

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

|   |   |                               |
|---|---|-------------------------------|
| <b>IN THE MATTER OF THE COMPLAINT FILED</b> | ) | <b>ORDER FOR AND NOTICE</b>   |
| <b>BY JOHN REINTS, RAPID CITY, SOUTH</b>    | ) | <b>OF HEARING ON PENDING</b>  |
| <b>DAKOTA, AGAINST BLACK HILLS</b>          | ) | <b>MOTIONS; NOTICE OF</b>     |
| <b>FIBERCOM, L.L.C. REGARDING ITS LATE</b>  | ) | <b>INTENT TO TREAT MOTION</b> |
| <b>PAYMENT CHARGE</b>                       | ) | <b>TO DISMISS IN PART AS</b>  |
|   | ) | <b>MOTION FOR SUMMARY</b>     |
|   | ) | <b>DISPOSITION</b>            |
|   | ) | <b>CT03-155</b>               |

On November 3, 2003, the Public Utilities Commission (Commission) received a complaint filed by John Reints, Rapid City, South Dakota (Complainant), against Black Hills FiberCom, L.L.C. (FiberCom) regarding its late payment charge. On November 24, 2003, the Commission received an Answer and Motion to Dismiss from FiberCom. On November 25, 2003, the Commission received a Petition to Amend Complaint. On November 26, 2003, the Commission received a Petition to Amend to correct clerical errors in the Petition to Amend. On December 1, 2003, the Commission received Complainant's Request for Postponement of Hearing to Permit Discovery, Request for Additional Sanction of Counsel and Claim for Additional Damages. On December 2, 2003, the Commission received Complainant's Response to FiberCom's Answer and Motion to Dismiss. On December 11, 2003, Complainant filed a letter dated December 9, 2003, addressed to FiberCom. On December 16, 2003, at a regularly scheduled meeting, the Commission considered FiberCom's Motion to Dismiss. Complainant did not appear, and the Commission voted unanimously to grant the Motion to Dismiss, to dismiss the complaint and close the docket. On December 24, 2003, the Commission received a Petition for Rehearing from Complainant. On December 30, 2003, the Commission received an email filing by FiberCom stipulating that FiberCom had no objection to the Petition for Rehearing. At its regular meeting on January 6, 2004, the Commission voted unanimously to grant Complainant's Petition for Rehearing.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-13, including 49-13-1 through 49-13-14, inclusive, and SDCL Chapter 49-31, including 49-31-3, 49-31-7, 49-31-7.1, 49-31-7.2, 49-31-7.3, 49-31-7.4, 49-31-10, 49-31-11, 49-31-38, 49-31-38.1, 49-31-38.2, 49-31-38.3, 49-31-89 through 49-31-97, inclusive, and ARSD Chapters 20:10:01 and 20:10:34.

PLEASE TAKE NOTICE that a motion hearing will be held on the parties' pending motions on January 29, 2004, beginning at 1:00 PM, in the Cactus Conference Room, Public Utilities Commission, Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota. The Commission will first consider the following motions filed by Complainant: (i) Petition to Amend Complaint (a) to sanction counsel for abusive conduct, (b) to add complaint for violation of Commission rules, and (c) to seek additional damages; (ii) motion to correct clerical errors; (iii) Request for Additional Sanction of Counsel; and (iii) Claim for Additional Damages. The Commission will then consider FiberCom's Motion to Dismiss. Lastly, if the Motion to Dismiss is not granted or is granted only in part, the Commission will consider Complainant's Request for Postponement of Hearing to Permit Discovery.

PLEASE TAKE FURTHER NOTICE that because Complainant has submitted evidentiary material in his pleadings and motions relative to the legal significance of an alleged telephone conversation between Complainant and a representative of FiberCom on October 28, 2003, and the

parties' respective actions following such conversation, the Commission intends to treat FiberCom's Motion to Dismiss as a motion for summary disposition pursuant to SDCL 1-26-18 as to the issue of whether such telephone conversation and the parties' subsequent actions present a genuine issue of material fact requiring a contested case hearing. The Commission therefore gives this notice in conformity with *Richards v. Lenz*, 539 N.W.2d 80 (S.D. 1995). The parties are instructed to file any briefs and supporting affidavits as to the issue of whether a genuine issue of material fact is presented concerning such issue no later than three days prior to the hearing date.

The parties and their attorneys may appear either in person or by conference call. The call-in number is (605) 773-6147. Complainant must notify the Commission if he desires the Commission to initiate calls to him or his attorney.

As a result of this hearing, the Commission may render decisions having the effect of final decisions as to any or all of the issues raised by the Complaint and Complainant's subsequent motions. The hearing will be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. The parties have the right to be present, either in person or by conference call, 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 fails to appear, the Commission may enter a default decision against the party. Any final decision of the Commission may be appealed by the parties to the 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 and in the manner specified above, on the issues set forth above.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 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 15<sup>th</sup> day of January, 2004.

|  |                      |
|--|----------------------|
| <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, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon. |                      |
| By:  | <u>William Kalbo</u> |
| Date:  | <u>1/15/04</u>       |
| (OFFICIAL SEAL)  |                      |

BY ORDER OF THE COMMISSION:

Robert K. Sahr  
ROBERT K. SAHR, Chairman

Gary Hanson  
GARY HANSON, Commissioner

James A. Burg  
JAMES A. BURG, Commissioner