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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,

Plaintiff,

vs.

Steve Kolbeck, 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

**VERIZON WIRELESS' REQUEST  
FOR LEAVE TO FILE RECORD  
CLARIFICATION REGARDING  
MOTION TO CONTINUE AND  
MOTION FOR ADDITIONAL  
DISCOVERY**

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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 (“Verizon Wireless”) wish to provide clarification  
regarding incomplete factual representations made in Defendants’ and Intervenors’ Reply  
to Verizon Wireless’ Response to Motion to Continue and Motion for Additional  
Discovery (“Reply”). Verizon Wireless requests leave of Court for file a response  
clarifying the record regarding discovery in this case. The substance of the request would

respond to the statement on page 2 of the Reply, in which Defendants and Intervenors state that:

Plaintiff has already acted outside of the Court's current scheduling order and served its own additional discovery on the Defendants and Intervenors.

This statement is incomplete, and misrepresents Verizon Wireless' actions. Verizon Wireless seeks to provide the Court several exhibits which would demonstrate the complete actions of the parties.

In sum, in December of 2006, Verizon Wireless advised that if the Defendants and Intervenors intended to elicit opinions from their expert witness beyond those in his report on September 1, 2005, that his report should be updated subject to Verizon Wireless' ability to conduct appropriate discovery on any new testimony. That was again reiterated after the parties discussed these issues by phone. On January 17, 2007, Defendants and Intervenors served a revised expert report of Larry Thompson. On February 6, 2007, Verizon Wireless submitted discovery (the discovery referenced in the Reply) limited to the new information contained in the revised expert report "as an alternative to objecting to the new information contained in the report." The Court should be aware that 1) the additional discovery served by Verizon Wireless was served only in response to a revised expert report that was received well outside of the date in the scheduling order; 2) communications between the parties clearly contemplated that such discovery would be available; and 3) Verizon Wireless' use of discovery instead of a motion to strike the new expert testimony was intended to handle discovery informally and reduce discovery disputes as directed by the Court's Standard Operating Procedures.

Because this new discovery was solely directed at Defendants' and Intervenors' new expert disclosures, it should not bear on the issues raised in the current motion.

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

DATED this 27th day of February, 2007

By: /s/ Craig A. Pfeifle

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**Attorneys for Plaintiffs**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 27, 2007, I electronically filed a true and correct copy of **VERIZON WIRELESS' REQUEST FOR LEAVE TO FILE RECORD CLARIFICATION REGARDING MOTION TO CONTINUE AND MOTION FOR ADDITIONAL DISCOVERY**, relative to the above-entitled matter, with the United States District Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Ms. Rolayne Ailts Wiest  
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Ms. Margo D. Northrup  
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Service was made by first class mail, postage prepaid to the following:

Ms. Darla Pollman Rogers  
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/s/ Craig A. Pfeifle

Craig A. Pfeifle