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January 11, 2006

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**FROM** Philip R. Schenkenberg  
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January 11, 2006

## VIA FAX AND U.S. MAIL

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**Re: Verizon Wireless et al. v. State of South Dakota et al.  
Court File No. 04-3014**

Dear Darla and Rolayne:

In accordance with Judge Kormann's standard operating procedures, this letter explains the nature of a motion to strike Verizon Wireless intends to file next week. We would like to file this motion on Tuesday when our reply brief is due and so would like to discuss this with you either tomorrow or on Friday morning.

Verizon Wireless intends to move to strike significant portions of Mr. Thompson's affidavit. There are two separate bases for this motion. First, Mr. Thompson purports to give testimony regarding the meaning of Chapter 284. This is improper for two reasons. First, Mr. Thompson has not been qualified as competent to provide expert testimony regarding the proper interpretation of a statute. In addition, this Court has held that extrinsic testimony concerning the Legislature's intent or how a statute should be read is inadmissible under South Dakota law. *American Meat Institute v. Barnett*, 64 F.Supp.2d 906, 915-16 (D.S.D. 1999).

Second, Verizon Wireless intends to move to strike portions of Mr. Thompson's testimony that are beyond the opinions contained in his expert report. The agreed-to Scheduling Order provided that expert reports would be exchanged by September 1, 2005. Under Fed.R.Civ.P. 26(a)(2), an expert report must contain "a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the witness in forming the opinion; any exhibits to be used as a summary of or support for the opinions. . ." There are significant portions of the Thompson affidavit that are simply not found

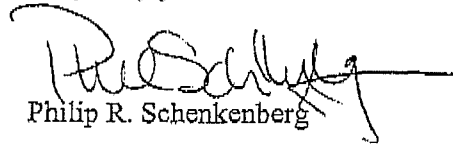
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in the expert report. That testimony should not be admitted in support of a motion for summary judgment and would be inadmissible at trial.

I have attached Mr. Thompson's affidavit, and have identified the portions that we seek to strike. I look forward to talking with you this week on this matter.

Very truly yours,



Philip R. Schenkenberg

PRS/smo

cc: Gene Lebrun

ATTACHMENT 1

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

Verizon Wireless (VAW) LLC,  
CommNet Cellular License Holding LLC,  
Missouri Valley Cellular, Inc.,  
Sanborn Cellular, Inc., and  
Eastern South Dakota Cellular, Inc.  
d/b/a VERIZON WIRELESS,

Plaintiff,

vs.

Bob Sahr, Gary Hanson, and Dusty Johnson,  
in their official capacities as the  
Commissioners of the South Dakota Public  
Utilities Commission,

Defendants,

and

South Dakota Telecommunications Ass'n  
and Venture Communications Cooperative,

Defendant Intervenors.

Civil No. 04-3014

AFFIDAVIT OF  
LARRY THOMPSON

STATE OF SOUTH DAKOTA

COUNTY OF DAVISON

1. My name is Larry D. Thompson. My business address is 1801 N. Main Street, Mitchell, South Dakota 57301. I am the Chief Executive Officer of Vantage Point Solutions, Inc. (VPS).

2. I received a Bachelors of Arts in Physics (1983) from William Jewell College, a Bachelors of Science in Electrical Engineering (1985) from the University of Kansas, and a Masters of Science in Electrical and Computer Engineering (1986) from the University of Kansas. I am a Registered Professional Engineer in South Dakota and 14 other states. I have been involved in the design and implementation of many voice, data, video, and wireless networks. I focus on assisting rural Local Exchange Carriers (RLECs) with nearly all technical and financial aspects of their operations.

3. VPS is a telecommunications and consulting firm headquartered in Mitchell, South Dakota. The client base of VPS is made up of RLECs. VPS provides engineering, financial, and regulatory services to our clients for both their wireless and wireline networks. VPS provides services to many of the RLECs in South Dakota that are SDTA member companies and I am familiar with much of their networks and operations.

4. My staff and I have performed numerous studies to determine the amount of wireless traffic that originates and terminates in different MTAs (interMTA). These studies consist of processing thousands of records to determine the amount of interMTA traffic that is being delivered to our landline RLEC clients. These studies have estimated the location of the wireless caller using either the calling party NPA-NXX from the SS7 messages or more accurately using the connecting cell site or tower location available in the wireless Call Detail Records (CDRs). The goal of these studies was to determine the amount of interMTA traffic delivered by a wireless carrier to many of our RLEC clients.

5. As described in the FCC First Report and Order,<sup>1</sup> wireless calls originating in one Major Trading Area (MTA) and terminating in the same MTA are subject to reciprocal compensation. Wireless calls that originate in one MTA and terminate in another MTA are subject to access charges. To properly bill for wireless traffic, it is necessary to also determine the amount of the interMTA traffic that is interstate and intrastate in nature.

6. I make this Affidavit in response to many of the matters and statements that were set forth in Verizon Wireless' Motion for Summary Judgment and associated Affidavits.<sup>2</sup> I am familiar with South Dakota Senate Bill SB144 as well as South Dakota Codified Laws 49-31-109 through 49-31-115. I provided testimony in both House and Senate legislative committee hearings held to address the Senate Bill. My handouts provided to the committee members as a supplement to my testimony provided during the committee hearings are attached as Exhibit LDT-1A and LDT-1B.<sup>3</sup> Matters addressed in the provisions of SB144 related to unidentified telecommunications traffic are within my personal knowledge based on my job experience.

7. The Plaintiffs claim in their Motion for Summary Judgment at paragraph 21, that "the FCC recognized...that CMRS providers were not required to ascertain whether calls are interMTA or intraMTA,"<sup>4</sup> and cite the *First Report and Order* at paragraph 1044 to support their claim. However, the very language that they emphasize does not support this claim, but instead

<sup>1</sup> *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 F.C.C.R. 15499, FCC 96-325 First Report and Order (released Aug. 8, 1996) ("*First Report & Order*").

<sup>2</sup> Verizon Wireless (VAW) LLC, et al., Plaintiff vs. Bob Sahr, et al., Defendants and Intervenors, Civil Number 04-3014, Paragraph 9, November 15, 2005.

<sup>3</sup> SDCL, 49-31-109 through 49-31-115.

<sup>4</sup> Verizon Wireless (VAW) LLC, et al., Plaintiff vs. Bob Sahr, et al., Defendants and Intervenors, Civil Number 04-3014, Paragraph 21, November 15, 2005.

indicates only that "it is not necessary for incumbent LECs or CMRS providers to be able to ascertain geographic locations when determining the rating for any particular call at the moment the call is connected." The statute does not require the wireless provider to determine the physical location of the caller when identifying the MTA in which the call originates. Verizon Wireless incorrectly believes that the South Dakota legislation requires the wireless carrier to determine the actual location of the caller when determining if the call is interMTA or intraMTA.

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This is not required by the FCC or common industry practice. The FCC stated, "For administrative convenience, the location of the initial cell site when a call begins shall be used as the determinant of the geographic location of the mobile customer."<sup>5</sup>

Thus, for purposes of categorizing traffic as either intraMTA or interMTA, it is only necessary to know the originating or connecting cell site location, not the physical location of the caller.

In his Affidavit, Jeff Harmon claims, "Because Verizon Wireless operates some cell towers that serve across MTA and/or state boundaries, Verizon Wireless could identify the MTA or state in which the call originates only by determining the physical location of the caller."<sup>6</sup> However, Verizon Wireless already must know the connecting cell site or tower location at the start of the call for its own networking and administration purposes. This information is needed by the wireless carrier for wireless call handling and handoff operations, as well as for call routing, roaming, and other network purposes.

8. Verizon Wireless would also need to know the calling party or tower location to determine appropriate taxes and Universal Service Fund contributions. All intrastate, interstate,

<sup>5</sup> *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 F.C.C.R. 15499, FCC 96-325 First Report and Order (released Aug. 8, 1996) ("*First Report & Order*"), para. 1044.

<sup>6</sup> Affidavit of Jeff Harmon, Verizon Wireless (VAW) LLC, et al., Plaintiff vs. Bob Sahr, et al., Defendants and Intervenors, Civil Number 04-3014, para. 9, November 15, 2005.

and international providers of telecommunications within the United States are required to file the FCC Form 499-A (Telecommunications Reporting Worksheet). The worksheet and associated instructions are included as Exhibit LDT-2. This form requires that these providers separately identify the portion of gross revenues that arise from interstate and international service. According to the instructions for this form, the FCC provides a safe harbor percentage of interstate revenues associated with mobile services of monthly and activation charges, as well as message charges including roaming, but excluding toll charges. However, these safe harbor percentages may not be applied to fixed local services revenues or toll service charges. All filers must report the actual amount of interstate and international revenues for these services. (For example, toll charges for itemized calls appearing on mobile telephone customer bills should be reported as intrastate, interstate or international based on the origination and termination points of the calls.)

9. Therefore, with information Verizon Wireless no doubt has concerning only the originating or connecting cell site location, not the physical location of the caller, Verizon Wireless could prepare "accurate and verifiable information, including percentage measurements that enables the terminating carrier to appropriately classify telecommunications traffic as being either local or nonlocal, and interstate or intrastate" for which the South Dakota statute allows.<sup>7</sup>

10. Jeff Harmon discusses the fields that are populated in the Initial Address Message (IAM) of a Signaling System 7 (SS7) message and states: "The mandatory SS7 fields that are automatically populated are message type, nature of connections, forward call indicators, calling party's category, user service information, and called party number."<sup>8</sup> In his affidavit, Mr.

<sup>7</sup> SDCL 49-31-110.

<sup>8</sup> Affidavit of Jeff Harmon, Verizon Wireless (VAW) LLC, et al., Plaintiff vs. Bob Sahr, et al., Defendants and Intervenors, Civil Number 04-3014, para.12, November 15, 2005.

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Harmon continues to discuss the optional SS7 message fields that Verizon utilizes as part of its standard business practices. These optional fields include the calling party number<sup>9</sup> and the Jurisdictional Information Parameter ("JIP").<sup>10</sup> Mr. Harmon indicates that Verizon follows the Alliance for Telecommunications Industry Solutions ("ATIS") Network Interconnection Interoperability Forum ("NTIF") recommendations for the data fill of the JIP parameter.<sup>11</sup> Mr.

Harmon does not address the other optional fields in the SS7 message that could be used to data fill information to assist both Verizon and other telecommunications service providers with the determination of traffic types (intraMTA, interMTA and intrastate, or interMTA and interstate) with standard AMA post-processing techniques. These optional fields include, but are not limited to, the Circuit Assignment Map parameter and the Generic Address parameter. The use of these optional fields has not been standardized by ATIS; however, they could potentially be used to address the traffic type separation issue with the proper software tools and post-processing techniques.

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11. Jeff Harmon stated, "there is no industry-standard SS7 field that Verizon Wireless could use to identify whether a call is intraMTA, interMTA and intrastate, or interMTA and interstate."<sup>12</sup> This is a correct statement, but only based on today's SS7 signaling standards. The

South Dakota legislation, however, is not limited by today's signaling standards. It is recognized in the legislation that signaling standards are constantly being changed and, furthermore, there are other provisions in the legislation that allow for originating carriers to provide separate

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<sup>9</sup> Id., at para. 15.

<sup>10</sup> Id. at para. 16.

<sup>11</sup> Id. at para. 18.

<sup>12</sup> Id. at para. 20.

information, regardless of actual signaling capabilities, that can assist in reasonably categorizing terminated telecommunications traffic.

The Ordering and Billing Forum (OBF) has been working to expand the SS7 signaling format to better identify telecommunications traffic so the terminating carrier can more accurately bill for the traffic. Many involved with the OBF would like to see the Jurisdictional Information Parameter (JIP) field in the SS7 used to identify the wireless caller's connecting tower at the start of the call. Earlier this year, the JIP was expanded to include information regarding the originating wireless switch.<sup>13</sup> This was certainly a step in the correct direction. I would expect that the use of the JIP will continue to be enhanced to provide more detailed information regarding the location of the originating wireless caller (with respect to the location of the initial tower location at the start of the call).

Furthermore, there is signaling information available to Verizon Wireless with respect to each wireless originated call that is not passed along in the SS7 message such as the trunk group number associated with the originating cell tower or the actual cell site number. For example, the Lucent Technologies SESS can identify the cell site number as part of the Automatic Message Accounting ("AMA") setup internal to the switching system per Lucent Table 2003 - Radio/Channel/Cell Information.<sup>14</sup> Similarly, the Nortel Network MTX identifies the originating trunk group from a specific cell location as a field in the AMA recording called the First Originating Trunk Common Language Location Identifier ("CLLI") field.<sup>15</sup>

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<sup>13</sup> Alliance for Telecommunications Industry Solutions, ATIS-0300011, Network Interconnection Interoperability (NIIF) Reference Document, Part III, Installation and Maintenance Responsibilities for SS7 Links and Trunks.

<sup>14</sup> Lucent Technologies Document 401-610-133 Issue 28 - Flexnet<sup>®</sup>/Autoplex<sup>®</sup> Wireless Networks Executive Cellular Processor (ECP) Release 24 pp 4-125 to 4-127

<sup>15</sup> Nortel Networks Document 411-2131-204 - MTX 12 (February 2004) - DMS-MTX CDMA/TDMA Billing Management Manual Standard Issue 11.11 p 6-147

12. Because the commonly accepted industry standards for signaling continue to evolve and are not yet adequate to quantify nonlocal traffic, SDCL 49-31-111 allows the originating carrier to "separately provide the terminating carrier with accurate information including verifiable percentage measurements that enables the terminating carrier to appropriately classify nonlocal telecommunications traffic as being either interstate or intrastate, and to assess the appropriate applicable access charges."<sup>16</sup> The form and substance of the accurate information required in this statute is not defined, except that it be adequate for the terminating carrier to appropriately classify the traffic and assess the applicable charges.

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13. Because the commonly accepted industry standards for signaling are not yet adequate to indicate the precise location of the wireless caller, wireless carriers often establish their delivered local and toll (interstate and intrastate) traffic ratios in an agreed upon contract. Normally the contract ratios are based on historical experience or using a special study. Since wireless carriers have the ability to determine the connecting tower of their wireless customer, a special study can accurately determine the local and toll (interstate and intrastate) mix for a given test period.

14. John L. Clampitt claims that the amount of interMTA traffic is "limited" on the Verizon Wireless network.<sup>17</sup> If the purpose of this statement is to imply that the issue of unidentified telecommunications traffic exchanged between wireless and wireline carriers is insignificant or inconsequential, I would disagree with the statement. Proper classification of wireless traffic is especially important for carriers operating in South Dakota, since South Dakota has three different MTAs (Minneapolis, Denver, and Des Moines). In addition, much of the

<sup>16</sup> SDCL 49-31-111.

<sup>17</sup> Affidavit of John L. Clampitt, Verizon Wireless (VAW) LLC, et al., Plaintiff vs. Bob Sahr, et al., Defendants and Intervenors, Civil Number 04-3014, Paragraph 15, November 15, 2005.

southern part of South Dakota borders the Omaha MTA. These MTA boundaries along with the RLEC territories are shown in Exhibit LDT-3. Because of this, South Dakota has a higher interMTA factor than most other states. VPS has not performed any interMTA studies for Verizon Wireless traffic.

However, some recent wireless studies have shown interMTA traffic between 10% and 35%, and some higher. Even Verizon Wireless, in more than one of its Reciprocal Transport and Termination Agreements with wireline LECs in South Dakota, has agreed to an interMTA traffic factor or ratio of 20% (of all Verizon traffic terminated by the LEC, 20% is agreed to be interMTA). It is important for South Dakota carriers to be able to accurately classify the terminating traffic to be properly compensated for the use of their networks.

15. Phantom traffic is commonly defined as traffic for which the terminating carrier is unable to determine either the carrier responsible for paying for the call or traffic where the terminating carrier is not able to determine the appropriate jurisdiction for properly rating the call. If the wireless traffic is not properly categorized by jurisdiction (intraMTA or interMTA and interstate, or interMTA and intrastate), then the wireless traffic would be considered phantom traffic. According to a National Exchange Carrier Association (NECA) news release dated April 7, 2004, it is estimated that 20% or more of telephone call minutes processed by some end office switches cannot be billed and phantom traffic could represent hundreds of millions of dollars of lost revenue to local telephone companies. Craig Bellinghausen of Verizon included a statement in his September 24, 2004, presentation regarding Phantom Traffic in which Verizon acknowledges that it is a growing concern.<sup>18</sup> According to his presentation, Verizon's

<sup>18</sup> Craig Bellinghausen, Phantom Traffic Pennsylvania Telephone Association New York State Telecommunications Association, September 24, 2004 (note that Mr. Bellinghausen made these statements as a representative of "Verizon" and not "Verizon Wireless.")

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"Measured Phantom Transit Traffic is in the 3% to 6% range. Phantom Calls Terminating on Verizon's network is in the 12% to 15% range. Bottom Line: Significant Issue at Verizon."

This presentation has been included as Exhibit LDT-4.

16. Mr. Clampitt claims that Verizon Wireless does not today have the capability to measure traffic for intercarrier compensation purposes and does not have the ability to generate reports that would identify traffic as intraMTA/interMTA and intrastate/interstate.<sup>19</sup> He also refers to "technical limitations and costs"<sup>20</sup> as the reason Verizon Wireless does not provide the signaling information or reports needed.

As with other wireless carriers, I believe Verizon Wireless providers, with the proper software tools and post-processing techniques, have the ability to comply with the state statutes by generating Call Detail Records (CDRs) for wireless originated calls not handled by an Interexchange Carrier (IXC) that include the connecting tower at the start of the call, the called party number, the call date, and call duration. Using this information, Verizon Wireless or the terminating carrier could process the CDRs to determine the interMTA factor.

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17. Mr. Harrop admits that there are systems and services that can measure and bill interMTA traffic.<sup>21</sup> This seems contrary to the other affidavits that try to establish that the measurement of interMTA traffic is not possible with the Verizon Wireless network. VPS has recently worked with another wireless carrier in South Dakota to extract the required signaling information from the wireless network. VPS processed this data to determine the actual

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<sup>19</sup> Id. at para. 16.

<sup>20</sup> Id. at para. 20.

<sup>21</sup> Affidavit of Edward A. Harrop, Verizon Wireless (VAW) LLC, et al., Plaintiff vs. Bob Sahr, et al., Defendants and Intervenors, Civil Number 04-3014, Paragraph 3, November 11, 2005.

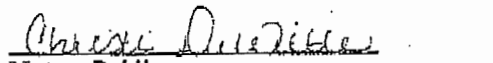
interMTA factor for the test period. In addition to determining the interMTA factor, the amount of interstate and intrastate traffic was also determined.

18. Verizon has also publicly offered suggestions as to how the industry should work together regarding phantom traffic. These suggestions included establishing industry standards, such as an interMTA record field, and seeking "legislation requiring that certain data legally must be passed on traffic."<sup>22</sup>

Dated this 22 day of December, 2005.

  
By Larry Thompson, CEO  
Vantage Point Solutions, Inc.

Subscribed and Sworn to me this 22<sup>nd</sup> day of December, 2005.

  
Notary Public  
My Commission Expires: 08/28/2008

<sup>22</sup>Craig Bellinghausen, Phantom Traffic Pennsylvania Telephone Association, New York State Telecommunications Association, September 24, 2004.