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August 4, 2008

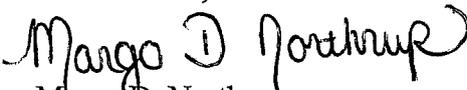
Ms. Patricia Van Gerpen
SD Public Utilities Commission
500 E Capitol Ave
Pierre SD 57501

RE: In the Matter of the Complaint filed by Gary Loudner, Black Hawk, South Dakota,
Against Golden West Telecommunications Cooperative Regarding Telephone
Outages (CT08-006)

Dear Patty:

Enclosed herein, please find an Answer to Complaint and Motion to Dismiss and Affidavit of
George Strandell. 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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TELECOMS customer bases (sic), on this evening.” Golden West admits that it was generally aware that there was an outage on November 13, 2007 that affected Midcontinent customers and denies the remainder of the allegation and specifically denies that it was responsible for the November 13, 2007 outage.

STATEMENT OF UNDISPUTED FACTS

Mr. Loudner is not a customer of Golden West. On November 13, 2008, Golden West became aware that there was a service outage that affected certain customers of Midcontinent. Golden West worked with Midcontinent to remedy the issue. Service was restored to customers within thirty minutes.

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 Golden West. He is not a Golden West customer and his claim, if any, is with his service provider, Midcontinent.

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 Golden West 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, Golden West 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 Golden West, 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, &
NORTHRUP, LLP

By: Margo D Northrup
A member of said firm

319 S. Coteau – P. O. Box 280
Pierre, SD 57501-0280
Attorneys for Golden West
Telecommunications Cooperative

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:

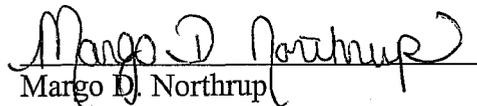
Gary L. Loudner
PO Box 204
Black Hawk, SD 57718-0204

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

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