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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

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 John-
son, in their official capacities as the
Commissioners of the South Dakota Public
Utilities Commission,

Defendant,

South Dakota Telecommunications Ass'n
and Venture Communications Cooperative,

Intervenors.

Civil Number 04-3014

RESPONSE OF DEFENDANT
AND INTERVENORS
TO PLAINTIFF'S
STATEMENT OF FACTS

COME NOW Bob Sahr, Gary Hanson, and Dustin Johnson in their official capacities as the Commissioners of the South Dakota Public Utilities Commission (collectively "Defendant") and South Dakota Telecommunications Association and Venture Communications Cooperative (collectively "Intervenors") and hereby respond to the Plaintiff's Statement of Facts as follows:

**DEFENDANT'S AND INTERVENORS' OBJECTIONS
TO PLAINTIFF'S STATEMENT OF FACTS**

1. Defendant and Intervenors do not dispute the facts stated in Section I, Paragraph 1 of the Verizon Statement of Facts.
2. Defendant and Intervenors do not dispute the facts stated in Section I, Paragraph 2.

3. Defendant and Intervenors do not dispute the facts stated in Section I, Paragraph 3.

4. Defendant and Intervenors do not dispute the facts stated in Section I, Paragraph 4.

5. Defendant and Intervenors do not dispute the facts stated in the first sentence of Section II, Paragraph 5. Defendant and Intervenors object to the second sentence of the paragraph, however, on the basis that it is a legal conclusion.

6. Defendant and Intervenors are without knowledge or information to dispute the facts stated in Section II, Paragraph 6.

7. Defendant and Intervenors do not dispute the facts stated in Section II, Paragraph 7.

8. Defendant and Intervenors are without knowledge or information to dispute the facts stated in Section II, Paragraph 8.

9. Defendant and Intervenors are without knowledge or information to dispute the facts stated in Section II, Paragraph 9.

10. Defendant and Intervenors are without knowledge to dispute the facts stated in Section II, Paragraph 10.

11. Defendant and Intervenors do not dispute the facts stated in Section II, Paragraph 11.

12. Defendant and Intervenors do not dispute the facts stated in Section II, Paragraph 12 of Verizon's Statement of Facts related to "indirect interconnection."

13. Defendant and Intervenors are without knowledge or information to dispute the facts stated in Section II, Paragraph 13.

14. Defendant and Intervenors are without knowledge or information to dispute the facts stated in Section II, Paragraph 14.

15. Defendant and Intervenors do not dispute the facts stated in Section II, Paragraph 15.

16. Defendant and Intervenors object to Section III, Paragraph 16. This is not a statement of facts, but is legal argument.

17. Defendant and Intervenors do not dispute the facts stated in Section III, Paragraph 17.

18. Defendant and Intervenors dispute that portion of Section III, Paragraph 18 which states that the “amount of interMTA traffic is limited.” This statement improperly suggests that the issue of identifying interMTA traffic is insignificant or inconsequential. Defendant and Intervenors object to this characterization. Thompson Affidavit ¶¶ 14-15.

19. Defendant and Intervenors do not dispute the facts stated in Section III, Paragraph 19.

20. Defendant and Intervenors do not dispute the facts stated in Section III, Paragraph 20.

21. Defendant and Intervenors object to Section III, Paragraph 21. This is not a proper statement of fact, but presents legal argument without stating specific facts.

22. Defendant and Intervenors object to Section III, Paragraph 22 insofar as it includes a legal conclusion – that Verizon is acting “consistent with this FCC determination.” With respect to the statement, however, indicating that Verizon Wireless uses “network and traffic routing information,” Defendant and Intervenors do not dispute such fact.

23. Defendant and Intervenors do not dispute the facts stated in Section IV, Paragraph 23.

24. Defendant and Intervenors object to Section IV, Paragraph 24. This is not a proper statement of fact, but presents legal argument without stating specific facts.

25. Defendant and Intervenors object to Section IV, Paragraph 25. This is not a proper statement of fact, but presents legal argument without stating specific facts.

26. Defendant and Intervenors object to Section IV, Paragraph 26. This is not a proper statement of fact, but presents legal argument without stating specific facts.

27. Defendant and Intervenors object to Section IV, Paragraph 27. This is not a proper statement of fact, but presents legal argument without stating specific facts.

28. Defendant and Intervenors object to Section IV, Paragraph 28. This is not a proper statement of fact, but presents legal argument without stating specific facts.

29. Defendant and Intervenors object to Section V, Paragraph 29. This is not a proper statement of fact, but presents legal argument without stating specific facts.

30. Defendant and Intervenors do not dispute the facts stated in the first and second statements of Paragraph 30 of Verizon’s Statement of Facts. With respect to the statement made indicating that Verizon Wireless utilizes SS7 throughout its South

Dakota network, Defendant and Intervenors are without knowledge or information to dispute that stated fact.

31. Defendant and Intervenors do not dispute the facts stated in Section V, Paragraph 31.

32. Defendant and Intervenors do not dispute the facts stated in Section V, Paragraph 32.

33. Defendant and Intervenors object to Section V, Paragraph 33. This is not a proper statement of fact, but presents legal argument without stating specific facts.

34. Defendant and Intervenors object to facts in Section V, Paragraph 34. This is not a proper statement of fact, but presents legal argument without stating specific facts.

35. Defendant and Intervenors dispute the facts stated in the second and third sentences of Section V, Paragraph 35. The statements made suggest that it is only possible to identify the MTA or state in which the call originates, for purposes of determining compensation obligations, by determining the physical location of the caller. This is not correct. The FCC stated in its First Report and Order, Paragraph 1044, that “[f]or administrative convenience, the location of the initial cell site when a call begins shall be used as the determinant of the geographic location of the mobile customer.” Or, as another alternative, “LECs and CMRS providers can use the point of interconnection between the two carriers at the beginning of the call to determine the location of the mobile caller or called party.” *Id.* It is incorrect to suggest that telecommunications traffic may only be jurisdictionally assigned, for intercarrier compensation purposes, based on the precise physical location of the caller at the time the call is made. This is not what the FCC has determined. Further, Defendant and Intervenors believe Verizon does have the capability to appropriately assign traffic through use of the initial, originating cell site location. (Thompson Affidavit ¶¶ 7-9).

36. Defendant and Intervenors object to the facts stated in Section V, Paragraph 36 for the same reasons set forth in Paragraph 35 herein.

37. Defendant and Intervenors are without knowledge or information to dispute the facts stated in Section V, Paragraph 37.

38. Defendant and Intervenors do not dispute the factual statements made in Section V, Paragraph 38 to the extent they are pertinent to describing the “mandatory SS7 fields,” under current industry standards adopted by ATIS. (*See* Thompson Affidavit ¶ 10).

39. Defendant and Intervenors dispute the facts stated in Section V, Paragraph 39 to the extent it is suggested that none of the referenced information can in any

way be used in the process of assigning telephone calls to the appropriate jurisdiction for compensation purposes. (*See* Thompson Affidavit ¶¶ 10, 12, 16).

40. Defendant and Intervenors do not dispute the facts stated in Section V, Paragraph 40.

41. Defendant and Intervenors dispute the facts stated in Section V, Paragraph 41 to the extent it is suggested that none of the referenced information can in any way be used in the process of assigning telephone calls to the appropriate jurisdiction for compensation purposes. (*See* Thompson Affidavit ¶¶ 10, 12, 16).

42. Defendant and Intervenors are without knowledge or information to dispute the facts stated in Section V, Paragraph 42.

43. Defendant and Intervenors do not dispute the facts stated in Section V, Paragraph 43.

44. Defendant and Intervenors dispute the facts stated in Section V, Paragraph 44 to the extent they infer that the physical location of the calling party is essential to identifying whether traffic is intraMTA, interMTA and intrastate, or interMTA and interstate. This is not consistent with the FCC's position (see response to Paragraph 35 herein). (*See* Thompson Affidavit ¶¶ 7-9).

45. Defendant and Intervenors dispute the facts stated in Section V, Paragraph 45. (*See* Thompson Affidavit ¶ 11).

46. Defendant and Intervenors object to Section VI, Paragraph 46. This is not a proper statement of fact, but presents legal argument without stating specific facts.

47. Defendant and Intervenors dispute the facts stated in Section VI, Paragraph 47, and further object to the Paragraph insofar as it suggests that the "exact location of a caller" is necessary to identify telecommunications traffic as intraMTA, interMTA and intrastate or interMTA and interstate. This is a legal conclusion not supported by the current federal law. (*See* Thompson Affidavit ¶ 7).

48. Defendant and Intervenors dispute the facts stated in Section VI, Paragraph 48. (*See* Thompson Affidavit ¶¶ 4, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17).

49. Defendant and Intervenors object to Section VI, Paragraph 49. This is not a proper statement of fact, but presents legal argument without stating specific facts.

50. Defendant and Intervenors dispute the facts stated in Section VI, Paragraph 50, to the extent that it is claimed that Verizon Wireless cannot due to "technical limitations and costs" provide signaling information or reports. Defendant and Intervenors also object to the suggestion made concerning signaling information – that some-

thing beyond commonly accepted industry standards is required. (See Thompson Affidavit ¶¶ 4, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17).

DATED this twenty-second day of December, 2005.

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