

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

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

On June 6, 2003, the Staff of the South Dakota Public Utilities Commission (Commission) filed a Motion For Order To Show Cause And Notice Of Hearing in the above entitled matter. Pursuant to ARSD 20:10:24:04:03, Staff submits the following Supplemental Motion in support of Staff's request that the Commission 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. By this Motion, Staff requests that the Commission consider the following issues in addition to those raised by Staff in the original Motion:

BACKGROUND

The background of this case is well known by the Commission and was stated in the original Motion filed by Staff on June 6, 2003. Staff hereby references and incorporates by reference the background information provided in that Motion. Since the time of that Motion, Staff has discovered that some S&S customers have been unable to get their "800" numbers released as they attempt to find a new long distance provider.

GROUNDS FOR 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 the previous Motion from Staff was sent to counsel for Les Sumption, the holder of the Certificate Of Authority of S&S, by certified mail. By rule this Motion shall be served in the same manner. The purpose of this service shall be to give notice of the facts and conduct which warrant Staff's request that the Commission 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.
3. Commission Staff alleges that there is probable cause to compel S&S to show cause as to whether its Certificate Of Authority should not be revoked and whether other appropriate penalties and relief should be ordered. Staff requests that the Commission consider the following actions, in addition to those requested by Staff in the June 6, 2003 Motion:
 - a. If the Commission revokes the Certificate Of Authority, Staff requests that the Commission construct the Order to prohibit Les Sumption or Matt Swearingen ever possessing any authority to provide any telecommunication services in this state. It is Staff's position that Les Sumption and Matt Swearingen

acted in violation of ARSD 20:10:24:04:02 in that they:

- (1) Failed to maintain accounts and records as required by the commission;
- (2) Failed to file with the commission all financial and other reports that the commission required, in a form and at such times as the commission designated;
- (3) Failed to maintain on file with the commission all current tariffs and rates;
- (4) Failed to cooperate with commission investigations or inquiries regarding customer complaints; and
- (5) As officers or agents of a telecommunications company, furnished or made misleading or false statements or reports, including those made by its legal counsel, to the commission.

Consistent with the provisions of ARSD 20:10:24:04:05, if the commission revokes the Certificate Of Authority, the named holder of the Certificate Of Authority may not reapply for a Certificate Of Authority for at least one year after the date of revocation, unless the commission determines that other action is more appropriate. It is Staff's position that "other action is more appropriate" in this instance. Staff requests that Les Sumption and Matt Swearingen, as holders of the Certificate Of Authority under the name of S&S Communications, Alterna-Cell, and RealTel, never again be permitted to hold a Certificate Of Authority in the state of South Dakota, either individually or as a member, partner or in conjunction with any group or entity. Based on the pattern of conduct and apparent contempt for the authority of this Commission, Staff here argues that both Les Sumption and Matt Swearingen have demonstrated that they are unfit to hold such authority from this Commission and as such should be banned from providing telecommunication services from this Commission for life, or until such time as the Commission may deem appropriate.

- b. Staff requests that the Commission take action to proceed against the \$75,000 bond of S&S Communications, issued by Star Insurance Company. ARSD 20:10:24:04:05 states that, "in the public interest, the commission may require an applicant, as a condition precedent to granting a Certificate Of Authority, to file with the commission a bond for an amount and a duration as the commission may require. The bond shall be filed with the commission and shall be for the benefit of a customer of the applicant." S&S, under the TC00-114 Order, was required to "update its bond every six months to provide 100% coverage of the prepaid amounts not covered under the collateral agreement (of Aberdeen Finance Corporation)." It is Staff's position that the failure of S&S to provide telecommunication services is sufficient for the Commission to pursue the bond. The bond, by its very language, states that Star Insurance Company binds itself unto the Public Utilities Commission of the State of South Dakota and the consumers of South Dakota, as Obligee, in the amount of \$75,000. A copy of indemnity bond number SA3162690 is attached to this Motion. ARSD 20:10:24:04:05 is silent as to the Commission's notice requirement to the surety in this matter. Staff shall provide notice consistent with the notice requirements utilized by the Commission in event of grain dealer and warehousemen insolvency (SDCL 49-43-5.8 & 49-45-18).
- c. Staff requests that the Commission take action to proceed against the \$125,000 Standby Letter Of Credit (LOC) issued by Aberdeen Finance Corporation (AFC). The LOC, by its very language, states that the following must be presented as a requirement of this credit:

“...Beneficiary’s affidavit executed by authorized member of the South Dakota Public Utilities Commission certifying that claim(s) have been presented by South Dakota Consumers against S&S Communications for not providing long distance services....The original letter of credit must accompany the beneficiary’s affidavit listed above as a requirement of this credit”

The original letter from Tim G. Rich of AFC is attached to this Motion. In that letter Mr. Rich stated, “...in the event of a default by S&S of its contractual obligation to provide long distance service to S&S’s prepaid customers, the Aberdeen Finance Corporation will look to this collateral and to individual guaranties, and not to customers for whom it holds financing agreements.”

Staff here asserts that S&S has failed in its contractual obligations to provide long distance service and that such claims have been presented to the Commission. ARSD 20:10:24:04.05 is silent as to the Commission’s notice requirement to the surety in this matter. Staff shall provide notice consistent with the notice requirements utilized by the Commission in event of grain dealer and warehouseman insolvency (SDCL 49-43-5.8 & 49-45-18) .

- d. Staff requests that the Commission take receivership of the bond and letter of credit as requested in paragraphs (b) and (c) above. Our rules and statutes do not provide specific procedural guidelines for taking action against the bond or letter of credit of a telecommunications company. Staff would recommend that the Commission take action consistent with the procedure outlined in our statutes regarding the insolvency of a grain dealer or warehouseman (SDCL 49-43-5.6 & 49-45-16) and as provided for in SDCL 21-21. Staff would also recommend that the Commission open a separate docket for the purposes of receiving formal complaints regarding a loss of service from S&S and potential claims against the bond and letter of credit. The current docket on S&S includes material which has been filed as confidential by S&S. Staff believes that it would be less of an administrative burden to open a new docket for consideration of issues involving the bond, LOC and all pending complaints as opposed to having all matters considered under one docket with portions being redacted.
- e. Staff requests that the Commission issue an Order compelling S&S to release the 800 number of any and all customers so requesting so that they may maintain those numbers as they seek service from other providers.

Staff hereby requests that if the Commission grants Staff’s Motion For Order To Show Cause And Notice Of Hearing, that the Commission provide notice to S&S Communications that these issues , as well as issues addressed in the original Motion, will be addressed at that time.

Signed and dated this 11th day of June, 2003.

Kelly D. Frazier
Staff Attorney