

PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION
OF SANCOM, INC. FOR EXTENSION OF
TIME OF EXEMPTION FROM
DEVELOPING COMPANY SPECIFIC
COST-BASED SWITCHED ACCESS
RATES

TC07-128

**AFFIDAVIT OF CHRISTOPHER W.
MADSEN IN RESPONSE TO SANCOM'S
MOTION TO QUASH**

State of South Dakota)
):ss
County of Minnehaha)

Christopher W. Madsen, being first duly sworn upon his oath, deposes and states as follows:

1. I am an attorney of record for Qwest Communications Corporation ("Qwest") in Docket TC 07-128 currently pending before the Commission. Qwest's petition to intervene in this docket was granted by the Commission on February 5, 2008.

2. Around February 14, 2008, I was advised by PUC Staff Attorney Karen Cremer that Staff and Sancom, Inc. ("Sancom") had reached an agreement in principle whereby Sancom had agreed to implement the same switched access rate charged by Qwest and that the rate would be phased in over a period of three years. In a subsequent communication with Ms. Cremer, I advised that Qwest would want to obtain any responses that Sancom provided to data requests propounded by Staff. Ms. Cremer advised that Sancom did not respond to all the requests and to those that it did, the responses were submitted on a confidential basis, so she could not release any of the responses to Qwest without approval of Sancom.

3. On Tuesday, May 27, I had a telephone conversation with Mr. Doug Eidahl. I advised Mr. Eidahl that Qwest wanted to receive and review copies of Sancom's responses to the Staff data requests and stated Qwest would be willing to discuss an appropriate confidentiality

agreement, if need be. Mr. Eidahl was interested in knowing whether Qwest would be supporting the settlement Sancom reached with Staff. I could not give any such assurances and reminded Mr. Eidahl that Sancom and Qwest were also involved in litigation in U.S. District Court. Ultimately, Mr. Eidahl stated that because Qwest had not served any data requests of its own, Sancom was under no obligation to provide any documents or information to Qwest.

4. Accordingly, in order to get information to evaluate the potential settlement reached by Staff and Sancom and to advance the litigation in this docket, Qwest opted to issue a subpoena duces tecum to Staff and to Sancom to obtain copies of Sancom's responses to the Staff data requests communicated to Doug Eidahl from Keith Senger via three email messages. Qwest also opted to serve a set of its own data requests.

5. Qwest served the subpoena duces tecum on Karen Cremer and Doug Eidahl, by mail on June 5, 2008. The discovery requests were also served on Doug Eidahl, by mail, at that time, as well. A copy of the subpoena duces tecum is attached as Exhibit A. A copy of the discovery requests are attached as Exhibit B. The subpoena and discovery requests were sent via first class mail to Mr. Eidahl at 1801 N. Main Street in Mitchell. This is the address listed on the service list for this docket on the PUC website and in the South Dakota State Bar Membership Directory. I consequently learned from Ms. Cremer that Mr. Eidahl had not timely received the subpoena and discovery requests in the mail. In checking the internet for any updates as to Mr. Eidahl's business address, I learned Vantage Point Solutions had moved to a new location. Accordingly, I re-served the documents and prepared a new certificate of service. A copy of the amended certificate of service and letter to Mr. Eidahl are attached as Exhibit C.

6. The subpoena duces tecum set forth a deadline of June 13 to produce copies of the Sancom responses to Staff's data requests. Given the fact that the information had previously been compiled and would only need to be copied, the deadline seemed reasonable. Nevertheless, counsel

for Qwest anticipated that it may be necessary to negotiate a confidentiality agreement before Sancom would agree to produce the responses and therefore in all likelihood the deadline would need to be extended. As a matter of fact, I readily entered into an agreement with Karen Cremer to extend the deadline until June 18, because she understood a motion to quash was forthcoming.

7. As briefly mentioned above, Qwest and Sancom are currently engaged in litigation in U.S. District Court in South Dakota, *Sancom, Inc. v. Qwest Communications Corporation*, Civ. 07-4147. In that case, Sancom has sued Qwest for failure to pay switched access charges. Qwest has denied Sancom's claims, asserted various defenses and asserted a counterclaim that Sancom is engaged in an illegal "traffic pumping" scheme with free calling service companies which unlawfully increase call volumes for traffic that Sancom does not terminate in its area. There are at least two similar cases pending in federal court in South Dakota involving CLEC's and IXC's where there are allegations the CLEC's are engaged in illegal traffic pumping: *Northern Valley Communications, LLC v. MCI Communications Services, Inc., d/b/a Verizon Business Services, Global Conference Partners, LLC*, Civ. 07-1016, *Sancom, Inc. v. MCI Communications Services, Inc., d/b/a Verizon Business Services, Free Conferencing Corp.*, Civ. 07-4106; *Sancom, Inc. v. Sprint Communications Company Limited Partnership v. Free Conferencing Corporation of America and Telejunctions, LLC*, Civ. 07-4107. In each of these cases, motions to dismiss the claims of the IXC's relating to traffic pumping are pending. These motions have been briefed for some time, but the court is yet to rule. In addition, there is also a complaint pending before the South Dakota PUC where it is alleged a CLEC is illegally engaged in traffic pumping: In the Matter of the Complaint filed by MCI Communications Services, Inc. d/b/a Verizon Business Services against Capital Telephone Company, Inc. Regarding Traffic Pumping. TC 08-065.

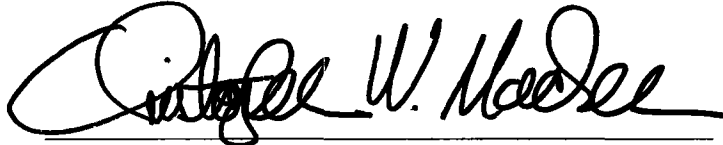
8. With regard to the federal litigation pending between Sancom and Qwest, counsel for Sancom forwarded a letter to counsel for Qwest threatening to file a motion to ask the court to

impose sanctions on Qwest pursuant to Federal Rule of Civil Procedure 11 ("Rule 11") because, in Sancom's opinion, Qwest's counterclaims regarding traffic pumping have no basis in law or fact. A copy of the May 30, 2008 letter from counsel for Sancom is attached as Exhibit D.

9. An allegation that a lawyer has submitted a pleading in violation of Rule 11 is a very serious accusation. Qwest vigorously denies that it has violated Rule 11 and on June 16, 2008 submitted a written response to Sancom. A copy of that letter is attached as Exhibit E. These letters speak for themselves. As of this date, Sancom has not filed or served a motion asking the U.S. District Court to impose sanctions pursuant to Rule 11.

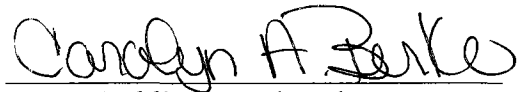
10. Aside from my initial conversation with Mr. Eidahl regarding this docket on May 27, and a subsequent telephone conference around June 11 or 12 regarding his correct address and the new location of his office, I have not had any communications with any attorneys representing Sancom in this docket. Likewise, to the best of my knowledge, none of the attorneys for Sancom have contacted counsel for Qwest to attempt to resolve any questions, differences, or disputes regarding the subpoena or the discovery requests.

Dated this 25th day of June, 2008 at Sioux Falls, South Dakota.



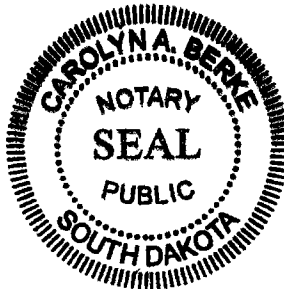
Christopher W. Madsen

Subscribed and sworn to me this
25th day of June, 2008.



Notary Public - South Dakota

My commission expires: 2.6.2013



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TC07-128

SUBPOENA DUCES TECUM

TO: Sancom, Inc., Attorney Douglas D. Eidahl, South Dakota Staff and Attorney Karen E. Cremer:

Pursuant to ARSD 20:10:01:17 and SDCL 15-6-45(a), you are commanded to produce and permit inspection of the following documents, in your possession or control, on Friday, June 13, 2008 at 9:00 a.m. at the offices of Boyce, Greenfield, Pashby and Welk, LLP, 101 N. Phillips Avenue, Suite 600, Sioux Falls, South Dakota 57104:

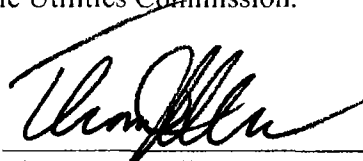
Any and all responses and documents provided by Sancom to PUC staff in response to requests for data or information contained in an e-mail message to Keith Senger to Doug Eidahl dated Thursday, January 10, 2008 at 2:47 p.m., an e-mail message from Keith Senger to Doug Eidahl dated Wednesday, January 30, 2008 at 3:34 p.m., and an e-mail message from Keith Senger to Doug Eidahl dated Wednesday, March 5, 2008 at 1:58 p.m.

This Subpoena shall be subject to the definitions set forth in exhibit "A" attached hereto.

In lieu of appearing and producing the documents at the date set forth above, you may provide copies on or prior to 9:00 a.m. on Friday, June 13, 2008. You will be reimbursed the reasonable costs of copying the documents for this production.

Issued in the name of the South Dakota Public Utilities Commission.

Dated this 5th day of June, 2008.



Thomas J. Welk
Christopher W. Madsen
BOYCE, GREENFIELD, PASHBY & WELK, LLP
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Sioux Falls, SD 57117-5015
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tjwelk@bgpw.com
cwmadsen@bgpw.com

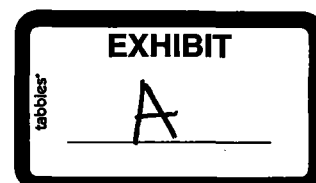


EXHIBIT A

The following definition shall apply to and govern the documents requested in this Subpoena:

"Document" includes any written, reported, recorded, or graphic matter however produced or reproduced, including but not limited to drawings, designs, manuals, memoranda, reports, financial reports, notes, letters, envelopes, telegrams, messages (including reports, notes and memoranda of telephone conversations and conferences), studies, analyses, books, articles, magazines, newspapers, booklets, circulars, bulletins, notices, instructions, papers, arithmetical computations, calendars, date books, minutes of meetings, and of all other communications of any type, including inter-office and intra-office communications, purchase orders, questionnaires and surveys, charts, graphs, tape or other recordings, videotape recordings, punch cards, magnetic tape, discs, printouts, electronically stored information, and other data compilations from which information can be obtained (translated if necessary into useable form), drafts of the foregoing, and copies of any of the foregoing upon which notations and writings have been made which do not appear on the original.

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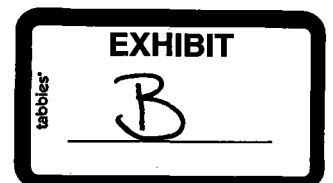
**QWEST COMMUNICATIONS
CORPORATION'S FIRST SET OF
INTERROGATORIES AND DATA
REQUESTS TO SANCOM, INC. d/b/a
MITCHELL TELECOM**

Qwest Communications Corporation, ("QCC" or "Qwest"), by and through its counsel, submits its first set of interrogatories and data requests (collectively, the "Requests") to Sancom, Inc. dba Mitchell Telecom ("Sancom") pursuant to ARSD 20:10:01:22.01, SDCL 15-6-33, and 15-6-34.

Instructions and Definitions

These Requests are propounded to Sancom, and call for Sancom to individually respond to each Request. In that sense, the terms "you," "your," and "yours" shall refer to the recipient of these Requests, its parents, subsidiaries, and affiliates, its former and present officers, directors, employees, representatives, agents, consultants, and attorneys and any other person acting on its behalf for any person.

The Requests are being propounded pursuant to the PUC's order in this matter (TC07-128). Each Request must be answered within thirty days from the date of service of these Requests. These Requests are continuing in nature until the time of hearing, and amended answers to the Requests are to be served promptly at any later date that additional information may be available to you, directly or indirectly, that would render incomplete, incorrect or misleading any answers previously given.



Each Request should be answered on the basis of your entire knowledge, including all information in your possession. If any of the requests cannot be answered in full, you are to answer to the extent possible, specifying the reason for your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portion. If your answer is qualified in any particular, please set forth the details of such qualification.

If you object to the production of any Document called for in the data requests herein, for each such Document state the following: (1) the reasons for the objection and any facts supporting the objection; (2) give a description of each Document including, without limitation, the date, sender, recipient(s), persons to whom copies have been furnished, job titles of each of the persons, subject matter of the Document, number of pages of the Document, the number(s) of the request to which such Document is responsive and the identity of the person in whose custody the Document is presently located.

If any Document is withheld under claim of privilege or work product, furnish a list identifying each Document for which the privilege or work product is claimed, together with the following information for each such Document: date, sender, recipient(s), persons to whom copies were furnished, job titles of each of those persons, subject matter of the Document, number of pages of the Document, the bases on which the privileges or work product is claimed, the paragraph(s) of these requests to which the Document responds, the person in whose custody the Document is presently located, and whether any matter that is not privileged or is not work product is discussed or mentioned in each Document.

Where a Request calls for a response in multiple parts, each part should be separated in the response so that the response is clearly understandable and complete.

If any Document requested was, but is no longer in your possession or subject to your

control, or is no longer in existence, state whether it: (1) is missing or lost; (2) has been destroyed; (3) has been transferred voluntarily or involuntarily to others and state the identity of the persons to whom it has been transferred; (4) has otherwise been disposed of, or in each instance explain the circumstances surrounding such disposition, state the date or approximate date thereof and the identity of the persons with knowledge of such circumstances; and, (5) identify the Documents that are missing, lost, destroyed, transferred or otherwise disposed of, by author, date, subject matter, addressee(s), and the number of pages.

If you do not clearly understand, or have any questions about, these definitions, instructions, interrogatories, or requests, contact the undersigned counsel for QCC promptly for clarification.

Preliminary Definitions

"PUC" and "Commission" both refer to the South Dakota Public Utilities Commission.

"Document" means all written, printed, typed, punched, taped, filed, or graphic matter, however produced, reproduced or stored, of every kind and description, now or formerly in your actual or constructive possession, custody, trust, care, or control, including but not limited to: correspondence (such as letters, e-mail, faxes, cables, and telegrams); notes; memoranda (including memoranda of conversations, conferences, and telephone conversations); reports; data compilation or analyses; logs and records; photographs, books; papers, manuals; handbooks; bulletins; advisories; messages; magazines; periodicals; film strips or movies; press releases; newspaper clippings; pamphlets, studies; notations; working papers; charts; graphs; plans; drawings; diagrams; computer printouts; indexes; minutes; transcripts; contracts; agreements; leases; legal pleadings; invoices; billings; statements; accounting books or records; financial data of any kind; journals; ledgers; diaries; tax returns; bylaws; rules; regulations; constitutions;

annual reports; programs; certifications; resolutions; any electronic or any other recordings of any kind or nature and any mechanical or electronic sound or recordings or transcripts thereof; computer files; data faxes; and all copies or facsimiles of documents by whatever means made.

"Identify," "identity," "identification," or "describe" when used with reference to a document, means to set forth, with respect to the original and each copy thereof, the following information: (a) its title or if untitled, its nature (e.g., letter, memorandum, telegram, note chart, photographs, sound reproduction, computer printout); (b) its date; (c) the identity of the person or persons who composed or originated it; (d) its substance and a sufficient description to enable the party propounding these data requests to request its production; (e) the name and last known address of each person who presently has custody of it; (f) if the document is no longer in your possession, custody, or control, state whether it was lost, destroyed, or otherwise disposed of, and describe the circumstances, including your authorization and the date of such disposition; and, (g) if you claim any privilege against disclosure of any of the above information with respect to any document, describe each document sufficiently to allow the party propounding these requests to move to compel its disclosure, including the name of the person originating the document, the addressee, and the date.

"Identify," "identity," "identification," or "describe" when used with reference to any individual, means to state the name, present or last known employer, present or last known address, and the present or last position held. When used with reference to an entity other than an individual, "identify," "identity," or "identification" means to state the official name or designation and address of such entity.

"Identify," "identity," or "describe," when used with respect to an act, occurrence, contract, transaction, decision, statement, communication, or conduct (hereinafter collectively

called "act"), means to describe in substance the event or events constituting such act, what transpired, the place and date, and to identify the persons involved and the documents referring or relating thereto.

"You", "your" or "yours" - Means or pertains to Sancom, Inc. dba Mitchell Telecom, its affiliates and subsidiaries or any other related corporate entities, in this matter receiving these requests, and includes, without limitation, their officers, directors, employees, agents, consultants, attorneys, corporate parents, subsidiaries and affiliates.

"QCC" means Qwest Communications Corporation and any affiliate of Qwest Communications Corporation.

"Persons" means any and all natural persons, corporations, businesses, firms, companies, partnerships, unincorporated associations, governmental or public agencies, joint ventures and all other entities, including, without limitation, all employees, representatives, consultants and agents of any of the foregoing.

"Free Calling Service" means any service, product, or offering that provides the ability for consumers to obtain free international calls, free conference calling, free chat line entry or free adult services, or other free service provided through the calling of a telephone number. Free international calls, free conference calling, free chat room entry, free adult services, or anything of the sort shall be considered "free" for the purposes of this definition even if the customer must pay a fee for making a long distance call.

"Free Calling Service Company" or "FCSC" means any entity that itself or through an affiliated entity advertises, markets, or provides the ability for consumers to obtain free international calls, free conference calling, free chat line entry or free adult services, or other free service provided through the calling of a telephone number. In addition, any entities to which

payments are provided based upon the traffic delivered to the entity are considered a “Free Calling Service Company.” Free international calls, free conference calling, free chat room entry, free adult services, or anything of the sort shall be considered “free” for the purposes of this definition even if the customer must pay a fee for making a long distance call to your number. Free Calling Service Companies shall include, but not be limited to: GoToMeeting.com, freeconferencecall.com, GoToWebinar.com, freeconferencing.com, freeconference.com, Citrix.com, Citrixonline.com, Power House Communications, A+ Conferencing/One Rate, Global Conference, Blue Pacific, Magellan 21, Audiocom, CLEC Connect, VAPPS, Hometown, Bright Technologies, Hometown, Clear Link, and Futurefone.

“Local Exchange Provider” means a provider of telecommunications services that delivers calls to a Free Calling Company for the provisioning of free international calls, free conference calling, free chat room entry, free adult services, or anything of the sort. In addition, any entity or person from whom a Free Calling Service Company receives payments on the basis of traffic routing through them to a Free Calling Service Company is considered a “Local Exchange Provider” for purposes of these definitions without reference to any other regulatory classification of such entity or person. Free international calls, free conference calling, free chat room entry, free adult services, or anything of the sort shall be considered “free” for the purposes of this definition even if the customer must pay a fee for making a long distance call to the number associated with a Free Calling Service Company.

“Sancom” means Sancom, Inc. or Mitchell Telecom, and includes, without limitation, their officers, directors, employees, agents, consultants, attorneys, corporate parents, subsidiaries and affiliates.

Correspondence: Any written communication, including but not limited to, emails and

letters exchanged by U.S. Mail, overnight mail, facsimile or any other transmission method.

The words “**any**” and “**all**” shall be considered to include each and every.

The singular of any word shall include the plural and the plural of any word shall include the singular.

A request to identify “**evidence**” of a fact or assertion is a request to identify any documents (including statutory, regulatory or case law materials), individuals with knowledge, or relevant acts or occurrences and should be read as a collective reference to all uses of the term “identify” in these definitions.

Requests for Data and for Production of Documents

Request 1. Identify each and every Free Calling Service Company with whom you have communicated or contracted, or to whom you have provided communications services, collocation services, or payments, whether directly or indirectly, since January 1, 2005, including the names of affiliated entities and the names of each person with whom you have communicated and their titles or positions within the entity, addresses, phone numbers, and other contact information.

Request 2. Provide all correspondence or other documents exchanged between you and any Free Calling Service Company, including but not limited to service agreements, contracts, invoices sent or received, emails, amendments, and technical data.

Request 3. Provide all contracts, work papers, agreements or other documents evidencing understandings or arrangements between you and any other entity or person relating to Free Calling Service. If any of these contracts, agreements, understandings, or arrangements is not in

written form, please set forth the substance of each such contract, agreement, understanding, or arrangement.

Request 4. Identify each payment made to or received from each Free Calling Service Company with which you have done business, including copies of all ledgers, registers, notes, checks, transfers, reports, invoices sent or received, or any other documentation reflecting in any manner every payment made to or received from Free Calling Service Companies and the basis or calculation of such payments.

Request 5. Provide all correspondence or other documentation between you and any telecommunications consultant or consulting firm including Vantage Point Solutions or any of its officers or employees, and any other consultant firms and their officers and employees, concerning or otherwise related to Free Calling Services or Free Calling Service Companies. Please include any workpapers or related materials regarding switched access tariffs or rate development created or maintained by said consultants.

Request 6. For each month beginning with January 2005, set forth, in minutes of use, the volume of traffic that has been routed to you and/or sent to each individual Free Calling Service Company, and provide all documents that reflect or otherwise identify the volume of traffic that has been routed to you and/or sent to each individual Free Calling Service Company since January 1, 2005.

Request 7. For each month beginning with January 2005, identify the revenues that you have received as a result of the volume of traffic that has been routed to you and/or sent to each individual Free Calling Service Company, and provide any and all documents that reflect or

otherwise identify the revenues you have received as a result of the volume of traffic that has been routed to you and/or sent to each individual Free Calling Service Company since January 1, 2005.

Request 8. For each Free Calling Service Company, identify:

- a. The nature and a brief description of all services, goods, or products you provide to the Free Calling Service Company.
- b. The type of, and location of the conference bridges, platform, computer, intelligent voice response system, softswitch, or other piece(s) of equipment owned or used by the Free Calling Service Company that provides functionality for conference services, chat room services, adult services, international calling services, or similar type services.
- c. The facility that connects your equipment to the equipment identified in 8a, above.
- d. Whether the facility identified in 8c, above, is connected to your switch via a trunk side connection or a line side connection.
- e. Estimated or projected call volumes that you have forecast or expected to receive for delivery to each Free Calling Service Company conference bridge or other equipment, and provide every document that reflects, discusses or analyzes the estimates or projections, regardless of the date prepared.

Request 9. For each Free Calling Service Company, identify the telephone number(s) or block of telephone numbers that you have assigned to the Free Calling Service Company, and

produce all documents and communications reflecting, discussing, evidencing, or analyzing the assignment of telephone numbers to Free Calling Service Companies.

Request 10. Identify and produce the tariffs that you believe obligate long distance companies (such as AT&T, MCI, Sprint and Qwest) to pay you for receiving traffic that is delivered to Free Calling Service Companies.

Request 11. Produce all website information, advertisements or other marketing materials in your possession concerning each and every Free Calling Service or Free Calling Services Companies. This includes all prior versions and drafts of such website information, advertisements, or marketing materials regardless of when created, used, or effective.

Request 12. Produce all documents reflecting or evidencing that the Free Calling Service Companies have a certificate or other documentation authorizing them to conduct business or provide telecommunications services in South Dakota.

Request 13. Identify each of your officers, directors, employees, shareholders, owners, members, affiliates, subsidiaries, agents, representatives, or consultants that have any ownership interest, partnership, membership, profit participation, compensation arrangement, employment, or other agreement of any kind with any Free Calling Service Company and for each such person, produce all documents that reflect any such ownership interest, partnership, membership, profit participation, compensation arrangement, or other agreement.

Request 14. Apart from Free Calling Services or Free Calling Service Companies,

- a. Identify any customer of your local exchange services with which you share revenues, not including any normal distribution of proceeds of a telephone cooperative or distributions to owners, partners, members, or shareholders in their capacities as such.
- b. For each such customer identified in your answer to Request 14(a), above, produce all contracts, agreements or other documents evidencing understandings or arrangements relating to such revenue sharing. If any of these contracts, agreements, understandings, or arrangements is not in written form, please set forth the substance of each such contract, agreement, understanding, or arrangement.

Request 15. Identify the profit margins that you have gained as a result of the volume of traffic that has been routed to you as a result of each individual Free Calling Service Company since January 1, 2005.

- a. Identify the additional costs, fixed or variable, incurred by you to support the volumes of traffic delivered by each Free Calling Service Company.
- b. Produce all documents related to, evidencing, or referring to these additional costs.

Request 16. Provide all call detail records (CDR), logfiles, or similar information that relates to the volume of traffic that has been routed to you as a result of each individual Free Calling Service Company over the last two years.

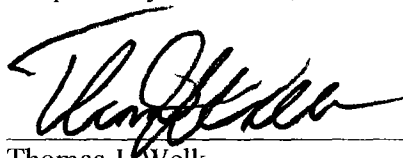
Request 17. For each Free Calling Service Company, provide all documents or other information that identifies or otherwise contains Call Detail Records, Logfiles, or Call Collection Information relating to all traffic volumes associated with each Free Calling Company.

Request 18. For each Free Calling Company, provide any and all information, including CABS billing records, provided to you by any outside vendor relating to (a) call volumes (b) call detail information or (c) minutes of use information.

Request 19. Provide all correspondence or other documents exchanged between you and Vantage Point Solutions, Inc., or any other consulting company, about, concerning or otherwise related to Free Calling Services or Free Calling Service Companies. Include all workpapers or other documents relating to, evidencing, or referring to rate design, pro forma financial projections of revenues from business relationships with FCSCs, or analysis of or advice received regarding business relationships with FCSCs.

Dated: June 5, 2008

Respectfully submitted,



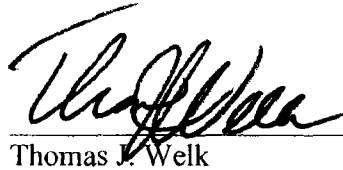
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Sioux Falls, SD 57117-5015
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tjwelk@bgpw.com
cwmadsen@bgpw.com
Attorneys for Qwest Corporation

CERTIFICATE OF SERVICE

I, Thomas J. Welk, do hereby certify that I am a member of the law firm of Boyce, Greenfield, Pashby & Welk, L.L.P., and on the 5th day of June, 2008, a true and correct copy of *Qwest's Communications Corporation's First Set of Interrogatories and Data Requests to Sancom, Inc. d/b/a Mitchell Telecom* was served via United States mail, postage pre-paid to the following:

Ms. Karen E. Cremer
Staff Attorney
South Dakota Public Utilities Corporation
500 East Capitol
Pierre, SD 57501

Mr. Doug Eidahl
Vice President of Consulting
Vantage Point
1801 North Main Street
Mitchell, SD 57301



Thomas J. Welk

PUBLIC UTILITIES COMMISSION
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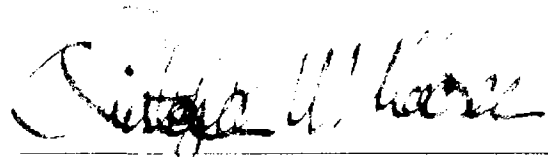
TC07-128

AMENDED CERTIFICATE OF SERVICE

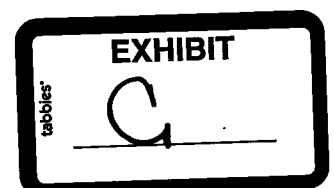
I, Christopher W. Madsen, do hereby certify that I am a member of the law firm of Boyce, Greenfield, Pashby & Welk, L.L.P., and on the 10th day of June, 2008, a true and correct copy of the Subpoena Duces Tecum with attached Exhibit and Qwest Communications Corporation's First Set of Interrogatories and Data Requests to Sancom, Inc. d/b/a Mitchell Telecom were served via U.S. first class mail, postage pre-paid upon the following:

Mr. Douglas D. Eidahl
Vice President of Consulting
Vantage Point Solutions
2211 North Minnesota Street
Mitchell, SD 57301

Dated this 10th day of June, 2008.



Thomas J. Welk
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June 10, 2008

Mr. Douglas D. Eidahl
Vice President of Consulting
Vantage Point Solutions
2211 North Minnesota Street
Mitchell, SD 57301

Re: In the Matter of the Application of Sancom, Inc. for Extension of
Time of Exemption From Developing Company Specific Cost-
Based Switched Access Rates
PUC Number: TC07-128
Our File No.: 2104.139

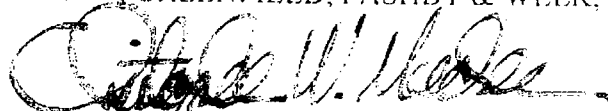
Dear Doug:

I am enclosing copies of a Subpoena Duces Tecum and a set of Interrogatories and Requests for Production with regard to the above-referenced docket pending before the South Dakota PUC. I am also enclosing an Amended Certificate of Service. In communications with Karen Cremer, I understand that there is some question about whether you received these documents. We used the address listed in the South Dakota State Bar Membership Directory. However, after looking at the Vantage Point website, it appears the company is occupying new offices spaces.

At any rate, you have now been served with the discovery requests. If you believe a Confidentiality Agreement is necessary to produce this information, please let me know.

Sincerely yours,

BOYCE, GREENFIELD, PASHBY & WELK, L.L.P.



Christopher W. Madsen

CWM/cab
Enclosures

C: George Baker Thomson, Jr.
Karen Cremer
Tom Welk

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Respond to this office

May 30, 2008

Via UPS

George Baker Thomson, Jr.
Qwest Services Corp.
1802 California Street, Suite 1000
Denver, CO 80202

Thomas John Welk
Christopher Wayne Madsen
Boyce Greenfield Pashby & Welk
PO Box 5015
Sioux Falls, SD 57117

Re: Sancom, Inc. v. Qwest Communications Corporation, Civ. 07-4147: Sancom, Inc.'s Proposed Motion for Rule 11 Sanctions Against Qwest Communications Corp.

Dear Sirs:

Sancom, Inc. ("Sancom"), by its undersigned counsel and pursuant to Rule 11(c)(1)(A), Fed. R. Civ. P, 28 U.S.C. § 1927 hereby provides Qwest Communications Corporation ("Qwest") notice of its intention to seek sanctions, expenses and attorneys fees pursuant to Rule 11 Fed. R. Civ. P, 28 U.S.C. § 1927 ("Rule 11") within 21 days of the date of Qwest's receipt of this letter unless Qwest withdraws the factually and legally unfounded counterclaims set forth in Qwest's November 6, 2007 Answer and Counterclaim ("Counterclaims") and Qwest's December 31, 2007 Response to Sancom's Motion to Dismiss Counterclaims ("Response").

Each and every one of the ten Counterclaims leveled by Qwest against Sancom in this case is premised upon Qwest's allegations that "Sancom defrauds Qwest" by generating "unreasonably high terminating switched access charges" for "telephone calls



that Sancom does not terminate,” and collecting revenue from Qwest that Sancom shares with “free calling service companies.” (Counterclaim at 14-17). Qwest’s Counterclaims and Response violate Rule 11 because Qwest has knowingly made factual and legal misrepresentations to the court. Specifically Qwest has acknowledged in meetings and presentations with each of the Commissioners of the Federal Communications Commission (“FCC”) that the calls made by Qwest’s end users to Sancom’s free calling service company customers do, are in fact, terminated by Sancom and that it is legal under existing law for Sancom to share revenue with its free calling service company customers.

Specifically, on May 21, 2008, in a series of meetings with staff for each of the five members of the FCC Qwest’s Vice President for Federal Regulatory, Melissa Newman, along with Qwest’s outside counsel, Russ Hanser lobbied for changes to the FCC’s existing rules governing the applicability of interstate access charges to long distance calls to conference bridges and the ability of carriers, like Sancom, who terminate those calls, to share revenue with their conference calling company customers. In lobbying for changes to the existing rules Qwest’s Vice President for Federal Regulatory and outside counsel both specifically acknowledged in their written presentation to the FCC that under the existing law and regulations such calls do terminate, and that sharing of marketing fees by LECs like Sancom with their customers is within the law. Qwest told the FCC that:

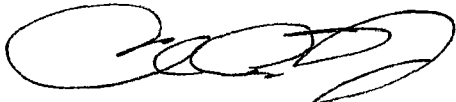
Rural LECs are currently permitted to assess tariffed access charges on IXCs and to share above-cost switched access payments with their business partners, permitting them to use access revenues to provide ‘free’ service.”

This demonstrates unequivocally that Qwest, in this case, knew, or should have known, that the Counterclaims against Sancom were frivolous and that Qwest’s Counterclaims misstated the law. While it is difficult to understand how such misstatements could be made inadvertently, Qwest’s misstatements in this case need not even be willful, as “negligence or inadvertence, not just bad faith or willfulness, is sanctionable.” *McMaster-Carr Supply Co.*, No. 01 C 6349, 2002 WL 1290390, at *2 (N.D. Ill. June 10, 2002). The presence of Mr. Hanser (Qwest’s outside counsel who is litigating substantially the same case as the instant case) at these meetings eliminates any possibility of any suggestion that Qwest’s statements to the FCC were somehow taken out of context, or made without awareness of the legal proceedings being taken by Qwest in the FCC Enforcement actions, or in cases pending in other federal courts and before the Iowa Utilities Board.

Qwest has a continuing obligation to investigate the validity and merit of any and all claims asserted in this case. Please consider this letter as notification of your

continuing duty to investigate the legal underpinnings of the Counterclaims, and to promptly dismiss all of the Counterclaims, as it is clear that legal justification for such claims does not exist. If you decline to dismiss the Counterclaims, please notify Sancom immediately. Sancom intends to seek all appropriate remedies and sanctions against Qwest for all Counterclaims which either lack substantial justification, as acknowledged by Qwest in its FCC filing, or which are intended solely to harass Sancom.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Nipe", written over a large, loopy flourish.

Chris Nipe
Attorney for Sancom, Inc.

CAN/ts

cc: Ross Buntrock
Michael Hazzard
Ryan Thompson



Qwest
1801 California Street, 10th Floor
Denver, Colorado 80202
Phone 303 383 8645
Facsimile 303 383 8588
George.Thomson@qwest.com

George Baker Thomson, Jr.
Corporate Counsel

June 16, 2008

Chris Nipe
Larson & Nipe
PO Box 396
200 East 5th Ave.
Mitchell, SD 57301

Re: Sancom's Letter Dated May 30, 2008, Regarding Motion for Rule 11 Sanctions

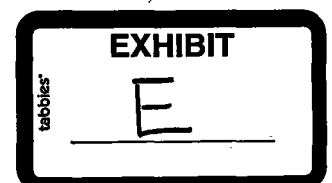
Dear Mr. Nipe:

For a multitude of legal and factual reasons, Sancom's threat to file a motion against Qwest Communications Corporation ("Qwest") under Rule 11 of the Federal Rules of Civil Procedure has absolutely no merit. This letter will outline some of the grounds upon which our claims and defenses are premised, and a good faith investigation into these matters by Sancom, which it is bound to do, would demonstrate the frivolous nature of any such motion. Then, this letter will address Qwest's discussions with the FCC in the rulemaking docket, which was opened for the purpose of developing rules to eliminate the very fraud and manipulation in which your clients are engaged.

The following are proceedings in which we have discovered and in fact *proven* that LECs in the same position as your client are violating state and federal law, and that the state and federal tariffs do not authorize or otherwise permit switched access charges:

- The Iowa Board case, Docket No. FCU-07-2. Despite the recalcitrance on the part of the respondent LECs in that case, Qwest was able to obtain discovery of the LECs' conduct and their relationships with free calling service company ("FCSC") business partners. On the basis of this discovery, *provided under oath by the respondents and their FCSC partners*, Qwest filed several hundred pages of testimony and exhibits proving its case. In short, Qwest showed that: (1) neither the state nor federal tariffs apply in the first instance because the FCSCs are not end user customers within the meaning of the applicable tariffs; (2) the calls are not terminating to an end-user premises and therefore not subject to applicable tariffs; (3) many of the calls did not terminate in the local calling area, again making the calls not subject to the applicable tariffs; (4) these schemes are premised upon a violation of governing non-discrimination rules; and (5) the Iowa Board in any event should declare these manipulative and fraudulent practices to be in violation of the LECs' certification as against public policy.

You should note that the respondents in the Iowa Board case filed several motions to dismiss upon multiple grounds, which included the same argument stated in your May 30, 2008 letter -- that the state and federal tariffs authorize or permit the LECs' switched access charges. After a full consideration, the Board *has denied each of these motions*, and the hearing is now set for December 8, 2008.



Your duty of conducting a reasonable investigation into whether grounds exist for a motion under Rule 11 clearly should include a review of the Iowa Board testimony. It currently is under seal pursuant to the parties' protective orders and the respondent LECs' insistence that this material remain out of the public eye. Qwest is willing to stipulate to a motion requesting public disclosure.

- The FCC complaint case against Farmers and Merchants, File No. EB-07-MD-001. The FCC partially granted Qwest's motion for reconsideration in response to arguments that Farmers had backdated and manufactured false evidence in its attempt to show that their FCSC partners were end user customers. Qwest obtained limited discovery in this case further demonstrating that they are not end user customers. In addition, evidence of Farmers' contractual relationship with the FCSCs proves that the services at issue are not within a common carrier's switched access tariff.

Again, your duty of conducting a reasonable investigation into whether grounds exist for a motion under Rule 11 should include a review of the FCC testimony and briefing. It is under seal pursuant to the FCC's protective orders, but Qwest is willing to stipulate to a motion requesting public disclosure.

Though no discovery has been taken and no evidence has been submitted as of yet, the proceedings in the Iowa federal court case, pending in the Southern District of Iowa, Case No. 4:07-cv-0078-JEG-RAW, also supports our position. In that case, the LEC defendants filed a motion to dismiss premised upon, *inter alia*, your same filed tariff argument, and the court declined to rule on such motions pending the FCC's review of the issues in the Farmers' case. Certainly, if your Rule 11 threat had any validity, the federal court would not have been reluctant to grant the defendants' motion to dismiss on the same grounds.

The FCC has issued orders and opened dockets supporting our position that your client and other similarly situated LECs are engaging in illegal activities. They include:

- The FCC ordered incumbent local exchange carriers that opt out of the NECA tariff, and thus be permitted to retain switched access revenues, to certify that they are not engaging in the same type of traffic pumping in which your client is engaged.
- The FCC opened a rulemaking to investigate the same tariff pumping schemes in which your clients are engaged. Certainly, the FCC has determined there are sufficient grounds to open this rulemaking, investigate wrongdoing, and issue rules eliminating these schemes.

Long distance carriers other than Qwest have independently asserted essentially the same claims and defenses against your client and other LECs engaging in traffic pumping. They include AT&T, Sprint, and Verizon, and they have filed numerous pleadings before state commissions and federal courts, in addition to comments in the FCC rulemaking. None of their claims or defenses has been dismissed (absent settlement), let alone been subject to a threat of a Rule 11 motion. The fact that these carriers, and their in-house and outside counsel, have independently asserted the same claims and defenses further supports Qwest's position and vitiates any thought of a Rule 11 issue. The FCC's orders and other carriers' comments,

pleadings, briefs and ex partes on file with the commissions and courts should be a matter of public record for your review.


The information outlined above shows beyond doubt that Qwest's claims and defenses against Sancom not only have merit, but also should be adopted by the court. At the very least, Qwest's pleadings have not been presented for any improper purpose, ***are warranted by existing law or by logical extension or modification of existing law or the establishment of new law***, have evidentiary support, and are otherwise warranted and reasonably based. Fed. R. Civ. Proc. 11(b).

That should end the matter; nonetheless, I will address your contention that the power point ex parte presented to the FCC in its rulemaking somehow supports your threatened motion. As a threshold matter, Qwest made that presentation in the docket in which the FCC is considering rules eliminating the conduct in which your client is engaged. Your May 30, 2008, letter also does not account for the context in which Qwest's presentation was made. The FCC has communicated to us a very valid concern that the rules it promulgates will not negatively impact LECs who are not engaging in traffic pumping schemes, and that such LECs will be protected by the filed rate doctrine. It is LECs such as your client -- ***not Qwest or other IXCs*** -- that are attempting to incorrectly posit that the filed tariff doctrine provides a shield to or otherwise permits traffic pumping schemes. Any fair evaluation of the FCC's concerns and Qwest's multiple ex partes and comments on file with the FCC shows that this was the context in which Qwest made its presentation proposing solutions and the establishment of new rules.

Let us be clear. It is not and never has been Qwest's position, before the courts, state commissions, or the FCC, that the type of traffic pumping schemes in which your client and other LECs are engaged are authorized or otherwise permitted by the state or federal switched access tariffs. Any suggestion to the contrary is inaccurate.

Motions for sanctions are grave matters, placing a high degree of responsibility upon the moving party to investigate and satisfy the applicable standards. Considering all of the facts and circumstances, including the fact that Qwest believes that its claims and defenses will be adopted by the court, Sancom's threat to file such a motion is baseless.

Sincerely,

A handwritten signature in black ink, appearing to read "George Baker Thomson, Jr.", written in a cursive style.

George Baker Thomson, Jr.