

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

<b>IN THE MATTER OF THE COMPLAINT</b>	)	<b>NOTICE OF INTENT TO TREAT</b>
<b>FILED BY GARY LOUDNER, BLACK</b>	)	<b>MOTION TO DISMISS AS MOTION</b>
<b>HAWK, SOUTH DAKOTA, AGAINST</b>	)	<b>FOR SUMMARY DISPOSITION;</b>
<b>SDN COMMUNICATIONS REGARDING</b>	)	<b>ORDER FOR AND NOTICE OF</b>
<b>TELEPHONE OUTAGES</b>	)	<b>HEARING ON MOTION</b>
	)	<b>CT08-005</b>

**TO: GARY LOUDNER AND SDN COMMUNICATIONS:**

**PLEASE TAKE NOTICE** that the South Dakota Public Utilities Commission (Commission) will hold a hearing at **10:30 A.M. Central Time or immediately following the Commission meeting, whichever is later, on November 12, 2008, in Rm. 423 of the State Capitol Building, 500 E. Capitol Ave., Pierre, SD** to consider SDN Communication's (SDN) Motion to Dismiss in this docket. Telephonic participation will be permitted. Please contact the Commission by November 10, 2008, to arrange for telephonic participation.

Complainant Gary Loudner filed a Complaint against SDN on July 14, 2008 alleging that one or more telephone outages had occurred. On August 4, 2008, SDN filed an Answer and Motion to Dismiss (Motion). On October 2, 2008, the Commission received a Request by Commission Staff to Schedule Motions to Dismiss. On October 21, 2008, at a regularly scheduled meeting, the Commission voted unanimously to grant the Request by Commission Staff to Schedule Motions to Dismiss.

Having considered the Motion and the arguments of the parties on the Motion, the Commission finds and concludes that certain assertions in the Motion may involve consideration of one or more issues of material fact. The Commission therefore serves notice, in conformity with *Richards v. Lenz*, 539 N.W.2d 80 (S.D. 1995), that it will consider SDN's motion to dismiss in whole or in part as a motion for summary disposition under SDCL 1-26-18 and 15-6-56. The Commission will hold a hearing on the Motion on November 12, 2008. Prior to the hearing, the parties may file and serve on the other parties such affidavits as they deem necessary to demonstrate whether a genuine issue of material fact exists which would require this matter to proceed to an evidentiary hearing.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-13 and 49-31.

The issues to be decided at the hearing are (i) whether a genuine issue of material fact exists with respect to the Complaint which would require the matter to go to evidentiary hearing, (ii) whether the material facts as to which no genuine issue exists demonstrate that SDN is entitled to judgment as a matter of law and (iii) whether SDN's Motion to Dismiss, considered in whole or in part as a motion for summary disposition, should be granted or denied.

The hearing will be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights may be forfeited if not exercised at the hearing. If a party or their representative fails to appear at the time and place set for the hearing, the Final Decision may be entered by default or may be based on the Motion to Dismiss filed by SDN, considered in whole or in part as a motion for summary disposition, and the affidavits and other evidence provided, if any, by the parties. After the hearing, the Commission will consider the Motion to Dismiss, and all evidence and arguments presented at the hearing. The Commission may then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter or may order that the matter be scheduled for hearing. As a result of the hearing, the Commission will determine whether the Motion to Dismiss, considered in whole or in part as a motion for summary disposition, should be granted or denied. The Commission's Final Decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law.

It is therefore

ORDERED, that a hearing shall be held at the time and place specified above on the issues as stated above.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Commission at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 29<sup>th</sup> day of October, 2008.

<b>CERTIFICATE OF SERVICE</b>	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.	
By:	<u>Aldine Kolbo</u>
Date:	<u>10/29/08</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Gary Hanson  
GARY HANSON, Chairman

Steve Kolbeck  
STEVE KOLBECK, Commissioner

Dustin M. Johnson  
DUSTIN M. JOHNSON, Commissioner  
*dk*