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Deputy General Counsel  
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The Verizon Wireless logo, featuring the word "verizon" in a bold, sans-serif font with a checkmark-like shape above the 'v', followed by the word "wireless" in a lighter, italicized sans-serif font.

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September 30, 2004

Robert Sahr, Chairman  
Gary Hanson, Vice-Chairman  
James Burg, Commissioner  
South Dakota Public Utilities Commission  
Capitol Building, 1<sup>st</sup> Floor  
500 E. Capitol Avenue  
Pierre, South Dakota 57501-5070

Re: Comments on RM04-001: Draft Rule 20:10:33:19  
Service Standards for Telecommunications Companies

**RECEIVED**

OCT 01 2004

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

**FAX Received SEP 30 2004**

Dear Chairman Sahr, Vice-Chairman Hanson and Commissioner Burg:

Verizon Wireless appreciates the opportunity to submit comments on the Draft Rule. While we understand the Commission's interest in the performance of telecommunications networks, we must respectfully oppose the Rule to the extent it would impose network standards and obligations on wireless carriers.

The proposed regulation would inappropriately apply traditional telephone company service standards for auxiliary battery power requirements to wireless carriers' networks. The proposed regulation is unnecessary, because the wireless industry already operates in a naturally responsive and highly innovative marketplace, and has a proven track record of planning for and anticipating potential service interruptions. Furthermore, regulation of wireless service quality is an area specifically reserved to federal regulation and should therefore not be undertaken by this Commission.

Over the past two decades the wireless industry has constructed and operated wireless networks in a competitive marketplace and has faced floods, fires, snow and ice storms, blackouts and many other national and natural disasters that threatened the operation of these networks. Wireless carriers have enlisted the assistance of their vendors, other telecommunications carriers and disaster planning agencies to develop and refine plans, procedures and products on national and/or regional scales to ensure the continued performance of their networks in times of emergency. Network reliability can also be a source of competitive differentiation between wireless carriers. Wireless carriers have every incentive to design their networks to be able to provide uninterrupted service even under the most trying situations.

Verizon Wireless' own national network performance standards call for each of its cell sites to be equipped with battery backup capable of eight hours of continued operation in the event of loss of commercial power. Each cell site is also equipped with connections for mobile generators. We plan for generator backup to the batteries in all possible cases unless prevented by the site's owner or by local zoning or noise ordinances. Our mobile switching offices are equipped with backup diesel generators. All facilities are tested and maintained regularly. We have invested in mobile Cells on Wheels (COWs) and Cells on Light Trucks (COLTS) to enable us to deploy additional wireless network capabilities quickly in critical areas. We have plans to keep our networks operating in many types of emergencies, and are constantly working to improve reliability even more.

Our competitively-driven, national operational performance standards, not state public utility regulations, ensured that Verizon Wireless' network performed well during the record breaking hurricanes that hit Florida, Alabama and Mississippi. We were able to maintain most sites in operation despite loss of electric utility service because of the backup batteries and generators that we had installed. When a few sites lost power they did so when it became too dangerous for employees to refuel generators due to downed power lines and trees. Regulations such as the Commission's proposed Draft Rule would not have kept these sites on the air.

The Draft Rule would inappropriately graft landline concepts onto the very different wireless industry. For example, it treats wireless tower and antenna sites the same as a telephone company's tandem switching office. This rule would require each cell site to have permanent auxiliary power or a connection to mobile power source within four hours. Yet cell sites are located throughout the state in areas much more remote and inhospitable than are telephone company tandem switching offices, areas that may be inaccessible or possibly hazardous to get to in some emergencies.

Moreover, the proposed power interruption triggers would apply when power was lost to greater than "ten percent of the customers served within an exchange." However, wireless providers' service area boundaries are not measured within telephone "exchanges." Wireless carriers are licensed by the Federal Communications Commission to serve discrete geographic areas defined by the FCC that do not track state-determined exchange boundaries for landline telephone companies. The Draft Rule thus cannot be feasibly applied to wireless companies.

The draft rule is also outside of the Commission's jurisdiction because the regulation of mobile wireless networks is within the exclusive authority of the FCC. The longstanding federal regulatory framework for the wireless industry, as well as Section 332 of the Communications Act, 47 U.S.C. 332, prohibit states from regulating the service quality of wireless networks. Specifically, states are preempted from establishing entry criteria or from imposing coverage or other quality of service standards upon wireless carriers.

Courts have held that claims implicating wireless service quality were preempted under Section 332.<sup>1</sup>

When the wireless industry began to develop in the early 1980s, the FCC asserted the sweeping authority over radio services that Congress had granted it, and preempted state regulation of wireless technical service and performance standards. Because “state and local regulations might conflict with and thereby frustrate” the federal goal of consistent nationwide regulation, the FCC asserted “federal primacy over the areas of technical standards and competitive market structure for cellular service.” Under this exclusive authority, the FCC issued technical and network standards for wireless service, designed to ensure “signal quality and other quality aspects of system performance.” The FCC made it clear that there was no room for state-imposed technical requirements for network performance: “It is imperative that no additional requirements be imposed by the states which could conflict with our standards and frustrate the federal scheme for the provision of nationwide cellular service.”<sup>2</sup> The FCC has not deviated from its decision that preemptive federal network quality rules, not potentially conflicting state-by-state rules, best serve the public interest.

Moreover, the entire telecommunications industry is constantly investigating ways in which to improve network reliability. Under the auspices of the Network Reliability and Information Council, a federal advisory committee composed of senior officials from many wireline, wireless, internet, equipment and other companies, and assisted by FCC staff, the telecommunications industry has adopted literally hundreds of industry “Best Practices” to improve the reliability of telecommunications networks.<sup>3</sup> The current NRIC is studying what additional or changed Best Practices should be adopted, and the recent experience in the Southeast will lead to even greater focus by the industry on ensuring that customers have the most reliable service possible. These Best Practices have the benefit of being national and thus consistent across the industry. State-specific regulations could impede these national efforts by requiring conflicting practices.

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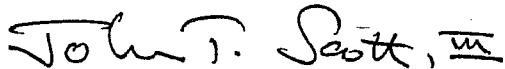
<sup>1</sup> In *Bastien v. AT & T Wireless Services*, 205 F 3<sup>rd</sup> 983 (7<sup>th</sup> Cir. 2000), for example, the plaintiff claimed that the wireless carrier was providing insufficient coverage and that the company had “signed up subscribers without first building the cellular towers and other infrastructure necessary to provide reliable cellular connections.” (Id. at 985). The Seventh Circuit found that the FCC alone had jurisdiction over CMRS service quality and entry, noting that “[t]he statute makes the FCC responsible for determining the number, placement and operation of the cellular towers and other infrastructure,” and that “Bastien’s complaint would directly alter the federal regulation of tower construction, location, coverage, quality of service and hence rates for service.” (Id. at 989, emphasis added). The court concluded: “Bastien’s complaint, although fashioned in terms of state law actions, actually challenges the rates and levels of service offered by AT&T Wireless, an area specifically reserved to federal regulation.” (Id. at 990).

<sup>2</sup> *Cellular Communications Systems*, 86 FCC 2d 469 at paras. 79-82; *on reconsideration*, 89 FCC 58, at paras. 81-84.

<sup>3</sup> Detailed information about the NRIC is available at its website, [www.nric.org](http://www.nric.org).

For the reasons described above Verizon Wireless respectfully opposes the application of Draft Rule 20:10:33:19 Service Standards for Telecommunications Companies to wireless carriers. Attached is a mark-up of the proposed rule. We appreciate this Commission's support of the continued development of wireless infrastructure in the State and welcome the opportunity to discuss any concerns the Commission may have.

Respectfully,

A handwritten signature in black ink that reads "John T. Scott, III". The signature is written in a cursive style with a horizontal line under the "III".

John T. Scott, III

cc: Ms. Pam Bonrud, Executive Director  
South Dakota Public Utilities Commission

## CHAPTER 20:10:33

### SERVICE STANDARDS FOR TELECOMMUNICATIONS COMPANIES

**20:10:33:19. Auxiliary and battery power requirements.** All telephony providers shall maintain continuous service to local residents during localized power interruptions. Localized power interruptions are those affecting not greater than ten percent of the customers served within an exchange. All telephony providers shall provide best efforts to maintain service during catastrophic power interruptions.

Catastrophic power interruptions include all events where commercial power is lost to greater than ten percent of the customers served within an exchange. Events causing catastrophic power interruptions include but are not limited to natural disasters such as flood, hail storms, ice storms, tornado, wind storms, snow storms, fires and man-made hazards such as hazardous materials incidents, ground transportation incidents, fires, nuclear attacks, terrorist attacks, explosions and releases of poisonous gas into the atmosphere.

Each local central office, toll switching office, or tandem switching office of a local exchange company shall contain a minimum of 8 hours, plus or minus 15 percent, of battery reserve rated for peak traffic load requirements. A permanent auxiliary power unit may be utilized to meet this requirement. In central offices and toll tandem switching offices, a permanent auxiliary power unit shall be installed or a mobile power source shall be available which normally can be delivered and connected within four hours. The remote terminating electronics of a local exchange company shall be equipped with a local or remote battery plant designed for a minimum of 8 hours, plus or minus 15 percent, of battery reserve rated for peak traffic load requirements. The

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batteries shall be tested and reported internally on a regular basis, not to exceed once a year. ~~All wireless or cellular tower electronics shall be considered a tandem switching~~

~~office for the applicability of this rule.~~ Providers of commercial mobile radio services as defined and regulated by the Federal Communications Commission are not subject to this rule.

**Source:** 25 SDR 89, effective December 27, 1998.

**General Authority:** SDCL 49-31-77, 49-31-85.

**Law Implemented:** SDCL 49-31-3, 49-31-77, 49-31-85.