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November 15, 2005

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Rolayne Ailts Wiest
South Dakota Public Utilities Commission
500 East Capitol
Pierre, South Dakota 57504-5070

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

Dear Counsel:

Enclosed and served upon you please find the following documents in connection with the above-referenced matter:

- Plaintiffs' Motion for Summary Judgment;
- Plaintiffs' Memorandum of Law in Support of Motion for Summary Judgment;
- Affidavit of Philip R. Schenkenberg;
- Affidavit of Jeff Harmon;
- Affidavit of John Clampitt;
- Affidavit of Edward A. Harrop;
- Affidavit of Doug Miller (with confidential exhibits filed under seal per Protective Order); and
- Proposed Order.

Very truly yours,

Philip R. Schenkenberg

PRS/smo
Enclosures
cc: Charon Philips
Gene Lebrun

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November 15, 2005

Ms. Kathy Hammond
United States Clerk of Court
225 South Pierre Street
Suite 405
Pierre, South Dakota 57501

Re: Verizon Wireless, et al. v. State of South Dakota, et al.
Court File No. 04-03014

Dear Ms. Hammond:

Enclosed for filing in connection with the above matter please find an original and one copy of each of the following documents:

- Plaintiffs' Motion for Summary Judgment;
- Plaintiffs' Memorandum of Law in Support of Motion for Summary Judgment;
- Affidavit of Philip R. Schenkenberg;
- Affidavit of Jeff Harmon;
- Affidavit of John Clampitt;
- Affidavit of Edward A. Harrop;
- Affidavit of Doug Miller (with confidential exhibits filed under seal per Protective Order); and
- Proposed Order.

Very truly yours,

Philip R. Schenkenberg

PRS/smo
Enclosures
cc: Charon Phillips
Gene Lebrun
Counsel of Record

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

Verizon Wireless (VAW) LLC, et al., Plaintiff, vs. Bob Sahr, et al., Defendants and Intervenors.	Civil Number 04-3014 **PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

TO: Defendants Bob Sahr, Gary Hanson, and Dustin Johnson, in there official capacities as the Commissioners of the South Dakota Public Utilities Commission and their attorney, Rolayne Ailts Wiest, Assistant Attorney General, South Dakota Public Utilities Commission, 500 East Capitol, Pierre, SD, 57501 and Intervenors South Dakota Telecommunications Ass'n and Venture Communications Cooperative and their attorneys, Darla Pollman Rogers and Margo D. Northrup, Riter, Rogers, Wattier & Brown, LLP, P.O. Box 280, Pierre, SD 57501.

PLEASE TAKE NOTICE Plaintiffs 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") will move, and hereby do move, the Court for Summary Judgment pursuant to Fed. R. Civ. P. 56(a). This Motion is accompanied by an appended statement of material facts as required by Local Rule 56.1(B) (Appendix A), affidavits of Jeff Harmon, John Clampitt, Doug Miller, Ed Harrop, and Philip Schenkenberg, and a memorandum of law, and a copy of SDCL §§ 49-31-110 through 115 (Appendix B).

Verizon Wireless moves for order as follows:

(1) Declaring that SDCL § 49-31-110 is preempted by 47 C.F.R. § 20.11 and the Federal Communications Commission's ("FCC") *T-Mobile Order*[1] because it allows a South Dakota local exchange carrier ("LEC") to bill a commercial mobile radio service ("CMRS") provider under its tariffs for calls that originate and terminate in the same major trading area ("MTA") rather than through an interconnection agreement or request for agreement under 47 C.F.R. § 20.11(e);

(2) Declaring that SDCL § 49-31-110 is preempted by 47 C.F.R. § 51.701 and the FCC's *First Report & Order*[2] because it authorizes LECs to charge access rates for CMRS calls that originate and terminate in the same MTA;

(3) Declaring that SDCL §§ 49-31-110 and 111 are preempted because they require a CMRS provider to identify, measure, or report calls that are interMTA;

(4) Declaring that SDCL §§ 49-31-110 and 111 are preempted because they establish intercarrier compensation obligations for CMRS providers outside of the negotiation and arbitration process Congress enacted in 47 U.S.C. § 252 and the FCC's rules;

(5) Declaring that SDCL §§ 49-31-110 and 111 are preempted because they reach interstate traffic that is subject to exclusive jurisdiction of Congress and the FCC; and

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[1] *In the Matter of Developing a United Intercarrier Compensation Regime*, CC Docket 01-92, 20 F.C.C.R. 4855 Declaratory Ruling and Report and Order (rel. Feb. 24, 2005) ("*T-Mobile Order*").

[2] *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 (1996) ("*First Report & Order*").

(6) Enjoining the Commissioners of the South Dakota Public Utilities Commission from taking any action to enforce or implement the preempted provisions under SDCL §§ 49-31-114 and 115.

REQUEST FOR ORAL ARGUMENT

In accordance with Local Rule 7.1, Verizon Wireless respectfully requests oral argument on this motion.

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

DATED this 11th day of November, 2005

By: _____

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APPENDIX A TO MOTION
STATEMENT OF FACTS PURSUANT TO LOCAL RULE 56.1(B)

I. PARTIES

1. Plaintiffs Verizon Wireless (VAW) LLC, CommNet Cellular License Holding LLC, Missouri Valley Cellular, Inc., Sanborn Cellular, Inc., and Eastern South Dakota Cellular (collectively "Verizon Wireless") all provide wireless telecommunications services in South Dakota under the "Verizon Wireless" brand name. Verizon Wireless, through its subsidiaries and affiliates, provides wireless service to more than 38 million customers in 49 states. In conjunction with its provision of wireless telecommunications services 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"). Clampitt Aff. ¶¶ 3-4.

2. Defendants Bob Sahr, Gary Hanson, and Dustin Johnson are Commissioners of the South Dakota Public Utilities Commission ("PUC"). These defendants are sued in their official capacity.

3. Defendant Intervenor South Dakota Telecommunications Associations ("SDTA") is a South Dakota corporation whose members consist of LECs in South Dakota. Motion to Intervene as Defendants, p. 2 (filed October 1, 2004).

4. Defendant Intervenor Venture Communications Cooperative ("Venture") is one of the member LECs of SDTA and is a non-profit organization that provides telecommunication services in central and northeastern South Dakota. *Id.*

II. VERIZON WIRELESS' NETWORK AND SERVICES

5. Verizon Wireless provides commercial mobile services 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 this mobile wireless service under the regulatory jurisdiction of the Federal Communications Commission ("FCC"). Clampitt Aff. ¶ 5.

6. Verizon Wireless (VAW) LLC, CommNet Cellular License Holding LLC, Missouri Valley Cellular, Inc., Sanborn Cellular, Inc., and Eastern South Dakota Cellular hold FCC licenses that cover the majority of the state of South Dakota. Clampitt Aff. ¶ 6.

7. Verizon Wireless provides service in accordance with its licenses by using network facilities that include cell towers, leased transmission facilities, and switches. A call made by a Verizon Wireless customer is picked up by a cell tower, delivered on leased transmission facilities to a switch, and then routed to the carrier serving the person being called. Clampitt Aff. ¶ 7.

8. Verizon Wireless operates 90 cell towers that are physically located in South Dakota. Some South Dakota cell towers that are near a state border serve portions of other states. Verizon Wireless also operates cell towers in neighboring states and some of those towers serve portions of South Dakota. Miller Aff. ¶ 3.

9. Verizon Wireless operates a switch in Sioux Falls, South Dakota (referred to as a "mobile switching center" or "MSC") that processes all calls originated or terminated through Verizon Wireless cell towers that are physically located in South Dakota. The Sioux Falls MSC also processes calls originated or terminated through a number of cell towers located in Iowa, one cell tower located in northeast Nebraska, and a number of cell towers located in the area of St. Cloud, Minnesota. Before the end of 2005, Verizon Wireless anticipates connecting its sites in Rochester, Minnesota to the Sioux Falls MSC. Miller Aff. ¶ 4.

10. Confidential Exhibits DM-1 through DM-6 are Verizon Wireless radio frequency ("RF") coverage maps. These RF coverage maps show the locations of Verizon Wireless' cell

towers that are connected to the Sioux Falls MSC, and the geographic areas served by these cell towers. Miller Aff. ¶ 5.

11. Verizon Wireless is interconnected to the public switched network in South Dakota through physical connections it has with Qwest Communications. These physical connections with Qwest allow Verizon Wireless to deliver calls destined to Qwest customers. This is referred to as direct interconnection. Clampitt Aff. ¶ 8.

12. These physical connections with Qwest also allow Verizon Wireless to deliver calls destined to customers of other carriers who are also connected to Qwest. This is referred to as indirect interconnection. In the case of indirect interconnection, Qwest performs what is referred to as a "transit" function, and acts as an intermediary between the originating and terminating carrier. Qwest is paid a per-minute transit fee by the originating carrier. Clampitt Aff. ¶¶ 9-10.

13. Calls that are originated by Verizon Wireless and transited by Qwest are delivered to Qwest switches referred to as tandem switches. Verizon Wireless commingles all calls that are switched at its Sioux Falls MSC and destined to carriers connected to the specific Qwest tandem switch. Clampitt Aff. ¶ 11.

14. For example, Verizon Wireless is connected at the Qwest tandem switch in Rapid City, South Dakota. Verizon Wireless delivers calls that are switched at its Sioux Falls MSC and destined for delivery to other carriers connected to Qwest's Rapid City tandem. These carriers include Fort Randall Telephone Company and Mount Rushmore Telephone Company. Clampitt Aff. ¶ 12.

15. Verizon Wireless also maintains direct connection with several LECs in South Dakota other than Qwest. Where it maintains direct connections, Verizon Wireless may deliver its calls without using Qwest as an intermediary. Clampitt Aff. ¶ 13.

III. INTERCARRIER COMPENSATION

16. In August of 1996, the FCC adopted its *First Report & Order,*[3] implementing the inter-carrier compensation provisions of 47 U.S.C. § 251, including the requirement under Section 251(b)(5) that LECs establish reciprocal compensation arrangements. The FCC determined that between LECs and CMRS providers reciprocal compensation under Section 251(b)(5) applies to calls that originate and terminate within the same Major Trading Area, or "MTA." *First Report & Order*, ¶ 1036. Reciprocal compensation is paid by the originating carrier (the carrier whose customer makes the call) to the terminating carrier (the carrier whose customer receives the call). Calls that originate and terminate in different MTAs would be subject to applicable "access" charges instead of reciprocal compensation. *First Report & Order*, ¶ 1043.

17. Parts of South Dakota lie in three different MTAs. MTA–12 (Minneapolis) covers roughly the eastern and central two-thirds (2/3) of South Dakota but also includes all of North Dakota and almost all of Minnesota. MTA-22 (Denver) covers roughly the western one-third of South Dakota but also includes much of Colorado, most of Wyoming, western Nebraska, and even a small part of Kansas. MTA-32 (Des Moines) covers the southeast corner of South Dakota, most of Iowa, the northeast corner of Nebraska, western Illinois, and small portions of Wisconsin and Missouri. These MTA boundaries are shown on Exhibit JC-1. Clampitt Aff. ¶ 14.

18. There are SDTA Companies within all three of these MTAs. *See* Schenkenberg Aff. Ex. PS-1, p. 4. Due to Verizon Wireless' network, its service areas, MTA boundaries, and

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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 (1996)

the LEC areas, Verizon Wireless may deliver to all South Dakota LECs calls that are a) intraMTA, b) interMTA and intrastate, and c) interMTA and interstate. Clampitt Aff. ¶ 15; Miller Aff. Ex. DM-1 through DM-6. However, the amount of interMTA traffic is limited because calls originated at distant cell sites and not switched through the Sioux Falls MSC are delivered by Verizon Wireless to an interexchange carrier which pays the applicable access charge. *Id.*

19. Reciprocal compensation and access charges have different cost structures. Reciprocal compensation rates are the lowest, followed by interstate access rates, and then intrastate access rates. The members of the SDTA have negotiated per-minute reciprocal compensation rates as follows:

COMPANY	PER MINUTE RECIPROCAL COMPENSATION RATES
Alliance Communications Cooperative, Inc.	$0.007 - $0.028
Armour Independent Telephone Co.	$0.009 - $0.038
Beresford Municipal Telephone Co.	$0.07 - $0.033
Bridgewater-Canistota Independent Tel. Co.	$0.02 - $0.033
CRST Telephone Authority	$0.009 - $0.028
Faith Municipal Telephone Company	$0.007 - $0.050
Fort Randall Telephone Company	$0.009 - $0.028
Golden West Telecommunications Coop.	$0.009 - $0.028
Interstate Telecommunications Cooperative	$0.007 - $0.028
James Valley Telecommunications	$0.009 - $0.028
Jefferson Telephone Co. (Long Lines)	$0.029 - $0.038
Kadoka Telephone Company	$0.029 - $0.038
Kennebec Telephone Company. Inc.	$0.029 - $0.038

(*"First Report & Order"*).

McCook Cooperative Telephone Co.	$0.029 - $0.038
Midstate Communications	$0.020 - $0.028
Mt. Rushmore Telephone Company	$0.009 - $0.038
PrairieWave Community Telephone	$0.005 - $0.028
RC Communications, Inc.	$0.020 - $0.033
Roberts County Telephone Cooperative	$0.020 - $0.050
Santel Communications Coop.	$0.009 - $0.028
Sioux Valley Telephone Co.	$0.007 - $0.028
Splitrock Properties, Inc.	$0.020 - $0.028
Stockholm-Strandburg Telephone Co.	$0.020 - $0.038
Swiftel Communications (Brookings)	$0.007 - $0.028
Tri-County Telcom, Inc.	$0.029 - $0.050
Union Telephone Co.	$0.009 - $0.028
Valley Telecommunications Cooperative	$0.020 - $0.028
Venture Communications Coop.	$0.009 - $0.028
Vivian Telephone Company	$0.009 - $0.028
West River Cooperative Telephone Co.	$0.020 - $0.028
West River Telecommunications Coop.	$0.007 - $0.038
Western Telephone Company	$0.029 - $0.033

See Schenkenberg Aff., Ex. PS-7, p. 1. These reciprocal compensation rates were voluntarily negotiated and have been filed with and approved by the Commission under 47 U.S.C. § 252.

20. The SDTA companies' terminating access rates are as follows:

COMPANY	PER MINUTE INTERSTATE ACCESS RATE	PER MINUTE INTRASTATE ACCESS RATE
Alliance Communications Cooperative, Inc.	$0.014998 - $0.024997	$0.1447
Armour Independent Telephone co.	$0.035225	$0.1447
Beresford Municipal Telephone Co.	$0.023107	$0.1447
Bridgewater-Canistota Independent Tel. Co.	$0.027186 - $0.028826	$0.1447

CRST Telephone Authority	N/A	$0.1447
Faith Municipal Telephone Company	$0.065891	$0.1447
Fort Randall Telephone Company	$0.007327 - $0.021039	$0.0931
Golden West Telecommunications Coop.	$0.051561 - $0.071379	$0.1447
Interstate Telecommunications Cooperative	$0.014093 - $0.043129	$0.1447
James Valley Telecommunications	$0.04331 - $0.047405	$0.1447
Jefferson Telephone Co. (Long Lines)	$0.037493	$0.1447
Kadoka Telephone Company	$0.05912	$0.1325
Kennebec Telephone Company, Inc.	$0.045719 - $0.048973	$0.1447
McCook Cooperative Telephone Co.	$0.028334 - $0.031286	$0.1447
Midstate Communications	$0.027595 - $0.038255	$0.1447
Mt. Rushmore Telephone Company	$0.007327 - $0.021039	$0.0931
PrairieWave Community Telephone	$0.023742 - $0.025054	$0.1463
RC Communications, Inc.	$0.038871 - $0.049505	$0.1447
Roberts County Telephone Cooperative	$0.044939 - $0.045103	$0.1447
Santel Communications Coop.	$0.020769 - $0.032059	$0.1447
Sioux Valley Telephone Co.	$0.015008 - $0.031382	$0.1447
Splitrock properties, Inc.	$0.083015	$0.1447
Stockholm-Strandburg Telephone Co.	$0.037191 - $0.040937	$0.1447
Swiftel Communications (Brookings)	$0.019417 - $0.021359	$0.1447
Tri-County Telcom, Inc.	$0.027023 - $0.027351	$0.1447
Union Telephone Co.	$0.112312 - $0.117617	$0.1447
Valley Telecommunications Cooperative	$0.046333 - $0.057295	$0.1447
Venture Communications Coop.	$0.01082 - $0.050124	$0.1447
Vivian Telephone Company	$0.01937 - $0.067141	$0.1447
West River Cooperative Telephone Co.	$0.064019 - $0.074843	$0.1447
West River Telecommunications Coop.	$0.020044 - $0.047146	$0.1447
Western Telephone Company	$0.045391 - $0.049137	$0.1447

See Schenkenberg Aff., Ex. PS-7, pp. 2-3.

21. In its *First Report & Order*, the FCC recognized that CMRS providers would deliver both intraMTA and interMTA calls to terminating LECs, and determined that CMRS providers were not required to ascertain whether calls are interMTA or intraMTA as:

> CMRS customers may travel from location to location during the course of a single call, which could make it difficult to determine the applicable transport and termination rate or access charge. We recognize that, using current technology, it may be difficult for CMRS providers to determine, in real time, which cell site a mobile customer is connected to, let alone the customer's specific geographic location. This could complicate the computation of traffic flows and the applicability of transport and termination rates, given that in certain cases, the geographic locations of the calling party and the called party determine whether a particular call should be compensated under transport and termination rates established by one state or another, or under interstate or intrastate access charges. We conclude, however, that it is 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. We conclude that parties may calculate overall compensation amounts by extrapolating from traffic studies and samples.

First Report & Order, ¶ 1044 (footnotes omitted) (emphasis added).

22. Consistent with this FCC determination, when Verizon Wireless negotiates with LECs regarding intercarrier compensation issues, it uses network and traffic routing information it has available to establish an assumed amount of interMTA traffic, which is then billed at access rates. Clampitt Aff. ¶ 17.

IV. CHAPTER 284

23. 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 (hereinafter "Chapter 284"). A copy of Chapter 284 is attached as Appendix B.

24. SDCL §§ 49-31-110 and 111 require CMRS providers to transmit certain "signaling information" as calls are delivered to other telecommunications carriers. This signaling

information must be "sufficient to identify, measure, and appropriately charge the originating carrier" for the traffic being delivered.

25. Under Section 110, an originating carrier must provide signaling information sufficient to identify a call as "local." For a CMRS provider, "local" means intraMTA. SDCL § 49-31-109(2) (defining "local").

26. Section 110 further requires that if an originating carrier is delivering both local and nonlocal traffic, it must separately provide "accurate and verifiable information" identifying the amount of traffic that is local versus nonlocal. If an originating carrier does not provide the terminating carrier with information that will allow the appropriate classification of traffic, the terminating carrier is authorized to "classify all unidentified traffic ... as nonlocal telecommunications traffic for service billing purposes." SDCL § 49-31-110.

27. Section 111 provides that if an originating carrier is delivering nonlocal traffic (i.e. interMTA traffic), it must transmit signaling information sufficient to allow the terminating carrier to "identify, measure, and appropriately charge" for the nonlocal traffic. If an originating carrier is delivering both intrastate and interstate nonlocal traffic, Section 111 requires the originating carrier to separately provide accurate information, including verifiable percentage measurements, to allow the terminating carrier to appropriately classify calls as interstate nonlocal or intrastate nonlocal. If a terminating carrier does not provide information that will allow the appropriate classification of traffic, the terminating carrier is authorized to "classify all unidentified nonlocal telecommunications traffic ... as intrastate telecommunications traffic for service billing purposes." SDCL § 49-31-111.

28. Because Verizon Wireless will deliver intraMTA calls, interMTA interstate calls, and interMTA interstate calls, Chapter 284 purports to give terminating LECs the authority to

classify and bill all traffic as intrastate access traffic unless Verizon Wireless provides the required signaling information and the separate reports that accurately identify the amount of traffic in each category.

V. INDUSTRY STANDARDS FOR SIGNALING INFORMATION

29. As noted above, SDCL § 49-31-110 and 111 require that an originating carrier of telecommunications traffic shall, in delivering its traffic, transmit "signaling information" in accordance with commonly accepted industry standards "that is sufficient to identify, measure, and appropriately charge the originating carrier" for the traffic that is delivered.

30. A commonly accepted industry standard protocol for delivering signaling information between telecommunications service providers is referred to as Signaling System 7 or "SS7." SS7 is the most common intercarrier signaling protocol used in the industry. Harmon Aff. ¶ 6. Verizon Wireless utilizes SS7 throughout its South Dakota network. Harmon Aff. ¶ 6.

31. SS7 provides carriers the ability to exchange information necessary to establish the voice path so that a call can be completed. Said another way, before the voice networks are connected, the signaling networks communicate with each other to determine how and whether the call will be delivered. As this is done, SS7 signaling messages are created by the originating carrier, and are delivered on a physically separate network from the calls themselves. Harmon Aff. ¶ 7.

32. To deliver signaling information using SS7 protocol, a carrier must: a) obtain the information to be transmitted, b) categorize the information in a way that will be understood by carriers receiving the information, and c) deliver the information. Harmon Aff. ¶ 8.

A. Obtaining the Information to be Included Within Signaling Information

33. SDCL § 49-31-110 states that an originating carrier like Verizon Wireless must transmit signaling information sufficient to allow the terminating carrier to identify whether a call is "local telecommunications traffic." Local telecommunications traffic is defined under SDCL § 49-31-109(2) as traffic that originates and terminates in the same MTA.

34. SDCL § 49-31-111 states that an originating carrier like Verizon Wireless must transmit signaling information sufficient to allow the terminating carrier to identify "nonlocal telecommunications traffic" as interstate or intrastate.

35. Verizon Wireless operates some cell towers that reach across MTA and/or state boundaries. Miller Aff. ¶ 3. As a result, Verizon Wireless could identify the MTA or state in which the call originates only by determining the physical location of the caller at the time the call is made. Verizon Wireless today is not capable of determining the physical location of the caller at the time the call is made for purposes of assigning jurisdiction for such calls for intercarrier compensation or SS7 purposes. Harmon Aff. ¶ 9.

36. For example, a Verizon Wireless customer could be driving in MTA-12 near its border with MTA-32, and call a landline customer who lives in MTA-12. The call would be picked up by a cell tower that serves portions of both MTAs, would be routed through Verizon Wireless' MSC in Sioux Falls, and delivered to the landline network. Verizon Wireless would not know the MTA of origin unless it had the capability to determine the physical location of the call as it was being made. Harmon Aff. ¶ 10.

B. Formatting Information to be Delivered in SS7 Messages

37. Verizon Wireless has upgraded its MSCs with the necessary software to allow it to create SS7 messages. This software is developed and sold by the switch vendor, which for

Verizon Wireless' Sioux Falls switch is Nortel. Switch vendors develop SS7 software to comply with accepted industry standards. Harmon Aff. ¶ 11.

38. Once installed, the SS7 software will fill in, or "populate" the header for the SS7 message and fields that are "mandatory" based on industry standards. The header for an SS7 message contains information showing the originating switch and identifies the type of signaling information that is shown. 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. If the header and these mandatory fields are populated, the SS7 message is deemed complete in accordance with industry standards, the call path will be established, and the call will be completed. Harmon Aff. ¶ 12.

39. Neither the information in the header nor the information in the mandatory SS7 fields will tell the terminating carrier whether a wireless call is intraMTA, interMTA and intrastate, or interMTA and interstate. Harmon Aff. ¶ 13.

40. There are also a number of SS7 fields that are considered to be "optional" in accordance with industry standards. This means that they can be populated, but they are not required to establish a voice path and complete a call. Optional fields are not automatically populated, but the SS7 software can be manually programmed to populate optional fields. Harmon Aff. ¶ 14.

41. One optional field in the SS7 message is the calling party's number. Verizon Wireless populates this field, but this information will not tell a terminating carrier whether the wireless call is intraMTA, interMTA and intrastate, or interMTA and interstate. Harmon Aff. ¶ 15.

42. A second optional field is the Jurisdictional Information Parameter or ("JIP") field, which is populated with a six-digit number. Harmon Aff. ¶ 16. Verizon Wireless populates the JIP field in a manner that is consistent with industry standards developed through the Alliance for Telecommunications Industry Solutions ("ATIS") Network Interconnection Interoperability Forum ("NIIF"). ATIS is a technical planning and standards development organization, and its membership includes large and small LECs, long distance carriers, wireless carriers, and equipment vendors. Approved ATIS standards are considered to be industry standards. Harmon Aff. ¶ 17.

43. On December 15, 2004, the NIIF released a standards document that includes, among other things, rules on how wireless carriers are to populate the JIP field. ATIS-0300011, *Network Interconnection Interoperability (NIIF) Reference Document, Part III, Installation and Maintenance Responsibilities for SS7 Links and Trunks*, p. 21 (attached as Exhibit JH-1 to the Harmon Affidavit). These rules provide that the JIP should be populated "where technically feasible" with an NPA-NXX that is assigned in the LERG to the originating switch or MSC." An NPA-NXX is industry shorthand for the area code and prefix for a block of 10,000 phone numbers. The LERG is the Local Exchange Routing Guide, which carriers use to determine how to route calls. When Verizon Wireless is assigned a block of 10,000 phone numbers, it associates that NPA-NXX with its MSC in the LERG. Harmon Aff. ¶ 18.

44. Verizon Wireless populates the JIP field with a six-digit code that is associated with its Sioux Falls switch. As a result, the SS7 message for all calls originated under the control of the Sioux Falls MSC will have the same JIP. This will tell the terminating carrier that Verizon Wireless originated the call, and that it was switched through the Sioux Falls MSC, but will not

provide the terminating carrier with information indicating whether the call is intraMTA, interMTA and intrastate, or interMTA and interstate. Harmon Aff. ¶ 19.

45. 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. As a result, even if Verizon Wireless could identify the originating MTA or state of a call, there would be no way to format that information within an SS7 message in a way that would communicate this to other telecommunications providers in accordance with industry standards. Harmon Aff. ¶ 20.

VI. PROVISION OF ACCURATE AND VERIFIABLE INFORMATION

46. SDCL §§ 49-31-110 and 111 provide that a carrier delivering both local and nonlocal telecommunications traffic, "shall separately provide the terminating carrier with accurate and verifiable information" to classify the telecommunications traffic as being either local or nonlocal, and interstate or intrastate.

47. For several reasons Verizon Wireless does not today have the capability to generate in the signaling stream or otherwise reports that would accurately identify calls as intraMTA, interMTA and intrastate or interMTA and interstate. First, as noted above, Verizon Wireless cannot determine the exact location of a caller served by a cell site that straddles a state or MTA boundary. Second, Verizon Wireless does not have internal systems that allow it to measure traffic for intercarrier compensation purposes. Clampitt Aff. ¶ 16.

48. Even if Verizon Wireless were to purchase software or services that would allow it to measure, report and bill traffic for intercarrier compensation purposes, industry standard products would not separate calls as intraMTA, interMTA and interstate, or interMTA and intrastate. If the cell site could be used as a proxy for the location where the call was originated, Verizon Wireless would still need to build and maintain a database that would identify each

originating cell by state and MTA. Verizon Wireless would need to obtain customized software that would compare the originating cell site location to the terminating telephone number and categorize the call as intraMTA, interMTA and interstate, or intrastate. The software would then need to separate calls by terminating LEC and transmit reports to each affected carrier. Verizon Wireless expects that it would be difficult and expensive to implement such changes to the Company's current procedures. Harrop Aff. ¶¶ 4-5.

49. None of Verizon Wireless' voluntarily-negotiated agreements in South Dakota or other states obligates Verizon Wireless to provide the type of signaling information or reports required by Chapter 284. In addition, no FCC mandate requires Verizon Wireless to establish the kind of measurement and reporting systems that would be necessary to comply with Chapter 284. Clampitt Aff. ¶ 19.

50. Given the technical limitations and costs associated with Chapter 284, Verizon Wireless is not today providing, and does not expect to provide, the signaling information or reports contemplated by Chapter 284. Clampitt Aff. ¶ 20.

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.

APPENDIX B

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.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Court File No. 04-3014

Sheryl M. O'Neill, being first duly sworn, deposes and states that on the 15th day of November, 2005, she served the attached PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT upon:

Darla Pollman Rogers
Ritter, Rogers, Wattier & Brown, LLP
319 South Coteau Street
P.O. Box 280
Pierre, South Dakota 57501-0280

Rolayne Ailts Wiest
South Dakota Public Utilities Commission
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(which is the last known address of said attorney) by depositing a true and correct copy thereof in the United States mail, postage prepaid.

Sheryl M O'Neill

Subscribed and sworn to before me
this 15th day of November, 2005.

Sandra J. Cambronne
Notary Public

SANDRA J. CAMBRONNE
Notary Public
Minnesota
My Commission Expires January 31, 2010