

THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

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

CT05-005

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Transcript of Proceedings
May 10, 2005

ORIGINAL

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BEFORE THE PUBLIC UTILITIES COMMISSION,
GARY HANSON, CHAIRMAN
BOB SAHR, VICE CHAIRMAN
DUSTY JOHNSON, COMMISSIONER (by telephone)

COMMISSION STAFF
Rolayne Ailts Wiest
John Smith
Karen Cremer
Sara Greff
Greg Rislov
Harlan Best
Keith Senger
Dave Jacobson
Michele Farris
Jim Mehlhaff
Tina Douglas
Heather Forney
Pam Bonrud

Reported By Cheri McComsey Wittler, RPR, CRR

PRECISION REPORTING
L I M I T E D

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1 CHAIRMAN HANSON: CT05-005, In the
2 Matter of the Complaints Filed by Customers of
3 S&S Communications, we have three questions before
4 us: Shall the Commission grant staff's Motion to
5 Consolidate; shall the Commission order that any
6 subsequently filed Complaints against S&S involving
7 the same subject matter be consolidated into this
8 docket; shall the Commission order such other
9 relief as requested in the Motion to Consolidate.
10 Mr. Smith.
11 MR. SMITH: Thank you, Mr. Chairman.
12 Staff filed this Motion for the purpose of I guess
13 implementing a practicably workable procedure for
14 dealing with the 145 S&S Complaints that we
15 currently have pending, and as the Commission
16 directed a couple of months ago, we will be doing
17 one last mailing out to all known customers of S&S
18 and it's possible that we may wind up having an
19 additional Complaint or two filed as a result of
20 that.
21 Our reason, more than anything else, I think,
22 for wanting to consolidate these is we just think
23 it's going to both lead to a more practical and
24 also I think a more fair process for dealing with
25 these Complaints. If we deal with them each on an

1 APPEARANCES BY TELEPHONE
2 Colleen Sevold
3 Melissa Thompson
4 Bill Heaston
5 Dave Prazak
6 Larry Nelson
7 Kyle White
8 Alan Dietrich
9 Al Lunde
10 =====
11
12 TRANSCRIPT OF PROCEEDINGS, held in the
13 above-entitled matter, at the South Dakota State
14 Capitol, Room 412, 500 East Capitol Avenue, Pierre,
15 South Dakota, on the 10th day of May 2005, commencing
16 at 9:30 a.m.
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1 of these Complaints. The issues of law are largely
 2 common to all of these Complaints. There will be
 3 little differences between the different
 4 Complainants, but I think this well fits within the
 5 standards for consolidation of the case. And,
 6 therefore, we would request that all of these
 7 currently pending cases be consolidated into one
 8 proceeding.

9 Although I didn't expressly state it in the
 10 Motion because they don't exist yet, I would also
 11 like the Commission to move and to direct the staff
 12 to consolidate any additional Complaint filings
 13 that revolve around the same general set of facts
 14 into this proceeding, and I am going to, I guess,
 15 verbally so move at this point in time.

16 And, lastly, I would like the Commission to
 17 order that the individual Complaint dockets then be
 18 deemed closed and integrated into the consolidated
 19 case but that we retain each of those existing
 20 files as subfiles within this particular case
 21 simply for administrative convenience so that we
 22 can keep all the various data that relates to
 23 individual Complainants in an orderly fashion.

24 And I have one question I wanted to direct to
 25 Keith Senger who's working with me on this. It's

1 my understanding, Keith, that none of the
 2 Complainants have contacted the Commission to
 3 object to consolidation of these proceedings. Is
 4 that the case?

5 MR. SENGER: That is correct. There
 6 was a letter sent to all of the Complainants that
 7 we have. We got seven or eight returned for the
 8 wrong address. The staff downstairs was great
 9 about finding addresses. We sent all of those
 10 letters back. None of the ones that were sent the
 11 second time were returned.

12 I was able to verbally contact via telephone
 13 five of the seven or eight. The other two or three
 14 we could not find a telephone number for. They
 15 moved out of state, maybe don't have a landline.
 16 So I have contacted all of them, and no one has
 17 objected.

18 COMMISSIONER JOHNSON: How long ago
 19 was that notice sent?

20 MR. SMITH: The original notice was
 21 sent on the 5th of April.

22 COMMISSIONER JOHNSON: Okay.

23 MR. SMITH: The follow-up letters --
 24 again, Commissioner Johnson, since these
 25 Complaints -- these Complaints were filed in 2003

1 and, as you well know, with any group of 145 people
 2 you're going to have people move. Some of these
 3 are business Complainants, and, in fact, not all
 4 businesses even last that long. And so we've had
 5 various situations where we've had address changes.
 6 We've literally had several of these Complainants
 7 have moved out of state. But I think the staff's
 8 done a good job of tracking down people.

9 You know, with both the mail notice and with
 10 the public notice of the proceeding, I am confident
 11 that we've done all we can under the notice rules
 12 of South Dakota to provide notice to these people.

13 CHAIRMAN HANSON: Thank you, John.
 14 Are there any questions by the Commissioners?

15 VICE CHAIRMAN SAHR: Maybe as much as
 16 comment as anything else. I just want to say as
 17 someone who's gone through this process along with
 18 staff I want to thank them for being diligent and
 19 for doing everything they can to contact the
 20 customers. And I think it's critical to try to
 21 keep the lines of communications open.

22 So I appreciate the efforts of sending out the
 23 letters, the additional letters, and looking into
 24 that. And I think it is -- it does sound like
 25 something that's going to be appropriate because

1 it's going to hopefully make it easier for the
 2 consumers out there and try to get people before
 3 the Commission to deal with this as easily -- or
 4 the best we possibly can.

5 And, you know, John, just because this is
 6 something where people might be listening in, do
 7 you just want to quickly explain we've got the
 8 contract claims and the bond claims. And I know
 9 that to perhaps most of the people in the room
 10 that's old news, but in case people are listening
 11 in and because it's going to be archived just a
 12 minute or so on that just so that if anyone does
 13 check this because they saw it on the agenda as a
 14 consumer, they'll be able to figure that out.

15 MR. SMITH: Uh-huh. And we did
 16 include in our notice -- we did include specific
 17 reference to the web broadcast of this so that
 18 people rather than having to call in could access
 19 it via the Internet. I obviously don't know if any
 20 of them are listening in, but hopefully they are.

21 We have two proceedings pending. We will,
 22 assuming this Motion to Consolidate is granted.
 23 One will be the proceeding involving the
 24 Complaints. Under our statutes, 49-13, persons in
 25 South Dakota have a right to file a Complaint

1 against a telecommunications company. That right
2 isn't limited to solely customers, but in this case
3 all of these Complaints are customers.

4 We initially had some Complaints that weren't
5 customers. We had some Complaints that involved
6 securities-based claims and other things like that.
7 Those Complaints have been dismissed as of this
8 point in time. I'm confident that we've given
9 adequate notice now of this Motion to all of the
10 Complainants.

11 I guess one other observation on that is if it
12 comes to light that because of the problems again
13 with maintaining addresses over lengthy periods of
14 times, if it turns out that a Complainant did not
15 receive the written notice and at a later date
16 wishes to carve his Complaint out into a separate
17 proceeding, I think we can deal with that at that
18 time.

19 In terms of the Complaint cases, we're
20 basically treating them -- although they were of
21 varying degrees of specificity in terms of prayers
22 for relief and all of that, we're basically
23 treating all of those Complaint cases as damage
24 claims. And, again, I think our purpose in wanting
25 to consolidate those, as I think you know from the

1 evidence in the 166 proceeding, the pattern here is
2 pretty standard, you know. It's a pretty -- pretty
3 much a same set of facts with different dollar
4 amounts, different contract terms, but pretty much
5 a standard operating procedure that S&S
6 Communications followed in signing up customers and
7 the way they went about doing their business.

8 So that's what this proceeding is about will
9 be to pursue these damage claims through the
10 completion and at such time as the Commission
11 issues the damages award in the case, and I'm
12 assuming we would issue one joint consolidated
13 damages award. At that point in time I'm hopeful
14 that the Commission would issue an Order also
15 setting a time limit for payment of that.

16 And the Section 49-13 -- Chapter 49-13 then
17 allows Complainants to then go to Circuit Court if
18 that damage award isn't satisfied within the time
19 limit that you've set. At such time the record
20 that you make in this Complaint proceeding will be
21 admissible as the record in the Circuit Court case.

22 And assuming that we prevail, at some point in
23 time all of these damage awards that you issue or
24 the consolidated damages award will be enterable as
25 a judgment in the Circuit Court system and will

1 then become a potential long-term lien on the
2 assets of the principals of S&S. That's the way I
3 see this potentially coming down.

4 The other aspect of this whole thing is the
5 proceeding involving the bond proceeds. And it's
6 not that that's -- that's related to this case.
7 And, in fact, if you recall one of the points of
8 relief we asked for in the bond case was that both
9 the Complaints filed in this proceeding be treated
10 as claims against the bond.

11 We also have some other persons who have
12 elected not to file formal damages claims but have
13 nevertheless filed claims against the bond. So
14 there will be a slightly different track with
15 respect to those two cases, but they will be
16 similar. And the way I see that working is that
17 when you finally ultimately determine the damage
18 awards in this case that those damages awards may
19 with some exceptions pretty much be the same as the
20 amount that you're going to authorize as claims
21 against the bond.

22 There may be a few exceptions because we do
23 have a few cases we've discovered where people were
24 definitely damaged but for whatever reason their
25 claims were forgiven for this or that reason by a

1 lender. We've got some credit card companies who
2 because of their warranty provisions in their
3 credit card terms have forgiven the debts. And,
4 again, we'll cross those bridges when we come to
5 them. I don't think we're there yet.

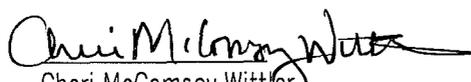
6 And we have several cases where lenders such
7 as Carroll Credit, Midland Leasing in Aberdeen, and
8 Aberdeen Finance Corporation advanced loans to pay
9 for prepaid services, and those loans have been
10 forgiven. And, again, we'll deal with that issue
11 when we get to it.

12 VICE CHAIRMAN SAHR: Thank you very
13 much.

14 CHAIRMAN HANSON: Thank you very
15 much, John. Is there anyone else either in the
16 room or telephonically who wishes to make any -- is
17 there anyone either in the room or telephonically
18 who wishes to make any statement pertaining to this
19 item?

20 MS. AILTS WIEST: I just had one
21 other question, and that would be then with respect
22 to your last statement, John, would you anticipate
23 that the Commission would move forward with this
24 Docket before moving forward with the bond proceed
25 Docket then?

1 MR. SMITH: Yes, it is.
 2 MS. AILTS WIEST: Okay. Thank you.
 3 CHAIRMAN HANSON: Thank you,
 4 Rolayne. Is there a Motion on CT05-005?
 5 VICE CHAIRMAN SAHR: Mr. Chairman, I
 6 would move that we grant staff's Motion to
 7 Consolidate and also that any subsequently filed
 8 Complaint against S&S involving the same subject
 9 matter be consolidated into this Docket and that we
 10 order the other relief as requested in the Motion
 11 to Consolidate.
 12 COMMISSIONER JOHNSON: Mr. Chairma
 13 I second.
 14 CHAIRMAN HANSON: And I concur.
 15 Motion carries.
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1 STATE OF SOUTH DAKOTA)
 2 :SS CERTIFICATE
 3 COUNTY OF HUGHES)
 4
 5 I, CHERI MCCOMSEY WITTLER, a Registered
 6 Professional Reporter and Notary Public in and for the
 7 State of South Dakota:
 8 DO HEREBY CERTIFY that as the duly-appointed
 9 shorthand reporter, I took in shorthand the proceedings
 10 had in the above-entitled matter on the 10th day of
 11 May 2005, and that the attached is a true and
 12 correct transcription of the proceedings so taken.
 13 Dated at Pierre, South Dakota this 26th day
 14 of May 2005.
 15
 16
 17

 18 Cheri McComsey Wittler
 19 Notary Public and
 20 Registered Professional Reporter
 21

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