

**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)	

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”), and pursuant to A.R.S.D. 20:10:01:22.01 and SDCL 15-6-37(a), hereby files this motion to compel intervenor South Dakota Telecommunications Association (“SDTA”) to respond to a discovery request.

I. BACKGROUND

In this proceeding, Petitioners seek to amend and consolidate the ETC designations currently held separately in the name of WWC License, LLC (“WWC”) and RCC Minnesota, Inc. (“RCC”) to reflect Cellco and its affiliated legal entities as the designated entity.¹ The purpose of this amendment and consolidation is so that the Commission, Staff and, most importantly, consumers understand that the collective Verizon Wireless operations are responsible for compliance with the universal service requirements and obligations throughout the entire area where WWC and RCC are designated as ETCs (the “Designated Area”). The Petition was supported with information demonstrating that Petitioners continue to satisfy all of

¹ Petition, p. 1. The Petition further requested the partial relinquishment of ETC status in the study area of Golden West Telecommunications Cooperative, Inc. The Commission approved that relinquishment by Order dated November 16, 2010.

the applicable eligibility requirements for designation as a federal ETC, as well as information explaining why it is in the public interest to grant the requested amendment and consolidation.²

SDTA filed a petition to intervene in this proceeding on September 24, 2010. SDTA's intervention petition was granted by Commission Order dated October 29, 2010. Based on SDTA's intervention petition, it appears that SDTA opposes the Petition. Petitioners anticipate that SDTA will participate at the hearing.

To evaluate and possibly rebut anticipated arguments from SDTA and other parties, Petitioners are entitled to discover facts about how other carriers, including SDTA's members, satisfy ETC requirements. In order to gather potential evidence for these arguments, Petitioners served discovery requests on SDTA on February 10, 2011. The discovery requests consisted of 13 interrogatories and five (5) requests for production of documents. SDTA served its Responses on Petitioners on February 28, 2011. SDTA completely refused to answer two of the interrogatories, objecting that each was "overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence." As to other requests, SDTA refused to produce certain requested documents, objecting that the requested documents were publicly available and that certain "progress reports" did not exist, even though the Commission's rules require the filing of such progress reports. In an effort to resolve this discovery dispute without involvement of the Commission, Petitioners exchanged letters, and had a substantive telephone conference, with SDTA's representatives.³ Although that resulted in additional responses from SDTA, SDTA still refused to provide a response to one important request. Accordingly, Petitioners have no choice but to move to compel a response.

² Petition, pp. 5-6 and Ex. D (Certification of Linda Stevens), pp. 3-12.

³ Petitioners hereby certify that through this conference and these letters, they in good faith conferred or attempted to confer with SDTA in an effort to secure the requested information without Commission involvement, as required by SDCL 15-6-37(a)(2).

II. STANDARD FOR A MOTION TO COMPEL

The Commission “may issue an order to compel discovery” “for good cause shown by a party.” A.R.S.D. 20:10:01:22.01. The South Dakota Rules of Civil Procedure relating to discovery apply in this proceeding. *Id.* Under the civil procedure rules, a party may move for an order compelling an answer if a party fails to answer an interrogatory or request for production of documents. SDCL 15-6-37(a)(2).

The Commission specified that SDTA’s response to Petitioners’ discovery requests were due February 24, 2011;⁴ Petitioners gave SDTA an extension of this deadline to February 28, 2011, on which date SDTA served its responses. As to the discovery request discussed herein, SDTA has failed to timely provide a substantive response. This is unacceptable – the “statutory mandate and court order [establishing the time period for responding to discovery requests] are not invitations, requests, or even demands; they are mandatory.” *Schwartz v. Palachuk*, 1999 SD 100, ¶ 23, 597 N.W.2d 442, 447.

One of SDTA’s bases for objecting to the discovery request at issue in this motion is that the information is not reasonably calculated to lead to the discovery of admissible evidence. But, the South Dakota Supreme Court has explained that under SDCL 15-6-26(b), “the scope of pretrial discovery is, for the most part, broadly construed.” *Kaarup v. St. Paul Fire and Marine Ins. Co.*, 436 N.W.2d 16, 19 (S. Dakota, 1989). “A broad construction of the discovery rules is necessary to satisfy the three distinct purposes of discovery: (1) narrow the issues; (2) obtain evidence for use at trial; (3) secure information that may lead to admissible evidence at trial.” *Id.* The wording of SDCL 15-6-26(b) itself “implies a broad construction of ‘relevancy’ at the

⁴ Second Amended Order for and Notice of Procedural Schedule and Hearing (rel. Feb. 18, 2011), p. 2.

discovery stage because one of the purposes of discovery is to examine information that may lead to admissible evidence at trial.” *Id.*, 436 N.W.2d at 20.

III. SDTA MUST PROVIDE A SUBSTANTIVE RESPONSE TO PETITIONERS’ DISCOVERY REQUEST

A. SDTA Must Produce Its Members’ Non-Public ETC Compliance Filings and Progress Reports (Interrogatory No. 7 and Request for Production of Documents No. 1)

Petitioners request an order compelling SDTA to respond to Interrogatory No. 7, which states:

7. Identify each SDTA member’s ETC-related compliance filings, annual reports, periodic progress reports, tariffs, and other Documents submitted to the Commission since January 1, 2009.

SDTA responded as follows:

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, the information requested is public information already on file with the Commission which can be accessed directly by Verizon Wireless.

RESPONSE. Without waiving said objection, SDTA would refer Verizon Wireless to the ETC Certification/Compliance filings, Annual Reports, and the current LECA Tariff on file with the South Dakota Commission. In regards to “progress reports,” to SDTA’s knowledge, none of the SDTA member companies, since January 1st of 2009 have been submitting any such reports.

Interrogatory No. 7 should be considered in conjunction with Petitioners’ Request for Production of Documents No. 1:

1. Produce any and all Documents identified or used in answering the above Interrogatories or which contain or relate to any of the information requested in the Interrogatories.

After the parties conferred, SDTA also provided a supplemental response:

....SDTA and Golden West continue to stand on their earlier responses. SDTA and Golden West continue to object to the Interrogatory on grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence....

SDTA failed to produce any documents in response to Interrogatory No. 7 and Request for Production of Documents No. 1. SDTA's objections, and its reference to documents available on the Commission's website, are inadequate, because SDTA's members' ETC certification/compliance filings and annual reports contain confidential exhibits that are not available on the Commission's website. These confidential materials contain the information that Petitioners are considering using to rebut allegations expected to be made by parties opposing the Petition. SDTA should have no objection based on confidentiality to producing these confidentially filed documents, because the Commission issued a Protective Order in this proceeding on November 16, 2010.

The requested filings are relevant because another party to this proceeding, James Valley Wireless, has challenged the sufficiency and accuracy of ETC certifications and reports made by WWC and RCC. Petitioners anticipate that a comparison of the confidential parts of SDTA's members' ETC reports to the confidential parts of WWC's and RCC's reports will be useful in demonstrating the adequacy of WWC's and RCC's reports.

Moreover, SDTA's statement that its members have not submitted progress reports is difficult to square with the requirement that each ETC must annually file a "progress report on its previously-filed two-year service quality improvement plan." A.R.S.D. 20:10:32:54(2). If SDTA's members have not been complying with this requirement, Petitioners are entitled to know that. SDTA should be compelled to produce all documents, including confidential documents, responsive to Interrogatory No. 7.

IV. CONCLUSION

The Commission should compel SDTA to respond to Petitioners' discovery request 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.

Respectfully submitted,

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Dated: April 21, 2011

By

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 21st day of April, 2011, I served a true and correct copy of **CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS's Motion to Compel Discovery Responses from SDTA** in the above-entitled matter, via electronic mail to:

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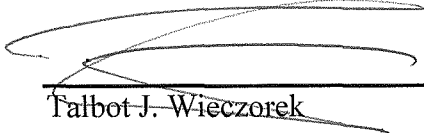
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