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*From the offices of Gene N. Lebrun
e-mail address: glebrun@lynnjackson.com*

November 17, 2005

RECEIVED

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Ms. Kathy M. Hammond
Deputy-In-Charge
405 Federal Building
225 South Pierre Street
Pierre, SD 57501

Re: Verizon Wireless et al. (v. State of South Dakota et al)
Court File No. 04-3014
Our File No. 040061-00001

Dear Ms. Hammond:

Pursuant to my telephone conversation today with Jill at your office, I have enclosed the following:

1. Page 3 of Plaintiffs' Motion For Summary Judgment signed by Gene N. Lebrun;
2. Page 24 signed by Gene N. Lebrun and Page 25 of Plaintiffs' Memorandum Of Law In Support Of Motion For Summary Judgment.

By copy of this letter, I am providing Darla Pollman Rogers and Rolayne Ailts Wiest with the enclosed.

Ms. Kathy M. Hammond

November 17, 2005

Page 2

Should you have any questions, please contact me.

Sincerely yours,

LYNN JACKSON, SHULTZ & LEBRUN, P.C.

A handwritten signature in black ink, appearing to read "Gene N. Lebrun", with a long horizontal flourish extending to the right.

Gene N. Lebrun

GNL:fjs

Enclosures

Enc/cc:
 Rolayne Ailts Wiest
 Darla Pollman Rogers
 Phil Schenkenberg/David McDonald

(6) Enjoining the Commissioners of the South Dakota Public Utilities Commission from taking any action to enforce or implement the preempted provisions under SDCL §§ 49-31-114 and 115.

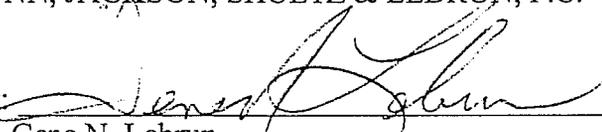
REQUEST FOR ORAL ARGUMENT

In accordance with Local Rule 7.1, Verizon Wireless respectfully requests oral argument on this motion.

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

DATED this 11th day of November, 2005

By:


Gene N. Lebrun
Steven J. Oberg
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Philip R. Schenkenberg
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Attorneys for Plaintiffs

Vonage Order, ¶ 26-28 (footnotes omitted) (emphases added).⁷

Here, the state has imposed regulation without respecting the interstate/intrastate distinction, and as a result, regulates calls that are "actually interstate." Because the state of South Dakota has no authority to regulate interstate services, Chapter 284 cannot be enforced as to interstate traffic.

C. Relief Requested

Verizon Wireless requests an order as follows:

- (1) Declaring that SDCL §§ 49-31-110 and 111 are preempted because they reach interstate traffic that is subject to exclusive jurisdiction of Congress and the FCC;
- (2) Enjoining the Commissioners of the PUC from taking any action to enforce or implement the preempted provisions under SDCL §§ 49-31-114 and 115.

CONCLUSION

For the above reasons, Verizon Wireless respectfully requests that the Court grant its motion for summary judgment.

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

DATED this 11th day of November, 2005

By: 

Gene N. Lebrun
Steven J. Oberg
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⁷ An "NPA/NXX" is industry shorthand for a phone number.

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