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UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

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,

South Dakota Telecommunications Ass'n  
and Venture Communications Cooperative,

Intervenors.

Civil Number 04-3014

PROTECTIVE ORDER

Pursuant to the stipulation of the Parties, the Court ORDERS, ADJUDGES and DECREES as follows:

1. 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, 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") have agreed that certain materials which are or may be the subject of discovery or which may otherwise be disclosed in this action are confidential and/or contain highly sensitive, proprietary, and competitive commercial or personal information and/or trade secrets.

2. If, in the course of this action, the Parties undertake to produce or are caused to disclose what they in good faith believe embodies confidential information, the procedures set forth herein shall be employed and the disclosure thereof shall be subject to this Order. The provisions of this Order apply to all discovery in this action, including all documents and information produced by the Parties or any third party.

3. For the purposes of this Order, "Document" includes all tangible written, recorded or graphic material, and intangible data files, such as magnetic computer files, whether produced or created by a party or another person, and whether produced pursuant to any state or federal discovery rules, by agreement or otherwise, and includes, without limitation, documents, interrogatory answers, responses to requests for admission, deposition transcripts and exhibits, trial transcripts or other court transcripts, pleadings, motions, affidavits, declarations, affirmations, briefs, or other filings, and any portion of any of the above;

4. "Confidential Information" means any trade secret or other confidential financial, commercial, or proprietary information contained in any document (including copies, transcripts, videos, and computer stored information), (a) which the producing Party contends and in good faith believes is a trade secret or other confidential or

proprietary research, development, personal, trading, customer or commercial information, and (b) which the producing Party or its counsel designates as "CONFIDENTIAL" upon a good faith belief that there is good cause therefore under applicable law. Confidential information shall not consist of any information which at any time has been: (a) produced, disclosed or made available to the public or otherwise available for public access; and/or (2) disclosed in connection with any governmental public filing and which documents or information could not reasonably be assumed to be or have been intended to be kept confidential. Any information that has not been preserved or maintained in a manner calculated to preserve its confidentiality may not be designated as "CONFIDENTIAL."

5. The producing Party or its counsel shall designate documents or information as confidential information prior to actual production of the document or information by placing the notation "CONFIDENTIAL" on every page of each document so designated or, in the case of confidential information disclosed in a non-paper median, (for example, video tape, audio tape, computer disks, etc.), the notation "CONFIDENTIAL" shall be affixed to the outside of the medium or its container. Inadvertent failure to designate a document as "CONFIDENTIAL" may be corrected by supplemental written notice given as soon as practicable.

6. This Protective Order prohibits the Party receiving information from disclosing to others documents marked as "CONFIDENTIAL" by the producing Party. Upon delivery of any document or other information so designated, another Party may,

within thirty days of delivery of the document or other such information, send a letter to the producing Party challenging any such designations by indicating by Bates number range(s) or other sufficient identifying information precisely which document(s) the challenging Party asserts are not in fact "CONFIDENTIAL." The Parties shall confer in a good faith attempt to resolve the dispute informally. If such attempt is unsuccessful, the designating Party shall by motion to the Court move for a protective order regarding any designation(s) in question, enclosing for in camera review, where appropriate, the documents challenged. The challenging Party may trigger a time period in which a motion must be filed by sending a certified letter to the designating Party stating that, in the challenging Party's opinion, an impasse regarding designations has been reached ("Impasse Letter"). Within fifteen days after receipt by the designating Party of an Impasse Letter, the designating Party must file a motion with the Court. If the Court determines that the challenged documents are not entitled to confidential treatment, those documents will no longer be held subject to this Protective Order. Any documents challenged hereunder retain their status as "confidential information" hereunder unless and until the Court orders that they be released from such status.

7. The Parties and/or their counsel shall have the right to exclude from oral depositions any person who is not authorized by this Order to receive documents or information designated as confidential information, other than (1) a person who qualifies under Paragraph 8, (2) the deponent or the witness, and (3) the deponent's or the witness'

counsel. Such right of exclusion shall be applicable only during periods of deposition examination or deposition testimony directed or relating to confidential information.

If, during the course of any deposition and not later than thirty (30) days after the receipt of a written transcript of such deposition, the deponent/witness, counsel for the deponent/witness, any Party, or counsel for any Party notifies the other Parties or their counsel in writing that the deposition transcript or any portion thereof or any exhibits to the deposition is subject to designation as "CONFIDENTIAL," such transcript or portion thereof shall be treated as protected by this Order. Documents that are used as exhibits already designated as "CONFIDENTIAL" shall remain confidential. Any deposition that has any portion of the transcript or exhibits designated as "CONFIDENTIAL" shall indicate that it contains confidential information. A Party which objects to the designation shall have the rights and objections as set forth in Paragraph 6.

When depositions or portions of depositions are designated "CONFIDENTIAL," the Parties and their counsel shall use such confidential information only as provided for in this Order. All persons present at the taking of such depositions when such confidential information is involved are enjoined from disclosing to any other person such confidential information and the testimony of the deponent or witness regarding such material, except as permitted herein.

8. Documents or information designated as "CONFIDENTIAL," copies thereof, and the information contained therein may be disclosed only to the following persons:

- (a) Employees of a Party;
- (b) Attorneys retained by the Parties in this proceeding to consult in this action, and their respective associates, clerks, legal assistants, stenographic and support personnel, and organizations retained by such attorneys to provide litigation support services in this action and the employees of said organizations;
- (c) A witness at a deposition or at trial if there is a good faith reason to believe that the witness has previously seen the document or is familiar with the subject matter of the document;
- (d) Independent consultants and experts and their staff ("Experts") who are directly employed or retained in connection with this action by the Parties or their counsel for assistance with respect to this action, to the extent that such disclosure is necessary for the preparation of this case for trial;
- (e) The Court in this action, any other court to which an appeal from this litigation may be taken and any persons employed by the Court;
- (f) Court reporters, including stenographers and video technicians transcribing proceedings in this action;
- (g) Copy and computer services personnel for purposes of copying, imaging, or indexing documents for purposes of this proceeding; and
- (h) Such other persons as hereafter may be designated by written agreement of the Parties or by order of the Court.

9. Documents or information designated as "CONFIDENTIAL" may be disclosed to the persons described in Paragraph 8 only to the extent necessary for purposes of this proceeding. In addition, each person described in subparagraph 8(a), 8(c), 8(d) or 8(h) shall, prior to such disclosure, first have signed a counterpart of the Acknowledgement Regarding Stipulated Protective Order attached hereto as Exhibit A, which acknowledges that he or she has read this Order, has agreed to be bound by it and will not disclose confidential documents or information to anyone else except as permitted herein, and will not use such material for any purpose other than presenting claims or defenses in this action by motion or at trial or in any appeal of this action. Each such counterpart of Exhibit A shall be maintained by the Party or counsel making the disclosure to such person and shall be made available to any Party requesting access thereto at the conclusion of this action.

10. Disclosure of confidential documents or information to an expert or consultant under Paragraph 8 shall not constitute a designation of the person as an expert whose opinions may be presented at trial.

11. If any Party should submit to the Court any documents or information designated as "CONFIDENTIAL," those documents shall be submitted in a separate envelope or other appropriate container, sealed and labeled with the caption of this case and the notation "Filed Under Seal," along with a Motion to Seal those attached documents and information. Upon filing of a Motion to Seal, any Party which seeks to preserve the confidentiality of those documents or information shall file a Memorandum

in Support of Sealing within ten (10) days of the filing of the Motion to Seal. Until such time as the Court has ruled on such a Motion and Memorandum, the Clerk shall maintain the confidentiality of these documents, and such materials shall be made available only to persons listed in Paragraph 8.

12. All documents and information designated as "CONFIDENTIAL" shall be used by the person receiving them solely for the purposes of this proceeding and for no other purpose whatsoever. Any proceeding in the Court or any other tribunal which refers to the confidential information shall be held in camera unless all Parties agree otherwise. Without limitation, no person receiving confidential information shall use or disclose such confidential information in any other action or proceeding. Material designated as "CONFIDENTIAL" shall not be used for any business, competitive or other purpose, and shall not be disclosed to any person or entity, except as expressly provided herein.

13. The terms of this Order shall in no way affect the right of any person (a) to withhold information on grounds of immunity from discovery such as, for example, attorney/client privilege or work product; or (b) to raise or assert any objections heretofore or hereafter raised or asserted, including but not limited to defenses or objections with respect to the use, relevance or admissibility at trial of any evidence, whether or not comprised of information or documents furnished subject hereto.

14. Nothing in this Order shall be construed to create rights in any person not a Party to this proceeding except to the extent such person is a disclosing entity hereunder.



15. Unless the Parties, themselves or through counsel, agree otherwise in writing, upon the final disposition of this action, the Parties and/or their counsel shall promptly return to the producing Party (or its counsel) or destroy all documents designated as "CONFIDENTIAL," all documents incorporating confidential information, and all copies made thereof, including all documents or copies of documents provided by the Party to any other person, no later than thirty (30) days after the unappealed or unappealable final judgment or settlement of the present action. Notwithstanding the foregoing, each Party's counsel of record shall be permitted to retain one file copy of materials made part of the trial record or which have been filed under seal with the Court, and a copy of all depositions and deposition exhibits.

16. In the event that any person having possession, custody or control of any document or information produced in this action and designated as "CONFIDENTIAL" receives a subpoena or other process or order to produce such document or information, such person shall promptly notify the producing Party, shall furnish the producing Party with a copy of said subpoena or other process or order, and shall keep confidential such information and documents until adjudication before the Court. The producing Party shall have the burden of defending against such subpoena or other process or order.

17. The Parties agree that this Order shall be effective from the date on which it is executed by counsel for the Parties and shall apply and be enforceable from that date forward with respect to all pre-trial proceedings in this matter, including materials produced at any time after commencement of this case.

18. Except as otherwise provided herein, neither the taking of nor the failure to take any action to enforce the provisions of this Order, nor the failure to object to any designation or any such action or omission, shall constitute a waiver of any right to seek and obtain protection or relief other than as specified herein of any claim or defense in this action or any other proceeding including, but not limited to, the claim or defense that any confidential information is or is not confidential to any Party. The procedures set forth herein shall not affect the rights of the Parties to object to discovery on the grounds other than those related to proprietary information claims, nor shall it relieve a Party of the necessity of proper response to discovery procedures.

19. The Court retains power during and (to the extent necessary to enforce Paragraph 18 hereof) after final disposition of this action to enforce this Order and to make such amendments, modifications, deletions, and additions to this Order as the Court may from time to time deem appropriate or as may be requested by the Parties.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

BY THE COURT:

\_\_\_\_\_  
Charles B. Kornmann  
United States District Judge

ATTEST:

JOSEPH A. HAAS, CLERK

By: \_\_\_\_\_  
Deputy

(SEAL)

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

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

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vs.

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Public Utilities Commission,

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and Venture Communications Cooperative,

Intervenors.

Civil Number 04-3014

ACKNOWLEDGEMENT REGARDING  
STIPULATED PROTECTIVE ORDER

I, \_\_\_\_\_, hereby acknowledge that:

1. I have received a copy of the Protective Order ("Order") stipulated to by the parties and entered by the Court in this action;
2. I have either read the Order and/or have had the terms of the Order explained to me by an attorney;
3. I understand the terms of the Order and agree to comply with and to be bound by such terms;

4. I may receive documents or information designated as confidential and understand that such documents and information are provided to me pursuant to the terms and restrictions of the Order;

5. I agree to hold in confidence any documents and information disclosed to me pursuant to the terms of the Order; and

6. I hereby submit myself to the jurisdiction of the United States District Court for the District of South Dakota for resolution of any matters pertaining to the Order.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_