moving party. The nonmoving party, however, must present specific facts showing that a genuine, material issue for trial exists. Jacobson v. Leisinger, 2008 SD 19, ¶ 24, 746 NW 2d 739, 745. Mr. Loudner has not presented any facts that show a genuine, material issue for trial.

WHEREFORE, SDN requests:

- (1) That the Commission grant its Motion to Dismiss the Complaint and hold it for naught; or in the alternative,
- (2) That the Commission set the matter for evidentiary hearing, at which time SDN, while not bearing the burden of proof, will defend against the Complaint;

- (3) For its costs in defending this Complaint, to the extent allowable; and
- (4) For such other and further relief as the Commission deems just.

DATED this 4 day of August, 2008.

RITER, ROGERS, WATTIER, &
NORTHROP, LLP

By: Margo D. Northrop
A member of said firm

319 S. Coteau – P. O. Box 280
Pierre, SD 57501-0280
Attorneys for SDN

CERTIFICATE OF SERVICE

I, Margo D. Northrup, certify that a true and correct copy of Answer to Complaint and Motion to Dismiss and Affidavit was mailed to each of the following by first class mail on the 4 day of August, 2008:

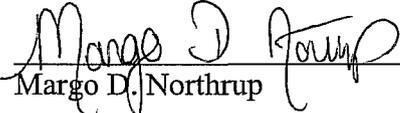
Gary L. Loudner
PO Box 204
Black Hawk, SD 57718-0204

And true and correct copies of said document were provided electronically to the following:

Patricia Van Gerpen
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