

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE PETITION OF )	
CELLCO PARTNERSHIP AND ITS )	
SUBSIDIARIES AND AFFILIATES TO )	TC10-090
AMEND AND CONSOLIDATE ELIGIBLE )	
TELECOMMUNICATIONS CARRIER )	
DESIGNATIONS IN THE STATE OF )	
SOUTH DAKOTA AND TO PARTIALLY )	
RELINQUISH ETC DESIGNATION )	

**SUPPLEMENT TO MOTION TO COMPEL DISCOVERY RESPONSES FROM SDTA**

Cellco Partnership d/b/a Verizon Wireless (“Cellco”), on behalf of itself and its subsidiaries and affiliates offering commercial mobile radio services (“CMRS”) in the State of South Dakota (collectively, “the Petitioners”) hereby supplement their motion to compel intervenor South Dakota Telecommunications Association (“SDTA”) to respond to discovery requests. As part of the meet-and-confer process, SDTA committed to produce documentation describing five of its members’ service offerings, and to identify its members’ affiliates and subsidiaries. In reliance on SDTA’s commitment, the Petitioners excluded these issues from their motion to compel against SDTA filed on April 21, 2011. After the motion to compel was filed, SDTA stated it would not produce the information it had previously committed to produce. Accordingly, the Petitioners hereby supplement their April 21 motion to compel.

**I. FACTUAL BACKGROUND**

Petitioners incorporate by reference the background information set forth in their April 21 motion to compel. As recounted in that motion, Petitioners attempted to resolve this discovery dispute without involvement of the Commission by sending a letter to, and holding a substantive telephone conference with, SDTA’s representatives. There were three categories of information that Petitioners sought from SDTA that were at issue in this meet-and-confer process: (1) the

confidential portions of ETC filings and reports submitted by SDTA's members to the Commission; (2) information about SDTA's members' service offerings, and (3) identification of SDTA's members' affiliates and subsidiaries. In a letter dated April 20, 2011, SDTA refused to produce the first category of information, but offered a compromise on the second and third categories. *See Exhibit A.* SDTA offered to produce information about the service offering of five of its members, and to produce the information about its members' affiliates and subsidiaries. *Id.* Petitioners accepted SDTA's offer as these two issues. *See Exhibit B.* Petitioners accordingly narrowed their motion to compel to seek only the confidential ETC filings and reports. *See* April 21, 2011 Motion to Compel.

On Monday, April 25, SDTA's counsel informed Petitioners that SDTA's offer had been conditional: SDTA would produce the supplemental information only if Petitioners did not file any motion to compel against SDTA at all. *See Exhibit C.* The letter containing SDTA's offer contains no such condition. *See Exhibit A.*

Thus, Petitioners are left with no choice but to supplement their April 21, 2011 motion to compel to include the two categories of information – set forth below in more detail – as to which SDTA offered to provide responses, and then refused to do so.

## **II. SDTA MUST PROVIDE A SUBSTANTIVE RESPONSE TO PETITIONERS' DISCOVERY REQUESTS**

Petitioners incorporate by reference the legal standard for a motion to compel set forth in their April 21 motion to compel.

### **A. SDTA Must Identify Its Members' Service Offerings (Interrogatory No. 8)**

Petitioners request an order compelling SDTA to respond to Interrogatory No. 8, which states:

8. Identify all of the telecommunications service offerings currently available to consumers residing within each SDTA member's South Dakota

designated service area, including the price, calling area, and services included in each offering. Produce copies of each SDTA member's current telecommunications marketing collateral which describe or relate to the current telecommunications service offerings.

SDTA provided no response whatsoever, stating only the following objection:

SDTA objects to this Interrogatory on grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

A competitive ETC is required to offer a local usage plan comparable to the one offered by the incumbent local exchange carrier in its Designated Area. A.R.S.D. 20:10:32:43.05. Another party, James Valley Wireless, has challenged Petitioners' compliance with this requirement. Full information about the SDTA members' local usage plans will assist Petitioners in rebutting James Valley Wireless' allegations. It should not be burdensome for the SDTA members to make available the information that they presumably use to advertise their services to the public. SDTA should be compelled to provide a full response to Interrogatory No. 8.

**B. SDTA Must Identify Its Members' Subsidiaries and Affiliates (Interrogatory No. 12)**

Petitioners request an order compelling SDTA to respond to Interrogatory No. 12, which states:

12. Identify all of the subsidiaries, affiliates, and related entities operating in the State of South Dakota for each SDTA member. Provide an organizational chart showing the relationship for each SDTA member.

SDTA provided no response whatsoever, stating only the following objection:

SDTA objects to this Interrogatory on grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Further, SDTA objects to the Interrogatory to the extent it seeks to impose a burden on SDTA which neither the Administrative Rules of South Dakota nor the South Dakota Rules of Civil Procedure impose.

SDTA should be compelled to provide responses to Interrogatory No. 12 because it appears that another party – James Valley Wireless – will be objecting to the Petition on the notion that it is somehow improper or impossible for a carrier to provide service as an ETC through the use of corporate affiliates’ assets, facilities, and licenses. Petitioners are entitled to discover the facts about the corporate structure of SDTA’s members in order to assist in the development of rebuttal arguments to James Valley Wireless’ expected argument. Accordingly, the information requested in Interrogatory No. 12 is likely to lead to the discovery of admissible evidence. SDTA must be compelled to provide a substantive response to Interrogatory No. 12.

### **III. CONCLUSION**

Because of SDTA’s surprising and baseless decision to refuse to follow through on its offer to produce information, the Petitioners have to supplement their motion to compel as set forth herein. The Commission should compel SDTA to respond to Petitioners’ discovery requests, as identified both in the April 21 motion to compel and in this supplement, so that Petitioners have a fair opportunity to discover facts as necessary to present a full defense to the allegations and arguments that appear likely to be presented at trial.

Dated: April 28, 2011.

Respectfully submitted,

GUNDERSON, PALMER, NELSON &  
ASHMORE, LLP

By 

Talbot J. Wieczorek

Assurant Building  
440 Mt. Rushmore Road  
P.O. Box 8045  
Rapid City, SD 57709-8045  
Telephone: (605) 342-1078  
Facsimile: (605) 342-0480

Mark J. Ayotte (MN # 166315)  
Matthew A. Slaven (MN #288226)  
Andrew M. Carlson (MN #284828) *pro hac  
vice pending*  
BRIGGS AND MORGAN, P.A.  
2200 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402-2157  
Telephone: (612) 977-8400  
Fax: (612) 977-8650  
mayotte@briggs.com  
mslaven@briggs.com  
acarlson@briggs.com

*COUNSEL FOR CELLCO PARTNERSHIP  
D/B/A VERIZON WIRELESS AND ITS  
SUBSIDIARIES AND AFFILIATES*

## CERTIFICATE OF SERVICE

The undersigned certifies that on the 28th day of April, 2011, I served a true and correct copy of **CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS's Supplement to Motion to Compel Discovery Responses from SDTA** in the above-entitled matter, via electronic mail to:

KARA SEMMLER  
STAFF ATTORNEY  
SDPUC  
500 EAST CAPITOL  
PIERRE SD 57501  
[karen.cremer@state.sd.us](mailto:karen.cremer@state.sd.us)

BRIAN ROUNDS  
STAFF ANALYST  
SDPUC  
500 EAST CAPITOL  
PIERRE SD 57501  
[brian.rounds@state.sd.us](mailto:brian.rounds@state.sd.us)

DARLA POLLMAN ROGERS  
ATTORNEY AT LAW  
RITER ROGERS WATTIER & NORTHRUP LLP  
PO BOX 280  
PIERRE SD 57501-0280  
[dprogers@riterlaw.com](mailto:dprogers@riterlaw.com)

MARGO D NORTHRUP  
ATTORNEY AT LAW  
RITER ROGERS WATTIER & NORTHRUP LLP  
PO BOX 280  
PIERRE SD 57501-0280  
[m.northrup@riterlaw.com](mailto:m.northrup@riterlaw.com)

JAMES M. CREMER  
ATTORNEY AT LAW  
BANTZ GOSCH & CREMER LLC  
PO BOX 970  
ABERDEEN SD 57402-0970  
[jcremer@bantzlzaw.com](mailto:jcremer@bantzlzaw.com)

RICHARD D. COIT  
SDTA  
PO BOX 57  
PIERRE SD 57501  
[richcoit@sdtaonline.com](mailto:richcoit@sdtaonline.com)



Talbot J. Wieczorek