UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN 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. STATE OF SOUTH DAKOTA, SOUTH DAKOTA PUBLIC UTILITIES COMMISSION, AND Bob Sahr, Gary Hanson, and Jim Burg, in their official capacities as the Commissioners of the South Dakota Public Utilities Commission, Defendants.	)	Civil No. _____ **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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 (collectively "Verizon Wireless"), by and through their attorneys, hereby bring this action for declaratory and injunctive relief against defendants State of South Dakota ("State"), the South Dakota Public Utilities Commission ("PUC") and Commissioners Bob Sahr, Gary Hanson, and Jim Burg (in their official capacities and not as individuals). In support of this Complaint, Verizon Wireless states as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Verizon Wireless (VAW) LLC is a Delaware limited liability corporation with its principal place of business at 180 Washington Valley Road, Bedminster, NJ 07921.

2. Plaintiff CommNet Cellular License Holding LLC is a Colorado limited liability corporation with its principal place of business at 180 Washington Valley Road, Bedminster, NJ 07921.

3. Plaintiff Missouri Valley Cellular, Inc. is a South Dakota corporation with its principal place of business at 180 Washington Valley Road, Bedminster, NJ 07921.

4. Plaintiff Sanborn Cellular, Inc. is a South Dakota corporation with its principal place of business at 180 Washington Valley Road, Bedminster, NJ 07921.

5. Plaintiff Eastern South Dakota Cellular, Inc. is a South Dakota corporation with its principal place of business at 180 Washington Valley Road, Bedminster, NJ 07921.

6. Verizon Wireless (VAW) LLC, CommNet Cellular License Holding LLC, Missouri Valley Cellular, Inc., Sanborn Cellular, Inc., and Eastern South Dakota Cellular all provide wireless telecommunications services in South Dakota under the "Verizon Wireless" brand name. Verizon Wireless, though its subsidiaries and affiliates, provides wireless service to more than 38 million customers in 49 states.

7. Defendant State is the State of South Dakota.

8. Defendant PUC is an agency of the State of South Dakota.

9. Defendant Bob Sahr is the Chairman of the PUC. Chairman Sahr is sued in his official capacity for declaratory and injunctive relief.

10. Defendant Gary Hanson is a Commissioner of the PUC. Commissioner Hanson is sued in his official capacity for declaratory and injunctive relief.

11. Defendant Jim Burg is a Commissioner of the PUC. Commissioner Burg is sued in his official capacity for declaratory and injunctive relief.

12. This court has subject matter jurisdiction of the action pursuant to 28 U.S.C. § 1331.

13. Venue is proper in this District under 28 U.S.C. § 1391(b) because the Defendants reside in this District and because a substantial part of the events giving rise to this action occurred in this District.

SUMMARY OF CLAIMS

14. Verizon Wireless seeks an order that federal law preempts South Dakota Senate Bill No. 144, which was published as Chapter 284 of the 2004 Session Laws ("Chapter 284") and was codified as SDCL §§ 49-31-109 to 49-31-115. Chapter 284 imposes certain requirements on Verizon Wireless as it provides wireless telecommunications services in the State.

15. In conjunction with its provision of wireless service in South Dakota, Verizon Wireless sends and receives telecommunications calls to and from state regulated landline telephone companies, which are referred to as local exchange carriers ("LECs"). Chapter 284, in conflict with the Federal Communications Act and regulations adopted by the Federal Communications Commission ("FCC"), obligates Verizon Wireless to measure and transmit certain information on calls made by its customers to customers of LECs. Based on this information, LECs are authorized to bill and collect compensation from Verizon Wireless. If such information is not delivered, Chapter 284 authorizes LECs to bill and collect at per-minute rates higher than what is authorized under federal law.

16. By imposing these requirements and authorizing LECs to charge high per-minute rates, the State has regulated Verizon Wireless' entry into the market, and exceeded its limited authority under Federal law to supervise compensation arrangements between wireless carriers and LECs. In addition, the regulations imposed in Chapter 284 conflict with the regulation of inter-carrier compensation established by Congress and the FCC.

FEDERAL REGULATORY AUTHORITY OVER COMMERCIAL MOBILE RADIO SERVICE

17. Verizon Wireless provides commercial mobile service as defined in 47 U.S.C. § 332, and commercial mobile radio services ("CMRS") as defined in 47 C.F.R. § 20.3. Verizon Wireless provides its services under the regulatory jurisdiction of the FCC.

18. In the late 1970s, the FCC launched an exhaustive rulemaking proceeding concerning wireless telecommunications services and created a comprehensive regulatory structure for the new telecommunications medium. Because "state and local regulations might conflict with and thereby frustrate" federal policies, the FCC exercised "federal primacy" over several key aspects of cellular service. In re An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems, 86 F.C.C.2d 469, at ¶¶ 79, 82 (1981). The basis for this preemptive authority was found in the longstanding federal authority over the radio spectrum and the FCC's regulation of entry qualifications for wireless service providers:

> Title III of the Communications Act of 1934 . . . provides us with adequate authority to assert federal primacy to the extent set forth above. In addition, the federal plan for provision of cellular service set forth in our Order, principally the goal of introducing nationwide compatible cellular service without undue delay, and the fact that cellular systems are to be interconnected with the

> public landline telephone network and capable of providing interstate as well as intrastate communications, provides a further basis for this Commission asserting federal primacy over licensing of cellular facilities. *Our assertion of federal primacy focuses on entry qualifications* . . . .

In re An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems, 89 F.C.C.2d 58, ¶ 84 (1982) (footnote omitted) (emphasis added) (hereinafter "Cellular Communications Sys.").

19. In 1993, Congress amended Section 332 of the Communications Act (47 U.S.C. § 332) to extend the FCC's authority over CMRS even further by preempting state regulation of entry and rates for CMRS providers. 47 U.S.C. § 332(c)(3)(A).[1] In addition, the 1993 Act specifically established that carriers have a right to interconnect with LECs in order to exchange traffic, and established that CMRS interconnection matters are subject to regulation by the FCC. *Id.* at § 332(c)(1)(B). The FCC implemented the 1993 Act by requiring LECs and CMRS providers to pay each other reciprocal compensation for the exchange of traffic. *See* 47 C.F.R. § 20.11.

20. Congress granted the FCC federal primacy in to order to prevent patchwork regulation of CMRS, which Congress feared would substantially impede the roll-out of CMRS. In re Wireless Tel. Radio Frequency Emissions Prods. Liab. Litig., 216 F. Supp. 2d 474, 483 (D. Md. 2002) ("In promulgating licensing and technical rules to govern wireless service, one of the FCC's overriding goals is to design cellular service in a manner that will achieve nationwide compatibility."). Thus, the FCC held in 1982 that "[i]t is imperative that no additional

[1] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b)(2)(A), 6002(b)(2)(B), 107 Stat. 312, 392 (1993) ("1993 Act").

requirements be imposed by the states which could conflict with our standards and frustrate the federal scheme for the provision of nationwide cellular service." Cellular Communications Sys., 89 F.C.C.2d at ¶ 81.

FEDERAL AUTHORITY OVER MARKET ENTRY

21. Section 332(c)(3)(A) of the Communications Act preempts states from regulating the entry of providers of CMRS. As a result, the terms on which a CMRS provider may offer service in a market are the exclusive province of federal regulators. *See Bastien v. AT&T Wireless Services, Inc.*, 205 F.3d 983 (7th Cir. 2000).

22. Verizon Wireless holds licenses issued by the FCC, which licenses entitle it to provide CMRS in the state of South Dakota. The FCC has defined CMRS as follows:

> *Commercial Mobile Radio Service.* A mobile service that is:
>
> > (a)(1) provided for profit, i.e., with the intent of receiving compensation or monetary gain;
> > (2) An interconnected service; and
> > (3) Available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or
> > (b) The functional equivalent of such a mobile service described in paragraph (a) of this section.

47 C.F.R. § 20.3.

23. The FCC has further defined an "interconnected service" to include a service:

> That is interconnected with the public switched network, or interconnected with the public switched network through an interconnected service provider, that gives subscribers the capability to communicate to or receive communication from all other users on the public switched network.

47 C.F.R. § 20.3.

24. In South Dakota, Verizon Wireless is interconnected to the public switched network through physical connections it has with Qwest Communications. These connections

allow Verizon Wireless to provide an "interconnected service" to its customers as part of its provision of CMRS.

FEDERAL AUTHORITY OVER INTERCONNECTION UNDER THE 1996 TELECOMMUNICATIONS ACT

25. In the 1996 Telecommunications Act,[2] Congress imposed certain new obligations on all LECs with respect to interconnection and compensation, *see* 47 U.S.C. §§ 251(a), (b)(5), and the FCC adopted extensive rules interpreting these provisions. *See* 47 C.F.R. §§ 51.701-51.717. To the extent these rules applied to interconnections and compensation between CMRS providers and LECs, the FCC's authority to promulgate these rules came from the 1996 Act, as well from Section 332 of the 1993 Act. The federal appellate courts have confirmed the FCC's exclusive authority to establish rules for interconnection and compensation between CMRS providers and LECs, both for interstate and intrastate traffic. *See, e.g., Iowa Utils. Bd. v. FCC,* 120 F.3d 753, 800 n. 21 (8th Cir. 1997), *rev'd on other grounds, AT&T Corp. v. Iowa Utils. Bd.,* 525 U.S. 366, 119 S. Ct. 721 (1999).

26. The 1996 Act provides that carriers must either voluntarily negotiate the terms of interconnection and compensation agreements, or they may submit disputes related to these matters to the relevant state commission for arbitration. *See* 47 U.S.C. § 252(a) & (b). Carriers that reach voluntarily-negotiated agreements may depart from the FCC's rules, and the Act precludes state commissions from dictating the terms of these agreements except to ensure that they are nondiscriminatory and consistent with the public interest. *See* 47 U.S.C. § 252(e)(2)(A).

27. If parties instead submit unresolved interconnection and compensation terms to the state commission for arbitration, the state must resolve all issues "consistently with the

[2] The Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. §§ 151 *et seq.*) ("1996 Act").

requirements of section 251 of [the Act], including the regulations prescribed by the [FCC]." *Id.* § 252(e)(2)(B). While the 1996 Act provides that states are permitted to adopt additional requirements of their own, Congress explicitly provided that any such requirements are permissible only insofar as they are "consistent with the requirements of" section 251 and do not "substantially prevent [its] implementation." 47 U.S.C. §§ 251(d)(3)(B), (C); *see also id.* § 261(c).

28. In August of 1996, the FCC adopted its *First Report & Order,*[3] implementing the inter-carrier compensation provisions of Section 251 of the 1996 Telecommunications Act. Specifically, the FCC exercised its broad oversight over CMRS to establish specific compensation rules that apply under Section 251 of the Act when CMRS carriers and LECs exchange traffic. The FCC thus exercised its authority to determine the area in which CMRS providers and LECs should pay each other cost-based "reciprocal compensation" as required by 47 U.S.C. § 251(b)(5). The FCC held that because CMRS service areas are "federally authorized" and vary in size from typical wireline exchange areas, the definition of "local" traffic for CMRS carriers should be based on a CMRS service area. The FCC selected the largest CMRS license area, which is called a Major Trading Area ("MTA"), to be the geographic scope of a "local" area for calls to or from a CMRS network. *See* 47 C.F.R. § 51.701(a)(2) (defining local telecommunications traffic exchanged between a LEC and CMRS carrier as traffic that "at the beginning of the call, originates and terminates within the same Major Trading Area."); *First Report & Order*, ¶ 1036.

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[3] *In the Matter of Implementation of the Local Competition Provisions of the Telecomms. Act of 1996*, CC Docket No. 96-98, 11 F.C.C.R. 15499, FCC 96-325 First Report and Order (rel. Aug. 8, 1996) (*"First Report & Order"*).

29. Within an MTA, then, compensation between LECs and CMRS providers was to be at cost-based reciprocal compensation rates: "traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5) [i.e, reciprocal compensation], rather than interstate and intrastate access charges." *First Report & Order*, ¶ 1036; *see also id.* ¶ 1043 (same).

30. In paragraph 1044 of the *First Report & Order*, the FCC recognized that it might be difficult for CMRS providers to determine which calls originated by their customers were intraMTA, because it is not always possible to tell from the traffic records the carriers exchange which cell site a mobile customer is connected to, let alone the customer's specific geographic location. The FCC determined, however, that "it was not necessary for incumbent LECs and CMRS providers to be able to ascertain geographic locations when determining the rating for any particular call at the moment the call is connected." *Id.* The FCC recognized that the technology that might permit such location identification could not be readily implemented and could be burdensome, and thus instead explicitly allowed CMRS providers to calculate their compensation obligations on a negotiated basis, or by extrapolating from traffic studies and samples. *Id.*

CHAPTER 284 OF SOUTH DAKOTA 2004 SESSION LAWS

31. In 2004, the South Dakota Legislature enacted Session Laws Chapter 284 (Senate Bill No. 144), which was codified as SDCL §§ 49-31-109 to 49-31-115. Chapter 284 is attached hereto as Exhibit 1.

32. Chapter 284 requires CMRS providers to transmit certain information as calls are delivered to other telecommunications carriers. Such call information includes, among other things, the MTA in which the call was initiated. Chapter 284 requires this information to be

transmitted for the purpose of determining the jurisdiction of a call as either a "local" call subject to cost-based reciprocal compensation payments, or as non-local calls subject to above-cost access rates.

33. Chapter 284 further provides that if a CMRS provider does not transmit the required call information, a LEC is authorized to charge the CMRS provider above-cost intrastate access rates for every call, even if the call is in fact "local" under federal law and thus not subject to access rates.

34. Verizon Wireless exchanges traffic in South Dakota in accordance with interconnection agreements it has in place with approximately 45 LECs. These agreements govern compensation obligations between carriers and have been voluntarily negotiated and approved by the PUC in accordance with 47 U.S.C. § 252(e). None of these agreements obligates Verizon Wireless to provide the type of call information required by Chapter 284. Most of those agreements are currently in evergreen status, and thus have no fixed expiration date. Verizon Wireless continues to negotiate interconnection agreements with LECs in South Dakota. No individual plaintiff has voluntary traffic exchange agreements with every LEC in South Dakota.

35. Verizon Wireless is incapable of measuring and transmitting the information required by Chapter 284. Verizon Wireless's network is not able to identify and transmit the location data Chapter 284 requires.

36. The FCC's orders specifically relieve Verizon Wireless from any obligation to provide the type of call information required by Chapter 284, and further provide Verizon Wireless with an unconditional right to exchange traffic with other LECs and, with respect to traffic that originates or terminates within the same MTA, to pay reciprocal compensation rates

and not higher access rates. If enforced, Chapter 284 would authorize LECs in South Dakota to penalize Verizon Wireless by charging it above-cost state access rates for calls that under federal law are subject to lower interstate access rates or cost-based reciprocal compensation. Chapter 284 thus will increase the costs of providing service in South Dakota for Verizon Wireless, requiring it to develop and implement costly technology that has no purpose other than serving a regulatory obligation. Alternatively, Verizon Wireless will always pay intrastate access rates for local calls its customers originate because Verizon Wireless will not be in a position to provide information to identify the originating location of individual calls. Because these costs would seriously affect a key component of providing service in South Dakota for Verizon Wireless, and impose a requirement as a condition for doing business in the State, Chapter 284 amounts to impermissible regulation of the terms of entry for CMRS carriers in the South Dakota market, in violation of 47 U.S.C. § 332(c)(3)(A).

37. In addition, the FCC has granted Verizon Wireless the authority to access to the public switched network without requiring it to implement the technical and operational requirements set forth in Chapter 284. By conditioning Verizon Wireless' access to the public switched network on conditions not imposed by the FCC, the State has unlawfully regulated Verizon Wireless' entry into the market.

38. In addition, Chapter 284 conflicts with the Section 251, and is directly inconsistent with the FCC's rules for LEC-CMRS interconnection and compensation under Section 332(c)(1)(B) of the Act and the FCC's rules and orders. It is therefore preempted by the 1996 Act.

39. Chapter 284 also may conflict with section 251 of 252 of the Act, to the extent it is read to preclude CMRS carriers from entering into agreements with LECs that differ from the terms of Chapter 284.

40. Verizon Wireless requests declaratory relief from the Court that Chapter 284 is preempted to the extent it conflicts with federal law.

41. Verizon Wireless also seeks to permanently enjoin defendants PUC and its Commissioners from acting on any complaint filed against Verizon Wireless based on Chapter 284, ordering any payments to be made by Verizon Wireless based on Chapter 284, or promulgating rules in accordance with Chapter 284 that would apply to Verizon Wireless.

CLAIMS FOR RELIEF

COUNT I: Declaratory Relief

Violation of U.S. Constitution, Article VI (Supremacy Clause)

42. Verizon Wireless incorporates by reference the preceding paragraphs as though fully set forth herein.

43. Verizon Wireless requests a declaration that Chapter 284 is preempted by 47 U.S.C. § 332 and 47 C.F.R. § 20.11 to the extent that it permits LECs to impose above-cost access rates for CMRS-LEC traffic that originates and terminates in the same MTA.

44. Verizon Wireless further requests a declaration that Chapter 284 is preempted by 47 U.S.C. § 332 and 47 C.F.R. § 20.11 to the extent it seeks to establish state standards for compensation between CMRS providers and LECs.

COUNT II: Declaratory Relief

Violation of U.S. Constitution, Article VI (Supremacy Clause)

45. Verizon Wireless incorporates by reference the preceding paragraphs as though fully set forth herein.

46. Verizon Wireless requests a declaration that Chapter 284 interferes with and thus is preempted by 47 U.S.C. §§ 251 and 252, which require that issues regarding exchange of telecommunications and compensation between carriers be addressed through carrier negotiations, subject to binding arbitration governed by the standards in 47 U.S.C. § 252.

COUNT III: Declaratory Relief

Violation of U.S. Constitution, Article VI (Supremacy Clause)

47. Verizon Wireless incorporates by reference the preceding paragraphs as though fully set forth herein.

48. Verizon Wireless requests a declaration that Chapter 284 is preempted by 47 U.S.C. § 252 and does not apply where parties have voluntarily entered into interconnection agreements establishing compensation obligations between the parties that do not depend on or require the exchange of call information like that required in Chapter 284.

COUNT IV: Declaratory Relief

Violation of U.S. Constitution, Article VI (Supremacy Clause)

49. Verizon Wireless incorporates by reference the preceding paragraphs as though fully set forth herein.

50. Verizon Wireless requests a declaration that Chapter 284 unlawfully imposes conditions on Verizon Wireless' entry in the CMRS market in violation of 47 U.S.C. § 332.

COUNT V: Injunctive Relief

Violation of U.S. Constitution, Article VI (Supremacy Clause)

51. Verizon Wireless incorporates by reference the preceding paragraphs as though fully set forth herein.

52. Verizon Wireless seeks to permanently enjoin Defendants PUC and its Commissioners from acting on any complaint filed against Verizon Wireless in accordance with

Chapter 284 or from authorizing any payments or other type of relief against Verizon Wireless in accordance with Chapter 284.

53. Verizon Wireless also seeks to permanently enjoin Defendants PUC and its Commissioners from promulgating any rules pursuant to Chapter 284 in those areas preempted by federal law.

WHEREFORE, Verizon Wireless prays that the Court enter an order:

1. Declaring that to the extent Chapter 284 establishes obligations regarding the exchange of telecommunications and compensation between CMRS providers and LECs, Chapter 284 is preempted by 47 U.S.C. §§ 251, § 332, and 47 C.F.R. § 20.11.

2. Declaring the State's only authority to establish obligations regarding the exchange of telecommunications and compensation between CMRS providers and LECs is by acting in accordance with 47 U.S.C. §§ 251 and 252, and Chapter 284 is in conflict with those provisions of Federal law;

3. Declaring that Chapter 284 in any event does not apply where parties have voluntarily entered into interconnection agreements establishing compensation obligations between the parties that do not depend on or require the exchange of the call information required by Chapter 284;

4. Enjoining Defendants PUC and its Commissioners from acting on any complaint against Verizon Wireless or authorizing any payments or other type of relief against Verizon Wireless under the Chapter 284;

5. Enjoining Defendants PUC and its Commissioners from promulgating any rules pursuant to the Chapter 284 regarding matters preempted by federal law;

6. Declaring that to the extent Chapter 284 regulates the entry of CMRS providers into the South Dakota market, Chapter 284 is preempted by 47 U.S.C. § 332; and

7. Granting Verizon Wireless such further relief as the Court may deem just and equitable.

Dated this 6th day of August, 2004.

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.

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ATTORNEYS FOR PLAINTIFFS

49-31-109. Definitions

Terms used in §§ 49-31-109 to 49-31-115, inclusive, mean:

(1) "Interexchange carrier," a telecommunications carrier providing nonlocal telecommunications services;

(2) "Local telecommunications traffic," any wireline to wireline telecommunications traffic that originates and terminates in the same wireline local calling area or wireline to wireless telecommunications traffic that originates within and is delivered to an actual point of presence established by a wireless service provider in the same wireline local calling area. Local telecommunications traffic also includes any wireless to wireline telecommunications traffic that originates and terminates in the same major trading area as defined in 47 CFR § 24.202(a) as of January 1, 2004;

(3) "Nonlocal telecommunications traffic," any wireline to wireline telecommunications traffic that originates in one wireline local calling area and terminates in another wireline local calling area and wireline to wireless telecommunications traffic that originates in one wireline local calling area and is delivered to an actual point of presence established by a wireless service provider in another wireline local calling area. Nonlocal telecommunications traffic also includes any wireless to wireline telecommunications traffic that originates in one major trading area and terminates in another major trading area;

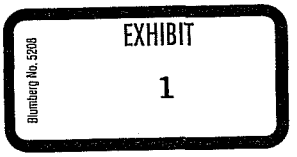
(4) "Originating carrier," a telecommunications carrier whose network or service is used by a customer to originate telecommunications traffic. An originating carrier may be a wireline or wireless carrier transmitting local telecommunications traffic or an interexchange carrier transmitting nonlocal telecommunications traffic;

(5) "Terminating carrier," a telecommunications carrier upon whose network telecommunications traffic terminates to the called party;

(6) "Transiting carrier," a telecommunications carrier that does not originate or terminate telecommunications traffic, but either switches or transports traffic, or both, between an originating carrier and a terminating carrier;

(7) "Transit traffic," telecommunications traffic that an originating carrier has delivered to a transiting carrier or carriers for delivery to a terminating carrier.

Source: SL 2004, ch 284, § 1.



49-31-110. Local telecommunications traffic signaling information required to be provided by originating carrier to terminating carrier to assess charges

If necessary for the assessment of transport and termination charges pursuant to 47 U.S.C. § 251(b)(5) as of January 1, 2004, an originating carrier of local telecommunications traffic shall, in delivering its traffic, transmit signaling information in accordance with commonly accepted industry standards giving the terminating carrier information that is sufficient to identify, measure, and appropriately charge the originating carrier for services provided in terminating the local telecommunications traffic. If the originating carrier is delivering both local and nonlocal telecommunications traffic, the originating carrier shall separately provide the terminating carrier with 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, and to assess the appropriate applicable transport and termination or access charges. If accurate and verifiable information allowing appropriate classification of the terminated traffic is not provided by the originating carrier, the terminating carrier may classify all unidentified traffic terminated for the originating carrier as nonlocal telecommunications traffic for service billing purposes.

Source: SL 2004, ch 284, § 2.

49-31-111. Nonlocal telecommunications traffic signaling information required to be provided by originating carrier to terminating carrier to assess charges

An originating carrier of nonlocal telecommunications traffic shall, in delivering its traffic, transmit signaling information in accordance with commonly accepted industry standards giving the terminating carrier information that is sufficient to identify, measure, and appropriately charge the originating carrier for services provided in terminating the nonlocal telecommunications traffic. If the originating carrier is delivering both intrastate and interstate nonlocal telecommunications traffic, the originating carrier shall 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. If accurate and verifiable information allowing appropriate classification of the telecommunications traffic is not provided by the originating carrier, the terminating carrier may classify all unidentified nonlocal telecommunications traffic terminated for the originating carrier as intrastate telecommunications traffic for service billing purposes.

Source: SL 2004, ch 284, § 3.

49-31-112. Transiting carrier required to deliver signaling information with telecommunications traffic--Liability for failure to deliver

A transiting carrier shall deliver telecommunications traffic to the terminating carrier by means of facilities and signaling protocols that enable the terminating carrier to receive from the originating carrier all signaling information, as required by §§ 49-31-110 and 49-31-111, the originating carrier transmits with its telecommunications traffic. If any transiting carrier fails to deliver telecommunications traffic to another transiting carrier or to the terminating carrier with all of the signaling information transmitted by the originating carrier as required by §§ 49-31-110 and 49-31-111, and this results in telecommunications traffic that is not identifiable and therefore not billable by the terminating carrier to the appropriate originating carrier, the transiting carrier is liable to the terminating carrier for the transport and termination or access compensation relating to the traffic that cannot be identified and billed to the appropriate originating carrier.

Source: SL 2004, ch 284, § 4.

49-31-113. Transit traffic or billing records to be provided by transiting carrier

Upon the request of a terminating carrier, the transiting carrier shall provide detailed transit traffic records or billing records related to the telecommunications traffic delivered to the terminating carrier.

Source: SL 2004, ch 284, § 5.

49-31-114. Complaint procedure--Provisional remedies

Any telecommunications carrier damaged by noncompliance with the provisions of §§ 49-31- 109 to 49-31-115, inclusive, may file a complaint with the commission pursuant to the provisions of chapter 49-13. If a complaint is filed seeking enforcement of any of the provisions in §§ 49-31-109 to 49-31-115, inclusive, the commission is authorized to order interim payments to the damaged party or other appropriate relief pending the final resolution of the complaint proceeding.

Source: SL 2004, ch 284, § 6.

49-31-115. Promulgation of rules

The commission may promulgate rules pursuant to chapter 1-26 for the purpose of implementing the provisions of §§ 49-31-109 to 49-31-115, inclusive. The rules may address:

(1) Defining the terms used in §§ 49-31-109 to 49-31-115, inclusive;

(2) Signaling information requirements;

(3) Carrier information necessary to appropriately classify telecommunications traffic;

(4) The handling of complaints filed by carriers under §§ 49-31-109 to 49-31- 115, inclusive; and

(5) Transit traffic records.

Source: SL 2004, ch 284, § 7.