

LAW OFFICES
RITER, ROGERS, WATTIER & BROWN, LLP
Professional & Executive Building
319 South Coteau Street
P.O. Box 280
Pierre, South Dakota 57501-0280
www.riterlaw.com

OF COUNSEL:
Robert D. Hofer
E. D. Mayer
TELEPHONE
605-224-5825
FAX
605-224-7102

ROBERT C. RITER, Jr.
DARLA POLLMAN ROGERS
JERRY L. WATTIER
JOHN L. BROWN

MARGO D. NORTHRUP, Associate

July 11, 2005

RECEIVED

JUL 13 2005

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

Gene N. Lebrun
LYNN, JACKSON, SCHULTZ & LEBRUN, P.C.
P. O. Box 8250
Rapid City, South Dakota 57709-8250

Re: Verizon Wireless vs. PUC
Civil Number 04-3014
Our File Number 04-181

Dear Gene:

On Monday, July 11, 2005, I hand-delivered the Joint Written Report of Rule 26(f) Meeting to the federal clerk of court's office for filing. A file-stamped copy is enclosed herein.

By copy of this letter, I am notifying all parties that we complied with the filing deadline for this document.

Sincerely yours,



Darla Pollman Rogers
Attorney at Law

DPR/ph

CC: Rolayne Ailts Wiest (with enclosure)
Rich Coit (with enclosure)
Philip Schenkenberg (with enclosure)

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION
COPY
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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 Dustin
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,

Intervenors.

Civil Number 04-3014 JUL 11 2005

JOSEPH HAAS
Clerk

JOINT WRITTEN REPORT OF
RULE 26(f) MEETING

RECEIVED

JUL 13 2005

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

A. Date and Place of the Meeting and Identification of the Parties, and their Attorneys

1. The date and place at which the meeting was held.

The parties held the Rule 26(f) conference by telephone on June 28, 2005. As noted in counsel's correspondence to the Court dated March 4, 2005, the parties have had multiple discussions in an attempt to reach a stipulation of fact that would eliminate the need for discovery. Counsel for Plaintiffs and counsel for one or more Defendant/Intervenor met by telephone on January 27, February 28, March 1, April 26, and May 31. During this time period the parties exchanged several drafts of a Stipulation

of Fact and discussed various case management issues. Ultimately, the parties could not reach a stipulation of fact that would eliminate the need for discovery but have agreed to a shortened discovery period as set forth below.

2. Name and address of the attorney or attorneys who represented each party at the meeting:

The following attorneys attended the Rule 26(f) meeting:

For the Plaintiffs:

Gene N. Lebrun
Lynn, Jackson, Shultz & Lebrun, P.C.
909 St. Joseph Street
P. O. Box 8250
Rapid City, South Dakota 57709
Telephone: (605) 342-2592

Philip R. Schenkenberg
David C. McDonald
Briggs and Morgan, P.A.
2200 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
Telephone: (612) 977-8400

For the Defendants:

Rolayne Ailts Wiest
Assistant Attorney General
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501-5070
Telephone: (605) 773-3201

For Intervenors:

Darla Pollman Rogers
Margo D. Northrup
P.O. Box 280
Pierre, South Dakota 57501
Telephone: (605) 224-5825

For Intervenor South Dakota Telecommunications Ass'n:

Richard Coit
South Dakota Telecommunications Association
320 East Capitol Avenue
P.O. Box 57
Pierre, South Dakota 57501-0057
Phone: 605-224-7629

3. Name of the insurance carriers and amount of liability coverage available.

For the Plaintiff: N/A

For the Defendant: N/A

B. Description of the Case

4. A brief narrative of the facts giving rise to the lawsuit, including a description of legal claims and defenses.

Plaintiff Verizon Wireless challenges the lawfulness of SDCL §§ 49-31-110, -111, -114, and -115 which establish requirements for originating telecommunications carriers to provide information which allows for the jurisdictional and regulatory classification of certain telecommunications traffic, allowing terminating telecommunications carriers to bill traffic based on whether such information is provided, and authorizing the South Dakota Public Utilities Commission ("Commission") to adjudicate complaints and promulgate rules. Verizon Wireless asserts that the requirements set forth in these state statutes, as applied to a wireless carrier, are preempted by federal law. Specifically, as set forth in the Complaint, Verizon Wireless contends that various provisions in the statutes are preempted by 47 U.S.C. § 332, 47 U.S.C. §§ 151, 251 and 252, 47 C.F.R. § 20.11, Federal Communications Commission ("FCC") directives, and Article VI of the U.S. Constitution (the Supremacy Clause). Verizon Wireless seeks a declaration that these new state requirements are unenforceable and also an injunction prohibiting Commission action to enforce these rules as to Verizon Wireless.

In conjunction with its provision of service as a wireless carrier licensed by the FCC, Verizon Wireless sends and receives telecommunications traffic to and from landline telephone companies in South Dakota. Sections 110 and 111 require Verizon Wireless to identify the jurisdictional and regulatory classification of telecommunications calls – whether the calls are jurisdictionally subject to "reciprocal compensation" pursuant to 47 U.S.C. § 251(b)(5), "interstate access" under federal law, or "intrastate access" under state law. Each type of traffic has its own rate. If an originating carrier does not comply with the requirements in Section 110 of the state statutes the terminating carrier is authorized to classify all unidentified telecommunications calls or traffic as non-local and either intrastate or interstate. If an originating carrier does not comply with the requirements in Section 111 the terminating carrier is authorized to classify all unidentified non-local telecommunications calls or traffic as intrastate. Currently, traffic that is non-local and intrastate is subject to higher per-minute access rates than other traffic that is local and subject to reciprocal compensation charges, or traffic that is non-local and interstate. Verizon Wireless alleges that Sections 110 and 111 require it to take action that is not feasible, inconsistent with industry practice, and contrary to an FCC ruling that the traffic identification is not required under these circumstances. Verizon Wireless also asserts that Sections 110 and 111 are unlawful to the extent they allow landline companies to charge access rates for traffic within the scope of 47 U.S.C. § 251(b)(5), or to charge intrastate access rates for traffic that is jurisdictionally interstate.

Defendants, the Commissioners of the South Dakota Public Utilities Commission (SDPUC), and Intervenors, the South Dakota Telecommunications Association (SDTA) and Venture Communications Cooperative, disagree with the Verizon Wireless preemption claims. They assert that the provisions contained in the challenged state statutes found in South Dakota Codified Laws Chapter 49-31 establish requirements related to the identification of telecommunications traffic that are not in conflict with any federal statutes or federal rule provisions. They claim that presently, matters addressed by the state statutes which require originating carriers to provide certain traffic identification information are not specifically addressed in the federal law, either in federal statute or rule. Moreover, they claim that there are various provisions in the Federal Communications Act which preserve state regulatory authority in certain areas and Defendants and Intervenors believe these provisions authorize the requirements established in the new state statutes (SDCL §§ 49-31-109 through 49-31-115).

Defendants and Intervenors claim that the provisions of 47 U.S.C. § 332 addressing the regulatory treatment of Commercial Mobile Service do not prohibit all state regulation over such services and do not in any way preempt the state requirements that are challenged. Further, under 47 U.S.C. § 251(d) state access regulations are expressly reserved and it is specifically stated that the federal statute does not preclude state regulations that are "consistent" and do "not substantially prevent implementation" of the federal requirements. Also, under 47 U.S.C. § 252, State Commissions are

expressly given authority to mediate, arbitrate and approve interconnection and reciprocal transport and termination arrangements between carriers. This authority extends not only to the terms and conditions of service, but also the establishment of rates for interconnection and/or reciprocal transport and termination. And, in addition, under 47 U.S.C. § 253, that section of the Federal Communications Act which generally prohibits “barriers to entry,” States are expressly not prohibited from imposing “on a competitively neutral basis and consistent with Section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.”

It is the position of Defendants and Intervenors that these federal statutory provisions permit state establishment of the types of requirements set forth in SDCL §§ 49-31-109 through 49-31-115 and contradict Plaintiff’s preemption claims.

Defendants and Intervenors also take the position that the preemption claims presented to the Court for resolution are issues of law which do not require a factual, evidentiary review. Defendants and Intervenors disagree with Plaintiff regarding the relevance or materiality of issues concerning Plaintiff’s ability to comply with the requirements imposed by the challenged state statutes.

5. A concise statement of the jurisdictional basis of the case, giving a brief narrative description as well as statutory references number.

Verizon Wireless seeks declaratory and injunctive relief pursuant to the Supremacy Clause of the United States Constitution. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

6. A brief statement of the material issues to be resolved.

- a. The effects of the requirements of Sections 110 and 111 on Verizon Wireless, including whether Verizon Wireless can meet the requirements.
- b. Whether the requirements of Sections 110 and 111 impermissibly regulate wireless traffic, impose requirements contrary to FCC rulings, or are otherwise preempted by federal law.
- c. Whether the Commission is preempted from taking the actions contemplated by Sections 113 and 114.

C. Pleadings

7. A statement of whether all pleadings have been filed, and description of any amendments to the pleadings the party proposes to make including the identification of any new parties to be added (if none so state).

The pleadings filed to date included the Complaint For Declaratory and Injunctive Relief, Amended Complaint For Declaratory and Injunctive Relief, Answer to Amended Complaint for Declaratory and Injunctive Relief, and Motion to Intervene as Defendants.

8. The date by which all motions which seek to amend the pleadings or add parties will be filed.

Parties shall be allowed until August 15, 2005 to join additional parties or to amend the pleadings.

9. Whether jury trial is available under the law, and whether a jury trial has been timely demanded.

This is a Declaratory and Injunctive Relief action. A jury trial is not available and has not been demanded.

D. Discovery Plan

The parties submit the following discovery plan to the Court:

10. Date by which all prediscovery disclosures required by Rule 26(a)(1) will be completed.

July 12, 2005.

11. The number of interrogatories each party shall be permitted to serve.

A maximum of 25 Interrogatories by each party to the other party and a maximum of 15 Requests for Admission by each party, to be served in no more than two sets.

12. The number of depositions each party shall be permitted to take (excluding expert witness depositions).

A maximum of 5 depositions by Plaintiff, 5 depositions by Defendant, and 5 depositions by Intervenors, each deposition limited to maximum of 8 hours unless extended by agreement of the parties.

13. The date by which all discovery (including expert discovery) shall be completed.

October 15, 2005.

14. A statement of how many, if any, expert witnesses each party anticipates calling at trial, and a brief (one or two words) description of the type of experts anticipated, e.g. medical doctor, economist, accident reconstructionist, accountant.

Each party anticipates they may call two experts from outside of their respective companies. SDTA will be allowed to call up to four experts not employed by it. Each party may attempt to qualify one or more employees of the parties as an expert witness. Parties anticipate that any experts would provide testimony on technical network issues and telecommunications industry practice and standards.

15. The date by which each party shall disclose the identity of expert witnesses and disclose the reports required under Rule 26(a)(2).

Expert witnesses will be identified by August 1, 2005, and expert reports exchanged by September 1, 2005.

16. Whether the parties anticipate expert depositions.

Yes.

17. The number of expert depositions each party shall be permitted to take.

One deposition for each expert identified.

18. The frequency with which discovery responses must be supplemented pursuant to Rule 26(a).

Supplementations under Rule 26(e) due October 15, and the 15th of every other month thereafter.

E. Dispositive Motions and Trial

19. Date by which all dispositive motions shall be filed and the hearing thereon completed.

All potentially dispositive motions should be filed by November 15, 2005, and the hearing completed by January 15, 2006.

20. Date by which the case will be ready to commence trial.

This case should be ready for trial by February 1, 2006.

21. Estimate trial time including jury selection and instructions.

The estimated time of this trial is three days. A jury will not be necessary.

22. Do the parties agree that the jury trial as well as all other proceedings subsequent to the return of the Rule 35 Report be conducted by a magistrate?

No.

23. What reason or reasons are there that this case cannot be settled in the early stages of litigation?

Verizon seeks declaratory and injunctive relief pursuant to the requirements of SDCL 49-31-110, -111-114, and -115 pursuant to the Supremacy Clause of the United States Constitution. Verizon Wireless asserts the state statutes is preempted by federal law. The state and federal laws will need to be interpreted by this Court.

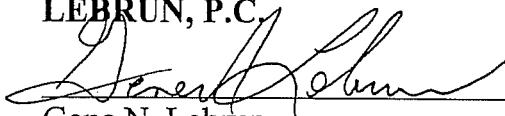
24. Would an early settlement conference before a magistrate be of assistance in reaching an early settlement? If not, why not?

No. The case requires an interpretation of statutes, as settlement is not appropriate.

Dated:

July 6, 2005

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



Gene N. Lebrun
909 St. Joseph Street
P. O. Box 8250
Rapid City, South Dakota 57709
Telephone: (605) 342-2592

Philip R. Schenkenberg
David C. McDonald
Briggs and Morgan, P.A.
2200 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
Telephone: (612) 977-8400

ATTORNEYS FOR PLAINTIFFS

Dated: July 7, 2005

Rolayne Aijts Wiest

Rolayne Aijts Wiest
Assistant Attorney General
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501-5070
Telephone: (605) 773-3201

ATTORNEY FOR DEFENDANTS

Dated: July 11, 2005

**RITER, ROGERS, WATTIER &
BROWN, LLP**

Darla Pollman Rogers

Darla Pollman Rogers
Margo D. Northrup
P.O. Box 280
Pierre, South Dakota 57501
Telephone: (605) 224-5825

ATTORNEYS FOR INTERVENORS