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**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION**

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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,

Plaintiffs,

vs.

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

Defendants,

South Dakota Telecommunications Ass'n  
and Venture Communications Cooperative,

Intervenors.

Civil Number 04-3014

**MEMORANDUM IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PROTECTIVE ORDER**

RECEIVED  
OCT 31 2005  
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

**INTRODUCTION**

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" or the "Companies"), Defendants Bob Sahr, Gary Hanson, and Dustin Johnson, in their official capacities as the Commissioners of the South Dakota Public Utilities Commission, and Intervenors South Dakota Telecommunications Association and Venture Communications Cooperative (collectively, the "Parties") previously agreed that certain materials and information which may be disclosed in this action are

confidential and/or contain highly sensitive, proprietary, and competitive commercial or personal information and/or trade secrets.

Plaintiffs now respectfully request the Court to enter a Protective Order that affords confidential treatment to maps depicting Verizon Wireless' cell site locations in and around the State of South Dakota and the signal propagation of these cell site locations.

## **ARGUMENT**

### **A. Standards Governing Protective Orders for Trade Secrets**

Pursuant to Fed. R. Civ. P. 26(c)(7), a court may "make a protective order requiring 'that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way.'" *Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1313 (11th Cir. 2001) (quoting Fed. R. Civ. P. 26(c)(7)). The district courts have "broad discretion" in "decid[ing] when a protective order is appropriate and what degree of protection is required." *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984). For the court to grant such an order, a showing of "good cause" must be made by the party seeking the protection. *See* Fed. R. Civ. P. 26(c); *Chicago Tribune Co.*, 263 F.3d at 1313.

### **B. Verizon Wireless' Cell Site Location and Signal Propagation Maps Contain Trade Secret Information**

Under South Dakota law, a "trade secret" is any "information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the

circumstances to maintain secrecy." South Dakota Codified Laws § 37-29-1, et. seq. (South Dakota Uniform Trade Secrets Act).

Verizon Wireless' cell site location and signal propagation maps contain proprietary business and technical information regarding the Companies' telecommunications network in and around the State of South Dakota. Miller Aff., ¶ 5. The information contained in these maps was assembled from internal engineering and network planning and development sources at Verizon Wireless. *Id.* These maps include specific location information for the Companies' network facilities and the capabilities of these facilities. *Id.* In addition, the maps contain information which indicates the location of the Companies' customers and the focus of its marketing efforts in the State of South Dakota. Miller Aff., ¶ 8. Disclosure of these maps would reveal confidential details pertaining to Verizon Wireless' network infrastructure, customer base, marketing strategies and the Companies' competitive position in the South Dakota telecommunications marketplace. Miller Aff., ¶¶ 5, 8. This information would be both economically damaging to Verizon Wireless and economically advantageous to its competitors. Miller Aff., ¶ 8.

Verizon Wireless' cell site location and signal propagation maps are considered classified and confidential data. Miller Aff., ¶ 6. The detailed cell site and signal strength information contained in these maps is known only to authorized Verizon Wireless employees and is subject to the Companies' internal data security policies. *Id.* In addition, cell site location and signal propagation maps are not available to the general public. *Id.* This information was generated from internal documents and records that are maintained as confidential and are only accessible by authorized personnel involved in the planning and maintenance of Verizon Wireless' network. Miller Aff., ¶¶ 6-7. Verizon Wireless' efforts to maintain the confidentiality of this

information is reasonable and necessary, especially when considering the importance of the information. With these precautions in place, it would be difficult, if not impossible, for a third party to obtain this information or generate these maps by proper means. Miller Aff., ¶ 7.

The cell site location and signal propagation maps are commercial information that, if disclosed, could provide economic value to other telecommunications carriers in the marketplace and cause substantial competitive harm to Verizon Wireless. Miller Aff., ¶ 8. Moreover, disclosure would provide competitors with physical and technical information regarding Verizon Wireless' network facilities and capabilities, customer base, and marketing strategies in the State of South Dakota. *Id.* Accordingly, Verizon Wireless' cell site location and signal propagation maps contain protected trade secret information.

**C. Good Cause Exists to Protect Verizon Wireless' Trade Secret Information**

To determine whether a party has demonstrated that sufficient "good cause" exists to issue a protective order, the court must balance the party's need for secrecy against the presumption of access that normally attaches to documents and information in court proceedings. *See Leucadia, Inc. v. Applied Extrusion Technologies, Inc.*, 998 F.2d 157, 166 (3rd Cir. 1993).

Good cause exists to protect disclosing a company's trade secrets. South Dakota law recognizes that trade secrets have competitive value, and should be protected in litigation. South Dakota Codified Laws § 37-29-1, et. seq. Verizon Wireless' cell site location and signal propagation maps contain trade secret information and disclosure of these maps would disadvantage Verizon Wireless in the South Dakota telecommunications marketplace.

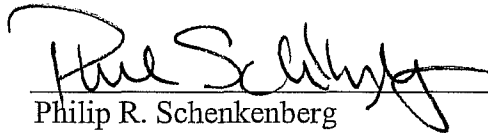
In circumstances such as these, courts have found that good cause exists and have "refused to permit their files to serve as . . . sources of business information that might harm a litigant's competitive standing." *Nixon v. Warner Communications*, 435 U.S. 589, 598 (1978).

## **CONCLUSION**

For the above stated reasons, a protective order affording confidential treatment to Verizon Wireless' cell site location and signal propagation maps is needed to protect the Companies' proprietary trade secret information and competitive position in the South Dakota telecommunications marketplace.

Dated: October 28<sup>th</sup>, 2005

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**AFFIDAVIT OF SERVICE BY MAIL**

STATE OF MINNESOTA )

) ss.

Court File No. 04-3014

COUNTY OF HENNEPIN )

Sandra J. Cambronne, being first duly sworn, deposes and states that on the 28<sup>th</sup> day of October, 2005, she served the attached MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PROTECTIVE ORDER upon:

Darla Pollman Rogers  
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Rolayne Ailts Wiest  
South Dakota Public Utilities Commission  
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Pierre, South Dakota 57504-5070

(which is the last known address of said attorney) by depositing a true and correct copy thereof in the United States mail, postage prepaid.

Sandra J. Cambronne

Subscribed and sworn to before me this  
28<sup>th</sup> day of October, 2005.

Linda S. Dorn

Notary Public

