

CT03-043



Gary Hanson, Chair  
Bob Sahr, Vice-Chair  
Dustin Johnson, Commissioner

## SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

500 East Capitol Avenue  
Pierre, South Dakota 57501-5070  
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(605) 773-5280  
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Consumer Hotline  
1-800-332-1782

April 15, 2005

Jay Koletzky  
Koletzky Implement Inc.  
Po Box 589  
Yankton SD 57078-

**RE: Staff's motion to consolidate complaint cases against S&S Communications**

Dear Jay:

The staff of the South Dakota Public Utilities Commission has filed the enclosed Motion to Consolidate and Notice of Motion in each of the open dockets involving a customer complaint against S&S Communications for failure to provide pre-paid telephone service. The reasons for doing this are stated in the motion. Basically, what we are trying to accomplish is to put the 145 pending complaint cases and any later-filed cases into one unified case so the Commission can see the whole picture when it makes its decision in the case and so that all complaints are treated in a uniform manner rather than piecemeal. If the Commission grants the motion, from then on, all of the complaints will be under the same new docket number, which will be CT05-005.

Please note that we have scheduled the Motion to Consolidate for hearing and decision for the Commission's regular meeting on May 10, 2005 at 9:30 A.M. CDT in Room 412 of the Capitol Building, 500 East Capitol Avenue, Pierre, SD. You have the right to attend the hearing in person, by counsel or by phone and object to the motion. If you wish to participate by phone, please call the Commission at (800) 332-1782 before May 10 to set up the call (the Commission will call you so you will not incur phone charges). If you want to just listen to the proceedings, they will be broadcast live on the Commission's website at [www.puc.sd.gov](http://www.puc.sd.gov) beginning at 9:30 A.M. on May 10. Just click on the word "LIVE" on the Commission's home page.

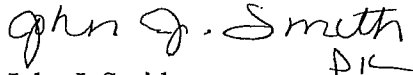
April 15, 2005

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Also, we want you to know that we have opened a companion docket, TC05-047, for the purpose of administering the bond and letter of credit proceeds that we receive (currently a total of \$150,000). In the Commission's March 17, 2005 Order Regarding Notice to Potential Claimants (copy enclosed), the Commission ordered that all complaints against S&S will also constitute claims against bond or letter of credit proceeds. As proceedings are scheduled in the bond docket, you will receive notice of them, but bringing the complaints to resolution must occur first.

Thank you for your patience. We are going to do our best to wrap this up over the next three months. If you have questions or concerns, feel free to call me, Keith Senger or Sara Greff at (800) 332-1782.

Sincerely,

A handwritten signature in cursive script that reads "John J. Smith". To the right of the signature, there is a small, handwritten mark that appears to be "DK".

John J. Smith

Attorney for Commission Staff

**STATE OF SOUTH DAKOTA  
PUBLIC UTILITIES COMMISSION**

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|                             |   |                                                  |
|-----------------------------|---|--------------------------------------------------|
|                             | ) | <b>MOTION TO CONSOLIDATE</b>                     |
| <b>IN THE MATTER OF THE</b> | ) |                                                  |
| <b>COMPLAINTS FILED BY</b>  | ) | <b>CT03-010 - CT03-096; CT03-098 - CT03-130;</b> |
| <b>CUSTOMERS OF S&amp;S</b> | ) | <b>CT03-132 - CT03-147; CT03-149 - CT03-153;</b> |
| <b>COMMUNICATIONS</b>       | ) | <b>CT03-156 - CT03-159</b>                       |
|                             | ) |                                                  |
|                             | ) |                                                  |
|                             | ) | <b>CT05-005</b>                                  |

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The staff (Staff) of the South Dakota Public Utilities Commission (Commission) moves the Commission pursuant to SDCL 15-6-42(a) for an order consolidating the pending dockets involving complaints filed by customers of S&S Communications (S&S) for loss of pre-paid telecommunications services. The dockets that Staff is requesting be consolidated are: CT03-010 through CT03-096, CT03-098 through CT03-130, CT03-132 through CT03-147, CT03-149 through CT03-153 and CT03-156 through CT03-159 (Complaints). The grounds for this motion are:

1. The Complaints are all against the same defendants and all arose out of the same subject matter, namely, the loss of telephone service on June 3, 2003 for which the Complainants had contracted with and pre-paid S&S. The Complainants' damages will all be recoverable, if at all, out of the same pool of bond and other security proceeds received by the Commission and defendant's assets. Consolidation will prevent the disparate treatment that might be afforded individual Complainants if the decisions are rendered in individual Complaints without regard to the aggregate of the Complaints and will allow the Commission to fashion its damages order to ensure fairness in awards and in the entitlement to any payments or execution in satisfaction of the award.

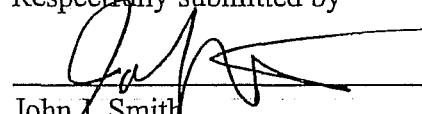
2. The Complaints involve one or more common questions of law and fact.

3. SDCI 49-13-27 only permits the joinder in one judicial proceeding to enforce a Commission damages order of those persons who were awarded damages pursuant to a single order. In likely event that the damages awarded to Complaints are not satisfied by S&S within the time afforded therefor by the Commission, in the absence of consolidation, it will be necessary for each of the individual damages orders to be filed as a separate action in circuit court in order to obtain recordable, executable judgments. It is therefore strongly in the interest of administrative and judicial economy and justice that the Complaints be considered and decided and damages awarded pursuant to a single order in a consolidated proceeding.

WHEREFORE, Staff requests that the Commission: (i) grant its Motion to Consolidate the Complaints into one docket which Staff has opened as CT05-005; (ii) order that the individual Complaint dockets shall be closed and deemed merged into the consolidated proceeding, Docket CT05-005; and (iii) order that the individual Complaint docket files shall be transferred to the consolidated docket and retained as working files in the consolidated proceeding for purposes of organizing filings pertaining to individual Complaints.

Dated this 15<sup>th</sup> day of April, 2005.

Respectfully submitted by

  
\_\_\_\_\_  
John J. Smith  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501  
ph. (605) 773-3201  
fax (605) 773-3809  
john.j.smith@state.sd.us

Attorney for Commission Staff

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

|                                                                                                                                               |                                                                           |
|-----------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| <b>IN THE MATTER OF THE PROCEEDS FROM )<br/>BONDS AND OTHER SECURITY FOR THE )<br/>BENEFIT OF CUSTOMERS OF S&amp;S )<br/>COMMUNICATIONS )</b> | <b>ORDER REGARDING<br/>NOTICE TO POTENTIAL<br/>CLAIMANTS<br/>TC05-047</b> |
|-----------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|

On March 2, 2005, the Public Utilities Commission (Commission) received a Petition from Commission Staff to open a docket for the administration and distribution of proceeds from bonds and other security (Proceeds) received by the Commission for the benefit of customers of S&S Communications (S&S). On or about June 3, 2003, S&S ceased providing wireline telecommunications service for which several hundred South Dakota customers had prepaid. On August 28, 2003, the Commission issued its final decision in Docket TC02-166 revoking S&S's certificate of authority.

In the Petition, Staff requests that the Commission issue one or more preliminary orders to establish and administer the claims procedure relative to the Proceeds. Specifically, Staff requests that the Commission issue preliminary orders to:

- a. Establish a procedure for providing notice to claimants and potential claimants of the opening of this docket and their rights and responsibilities in regard to filing claims against Proceeds.
- b. Establish a cut-off date by which all potential claimants to the Proceeds shall have filed their claims or be foreclosed from so filing.
- c. Determine that formal docketed complaints filed with the Commission by customers against S&S also constitute claims against the Proceeds.
- d. Ordering such other preliminary relief that Staff shall request in the proceeding by appropriate motion.

With respect to a final decision and order, Staff requests that the Commission issue a final order on the following issues:

- a. Determining the dollar amount of each claimant's potential entitlement to Proceeds and the fractional share of Proceeds to which each claimant is entitled.
- b. Applying the claimants' fractional shares to the amount of Proceeds then in the custody of the Commission.
- c. Providing that any Proceeds received by a claimant shall constitute a satisfaction, to the extent of such amount, of any damages order or judgment issued by the Commission or a Court against S&S arising out of the subject matter for which the Proceeds were received.
- d. Authorizing and directing the Executive Director to take necessary action to distribute Proceeds then in the custody of the Commission.
- e. Directing Staff to file motions to authorize additional distribution of Proceeds as they are received.

Finally Staff requests that the Commission order such other and further relief as the Commission deems just and proper.

At its March 8, 2005 meeting, the Commission considered the following issues: 1) whether to establish a procedure for providing notice to all potential claimants who have not yet filed of their rights and responsibilities in regard to filing claims against the Proceeds; 2) whether to establish a cut-off date by which all potential claimants to the Proceeds shall have filed their claims or be foreclosed from so filing; 3) whether to determine that formal docketed complaints filed with the Commission by customers against S&S also constitute claims against the Proceeds; and 4) whether to order any other preliminary relief at this time. The Commission has jurisdiction over this matter pursuant to SDCL chapters 49-13 and 49-31, specifically 49-13-1, 49-13-1.1, 49-13-3, 49-13-4, 49-13-5, 49-13-13, 49-13-14, 49-31-3, 49-31-7, and 49-31-7.1.

At the meeting the Commission voted to: 1) provide notice to all potential claimants by instructing Staff to mail a notice of this proceeding and the opportunity to file a claim to all of the estimated 633 S&S customers in South Dakota, and all other potential South Dakota claimants who can be located who had prepaid for services that S&S had not yet provided under prepaid service contracts; 2) establish a cut-off date of 45 days after the mailing of the notice by which all potential claimants to the Proceeds must file their claims or be foreclosed from filing a claim; and 3) find that the formal docketed complaints filed with the Commission by customers against S&S also constitute claims against the Proceeds. The Commission further directed Staff to follow-up on all notices that were unable to be delivered and to issue press releases regarding this docket. It is therefore

ORDERED, that Commission Staff shall provide notice to all potential claimants by mailing a notice of this proceeding and the opportunity to file a claim to all of the estimated 633 S&S customers in South Dakota, and all other potential South Dakota claimants who can be located who had prepaid for services that S&S had not yet provided under prepaid service contracts. Staff shall also follow-up on all notices that were unable to be delivered and to issue press releases regarding this docket; and it is

FURTHER ORDERED, that the Commission establishes a cut-off date of 45 days after the mailing of the notice by which all potential claimants to the Proceeds must file their claims or be foreclosed from filing a claim; and it is

FURTHER ORDERED, that the formal docketed complaints filed with the Commission by customers against S&S also constitute claims against the Proceeds.

Dated at Pierre, South Dakota, this 17<sup>th</sup> day of March, 2005.

**CERTIFICATE OF SERVICE**

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: Delaine Kalls

Date: 3/18/05

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Gary Hanson  
GARY HANSON, Chairman

Robert K. Sahr  
ROBERT K. SAHR, Commissioner

Dustin M. Johnson  
DUSTIN M. JOHNSON, Commissioner

