

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

IN THE MATTER OF THE APPLICATION OF)	
S&S COMMUNICATIONS/ALTERNA-CELL)	MOTION FOR ORDER TO
FOR A CERTIFICATE OF AUTHORITY TO)	SHOW CAUSE AND NOTICE
PROVIDE INTEREXCHANGE)	OF HEARING
TELECOMMUNICATIONS SERVICES IN)	
SOUTH DAKOTA)	TC02-166
)	

Comes now the staff of the South Dakota Public Utilities Commission (Commission), pursuant to ARSD 20:10:24:04:03 and moves the Commission to issue an Order To Show Cause, pursuant to 20:10:01:45, and a Notice Of Hearing, pursuant to ARSD 20:10:24:04:03, in the above-entitled manner. By this Motion staff requests that the Commission, suspend or revoke the Certificate of Authority of S&S Communications. In support of this Motion, staff asserts as follows:

BACKGROUND

On December 21, 2000, the Commission issued an Order in Docket TC00-114, granting S&S a certificate of authority, subject to conditions, one of which stated:

3. S&S reporting to the Commission the current level of prepaid customers and updating its bond every six months to provide 100% coverage of the prepaid amounts not covered under the collateral agreement.

On September 27, 2002, the Commission received a Motion from Staff requesting that the Commission issue an Order to Show Cause to S&S Communications/Alterna-Cell as to why S&S should not be found in violation of the Order Granting Certificate of Authority in TC00-114 (Order) and of the laws of the State of South Dakota, including but not limited to SDCL 49-31-7.1 and ARSD 20:10:01:28, 20:10:06:05 and 20:10:24:05.05. On October 28, 2002, the Commission issued an Order Granting Motion to Issue Order to Show Cause.

At its regularly scheduled March 18, 2003, meeting, Staff and S&S jointly recommended that the Commission reconsider the terms and conditions of S&S' certificate of authority and impose a new restriction that S&S not offer any prepaid services (including a prepaid calling card) or require or accept deposits or advance payments without prior approval of the Commission. On March 20, 2003, the Commission issued an Order Granting Amended Certificate of Authority in this Docket to impose these further restrictions.

On May 27, 2003 Staff filed a Motion For Order To Amend Certificate Of Authority To Clarify And Add Reporting Requirements. On June 2, 2003, the Commission voted unanimously to grant Staff's motion and issued an Order granting Staff's Motion.

ARGUMENT IN SUPPORT OF MOTION

1. The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-31, specifically 49-31-3, 49-31-7 and 49-31-7.1 and ARSD 20:10:24:04:02, 20:10:24:04:03 and 20:10:24:04:04.
2. Pursuant to 20:10:01:45 and 20:10:24:04:03, a copy of all previous motions from staff are attached to this Motion and shall be served upon Les Sumption, the holder of the Certificate of Authority of S&S, by certified mail. The purpose of this service shall be to give notice of the facts and conduct which warrant staff's request that the Commission to revoke the Certificate of Authority of S&S Communications. It is Staff's position that all allegations raised by Staff in all previous Motions, which have not otherwise been addressed by S&S, be considered by the Commission. These issues can be found in the attached Motions and include, but are not necessarily limited, to the following:
 1. Whether S&S committed any of the following acts, errors or omissions:
 - a. Failed to provide current prepaid customer information in accordance with Order in Docket TC00-114 (COA Order), granting S&S a certificate of authority.
 - b. Provided insufficient information from which the proper bond amount under the COA Order could be calculated.
 - c. Provided inaccurate information regarding the current amount of customer prepayments.
 - d. Failed to provide a bond to effect 100% bond coverage of customer prepayments in excess of the amount covered by the collateral agreement.
 - e. Refused to provide information deemed necessary, and requested of S&S in writing, by Commission Staff to enable the correct determination of the current amount of customer prepayments and resulting bond coverage requirement.
 2. If any of the alleged acts, errors or omissions set forth in 1.a. - e. is found to have been committed, whether S&S thereby violated condition 3. of the COA Order.
 3. If any of the alleged acts, errors or omissions set forth in 1.a. - e. is found to have been committed, whether S&S thereby violated SDCL 49-31-7.1.
 4. If any of the alleged acts, errors or omissions set forth in 1.a. - e. is found to have been committed, whether S&S thereby violated, neglected, failed or refused to comply with a lawful order of the Commission under SDCL 49-31-38.
 5. If any of the alleged acts, errors or omissions set forth in 1.a. - e. is found to have been committed, whether such conduct was intentional such that S&S thereby intentionally did or

caused to be done, or intentionally permitted or omitted to be done, any act, matter or thing prohibited or declared to be unlawful in this chapter under SDCL 49-31-38.1.

6. If any of the alleged acts, errors or omissions set forth in 1.a. - e. is found to have been committed, whether such conduct constituted the "willful continuing to neglect or refuse to comply with a reasonable order of the Commission" under SDCL 49-31-38.2.
7. If any of the alleged acts, errors or omissions set forth in 1.a. - e. is found to have been committed, whether S&S thereby failed "to comply with . . . other terms and conditions imposed on its certification by the Commission pursuant to ARSD 20:10:24:02.
8. If any of the alleged acts, errors or omissions set forth in 1.a. - e. is found to have been committed, whether such conduct constituted "other good cause" under ARSD 20:10:24:02.
9. Whether S&S shall be ordered to increase its bond amount to meet the bond coverage condition set forth in the COA Order.
10. Whether security other than a surety bond shall be deemed acceptable by the Commission pursuant to ARSD 20:10:24:04.5 and the COA Order, and if so, what alternative security shall be deemed acceptable.

Pursuant to 20:10:01:45 and 20:10:24:04:03, an Affidavit from James Mehlhaff, an analyst for the Consumer Affairs Division of the Commission is attached and will be served via certified mail on Les Sumption. Consistent with the allegations in that Affidavit, staff requests the Commission serve notice that the following issues will also be heard by the Commission:

11. Whether S&S sold prepaid services in violation of the March 20, 2003, Order issued by the Commission.
12. What penalties, if any, shall be imposed if S&S is found to have acted in violation of that Order.

Signed and dated this 6th day of June, 2003.

Kelly D. Frazier
Staff Attorney