

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) DOCKET NO. TC10-090
AMEND AND CONSOLIDATE ELIGIBLE)
TELECOMMUNICATIONS CARRIER)
DESIGNATIONS IN THE STATE OF)
SOUTH DAKOTA AND TO PARTIALLY)
RELINQUISH ETC DESIGNATION)

RESPONSE BY GOLDEN WEST TELECOMMUNICATIONS COOPERATIVE, INC AND
SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION TO MOTIONS TO COMPEL
DISCOVERY BY CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS

COMES NOW South Dakota Telecommunications Association (“SDTA”) and Golden West Telecommunications Cooperative, Inc. (“Golden West”), by and through its counsel of record, and file this Joint Response to Motions to Compel filed in Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”). The Motions to Compel are without merit and should be denied by the South Dakota Public Utilities Commission (“Commission”).

The South Dakota Rules of Civil Procedure define the scope of discovery, providing that the parties may obtain discovery regarding all relevant matters. SDCL 15-6-26(b)(1). Relevant matters are those which are “reasonably calculated to lead to the discovery of admissible evidence,” and which are not privileged. *Id.* “No overbroad or “carte blanche” disclosure, unduly burdensome or lacking in specificity, should be allowed.” Maynard v. Hereen, 1997 SD 60, 25, 563 NW2d 830, 838 (citing Lopez v. Huntington Autohaus LTD., 540 NWS2d 874, 876 (NY App. Div 1989). Accordingly, discovery is subject to limitations. SDCL 15-6-26(b)(1)(A).

Verizon Wireless’ motions to compel highlight an apparent misunderstanding not only of the purpose of this docket but also of SDTA and Golden West’s interest in the docket and the scope of their involvement and participation. As stated in the Second Amended Order for and Notice of Procedural Schedule, the issue at the hearing is whether the “Commission shall grant Cellco Partnership d/b/a Verizon Wireless, and its subsidiaries and affiliates offering commercial mobile radio services in South

Dakota (Verizon Wireless), request to amend and consolidate the ETC designations currently held separately in the name of WWC and RCC in the state of South Dakota to reflect Cellco Partnership and its affiliated legal entities as the designated entity.” SDTA and Golden West intervened and identified the reasons for their interventions in their respective Petitions to Intervene on file with the Commission. It is the position of SDTA and Golden West that “Verizon Wireless, in order to properly receive ETC status, must follow the established process” of this Commission. (SDTA Petition to Intervene, pg. 3). SDTA and Golden West intend to limit their participation in this hearing to cross-examining witnesses of other parties in the docket and to providing briefs and arguments on the policy and legal issues surrounding this matter. SDTA and Golden West have not identified a witness and do not intend to call a witness. SDTA and Golden West do not plan to introduce any independent evidence, and any cross examination will be limited by the direct examination of the other parties, pursuant to the rules of civil procedure.

During the course of discovery, Verizon Wireless served separate interrogatories on SDTA and Golden West which were in most respects very broad and did not request information that could in any way be considered relevant to this matter. Verizon Wireless argues in its Motion to Compel served on Golden West that these discovery requests were served “to evaluate and possibly rebut anticipated evidence from Golden West and other parties.” (Golden West Motion to Compel, pg. 2). Without a witness, it is difficult to see how Golden West and the SDTA member companies will have any opportunity to introduce evidence that may need to be rebutted by Verizon Wireless.

Even though the bulk of the discovery was entirely irrelevant to this proceeding, Golden West and SDTA provided the requisite information. Thereafter, Golden West and SDTA received a letter from Verizon Wireless requesting additional information. Golden West and SDTA did meet and confer with Verizon Wireless, but obviously, there was misunderstanding between the parties as to the outcome of the meet and confer and follow-up correspondence. It was the goal of SDTA and Golden West to resolve all outstanding discovery issues among the parties, thus avoiding any motions to compel. In a spirit of compromise and with that goal in mind, Golden West and SDTA offered to provide some limited, additional information, even though SDTA and Golden West believed (and continue to believe) that all

further discovery requested by Verizon Wireless was irrelevant to the issues in the current docket. Because Golden West and SDTA understood that their offer would resolve all other outstanding issues, they were surprised when Verizon Wireless filed Motions to Compel within days. SDTA and Golden West understood that their offer was conditioned on Verizon Wireless not pursuing motions to compel against SDTA and Golden West. SDTA and Golden West stand by their position that even the information they offered to provide is wholly irrelevant to this proceeding.

Interrogatory No. 7 and Request for Production of Documents No. 1 (Golden West and SDTA)

Verizon Wireless has requested that SDTA turn over the confidential portions of its member company's confidential ETC certification/compliance filings and that Golden West do the same. As the Commission is aware, the public portion of all ETC filings are on file with the Commission and are readily available to Verizon Wireless. Those portions of the filings, plus the Commission's rules, clearly establish the appropriate processes for ETC filings and certifications, and that is one of SDTA's and Golden West's primary interests in this docket. The confidential portions of the filings are not public, are not readily available, and do not contain information that is relevant in this docket.

Verizon Wireless' Motions to Compel these confidential documents should be denied because the requested documents are completely irrelevant to the issues in this docket, and Verizon Wireless' attempt to establish relevance misses the mark. In the Motions to Compel, Verizon Wireless argues that the confidential financial and network investment information contained in the confidential exhibits of SDTA member companies and Golden West in their annual ETC certification filings is being requested because James Valley Wireless is challenging the accuracy and sufficiency of some of the prior certification filings made by WWC and RCC. Upon closer examination, however, the allegations of James Valley Wireless are more specific. James Valley Wireless is claiming that the prior filings made by WWC and RCC were not accurate or sufficient because they did not adequately give notice of the substantial changing circumstances occurring as a result of the mergers or acquisitions. For example, the filings failed to indicate that either the manner of delivering the ETC services would be changing significantly or that the number of lines or phone counts forming the basis for total support would be changing.

Requiring production of all of the confidential materials that are part of the Golden West and SDTA member company's ETC certifications and reviewing those will not result in any facts or evidence that is relevant to responding to James Valley Wireless' claims, which allege lack of adequate notice or in essence misrepresentation, rather than a lack of sufficient data to show continuing compliance with the ETC service requirements.

Contrary to Verizon Wireless' contentions, a side by side comparison of the confidential portions of Golden West's filing and the SDTA member company's filings with the confidential portions of the WWC and RCC ETC filings is neither useful nor relevant. The Commission's decision in this docket is based on the Application of Verizon Wireless and the Commission's rules and established procedures, not on the ETC filings of the rural local exchange carriers of South Dakota. Such a comparison would also be inappropriate and meaningless because it is rather like trying to compare apples to oranges. Golden West and the SDTA member companies are wireline companies that report upgrades of existing lines and plant to improve and enhance services to customers. That has nothing to do with reports of wireless companies, who report on construction of new towers.

With regard to SDTA, it is also important to note that it does not make ETC filings. Each individual member company of SDTA is responsible for its own filings and confidential exhibits. SDTA does not have access to, custody of, or control over confidential information of its member companies, nor can SDTA waive the confidentiality of the information of its member companies. Therefore, even the presence of a protective order in this docket does not place SDTA in a position of being able to produce such documents. Further, neither SDTA nor Golden West are calling a witness of their own. Without a foundational witness produced by SDTA or Golden West, it is hard to envision how Verizon Wireless would be able to utilize at the hearing any of the information it is requesting in the Motions to Compel.

Interrogatory No. 8 (SDTA)

Verizon Wireless is requesting that SDTA identify all of the telecommunications services currently offered to consumers residing within each SDTA member company's South Dakota designated service area, including the price, calling area, and services included in each offering, and also including copies of each SDTA member company's current telecommunications marketing materials that describe or relate to the current telecommunications service offerings. Verizon Wireless argues that this information is necessary because James Valley Wireless has challenged Verizon Wireless' compliance with ARSD 20:10:32:43:05, which requires it to offer a local usage plan. (Supplement to Motion to Compel – SDTA, p. 3). Verizon Wireless further states that as a competitive ETC it is required to offer a local usage plan comparable to the one offered by the incumbent local exchange carrier in its Designated Area. Verizon Wireless must meet this requirement in its own application, and the individual service offerings of each SDTA member company are not relevant to this proceeding. Furthermore, the service offerings of wireline companies are distinctly different from the service offerings of a wireless company, and therefore, such a comparison would be meaningless to a decision of the issues to be decided in this docket.

Furthermore, SDTA does not have this information in its possession and it is unduly burdensome to require SDTA to collect this information. The request is overbroad and goes far beyond the services at issue in this docket. Further, a good portion of this information is located in public documents, including tariffs and individual websites of each SDTA member company, which is easily accessible to Verizon Wireless.

Interrogatory No. 12 (Golden West and SDTA)

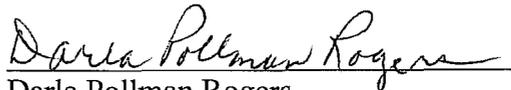
Verizon Wireless is requesting that Golden West and the SDTA member companies provide information relative to their subsidiaries, affiliates, and related entities operating in the State of South Dakota with an organization chart showing the relationship between the parties. Verizon Wireless states it is relevant because James Valley Wireless will be objecting to the Petition on the basis 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 (Supplement to SDTA Motion to Compel, p. 3). Again, it is very difficult to see how this information is relevant to this proceeding, as Golden West and the member companies of SDTA are wireline companies. Their corporate organizational structure has no significance or relevance to the issues to be decided in this docket, for purposes of comparison or otherwise. The requested information is clearly not relevant from the perspective of Golden West, as the Petition of Verizon Wireless requested the partial relinquishment of ETC status in the study area of Golden West, which request was approved by the Commission. With regard to the other SDTA member companies, at a minimum the request should be limited to affiliates engaged in ETC related activities, rather than to all affiliates, and affiliates should be defined. Further, the request is unnecessarily burdensome for SDTA as it does not have this information in its possession and would need to collect this information from each of its member companies.

WHEREFORE, Golden West and SDTA respectfully request that the Commission deny the Motions to Compel filed by Verizon Wireless.

Dated this 2nd day of May, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Response By Golden West Telecommunications Cooperative, Inc. and South Dakota Telecommunications Association to Motions to Compel Discovery by Cellco Partnership d/b/a Verizon Wireless filed in Commission Docket TC10-090 was served electronically on the following persons:

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