



August 31, 2010

EX PARTE

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Ms. Dortch:

Re: WC Docket No. 07-135

This is to inform you that on August 30, 2010, the following persons attended a meeting with Commission staff in connection with the proceeding identified above: David Frankel of ZipDX; John Ryan of Level 3; Chris Frentrup of Sprint; Donna Epps and Chris Miller of Verizon; Glenn Reynolds of USTelecom; Brian Benison, Hank Hultquist and Bob Sutherland of AT&T; and Bob McKenna and Melissa Newman of Qwest. Commission staff in attendance were Zac Katz, Legal Advisor to Chairman Genechowski, and the following representatives of the Wireline Competition Bureau: Sharon Gillett; Don Stockdale; Marcus Maher; Al Lewis; John Hunter; Doug Slotten; Lynn Engledow; Randy Clarke; Jay Atkinson; and Patrick Halley.

During this meeting, the industry representatives urged the Commission to move forward with a final order in this proceeding to address the egregious practice of traffic pumping. In furtherance of this, the attached proposed rules were distributed and formed the basis of discussions at the meeting. The attached lawsuit received recently by Verizon was also distributed and discussed.

Pursuant to Commission rules, please include a copy of this filing in the record for the above-referenced proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn T. Reynolds", written in a cursive style.

Glenn T. Reynolds
Vice President – Policy

Ms. Marlene Dortch
August 31, 2010
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c: David Frankel
John Ryan
Chris Frentrup
Donna Epps
Chris Miller
Brian Benison
Hank Hultquist
Bob Sutherland
Bob McKenna
Melissa Newman
Zac Katz
Sharon Gillett
Don Stockdale
Marcus Maher
Al Lewis
John Hunter
Doug Slotten
Lynn Engledow
Randy Clarke
Jay Atkinson
Patrick Halley

Revised Rule: 47 CFR 61.26

§ 61.26 Tariffing of competitive interstate switched exchange access services.

(a) Definitions. For purposes of this section 61.26, the following definitions shall apply:

(1) CLEC shall mean a local exchange carrier that provides some or all of the interstate exchange access services used to send traffic to or from an end user and does not fall within the definition of "incumbent local exchange carrier" in 47 U.S.C. 251(h).

(2) Competing ILEC shall mean the incumbent local exchange carrier, as defined in 47 U.S.C. 251(h), that would provide interstate exchange access services, in whole or in part, to the extent those services were not provided by the CLEC.

(3) Interstate switched exchange access services shall include the functional equivalent of the ILEC interstate exchange access services typically associated with following rate elements: local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); tandem switching.

(4) Non-rural ILEC shall mean an incumbent local exchange carrier that is not a rural telephone company under 47 U.S.C. 153(37).

(5) The rate for interstate switched exchange access services shall mean the composite, per-minute rate for these services, including all applicable fixed and traffic-sensitive charges.

(6) Rural CLEC shall mean a CLEC that:

(i) does not serve (i.e., terminate traffic to or originate traffic from) any end users located within either:

(a) Any incorporated place of 50,000 inhabitants or more, based on the most recently available population statistics of the Census Bureau or

(b) An urbanized area, as defined by the Census Bureau; and

(ii) neither originates nor terminates more than [XX] minutes of use of interstate switched exchange access traffic per working loop per month.

(7) Rural ILEC shall mean an incumbent local exchange carrier that is a rural telephone company under 47 U.S.C. 153(37).

(8) Working loop shall have the same definition as in 47 C.F.R. § 54.307(b), and a physical connection to a customer premise shall count as a single working loop without regard to the capacity of that connection or its capability to transmit multiple simultaneous calls.

(b) Except as provided in paragraphs (c) and (d) of this section, a CLEC shall not file a tariff for its interstate switched exchange access services that prices those services above the

benchmark rate. The benchmark rate for a CLEC's interstate switched exchange access services will be the rate charged for similar services by the competing ILEC.

(c) Rural exemption. Notwithstanding paragraph (b) of this section, a rural CLEC competing with a non-rural ILEC shall not file a tariff for its interstate exchange access services that prices those services above the rate prescribed in the NECA access tariff, assuming the highest rate band for local switching. In addition to that NECA rate, the rural CLEC may assess a presubscribed interexchange carrier charge if, and only to the extent that, the competing ILEC assesses this charge. Any rural CLEC that files a tariff pursuant to this exemption shall, no later than the 30th day after the end of each quarter for which it ceases to meet the requirements of the exemption, submit to the Commission a revised tariff based upon the competing ILEC's rates.

(d) Limitation on Use of Rural ILEC as a Benchmark. Notwithstanding paragraph (b) of this section, if a CLEC's competing ILEC is a rural ILEC, the CLEC may benchmark to the competing rural ILEC only if the CLEC terminates [XX] or fewer minutes of use of interstate switched exchange access traffic per working loop per month. Any CLEC benchmarking to a competing rural ILEC shall, no later than the 15th day after the end of each quarter, certify to the Commission either:

(i) that the CLEC continues to qualify as a CLEC entitled to benchmark to the competing rural ILEC pursuant to this paragraph based on the CLEC's average switched exchange access minutes of use per working loop per month for the preceding quarter and that the CLEC will retain the documentation necessary to support its certification for at least three (3) years and will provide that documentation to the Commission on demand; or

(ii) that the CLEC is no longer eligible to benchmark to the competing rural ILEC pursuant to this paragraph based on the CLEC's average switched exchange access minutes of use per working loop per month for the preceding quarter and that the CLEC will file a revised tariff within 30 days that prices its interstate switched exchange access services no higher than the rate charged by [a]the Bell Operating Company as defined in 47 U.S.C. 153(4) serving the CLEC's state, or the largest ILEC in the state, possession or territory if there is no Bell Operating Company (based on number of lines within the state).

(iii) A CLEC billing a customer for interstate switched exchange access under this section of the Rules may not tariff rate elements or charges for any switched access service function (e.g., tandem switching or local end office switching) that it does not provide.

(iv) A CLEC required to file a new tariff under subsection (ii) hereof may not benchmark its interstate switched access rates to a rural ILEC for a minimum of one (1) year after the new tariff complying with subsection (ii) has been filed.

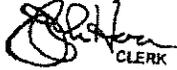
(e) If a CLEC provides some portion of the interstate switched exchange access services used to send traffic to or from an end user not served by that CLEC, the rate for the access services provided may not exceed the rate charged by the competing ILEC for the same access services.

Separate Revenue Sharing Provision

To be stated in an FCC order:

It shall be an unjust and unreasonable practice for any LEC to assess intercarrier compensation—including, for example, access charges, reciprocal compensation charges, or charges assessed under 47 C.F.R. § 20.11 arrangements—on traffic that is subject to a revenue sharing arrangement. A “revenue sharing arrangement” is any arrangement between a LEC and a calling provider whereby (i) the LEC compensates a calling provider to direct calls to or through a LEC’s local exchange and (ii) the arrangement can be expected over its term to produce net payments from the LEC to the calling provider. “Calling provider” means any entity, including any affiliate of a LEC, that promotes or advertises to end users telecommunications services or information services and that provides or uses a LEC’s telephone numbers for such services to be routed to or through a LEC’s local exchange.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
AUG 19 2010

CLERK

FREE CONFERENCING CORP.,
a Nevada Corporation,

CIV. 10- 4113

Plaintiff,

vs.

COMPLAINT

SANCOM, INC., a South Dakota Corporation, d/b/a MITCHELL TELECOM; SANTEL COMMUNICATIONS COOPERATIVE, INC., a South Dakota Corporation; and MCI COMMUNICATIONS SERVICES, INC. d/b/a VERIZON BUSINESS SERVICES, a Delaware Corporation.

Defendants.

Plaintiff Free Conferencing Corporation, by and through its counsel, and for its
Complaint against the above-named *Defendants*, states and alleges as follows:

THE PARTIES

1. Plaintiff Free Conferencing Corporation (“FCC”) is a corporation organized and existing under the laws of Nevada, with its principal place of business in California.
2. Defendant Sancom, Inc., d/b/a Mitchell Telecom (“Defendant Sancom”), is a corporation organized and existing under the laws of South Dakota, with its principal place of business in Mitchell, South Dakota.
3. Defendant Santel Communications Cooperative, Inc. (“Defendant Santel”), is a corporation organized and existing under the laws of South Dakota, with its principal

place of business in Woonsocket, South Dakota. Defendant Santel is the parent company for Defendant Sancom.

4. Defendant MCI Communications Services, Inc., d/b/a Verizon Business Services (“Defendant Verizon”), is a corporation organized and existing under the laws of Delaware, with its principal place of business in the Commonwealth of Virginia.

JURISDICTION AND VENUE

5. This Court has diversity-of-citizenship jurisdiction pursuant to 28 U.S.C. §1332. There is diversity jurisdiction because FCC is a corporation organized and existing under the laws of the State of Nevada. Defendant Sancom and Defendant Santel are corporations organized and existing under the laws of the State of South Dakota. Defendant Verizon is a corporation organized and existing under the laws of the State of Delaware. The amount in controversy, without interest and costs, exceeds the sum or value specified by 28 U.S.C. § 1332. FCC’s claims against Defendant Verizon also arise under the Federal Communications Act, including 47 U.S.C. §§ 201, 202, 206, and 207, and therefore the Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331. The Court would also have supplemental jurisdiction over FCC’s pendent state-law claims pursuant to 28 U.S.C. § 1367(a).
6. The Court has personal jurisdiction over Defendant Sancom because it is incorporated, and does business in, the State of South Dakota.
7. The Court has personal jurisdiction over Defendant Santel because it is incorporated, and does business in, the State of South Dakota.
8. The Court has personal jurisdiction over Defendant Verizon because it does business in, and conducted the unlawful acts complained of, in the State of South Dakota.

9. Venue is proper pursuant to 28 U.S.C. §1391(a).

FACTUAL ALLEGATIONS

10. FCC is one of the country's leading providers of conference call services.
11. FCC's signature service is its free, reservation-less, high-quality, easy-to-use conference call service, which allows individuals, businesses, and public sector participants to make conference calls for only the cost of the long-distance call (*i.e.*, the caller pays FCC no fee for providing the conference call service; the conference caller's only expense is any applicable long distance charges to its long distance carrier for calling into FCC's conferencing bridge).
12. FCC's all-digital network is provided through its relationship with local exchange carriers ("LECs") like Defendant Sancom and Defendant Santel, and FCC competes with the 800-number based conference calling services of large telecommunications carriers which bundle high-cost long distance charges with conference features, ultimately costing consumers substantially more per-minute than similar or better service from FCC.
13. FCC has formed relationships with rural LECs and competitive local exchange carriers ("CLECs"), like Defendant Sancom and Defendant Santel, that have excess network capacity for the high network demand occasioned by multiple, simultaneous conferences.
14. Under these arrangements, FCC subscribes to Defendant Sancom's and Defendant Santel's telecommunications services and FCC provides teleconferences in South Dakota. Defendant Sancom and Defendant Santel, in turn, pay certain marketing fees

to FCC based on the amount of conference call traffic that is sent to the telephone numbers that Defendant Sancom and Defendant Santel have assigned to FCC.

15. Defendant Sancom is a CLEC which provides telephone and other services through wires to the homes and businesses of its customers.

16. Defendant Sancom and Defendant Santel also provide originating and terminating access services (“access services”) to long distance companies (known as “interexchange carriers” or “IXCs”) which allow the long distance companies to transmit the long distance calls of their customers even though they do not own or lease the telephone lines that connect to the users’ telephones. Defendant Sancom and Defendant Santel also provide telecommunications services to its subscribers, such as FCC.

17. In accordance with Defendant Sancom’s and Defendant Santel’s federal and state tariffs, they assess regulated charges – know as “access charges” – on long distance carriers that use its networks to take calls from, or deliver calls to, the long distance carriers’ customers within Defendant Sancom’s and Defendant Santel’s local service area.

18. Defendant Verizon is an inter-exchange (*i.e.* long distance) carrier that provides long distance telephone service to customers throughout the country.

19. The Federal Communications Commission regulates, and has exclusive jurisdiction over, access charges that apply to interstate long distance telephone calls; similarly, the South Dakota Public Utilities Commission regulates, and has jurisdiction over, access charges for long distance calls made within South Dakota.

20. In March 2005, FCC and Defendant Sancom entered into a Wholesale Local Services Agreement (“Agreement”). A copy of this Agreement is attached to this Complaint as “Exhibit I.”
21. David Erickson, President of FCC, executed this Agreement on behalf of FCC.
22. Gene Kroell, General Manager of Defendant Sancom, executed this Agreement on behalf of Defendant Sancom.
23. Under this Agreement, FCC desired to locate a teleconference bridge, and Defendant Sancom desired to provide a location for this teleconference bridge, at Defendant Sancom’s central office in Mitchell, Davison County, South Dakota.
24. Under this Agreement, FCC provided Defendant Sancom (at FCC’s expense) a teleconference bridge and PC server.
25. Under this Agreement, Defendant Sancom was to provide a location for FCC’s teleconference bridge and associated equipment at its central office at 1000 Innovative Drive, Mitchell, South Dakota 57301.
26. Under this Agreement, FCC was to provide both existing and new customers to Defendant Sancom and Defendant Santel. FCC was also to provide a minimum of 2,000,000 minutes of customer use in existing business.
27. Under this Agreement, Defendant Sancom was to pay to FCC a marketing fee of \$0.02 (TWO CENTS) per minute per month based upon revenue collected on minutes used per month. The monthly billing cycle was to coincide with Defendant Sancom’s billing cycle. FCC was to receive payment from Defendant Sancom within thirty (30) days of the end of each month. The minutes of use were to be established by reference to Defendant Sancom’s records.

28. Under this Agreement, in the event of any default or breach on the part of any party, the non-defaulting party shall be entitled to recover from the defaulting party all costs and attorney's fees incurred by the non-defaulting party in enforcing such party's rights, whether incurred with or without suit or before or after .
29. In November 2009, FCC provided Defendant Sancom's current general manager, Ryan Thompson, with a Notice of Breach of Contract ("Notice"). A copy of this Notice is attached to this Complaint as "Exhibit 2."
30. Despite this Notice, Defendant Sancom and Defendant Santel have failed and refused to pay the invoices although demand for said payments has been made by FCC. As a result of such failure, Defendant Sancom and Defendant Santel are indebted to FCC in the sum of \$ 10,112,583.70. A copy of FCC's invoice is attached to this Complaint as "Exhibit 3."
31. On information and belief, Defendant Verizon learned that FCC was providing competing conferencing services and terminated calls to Defendant Sancom and Defendant Santel.
32. On information and belief, in an effort to, *inter alia*, effectively "starve out" this new source of competition to its conferencing services and to interfere with FCC's contractual relationship with Defendant Sancom and Defendant Santel, Defendant Verizon engaged in unlawful acts of self-help by, *inter alia*, refusing to pay Defendant Sancom's and Defendant Santel's tariffed charges associated with, among other long-distance traffic, traffic that Defendant Verizon delivered to Defendant Sancom and Defendant Santel for termination to FCC's equipment on Defendant Sancom's and Defendant Santel's network.

33. Defendant Verizon engaged in such conduct with the intent to harm FCC and to gain an unfair competitive advantage by, *inter alia*, continuing to bill its long-distance customers for the long-distance calls it sent to FCC's conference call bridge for termination at Defendant Sancom's and Defendant Santel's local telephone exchange. At the same time, Defendant Verizon incongruously and unlawfully maintained that the calls to FCC's conferencing call bridge were not subject to terminating access charges by Defendant Sancom and Defendant Santel. Indeed, on information and belief, despite the fact that FCC understands that Defendant Verizon has settled an underlying dispute with Defendant Sancom and Defendant Santel such that it no longer contends Defendant Sancom's and Defendant Santel's delivery of Defendant Verizon's customers' traffic to FCC is unlawful or not compensable, Defendant Verizon continues to maintain that FCC is part of a "conspiracy" that now includes Defendant Verizon itself.
34. Defendant Verizon utilizes the terminating access services that Defendant Sancom and Defendant Santel provide Defendant Verizon in connection with the long-distance calls that Defendant Verizon delivers to Defendant Sancom and Defendant Santel for termination to FCC's equipment located on Defendant Sancom's and Defendant Santel's network.
35. On information and belief, in accordance with its federal and South Dakota tariffs, Defendant Sancom and Defendant Santel have billed Defendant Verizon for the tariffed access services that they provide to Defendant Verizon after FCC's relationship with Defendant Sancom and Defendant Santel began, and continues to do so in accordance with Defendant Sancom's and Defendant Santel's tariffs and/or

the parties' settlement agreement.

36. On information and belief, Defendant Verizon purported to justify its refusal to pay Defendant Sancom's and Defendant Santel's tariffed access charges based on conditions related to Defendant Sancom's, Defendant Santel's, and FCC's customer relationship that Defendant Verizon does not in the ordinary course of its business undertake an effort to validate before paying other LECs' tariffed access charges, rendering those billing practices interposed in an unreasonable and discriminatory manner.
37. Further, to injure FCC and to interfere with its relationship with Defendant Sancom and Defendant Santel, Defendant Verizon refused to pay *all* of Defendant Sancom's and Defendant Santel's tariffed access charges, including access charges associated with calls that Defendant Verizon does not even dispute (such as Defendant Sancom's and Defendant Santel's residential and non-conference-call-provider commercial customers) in an effort to pressure Defendant Sancom and Defendant Santel into accepting a substantially lower rate per minute for telecommunications traffic, a rate that is far below Defendant Sancom's and Defendant Santel's legal tariff, in turn negatively impacting the remuneration that is due FCC via its Agreement with Defendant Sancom and Defendant Santel.
38. By refusing to pay Defendant Sancom's and Defendant Santel's lawfully assessed access charges, Defendant Verizon knowingly and proximately caused Defendant Sancom's and Defendant Santel's inability to pay the marketing fees due FCC, a consequence that, on information and belief, Defendant Verizon knowingly created with the purpose of injuring Defendant Sancom, Defendant Santel, and FCC, which

Defendant Verizon accomplished by degrading Defendant Sancom's and Defendant Santel's relationship with FCC.

39. This tortious interference also injured FCC's business in other ways, including direct and consequential damages associated with attempting to mitigate the damages it suffered as a result of Defendant Verizon's unlawful "self-help" and discriminatory practices.

**COUNT I
BREACH OF CONTRACT
(Defendant Sancom and Defendant Santel)**

40. FCC re-alleges and incorporates by reference the foregoing paragraphs.
41. Defendant Sancom and Defendant Santel have failed to comply with the terms and conditions of the parties' Agreement.
42. FCC has invoiced Defendant Sancom pursuant to the parties' Agreement.
43. Defendant Sancom and Defendant Santel have failed and refused to pay those amounts invoiced to it by FCC, thus constituting a breach of the parties' Agreement.

**COUNT II
UNJUST ENRICHMENT
(Defendant Sancom and Defendant Santel)**

44. FCC re-alleges and incorporates by reference the foregoing paragraphs.
45. As described above, and in the alternative to FCC's breach of contract claim, FCC also alleges that it provided a benefit to Defendant Sancom and Defendant Santel by providing services to Defendant Sancom and Defendant Santel.
46. Defendant Sancom and Defendant Santel have retained the benefits conferred upon them by FCC and knowingly accepted those benefits.

47. It would be inequitable for Defendant Sancom and Defendant Santel to retain the benefits of the services provided by FCC without properly compensating FCC for the value of the services provided.
48. FCC has suffered injury to business or property by reason of Defendant Sancom's and Defendant Santel's unjust enrichment.
49. Pursuant to the equitable doctrines of quantum meruit and unjust enrichment, FCC is entitled to payment from Defendant Sancom and Defendant Santel for the amount of the invoices.

**COUNT III
TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS
(Defendant Verizon)**

50. FCC re-alleges and incorporates by reference the foregoing paragraphs.
51. FCC entered into a valid subscriber contract with Defendant Sancom and Defendant Santel whereby Defendant Sancom and Defendant Santel provided FCC with telecommunications services and allowed FCC to locate its conferencing equipment at Defendant Sancom's central office in Mitchell, South Dakota, for the express purpose of allowing FCC to carry on its conference calling business. FCC's business is dependent upon Defendant Sancom's and Defendant Santel's ability to terminate all of the calls that are made to the telephone numbers to which FCC's subscribes and Defendant Sancom's and Defendant Santel's collection of the applicable tariffed rates for providing those and related services for FCC.
52. FCC's contract with Defendant Sancom and Defendant Santel further provided that FCC would receive a marketing fee from Defendant Sancom and Defendant Santel based upon the access-charge revenue that Defendant Sancom and Defendant Santel

collects from long-distance carriers, including Defendant Verizon, associated with the minutes of FCC's services used per month by each long-distance carrier's long-distance customers. On information and belief, Defendant Verizon knew that Defendant Sancom's and Defendant Santel's relationship with FCC involved the payment of such a marketing fee.

53. Defendant Verizon unlawfully refused to pay Defendant Sancom's and Defendant Santel's invoices for originating and terminating traffic from Defendant Verizon's long-distance customers, with the intent to injure Defendant Sancom, Defendant Santel's, and FCC's business relationship, which it succeeded in doing.
54. Defendant Verizon's conscious and unjustified refusal to pay Defendant Sancom and Defendant Santel for its services despite its obligation to do so under Defendant Sancom's and Defendant Santel's tariffs and the filed rate doctrine demonstrates Defendant Verizon's intention to destroy or otherwise injure FCC's business relationship with Defendant Sancom and Defendant Santel.
55. FCC suffered and continues to suffer damages as a result of Defendant Verizon's intentional actions to disrupt FCC's relationship with Defendant Sancom and Defendant Santel. As a direct and proximate result of Defendant Verizon's refusal to pay Defendant Sancom's and Defendant Santel's invoices, FCC suffered direct and consequential damages associated with its lack of marketing fees due and attempting to mitigate the damages it suffered and continues to suffer as a result of Defendant Verizon's unlawful "self-help" and discriminatory practices, and additional damages associated with attempting to mitigate its damages caused by Defendant Verizon.

COUNT IV
VIOLATION OF SECTION 201(b) OF THE COMMUNICATIONS ACT
(Defendant Verizon)

56. FCC re-alleges and incorporates by reference the foregoing paragraphs.
57. Section 201(b) of the Federal Communications Act (“Communications Act”) prohibits unjust or unreasonable practices by a telecommunications carrier.
58. Defendant Verizon, an interstate telecommunications carrier, engaged in unjust and unreasonable practices by, *inter alia*, delivering long-distance calls to Defendant Sancom and Defendant Santel for termination but refusing to pay Defendant Sancom and Defendant Santel its tariffed terminating access rates for terminating access services provided by Defendant Sancom and Defendant Santel pursuant to its tariffs to injure Defendant Sancom, Defendant Santel, and FCC, including justifying that refusal based on reasons that, on information and belief, it does not ordinarily even consider when evaluating the validity of LECs’ access charge invoices, and to aid its own conferencing services to the purposeful detriment of FCC’s competitive offerings. This purposeful, injurious conduct is unlawful.
59. FCC is entitled to damages in the amount of the unpaid marketing fees and related charges for which Defendant Sancom and Defendant Santel have billed Defendant Verizon (plus any additional damages that accrue through the pendency of this action), along with all other direct and consequential damages caused by Defendant Verizon’s unlawful conduct, plus interest, along with its reasonable costs and attorneys’ fees pursuant to Section 206 of the Communications Act.

COUNT V
VIOLATION OF SECTION 202(a) OF THE COMMUNICATIONS ACT
(Defendant Verizon)

60. FCC re-alleges and incorporates by reference the foregoing paragraphs.
61. Section 202(a) of the Communications Act prohibits unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services. Further, it is unlawful under section 202(a) “to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.”
62. Defendant Verizon engaged in unreasonable discrimination by specifically targeting rural LEC/conference-call-provider customers (like FCC), and engaging in discriminatory practices meant to financially harm FCC by attempting to induce Defendant Sancom, Defendant Santel, and similarly situated rural LECs to stop providing services to FCC and the other rural LECs’ conference-call provider customers.
63. Defendant Verizon does not engage in similar practices with other LECs and only discriminated against Defendant Sancom, Defendant Santel, and similarly situated rural LECs for providing services to its customers that provide conference calling and similar services. Indeed, on information and belief, Defendant Verizon pays and/or does not dispute access charges assessed it by non-rural LECs that terminate calls to conferencing and similar equipment; also on information and belief, the reasons Defendant Verizon proffers for not having to pay Defendant Sancom’s and Defendant Santel’s terminating access charges are not factual matters that Defendant Verizon investigates or validates in the ordinary course of its review and payment of LECs’

access charges, and thus Defendant Verizon's practices vis-à-vis these rural-LEC/conferencing-customer relationships are interposed in a bad faith, discriminatory fashion. As such, on information and belief, Defendant Verizon does not maintain a consistent practice of not paying access charges for calls terminated to conference bridges *because* they are conference bridges; rather, Defendant Verizon engaged in this discriminatory practice because of *who* terminates calls to conferencing equipment (*i.e.* rural LECs that pay marketing fees to their conference-call-provider customers).

64. As a direct result of Defendant Verizon's discrimination, FCC suffered financial harm and damages.

65. FCC is entitled to all direct and consequential damages caused by Defendant Verizon's unlawful conduct, including the unpaid marketing fees that Defendant Sancom and Defendant Santel have been unable to tender to it because of Defendant Verizon's unlawful refusal to pay Defendant Sancom's and Defendant Santel's tariffed access charges (plus any additional damages that accrue through the pendency of this action), plus interest, along with its reasonable costs and attorneys' fees pursuant to Section 206 of the Communications Act.

WHEREFORE, FCC respectfully requests this Court to enter a judgment in its favor against Defendant Sancom, Defendant Santel, and Defendant Verizon, in an amount to be determined through discovery or at trial, together with interest thereon, plus costs and attorneys'

fees, and any other relief to which FCC is entitled.

Dated this 16th day of August, 2010.

~~SWIER LAW FIRM, PROF. LLC~~



Scott R. Swier
133 N. Main Street
P.O. Box 256
Avon, South Dakota 57315
Telephone: (605) 286-3218
Facsimile: (605) 286-3219
scott@swierlaw.com
www.SwierLaw.com
Attorney for Plaintiff

JURY TRIAL DEMAND

Plaintiff FCC demands a trial by jury on all issues triable of right by jury.

Dated this 16th day of August, 2010.

~~SWIER LAW FIRM, PROF. LLC~~



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Attorney for Plaintiff

**WHOLESALE LOCAL SERVICES AGREEMENT
FOR FREE CONFERENCING CORPORATION**

This agreement is entered into as of March 1, 2005, between Sancom, Inc (hereinafter "Sancom") and Free Conferencing Corporation (hereinafter "FCC").

WHEREAS, FCC desires to locate a Teleconference Bridge and SANCOM desires to provide a location for said bridge at its central office location in Mitchell, South Dakota.

NOW, THEREFORE, the parties agree as follows:

1. **CONFERENCE BRIDGE**: FCC shall provide at its expense a Conference Calling Bridge and PC server.

2. **LOCATION**: SANCOM will provide a location for said Conference Calling Bridge at its central office at 1000 Innovative Drive, Mitchell, SD 57301. This location will include a rack space for Conference Bridge with DS3 local service from switch to bridge. In addition, SANCOM will provide a technician to assist the manufacturer's engineer in the event of a bridge failure. The central office will be maintained in good repair and will include power backup. Rack space requirement is estimated at 1 full rack. DS3's will be added as the customer base grows up to about 2 DS3s to haul minutes to SANCOM's switch.

3. **CUSTOMERS**: FCC shall provide customers, both existing and new customers. FCC shall provide minimum of 2,000,000 minutes of customer use in existing business.

4. **RELATIONSHIP WITH END USERS**: FCC will be SANCOM sole customer of record for all of the services. SANCOM shall have no responsibility for dealing directly with any of FCC's customers ("End Users") for any purpose relating to the services. FCC is solely responsible for all products and services it provides to its End Users.

No End User or any other third party shall be considered a party to or beneficiary of this Agreement or have any claim under this Agreement against either SANCOM or FCC. FCC agrees to indemnify and hold harmless SANCOM, its officers, directors, employees and agents, from all claims with respect to any of the services or FCC's breach of this Agreement, except to the extent caused by the gross negligence or willful misconduct of SANCOM.

5. **FACILITY ACCESS**: FCC employees, technicians, and designated representative will be allowed access to the facility to inspect, perform diagnosis, repair, or remove Conference Bridge and associated equipment on a 24 hour per day, 7 day per week basis. FCC will notify SANCOM in advance of any access requirement.

6. **MAINTENANCE**: The Equipment will be installed by the manufacturer or FCC. The bridge will be under factory maintenance agreement and may require a technician



occasionally to work with the factory to reboot the system or to install replacement parts. SANCOM will provide a technician to work with said factory representatives. However, SANCOM provides no warranty or guaranty above and beyond that which the manufacturer provides. SANCOM shall not be liable for any damages, whether direct or consequential, associated with a breakdown in the conferencing bridge equipment, but shall promptly repair such equipment if there is a malfunction.

7. **TERM OF AGREEMENT:** The term of this agreement shall be for three (3) years beginning March 1, 2005. SANCOM may assign this agreement to an independent telephone company located in the state of South Dakota.

8. **CONFIDENTIALITY:** During the term of this Agreement and for a period of three (3) years thereafter, neither FCC nor SANCOM shall disclose any terms of this Agreement, including pricing, or any other confidential information of the other Party. For purposes of this Agreement, the term "confidential information" shall mean information in written or other tangible form specifically labeled as such when disclosed by a Party. Any confidential information transmitted orally shall be identified as such at the time of its disclosure. All confidential information shall remain the property of the disclosing Party.

9. **TERMINATION OF AGREEMENT:** Either of the parties may terminate this agreement at any time during the term of this agreement upon sixty (60) days written notice. Said notice shall be directed to:

Gene Kroell
Sancorn, Inc.
1801 N. Main Street
Mitchell, SD 57301
Ph: (605) 996-2525
Fax: (605) 996-2581
aekroell@mitchelltelecom.com
www.mitchelltelecom.com

RZ

RTHOMPSON@SAUNTEL.NET

David Erickson
Free Conferencing Corporation
110 W. Ocean Blvd
Suite 517
Long Beach, CA 90802
david@freeconferencing.com
www.freeconferencecall.com

10. **MINUTES OF USE COMPENSATION:** SANCOM shall pay to FCC a marketing fee of 2.0¢ per minute per month based upon revenue collected on minutes used per month. The monthly billing cycle shall coincide with SANCOM's billing cycle. FCC shall receive payment from SANCOM within thirty (30) days of the end of each month. Minutes of use shall be established by reference to SANCOM records. Should

SANCOM suffer a substantial and material change in the amount of revenue it is contractually entitled to receive from its carriers and suppliers, the parties agree to renegotiate the amounts payable by FCC to SANCOM under this Agreement. SANCOM shall be responsible to notify FCC of any change in its compensation status.

11. OWNERSHIP OF PROPERTY: FCC shall own the Conference Calling Bridge and PC server. SANCOM shall own the rack, voice ports, DS3's and the real property the street address of which is 1000 Innovative Drive, Mitchell, South Dakota 57301. Neither party to this agreement obtains an ownership interest in the other's property by virtue of this agreement.

12. AUTHORIZATION: The parties, by executing this agreement, expressly affirm that they have been duly authorized and have full power and authority to enter into this agreement.

13. DEFAULT:

(a) In the event either party fails to comply with or perform any of the terms, covenants, conditions and acts required of it in this Agreement, then the non-defaulting party, after thirty (30) days written notice to the defaulting party specifying such failure and such failure is not cured within said thirty (30) days, then the non-defaulting party, without further notice, may terminate this Agreement effective immediately after the expiration of the foregoing 30 days.

(b) The rights and remedies stated in this Agreement are not exclusive and each of the parties, in the event of breach hereof or a dispute, are entitled to pursue any of the remedies available by law or by equity.

14. ATTORNEY'S FEES: In the event of any default or breach on the part of any party hereto, any non-defaulting party shall be entitled to recover from the defaulting party all costs and attorney's fees incurred by a non-defaulting party in enforcing such party's rights hereunder, whether incurred with or without suit or before or after judgment.

15. BENEFIT AND ASSIGNABILITY: This agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns and no other person or entity shall have any right, whether third-party beneficiary or otherwise hereunder. Except as provided in Paragraph 7, this agreement may not be assigned by any party without the prior written consent of the other party.

16. GOVERNING LAW: This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of South Dakota.

SANCOM, Inc

BY: Gene Kroell

PRINT NAME: GENE KROELL

TITLE: GENERAL MANAGER

DATE: 3-3-05

FREE CONFERENCING CORPORATION

BY: [Signature]

PRINT NAME: DAVID ERICKSON

TITLE: PRESIDENT

DATE: 3/7/05

November 16, 2009

To: Ryan Thompson, General Manager
Sancom, Inc.

From: Jeff Holoubek, Director of Legal
Free Conferencing Corporation
949.842.4478

Re: Breach of Contract by Sancom, Inc. – Notice

Mr. Thompson:

The purpose of this letter is to provide you with formal notice that Sancom Inc. is now, and has for the past 10 months, been in breach of its contract with Free Conferencing Corporation.

Sancom, Inc. is contractually obligated to pay Free Conferencing Corporation its proportionate share of settlement awards received by Sancom, Inc. for marketing services provided by Free Conferencing Corporation. In addition, Sancom, Inc. was contractually obligated to negotiate in good faith a new contract that reflects the changed business environment, and to compensate Free Conferencing Corporation for Sancom, Inc.'s continued acceptance of marketing services. David Erickson, President of Free Conferencing Corporation has made numerous attempts to contact Ryan Thompson in an effort to satisfy the aforementioned contractual obligations. Ryan Thompson has made many promises to pay what is owed and to resolve all outstanding contractual debts and satisfy other obligations, inducing Free Conferencing Corporation to continue to provide marketing services. Ryan Thompson has broken every one of his promises, and his lack of sincerity has become evident.

Free Conferencing Corporation has at all times acted in good faith, keeping every one of its promises, even to the extent of loaning Sancom, Inc. its portion of payment for a joint legal defense, as a good faith gesture, because Sancom, Inc. asked for financial assistance.

Free Conferencing Corporation, with this letter, provides Sancom, Inc. formal notice of Sancom, Inc.'s breach of contract. With this letter Sancom, Inc. is put on notice of Free Conferencing Corporation's intention to cease business with Sancom, Inc., following 30 days from the date of this notice, in accordance with the terms of the contract. Sancom, Inc. will be contacted by Free Conferencing Corporation's engineering depart to make arrangements for Free Conferencing Corporation to remove its equipment from Sancom, Inc.'s premises.

Sincerely,

Jeff Holoubek, Director of Legal
Free Conferencing Corporation





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06/29/10

Free Conferencing Corporation
Customer Balance Detail
All Transactions

Type	Date	Num	Account	Class	Amount	Balance
Sancorn						
General Journal	12/31/2005	20	Accounts Receivable		334,804.97	334,804.97
General Journal	1/1/2006	20R	Accounts Receivable		-334,804.97	0.00
Invoice	8/1/2006	JC27	Accounts Receivable		213,489.47	213,489.47
Invoice	8/22/2006	JC16	Accounts Receivable		63,468.91	276,958.38
Invoice	10/1/2006	JC29	Accounts Receivable		180,188.07	457,146.45
Payment	10/4/2006		Accounts Receivable		-213,489.47	243,656.98
Payment	10/18/2006		Accounts Receivable		-63,468.91	180,188.07
Invoice	11/1/2006	JC46	Accounts Receivable		166,955.41	347,143.48
Payment	11/14/2006		Accounts Receivable		-180,188.07	166,955.41
Invoice	12/1/2006	JC47	Accounts Receivable		626,988.95	793,944.36
Payment	12/18/2006		Accounts Receivable		-166,955.41	626,988.95
Invoice	1/1/2007	JC65	Accounts Receivable		467,709.32	1,094,698.27
Payment	1/17/2007		Accounts Receivable		-626,988.95	467,709.32
Invoice	2/1/2007	JC63	Accounts Receivable		443,902.33	911,611.65
Invoice	2/1/2007	JC89	Accounts Receivable		443,902.33	1,355,513.98
Payment	2/16/2007		Accounts Receivable		-467,709.32	887,804.66
Invoice	3/1/2007	JC94	Accounts Receivable		578,021.48	1,465,826.14
Payment	3/14/2007		Accounts Receivable		-443,902.33	1,021,923.81
Invoice	4/1/2007	JC93	Accounts Receivable		506,022.80	1,527,946.61
Payment	4/17/2007		Accounts Receivable		-368,068.99	1,159,877.62
Invoice	5/1/2007	JC105	Accounts Receivable		533,073.67	1,692,951.29
Payment	5/1/2007		Accounts Receivable		-292,293.79	1,400,657.50
Payment	5/17/2007		Accounts Receivable		-342,513.48	1,058,144.02
Invoice	6/1/2007	JC106	Accounts Receivable		628,885.58	1,687,029.60
Payment	6/19/2007		Accounts Receivable		-91.23	1,686,938.37
Payment	6/19/2007		Accounts Receivable		-4,872.56	1,682,065.81
Invoice	7/1/2007	JC127	Accounts Receivable		802,451.72	2,484,517.53
Payment	7/12/2007		Accounts Receivable		-299,241.91	2,185,275.62
Invoice	8/1/2007	JC122	Accounts Receivable		832,808.45	3,018,084.07
Payment	8/16/2007		Accounts Receivable		-377,618.01	2,640,466.06
Payment	8/16/2007		Accounts Receivable		-7,845.93	2,632,620.13
Payment	8/16/2007		Accounts Receivable		-1,907.77	2,630,712.36
Invoice	9/1/2007	JC136	Accounts Receivable		977,401.37	3,608,113.73
Payment	9/13/2007		Accounts Receivable		-423,062.11	3,185,051.62
Invoice	10/1/2007	JC135	Accounts Receivable		930,323.45	4,115,375.07
Payment	10/11/2007		Accounts Receivable		-495,573.76	3,619,801.31
Payment	10/11/2007		Accounts Receivable		-4,768.52	3,615,032.79
Payment	10/11/2007		Accounts Receivable		-29,635.03	3,585,397.76
Invoice	11/1/2007	JC167	Accounts Receivable		917,822.41	4,503,220.17
Payment	11/7/2007		Accounts Receivable		-819.70	4,502,400.47
Payment	11/7/2007		Accounts Receivable		-472,730.12	4,029,670.35
Invoice	12/1/2007	JC175	Accounts Receivable		967,376.15	4,997,046.50
Payment	12/12/2007		Accounts Receivable		-1,024.34	4,996,022.16
Payment	12/12/2007		Accounts Receivable		-121.96	4,995,900.20
Payment	12/12/2007		Accounts Receivable		-465,949.37	4,529,950.83
Invoice	1/1/2008	JC174	Accounts Receivable		926,676.74	5,456,627.57
Payment	1/24/2008		Accounts Receivable		-201.45	5,456,426.12
Payment	1/24/2008		Accounts Receivable		-1,805.76	5,454,620.36
Payment	1/24/2008		Accounts Receivable		-1,328.81	5,453,291.55
Payment	1/24/2008	JC174	Accounts Receivable		-17.90	5,453,273.65
Payment	1/24/2008	JC175	Accounts Receivable		-483,848.37	4,969,425.28
Invoice	2/1/2008	JC187	Accounts Receivable		886,499.18	5,855,924.46
Payment	2/21/2008	JC175	Accounts Receivable		-348.92	5,855,575.54
Payment	2/21/2008	JC174	Accounts Receivable		-641.76	5,854,933.78
Invoice	3/1/2008	JC213	Accounts Receivable	FCC	1,047,211.18	6,902,144.96
Payment	3/22/2008	5692	Accounts Receivable		-4.01	6,902,140.95
Payment	3/22/2008	5692	Accounts Receivable		-9,569.66	6,892,571.29
Invoice	4/1/2008	JC214	Accounts Receivable	FCC	965,759.63	7,858,330.92
Payment	4/21/2008	5820	Accounts Receivable		-24,825.91	7,833,505.01
Payment	4/21/2008	5820	Accounts Receivable		-2,278.01	7,831,227.00
Payment	4/21/2008	5820	Accounts Receivable		-7,908.57	7,823,318.43
Payment	4/21/2008	5820	Accounts Receivable		-7,160.75	7,816,157.68
Payment	4/21/2008	5820	Accounts Receivable		-7,334.26	7,808,823.42
Invoice	5/1/2008	JC241	Accounts Receivable	FCC	1,000,786.26	8,809,609.68
Payment	5/20/2008	5940	Accounts Receivable		-11,968.28	8,797,641.40
Payment	5/20/2008	5940	Accounts Receivable		-6,467.25	8,791,174.15
Payment	5/20/2008	5940	Accounts Receivable		-5,331.88	8,785,842.27
Payment	5/20/2008	5940	Accounts Receivable		-205.29	8,785,636.98

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Free Conferencing Corporation
Customer Balance Detail
All Transactions

Type	Date	Num	Account	Class	Amount	Balance
invoice	6/1/2008	JC242	Accounts Receivable	FCC	499,205.15	9,284,842.13
Payment	6/23/2008	006106	Accounts Receivable		-23,733.29	9,261,108.84
Payment	6/23/2008	006106	Accounts Receivable		-927.62	9,260,181.22
Payment	6/23/2008	006106	Accounts Receivable		-54,774.98	9,205,406.24
Invoice	7/1/2008	JC262	Accounts Receivable	FCC	187,682.43	9,393,088.67
Payment	7/21/2008	006254	Accounts Receivable		-183.95	9,392,904.72
Payment	7/21/2008	006254	Accounts Receivable		-5,491.49	9,387,413.23
Payment	7/21/2008	006254	Accounts Receivable		-6,285.88	9,381,127.35
Invoice	8/1/2008	JC283	Accounts Receivable	FCC	47,924.97	9,429,052.32
Payment	8/18/2008	006380	Accounts Receivable		-41,268.52	9,387,783.80
Payment	8/18/2008	006380	Accounts Receivable		-30,496.32	9,357,287.48
Invoice	9/1/2008	JC284	Accounts Receivable	FCC	32,110.84	9,389,398.32
Payment	9/22/2008	006538	Accounts Receivable		-643.33	9,388,754.99
Payment	9/22/2008	006538	Accounts Receivable		-319.32	9,388,435.67
Payment	9/22/2008	006538	Accounts Receivable		-365.38	9,388,070.29
Payment	9/22/2008	006538	Accounts Receivable		-14,388.72	9,373,681.57
Invoice	10/1/2008	JC298	Accounts Receivable	FCC	92,631.86	9,466,313.43
Payment	10/20/2008	#006...	Accounts Receivable		-9,443.29	9,456,870.14
Invoice	11/1/2008	JC313	Accounts Receivable		85,050.08	9,541,920.22
Payment	11/24/2008	6823	Accounts Receivable		-25,093.56	9,516,826.66
Invoice	12/1/2008	JC324	Accounts Receivable		74,265.75	9,591,092.41
Invoice	1/1/2009	JC325	Accounts Receivable		58,300.44	9,649,392.85
Payment	1/9/2009	6927	Accounts Receivable		-23,148.29	9,626,244.56
Payment	1/21/2009	7058	Accounts Receivable		-19.87	9,626,224.69
Payment	1/21/2009	7058	Accounts Receivable		-2.88	9,626,221.81
Payment	1/21/2009	7058	Accounts Receivable		-4.78	9,626,217.03
Payment	1/21/2009	7058	Accounts Receivable		-706.79	9,625,510.24
Payment	1/21/2009	7058	Accounts Receivable		-1,060.50	9,624,449.74
Payment	1/21/2009	7058	Accounts Receivable		-409.30	9,624,040.44
Invoice	2/1/2009	JC337	Accounts Receivable	FCC	53,220.69	9,677,261.13
Payment	2/24/2009	7210	Accounts Receivable		-463.34	9,676,797.79
Payment	2/24/2009	7210	Accounts Receivable		-128.94	9,676,668.85
Invoice	3/1/2009	JC384	Accounts Receivable		61,051.45	9,737,720.30
Payment	3/25/2009	7328	Accounts Receivable		-0.06	9,737,720.24
Payment	3/25/2009	7328	Accounts Receivable		-529.70	9,737,190.54
Invoice	4/1/2009	JC365	Accounts Receivable	FCC	55,727.63	9,792,918.17
Payment	4/30/2009	7489	Accounts Receivable		-609.05	9,792,309.12
Invoice	5/1/2009	JC385	Accounts Receivable		58,663.70	9,850,972.82
Invoice	6/1/2009	JC405	Accounts Receivable		52,157.96	9,903,130.78
Payment	6/3/2009	7605	Accounts Receivable		-13.40	9,903,117.38
Payment	6/3/2009	7605	Accounts Receivable		-35.29	9,903,082.09
Payment	6/3/2009	7605	Accounts Receivable		-601.86	9,902,480.23
Payment	6/3/2009	7605	Accounts Receivable		-655.02	9,901,825.21
Payment	6/30/2009	7730	Accounts Receivable		-111.11	9,901,714.10
Invoice	7/1/2009	JC423	Accounts Receivable	FCC	47,614.08	9,949,328.18
Invoice	8/1/2009	JC435	Accounts Receivable	FCC	43,241.19	9,992,569.37
Payment	8/12/2009	7904	Accounts Receivable		-623.24	9,991,946.13
Payment	8/12/2009	7904	Accounts Receivable		-212.97	9,991,733.16
Payment	8/24/2009	8054	Accounts Receivable		-19.61	9,991,713.55
Payment	8/24/2009	8054	Accounts Receivable		-20.37	9,991,693.18
Payment	8/24/2009	8054	Accounts Receivable		-14.90	9,991,678.28
Payment	8/24/2009	8054	Accounts Receivable		-332.24	9,991,346.04
Invoice	9/1/2009	JC445	Accounts Receivable	FCC	43,211.02	10,034,557.06
Payment	9/28/2009	008181	Accounts Receivable		-1,857.23	10,032,699.83
Invoice	10/1/2009	JC452	Accounts Receivable	FCC	41,517.76	10,074,217.59
Invoice	11/1/2009	JC467	Accounts Receivable		41,268.09	10,115,485.68
Payment	11/3/2009	8334	Accounts Receivable		-2,901.98	10,112,583.70
Total Sancom					10,112,583.70	10,112,583.70
TOTAL					10,112,583.70	10,112,583.70