

1 TUESDAY, JANUARY 16, 2007

2 CHAIRMAN JOHNSON: With that, we will proceed to --
3 thank you very much to all the parties. We appreciate it. We
4 do apologize again for the technical difficulties. With that,
5 the commission will proceed toward our second item on today's
6 agenda, TC06-176, and that is in the matter of the petition of
7 Sprint Communications Company L.P. for arbitration pursuant to
8 the Telecom Act of '96 to resolve issues relating to an
9 interconnection agreement with Brookings Municipal Utilities,
10 doing business as Swiftel. We have two questions before the
11 commission today. The first is, shall the commission grant the
12 motion to compel filed by Sprint? We also have a motion to
13 compel by Swiftel. At this time I would look toward those
14 representing the parties to see whether or not you want to take
15 those questions separately or want to address both your motion
16 and your response when you are giving your oral argument.

17 MS. WIEST: Separate.

18 CHAIRMAN JOHNSON: We will go ahead and do those
19 separately. The first question we will take up will be, shall
20 the commission grant the motion to compel filed by Sprint. As
21 the moving party, we would look to Sprint to provide its oral
22 argument.

23 MR. WIECZOREK: Mr. Chairman, can you hear me?

24 CHAIRMAN JOHNSON: Yes, Mr. Wieczorek, we can.

25 MR. WIECZOREK: Talbot Wieczorek for Sprint.

1 CHAIRMAN JOHNSON: Mr. Wieczorek, we can hear you, go
2 ahead.

3 MR. WIECZOREK: Mr. Chairman?

4 CHAIRMAN JOHNSON: Yes, Mr. Wieczorek, we can hear
5 you.

6 MR. WIECZOREK: Mr. Chairman, Talbot Wieczorek on
7 behalf of Sprint. I will go through kind of the same format
8 that Mr. Overcash established, taking these one at a time in
9 the order in which the questions were posed. The motion to
10 compel that was filed on behalf of Sprint seeks, frankly,
11 mostly clarifications and direct answers to a couple of
12 questions that we believe were read in a way that was a
13 tortured reading so that they wouldn't have to respond. The
14 first are Interrogatories 2 and 3. These agreements, those
15 interrogatories made fairly straightforward requests that they
16 identify, particular Request No. 2, first, any
17 telecommunications traffic, either directly or indirectly
18 through a tandem connection exchanged during the last 12 months
19 pursuant to a written agreement.

20 When Sprint received Swiftel's response, we thought
21 that perhaps they misread the question. We thought it was
22 clear that we wanted to know who did they directly receive
23 traffic from as in a direct interconnect and who did they
24 receive traffic from indirectly through a tandem. The way
25 Sprint responded, frankly -- excuse me, the way Swiftel

1 responded -- I'll say Brookings instead of Swiftel, that might
2 be easier for everybody to follow. The way Brookings
3 responded, it's impossible to tell how they are connected with
4 any company they identified.

5 In Request No. 4 and their response to our motion,
6 Brookings said, well, we provided in response to Request No. 4
7 interconnection agreements with WWC, Midco and an agreement
8 with our affiliate, a wireless service, but if you read those
9 agreements, we don't know if they are directly or indirectly
10 connected. We think they should be compelled to explain to us
11 how they are receiving this traffic, whether it's direct
12 connect or indirect connect.

13 The same is true for Request No. 3, which talks --
14 where they raise and say, well, we have got PAS agreements with
15 Qwest and ITC, but we can't tell you how they are connected. I
16 find the fact that -- I can't believe their engineer or
17 consultant doesn't know how they are delivering traffic and
18 it's under an EAS system. Now, I agree they don't necessarily
19 have to go out and beat the bushes from a third party to view
20 this information, but I find that highly improbable you
21 couldn't walk down the hall and ask the engineer or call up the
22 consultant and say how did we connect with these guys.

23 I have never had a telecommunications carrier, an ILEC
24 tell me they can't tell me how they are connected for the
25 purposes of EAS or how they are actually connected with any of

1 the wireless carriers delivering traffic to them, whether it's
2 direct or indirect, and if it's indirect, over what tandem. In
3 South Dakota, the choices as to what tandem is fairly limited.

4 So I think the -- frankly, I think they are playing
5 kind of fast and loose with their analysis. It's fairly
6 straightforward questions and I think they should be compelled
7 to answer two and three and provide that information.

8 The next interrogatory we requested was 15. Now,
9 Brookings takes some exception to the fact claiming that
10 Sprint is asking multiple follow-up questions. Those questions
11 were never intended to go beyond the initial question, but
12 given how Brookings was responding to some of the questions
13 where it appeared they were misreading the questions, whether
14 purposely or not, we submitted follow-up questions to try to
15 hone down what we are asking so they understood it so we could
16 avoid a motion to compel.

17 Under 15, that question asks them to identify and
18 describe in detail how we would directly interconnect with the
19 Brookings office. The follow-up questions we asked, they did
20 give a description and we weren't sure by their diagram whether
21 they are showing a two-way trunk. They have since clarified
22 that yes, it's a two-way trunk, they did that in their
23 response. Then we also asked whether Brookings agrees to
24 share, under their diagram, agrees to share costs at the two-
25 way facility.

1 Their argument in response to that follow-up or that
2 clarifying question was that that was beyond the scope of the
3 question. The question asked them to describe in detail how
4 the interconnections would be designed and installed. It's
5 fairly standard when you design and install interconnection,
6 you discuss how the costs are going to be counted on that
7 interconnection and we believe that was within the scope of
8 that question and we would ask they answer that part of the
9 question.

10 As to 19, the question had to do with -- the question
11 had to do with the two-way interconnection facility. The
12 question specifically asked if Swiftel would not agree --
13 whether Swiftel, Brookings would not agree whether they would
14 plan on installing a one-way facility and the host switch. We
15 did ask the follow-up question if they planned on delivering --
16 not a follow-up, I'm clarifying, if not, do you intend to
17 install a one-way facility to deliver the originating traffic?
18 I think the question should be responded to in that the
19 question specifically asks whether they would agree on
20 installing a facility to deliver Brookings originated traffic
21 to Sprint and the host.

22 As to 26, 26 is an admit or deny question and in 26
23 the question was whether there were technical issues preventing
24 respondents from interconnections indirectly with Sprint for
25 exchanges of traffic. In other words, is there any technical

1 issues to prevent an indirect connect with Brookings and
2 Sprint. And Swiftel or Brookings took the position that that
3 was a vague question and they refused -- pardon me here -- they
4 did not have sufficient information to answer the question, so
5 essentially they refused to answer, just general categorically
6 denied it.

7 We clarified the question to say, you know, we are
8 only asking whether there's a network problem with an indirect
9 connect and this becomes a problem in the way they have
10 answered it because they have not made it clear whether they
11 have indirect connects with other telecommunications carriers
12 or how they are done. This is a fairly straightforward
13 question and that is, is there a technical -- a network
14 technical issue that prevents indirect connect, and if so, what
15 is it? I think they should be compelled to answer that. It is
16 not a difficult question, it's a fair question.

17 We don't want to get to a situation in the hearing and
18 a witness comes forth and says, you can't indirectly connect
19 because we have a network problem that won't allow it. I guess
20 the alternative is if they refuse to answer it, does one have
21 to assume there is no network issue that prevents indirect
22 connection?

23 As to 29 -- the question for 29 is -- the question for
24 29 asks Brookings to identify any technical issues which
25 prevent Sprint from sending access traffic and traffic subject

1 to recip comp to Brookings on the same trunk. Brookings then
2 discussed issues that they have and, again, in sending traffic
3 out over a trunk, that they have to send IXC traffic to SDN.
4 However, they did not raise any technical issues, and frankly,
5 this perhaps only takes a clarification. It appears they did
6 not raise any technical issues with Sprint delivering IXC
7 traffic and recip comp traffic over the same trunk. We did a
8 follow-up question merely because in the way they answered the
9 question, it appears they might have confused it and thought it
10 going the other way.

11 So our position would be they need to answer as to
12 what issues are -- what technical issues would exist in traffic
13 being delivered, both types of traffic being delivered over the
14 same trunk by Sprint to Brookings or that they should be held
15 to the conclusion that there are none because they have not
16 raised any from that method of traffic.

17 Finally, 38 is fairly simple. Brookings had raised an
18 issue with some of our language dealing with essentially the
19 phone book directory, that it was unfair, the language we
20 proposed in the interconnection agreement. We asked them to
21 identify all facts supporting their statement on page 24,
22 paragraph 66, that they stated Swiftel opposes Sprint's
23 language because it seeks to obtain preferential treatment for
24 Sprint end users. And in their response, when we asked them to
25 give all those facts that support that, they simply stated that

1 the current rate for directories is thirteen sixty per
2 directory and we essentially don't know what that means,
3 whether that's a replacement rate or whether that's what they
4 pay, they pay for every directory and if they are going to
5 contend that Sprint has to pay thirteen sixty per directory for
6 each of its customers.

7 So the only clarification we sought was whether they
8 are asserting that thirteen sixty is only for additional
9 directories delivered to subscribers or whether they would
10 intend that applies to initial directories, and I think that's
11 within the purview of that question when we had asked them to
12 identify all facts supporting that, whether they think that
13 they get to charge us for the initial directories under that
14 scenario.

15 I apologize if I went a little quickly, Commissioners.
16 It gets to be a long time on the phone and yelling into the
17 speaker. If you want to take questions now, I would be more
18 than happy to take them now or wait till after Ms. Sisak.

19 CHAIRMAN JOHNSON: Let's go ahead and take them now,
20 Tal. Thanks very much for your argument. I don't know that I
21 have questions at this time. Do other commissioners or
22 advisors have any questions? All right, thanks, Mr. Wieczorek.
23 At this point we will turn to Swiftel and hear their side of
24 the story.

25 MS. SISAK: Commissioners, this is Mary Sisak. Mr.

1 Helsper is also on the phone, but as he indicated earlier, I
2 will be conducting the argument or presenting the argument.
3 With respect to Requests 2 and 3 -- well, first of all, just a
4 general comment. We do believe that on a number of these
5 questions, in the guise of clarifying the information that they
6 were seeking, Sprint has in essence propounded new questions,
7 which simply is not contemplated in the discovery process and
8 would give them two bites of the apple when Swiftel is limited
9 to asking discovery just once. And basically if we put forth a
10 bad question and Sprint gave us a bad answer, we are stuck with
11 it and I think the same should apply to Sprint. So we would
12 ask you to not be fooled by the argument that some of these
13 further questions are really incorporated somehow in the
14 original questions. They are new questions and they should be
15 rejected.

16 Specifically with regard to Requests 2 and 3, I think
17 a careful reading of the request shows that the identification
18 for the breakout that Sprint is now requesting was not asked
19 for. And as we also said in our response, the information that
20 they have sought has been provided, so we feel that their
21 motion to compel should not be granted in that respect or with
22 respect to Questions 2 and 3.

23 With respect to Request 15, I'm not sure if Mr.
24 Wieczorek has represented that Sprint is withdrawing its
25 objections to the first part of the question where they claim

1 that we did not show whether local interconnection service was
2 a one-way or two-way facility, but our answer is we provided
3 the diagram with an arrow in both directions, which is
4 generally recognized and accepted as indicating traffic flowing
5 in two directions. And so we believe we have answered that
6 part of the question.

7 And with respect to their new follow-up question about
8 sharing the cost of a two-way facility, we maintain that there
9 is nothing in the original question proposed or propounded that
10 in any way asks for any information about cost sharing and we
11 would ask that that be rejected.

12 On Request 19, again, we believe we have answered that
13 question. Our response to Request 15 was a diagram showing how
14 we would propose that interconnection between the parties be
15 done and we have proposed a two-way direct interconnection
16 facility, so we believe that Request 19 has been answered.

17 With respect to Request 26, this question, Sprint asks
18 a very broad-based question whether there were any possible
19 reasons why an indirect interconnection or technical reason why
20 an indirect interconnection might not be possible, and then
21 they -- but they asked us to admit or deny the statement. We
22 denied the statement, so we answered that part of the question
23 by denying it. And then they asked us to explain if we denied,
24 to explain, and we explained our denial, saying we did not have
25 the information to make some kind of assessment of the entire

1 universe of possible indirect interconnections and whether or
2 not there might be a technical issue with any of that.

3 And I would just also further add that Sprint designed
4 this question and if Sprint has a particular type of indirect
5 interconnection that they are interested in, they could have
6 very easily explained what indirect interconnection they were
7 asking us to respond to and then we probably could have
8 responded to the question. But with this kind of open-ended,
9 extremely broad-based hypothetical situation, we responded that
10 we did not have sufficient information and that is an
11 appropriate response to an interrogatory.

12 And then with respect to Request 29, we again are
13 really just on that question, we believe that Sprint has
14 proposed a new question in the guise of asking or filing their
15 motion to compel and we would just ask that if the commission
16 orders us or compels us to respond to the question, that it be
17 limited to the original question asked.

18 And then with respect to Request 38, Sprint asked
19 Swiftel to identify all facts supporting a certain statement.
20 We identified the facts. Now Sprint is asking us to explain
21 what we meant by the facts we identified and that was not part
22 of their original question, so again, we believe that's a new
23 question that should be rejected. And that concludes my
24 statement.

25 CHAIRMAN JOHNSON: Thank you very much, Ms. Sisak. I

1 appreciate that. At this time we will see if there are any
2 commissioner or advisor questions for Swiftel. We have one
3 from Commissioner Kolbeck. Do you want a little more time?

4 MS. SISAK: Was one proposed to me?

5 CHAIRMAN JOHNSON: No, Commissioner Kolbeck was
6 looking through some of his papers and I think he decided to
7 hold off on a question for now. If there are no questions, we
8 will turn to staff and their argument. Ms. Van Bockern, if we
9 could get a quick mike check from you and see if the parties
10 can hear you.

11 MS. VAN BOCKERN: Can you hear me all right? This is
12 Kara Van Bockern for staff.

13 CHAIRMAN JOHNSON: Mr. Wieczorek, could you hear that?

14 MR. WIECZOREK: Yes, I could.

15 CHAIRMAN JOHNSON: Ms. Sisak, could you hear that?

16 MS. SISAK: Yes.

17 MS. VAN BOCKERN: This is Kara Van Bockern for staff.
18 Staff doesn't have a strong position on these, other than we
19 believe that the follow-up questions were simply follow-up
20 questions. They weren't additional requests and that the
21 requested material is discoverable and should be produced.

22 CHAIRMAN JOHNSON: Are there any commissioner or
23 advisor questions for staff? At this time I think it would
24 again be helpful for us to -- first off, are there any other
25 questions for any of the parties? Ms. Wiest has some

1 questions.

2 MS. WIEST: Thank you. This is Rolayne Wiest. I had
3 maybe a couple for Mr. Wieczorek. I was looking at the one
4 where you talk about Interrogatory 15, sharing costs, and I
5 just can't see in there where you ask anything about sharing
6 costs. Where do you think that that is?

7 MR. WIECZOREK: If you look under the subpart where it
8 asks them to describe in detail how the interconnections would
9 be designed and installed from a Swiftel perspective, we think
10 that's an area where they would have identified how they
11 would -- the design and interconnection, generally part of that
12 is how you are going to cost it out or who is going to be
13 responsible for what on that and we think that should have been
14 clarified.

15 MS. WIEST: Thanks, that's all I have.

16 CHAIRMAN JOHNSON: I think it would again be helpful
17 for the commission to hear any advice or guidance that Ms.
18 Wiest might have for us. Ms. Wiest, if you want to provide us
19 some recommendations.

20 MS. WIEST: Sure. I would recommend that with respect
21 to Requests 2 and 3, I believe that that motion to compel
22 should be granted. I think Brookings is maybe reading this a
23 little bit too narrowly and they should be required to tell who
24 is connecting directly and who is connecting indirectly. With
25 respect to the question about they don't know how some traffic

1 is delivered, I guess the whole point is to the extent they
2 know it, they need to provide it, and to the extent somebody in
3 their company knows it, then they need to provide it. But as
4 Mr. Wieczorek I think stated, you don't have to go outside to
5 other parties to provide that kind of information. But again,
6 I would think it would be unusual if they don't know that.

7 Interrogatory 15, I believe they did clarify that it
8 is a two-way trunk. Again, I just don't see where the sharing
9 costs question is in there. So with respect to Interrogatory
10 15, I would not recommend that the commission grant that motion
11 to compel.

12 Interrogatory 19, I would agree with Mr. Wieczorek
13 that I don't think they specifically answered his exact
14 question and I think that the question specified is whether
15 they would agree. So I believe that motion to compel should be
16 granted. With respect to Interrogatory 26, I think that
17 Swiftel should be compelled to answer that question also with
18 respect to the indirect interconnection.

19 And with respect to Interrogatory 29, I believe that
20 that also should be granted, though I would agree with Swiftel
21 that it should be limited to the original questions that were
22 asked, and I'll just -- just as an example, I would say that
23 reading Sprint's e-mail with their follow-up questions, I'm not
24 sure that the first question that they posed actually could be
25 subsumed within that direct -- within that question originally

1 asked in 29. So I would say that you would grant it, to the
2 extent that it's limited to the original questions asked.

3 And with respect to No. 38, I would have to agree with
4 Swiftel that all they were asked to do was to identify the
5 facts they believed supported that statement and I don't think
6 you can compel them to identify more facts that they believe
7 support the statement. So I would say no to that one.

8 CHAIRMAN JOHNSON: Thanks very much, Ms. Wiest. I
9 have a question for you with regard to Request 38. When I read
10 the request and then I look at the response, it doesn't seem as
11 though the response is -- particularly addresses fully the
12 request. Any guidance on where you think I might be wrong on
13 that?

14 MS. WIEST: I understand your point. My only problem
15 is that when Sprint asks for what additional information they
16 want, they want Swiftel to be compelled to identify the
17 thirteen sixty charges only for additional directories and I
18 guess my point is I can't say that -- I don't know how we can
19 say that that is what Swiftel, was one of the facts that they
20 need to identify to answer that question.

21 CHAIRMAN JOHNSON: Any other commissioner questions
22 for Ms. Wiest or other parties? If there aren't any, a motion
23 would be in order. If anybody has one, they can certainly feel
24 free. I can hop in, unless you have one ready to go.

25 VICE-CHAIR HANSON: I think it needs to be taken

1 apart. Did you have a question?

2 COMMISSIONER KOLBECK: No, go ahead.

3 CHAIRMAN JOHNSON: The motion has been made and I
4 would certainly concur. I think we will just move on a
5 consensus the issue should be bifurcated.

6 COMMISSIONER KOLBECK: I concur.

7 CHAIRMAN JOHNSON: Let's move forward on that, then.
8 Commissioner Hanson, did you have some motions or did you want
9 us to move through the menu?

10 VICE-CHAIR HANSON: In TC06-176, I would move that the
11 commission grant the motion to compel on Items 2 and 3.

12 CHAIRMAN JOHNSON: I would second the motion.

13 COMMISSIONER KOLBECK: I'll concur.

14 CHAIRMAN JOHNSON: Motion carries. Any further
15 motions?

16 VICE-CHAIR HANSON: On the same docketed item, I move
17 that the commission not compel Item 15.

18 CHAIRMAN JOHNSON: I would second the motion.

19 COMMISSIONER KOLBECK: I'll concur.

20 CHAIRMAN JOHNSON: That motion is made and carries.

21 VICE-CHAIR HANSON: On Item 19, I move that the
22 commission compel.

23 COMMISSIONER KOLBECK: I'll second.

24 CHAIRMAN JOHNSON: I would concur. That motion
25 carries.

1 VICE-CHAIR HANSON: On Item 26, I move that the
2 commission compel.

3 COMMISSIONER KOLBECK: I'll second.

4 CHAIRMAN JOHNSON: I will concur. That motion
5 carries.

6 VICE-CHAIR HANSON: On Item 29, I move that the
7 commission compel with the condition that it be limited to
8 original question asked.

9 CHAIRMAN JOHNSON: I would second.

10 COMMISSIONER KOLBECK: I'll concur.

11 CHAIRMAN JOHNSON: That motion carries.

12 VICE-CHAIR HANSON: And Item 20 -- excuse me, Item 38,
13 I move that the commission compel, with my belief that it needs
14 to be answered more completely.

15 CHAIRMAN JOHNSON: Is there a second?

16 COMMISSIONER KOLBECK: No.

17 CHAIRMAN JOHNSON: Hearing no second, the motion dies
18 due to lack of a second. I was almost there, Commissioner
19 Hanson, I just couldn't quite get there. I will move instead
20 that for Request 38, the motion to compel is denied.

21 COMMISSIONER KOLBECK: I'll second that.

22 VICE-CHAIR HANSON: And I will oppose on the basis
23 that I believe that the answer needs to be provided -- the
24 answer to the question needs to be more complete.

25 CHAIRMAN JOHNSON: Wonderful, that -- I believe that

1 resolves all outstanding issues on the Sprint motion to compel.
2 I'll pause for a moment to see if anybody has other business
3 that we have forgotten. Hearing none, we will proceed to the
4 second question with regard to this docket and that deals with
5 the motion by Swiftel to compel, and at this time I believe it
6 would be appropriate to hear the arguments by Swiftel.

7 MS. SISAK: Thank you. Mary Sisak on behalf of
8 Swiftel.

9 CHAIRMAN JOHNSON: Go ahead and proceed, Mary.

10 MS. SISAK: The first comment that we raised in our
11 motion to compel is our reading of South Dakota law section
12 15-6-33(A) requires that interrogatories be answered under oath
13 and although Sprint did provide a verification, it is not under
14 oath and we would request that they be required to provide or
15 that they be required to answer their interrogatories under
16 oath.

17 Then I will just discuss each -- briefly each
18 discovery request and production for document request that we
19 raised. Our Discovery Request 4 asks Sprint to identify any
20 contracts and billing agreements that it has entered into with
21 any third-party customers. They objected to the question for a
22 number of reasons, including trade secret, proprietary, highly
23 sensitive information, also that it's vague and ambiguous,
24 overly broad, unduly burdensome and that it's not likely to
25 lead to discovery of admissible evidence. Although Sprint has

1 now responded to the question, they have not withdrawn their
2 objection and in light of the fact that discovery requests are
3 continuing in nature, we would ask that their objection be
4 denied.

5 On Discovery Request 5, we believe that Sprint has now
6 provided the information that we sought and we will withdraw
7 our motion on Discovery Request 5. On Discovery Requests 13,
8 14 and 15, in Discovery Request 13 we asked Sprint to list the
9 retail telecommunications services that it intends to provide
10 to end users of MCC or other telecommunications carriers or
11 service providers and to state the rates that you intend to
12 effect for each service listed.

13 Questions 14 and 15 are somewhat similar in nature,
14 however, they ask for different information. Question 14 asks
15 for a list of the wholesale telecommunications services that
16 Sprint intends to provide and to state the rate for those
17 services. And Question 15 asks Sprint to list the wholesale
18 telecommunications services that Sprint intends to provide to
19 MCC and to state the rate you intend to assess for each service
20 listed.

21 Sprint's response was basically they responded the
22 same to each question and they also raised objection. They
23 objected to providing the rate on the grounds that it requests
24 Sprint to reveal the rate it charges to MCC. In Question 13,
25 clearly they are not asked to provide the rate they charge to

1 MCC, they are asked to provide the rate they charge to end
2 users of MCC. Further, they object to the information that it
3 would not lead to the discovery of admissible evidence. And we
4 believe this objection should be denied because Sprint itself
5 raised the question of wholesale versus retail services in its
6 petition for arbitration and I think because they have raised
7 the question or raised the issue that there is a distinction
8 between wholesale and retail services, I think the question
9 asks them to list which services that they provide are
10 wholesale services and which are retail services is not only
11 relevant but is simply asking for clarification of their own
12 argument in their petition for arbitration.

13 Sprint also objects to Question 14. It appears they
14 continue to maintain their objection on the grounds that it's
15 competitive information and they further object because Swiftel
16 did not define the word "retail," but as I have just explained,
17 Sprint is the one that has raised the question of wholesale
18 versus retail services in its petition and I think that raising
19 that question or trying to say that because we have not defined
20 "retail," somehow the question is vague, we are simply asking
21 them to explain terms that they have introduced to this
22 proceeding.

23 On Discovery Requests 18 and 20, Discovery Request 18,
24 we asked Sprint to -- well, we asked Sprint basically to
25 identify information that they claim in their arbitration

1 petition they will provide. So for example, at page 18 of
2 their arbitration petition, Sprint claims that it will provide
3 industry call records that can be used for billing purposes and
4 Sprint also agrees to provide the necessary records for audit
5 purposes to insure accurate billing. And we asked Sprint to
6 identify all the information that would be provided as part of
7 the industry standard call records and that would be provided
8 as necessary reference for audit purposes.

9 In their response, Sprint does -- it appears that
10 Sprint does answer the question about identifying information
11 that is going to be provided as part of industry standard call
12 records, but they do not provide an answer to identifying the
13 information that will be provided by Sprint as necessary
14 records for audit purposes. And Question 20 basically follows
15 the same kind of format, where again it appears that they did
16 not provide any information concerning the records that would
17 be provided for audit purposes.

18 Discovery Requests 23, 24, 25 and 26 all relate to
19 questions concerning the equipment that will be installed or
20 required to be installed when used for delivery of services.
21 And the purpose of these questions is to gather information
22 concerning Sprint's representation in their petition that they
23 will be providing certain services and MCC will be providing
24 certain services and their further representation that they
25 will be somehow jointly providing services. To try to get to

1 the heart of what is really happening here, we have asked a
2 number of questions of Sprint to identify the equipment in
3 Question 23, the equipment that is installed or required to be
4 installed to deliver services to MCC or MCC's end users.

5 Question 24, provide a list of the equipment and
6 facilities in South Dakota which are owned, leased or
7 controlled by Sprint which are available for use to deliver
8 traffic exchanged under the agreement. Question 25, provide a
9 list of all equipment and facilities in South Dakota which
10 Sprint intends to use to deliver traffic exchanged under the
11 agreement to MCC or to receive traffic exchanged under the
12 agreement from MCC. And then question 26, provide a list of
13 locations for the equipment and facilities identified in
14 Question 24 and 25.

15 Sprint has objected to all of these requests as being
16 burdensome and not relevant, and as I previously discussed, all
17 of these requests are relevant to gather facts concerning
18 statements presented by Sprint in its petition. In terms of
19 their argument that it's burdensome, in response -- in their
20 response to the motion to compel, Sprint provided a number of
21 diagrams showing call flows which seem to show a very limited
22 number of facilities and equipment that are going to be used in
23 the provision of service, so it is hard to understand how
24 responding to our discovery request would in fact be
25 burdensome.

1 And then we also asked for a motion to compel on a
2 number of our requests for document production. The first
3 production for documents asks Sprint to produce all documents
4 that were referenced in any interrogatory, identified in any
5 interrogatory, relevant to any interrogatory or that Sprint
6 intends supports its responses to interrogatories. In their
7 original answers, Sprint objected to all of points A through D
8 as being unduly broad, burdensome, vague and would cause Sprint
9 to incur undue expenses.

10 In their response to the motion to compel, it appears
11 that Sprint is abandoning its objection to A, 1A, B and D and
12 that they only now maintain their objection to interrogatory
13 response 1C. If that is in fact a correct interpretation of
14 Sprint's response, then we would withdraw our objection -- or
15 excuse me, yes, we would withdraw our objection, except that we
16 believe that the contract between Sprint and MCC should be
17 produced, and in the last argument, the commission compelled
18 Sprint to produce that document to Interstate. For all of the
19 same reasons, it should be compelled to produce it to Swiftel.

20 We do not object to the redaction of confidential or
21 highly sensitive trade secret information. However, as was
22 suggested, we believe that once we see the redacted document,
23 if there is a question as to whether or not Sprint has
24 improperly redacted any information, we should have the
25 opportunity to bring that back to the commission.

1 Production of Document Request 3, we asked for a
2 diagram of the facilities identified in Questions 24 and 25.
3 Sprint has responded now that they do not have a diagram, but
4 they also objected to the production of the diagram on the
5 grounds it would be burdensome and not relevant. They have not
6 explained how it would be burdensome and so we believe that
7 that objection should be denied and also the fact that their
8 objection that it's not relevant, we believe that objection
9 should be denied because the diagram will go towards basically
10 substantiating or further examining Sprint's own
11 representations about how it intend to provide service in this
12 proceeding or as a result of this proceeding.

13 Production of Document 4 and 6, 4 asks for a copy of
14 contracts and documents with MCC and 6 provides for all
15 agreements between Sprint, including its MCC, and they have
16 included they will provide that, or excuse me, that if they are
17 required to provide that, it should only be as redacted, and
18 the same discussions for Production of Document Request 1
19 applies to this as well.

20 Production of Document Request 5, we asked Sprint to
21 provide a fully populated call record sample for each and every
22 call type that Sprint is proposing to transport over the
23 multijurisdictional, multiuser trunk you are describing in this
24 petition. In its original response, Sprint first said that it
25 does not have call record samples at this time, but then Sprint

1 further went on to say that they would be prohibited from
2 providing such records if they existed. Sprint did not
3 officially write this up as an objection. To the extent that
4 Sprint is not objecting to the provision of populated call
5 record samples if and when they have them, then we would
6 withdraw our motion on that point. But if Sprint is in fact
7 objecting to providing them, even when they do have them, then
8 we would ask the commission to deny that objection. This
9 information is relevant and as we indicated in our motion, any
10 customer confidential information or carrier confidential
11 information could be redacted to make sure there was no issue
12 with confidentiality.

13 And with Production of Document Request 8, we asked
14 Sprint to provide a diagram detailing how Sprint's MCC network
15 will process call types and Sprint has now provided some of
16 that, at least some of that information, but they objected to
17 the question on the grounds that it was not likely to lead to
18 the discovery of admissible evidence, and again, because
19 discovery requests are continuing in nature, we would ask the
20 commission to deny that objection that this information is not
21 relevant. And that concludes my argument.

22 CHAIRMAN JOHNSON: Thank you very much, Ms. Sisak. At
23 this time I think we will take commissioner or advisor
24 questions. I do have one. It's regarding Document Request 13,
25 14, 15. I understand why you would want a list of the retail

1 and wholesale services. Help me understand a little bit better
2 why rate information would be necessary in this interconnection
3 dispute.

4 MS. SISAK: Well, frankly, Commissioner, to the extent
5 that a rate is not charged, that would be important to know
6 because it would go to the question of whether or not a service
7 is in fact being provided. I think part of the -- and
8 conversely, if a rate is charged, that would go to support
9 whether or not a service is provided and to whom.

10 CHAIRMAN JOHNSON: Wouldn't the same --

11 MS. SISAK: So for example --

12 CHAIRMAN JOHNSON: Go ahead, I'm sorry.

13 MS. SISAK: Excuse me. I will give an example. When
14 Sprint says that it provides services, let me just get my
15 answer here to 13, when they say that they provide telephone
16 exchange service, otherwise known as local telephone service to
17 end users of MCC, it would be relevant to know whether they
18 charge a rate for that to know whether in fact they do provide
19 that service.

20 CHAIRMAN JOHNSON: Couldn't the same information be --
21 couldn't you get at the same issue but without specific rates?
22 I mean, rather than just -- couldn't the question have been
23 asked just the way you just posed is, is there a legitimate and
24 bona fide rate being offered for that service?

25 MS. SISAK: Well, not exactly the way you phrased it

1 because I suppose Sprint would come back and say yes, because
2 MCC is going to charge a rate. And what we are trying to find
3 out is what services is Sprint providing and what rate are
4 they -- and for which they are getting a rate, so I suppose
5 some variation of the question you just posed would be
6 acceptable.

7 CHAIRMAN JOHNSON: Well, and the reason I'm asking is
8 that I do think some weight should be given to Sprint's
9 argument that rate information in a competitive environment is
10 not the kind of thing that one would want to give out unless
11 there was very good reason, so I just want to try to figure out
12 exactly what we need here for you to all get the information
13 that you are entitled to as part of discovery. Thanks.

14 MS. SISAK: Commissioner, to the extent that Sprint
15 has made that argument, that only applies to any rate that they
16 are assessing to MCC. That argument would not apply to any
17 rate they intend to assess to an end user, because after all,
18 that information would be in their price list, which has to be
19 made available to the public.

20 CHAIRMAN JOHNSON: Okay. Thank you. Other
21 commissioner or advisor questions for Swiftel? Hearing none, I
22 think at this time we will move toward hearing the oral
23 arguments by Sprint. Mr. Wieczorek. Mr. Wieczorek, are you
24 with us?

25 MR. WIECZOREK: Yeah, I am.

1 CHAIRMAN JOHNSON: Are you prepared for your oral
2 argument?

3 MR. WIECZOREK: Yes, I am, Mr. Chairman.

4 CHAIRMAN JOHNSON: Proceed, thanks.

5 MR. WIECZOREK: First of all, I would apologize to the
6 commission on the sworn statement. Originally the statement I
7 gave, I had actually used the identical one that ITC had sent
8 to me and Ms. Sisak wanted it under an oath statement and my
9 client had provided that to me last Friday and through an
10 oversight, I hadn't forwarded that to Ms. Sisak, so as to the
11 sworn oath, I will e-mail that to her immediately and that's my
12 apologies. There's no objection to providing it in the format
13 she's asking for.

14 My understanding is from her argument, that as to
15 Document Request 4 and 5, they have been withdrawn.

16 MS. SISAK: Excuse me, Discovery Requests 4 and 5?

17 MR. WIECZOREK: Yes, excuse me, your data requests is
18 I believe how you labeled them. Discovery requests, excuse me,
19 yes, Discovery Requests 4 and 5 were withdrawn, not document
20 requests. Thank you for that clarification.

21 So I will go straight to 13, 14 and 15 where I
22 believe, Mr. Chairman, you ended up at. As to 13 where they
23 have asked that we list the retail telecommunications services
24 that you intend to -- I will slow down -- intend to provide to
25 end users of MCC or other telecommunications carriers for

1 service providers, we provided a response listing the services
2 that we are going to provide to those end users.

3 The second part of her question was state the rate you
4 intend to assess to each service listed. We are jointly
5 providing with MCC and MCC will have the billing relationship
6 with the end users for those services and I might clarify that
7 issue, so we have provided what information we had. To the
8 extent they are looking for rates or something that is within
9 our contract with MCC, we have objected and the commission has
10 heard that argument and I stand by the argument made earlier
11 today that that's confidential and we should not have to
12 produce it.

13 Under 14 where she requested that we list the
14 wholesale telecommunications services that Sprint intended to
15 provide telecommunications or service providers, we objected to
16 that as being very broad. It's not limited to South Dakota,
17 it's not limited to this type of arrangement with cable
18 companies. We have provided information. We said we have long
19 distance in the state, the request was that broad that it would
20 apply to all long distance services you are providing. To the
21 extent that there is any wholesale type services provided to
22 cable companies, all the services that we provide to cable
23 companies are listed and set forth in our attachment to our
24 original response to discovery, I believe, to the response to
25 Swiftel labeled as 1.1 and lists all the services that cable

1 companies are acquired through Sprint. We stand by that
2 response.

3 To the extent that they would seek additional
4 information for outside the state of South Dakota or beyond
5 this type of service that we are rendering in this situation,
6 we believe it's not related to this situation, it's overly
7 broad, it's not likely to lead to any admissible evidence in
8 this case.

9 We have provided the actual long distance tariff in
10 response to their motion to compel and we have also cited them
11 to the Qwest and PrairieWave agreement, interconnection
12 agreement that were filed in South Dakota as other information
13 that's going on in South Dakota. So I think we have more than
14 adequately answered that, to the extent it was objected to.

15 As to 15, I stand by the objection. It's obvious that
16 the commission has already ordered we provide redacted copies
17 of the agreement with MCC and I believe it's going to list
18 whatever services we are applying to MCC in the agreement. So
19 that might, quite frankly, eliminate the issue as to 15. I
20 will stand by that objection. For the purposes of the record,
21 I am not waiving my objection, but I am not going to reargue
22 the issue on the discoverability of the agreement. Just for
23 purposes of the record, I wanted to make that clear.

24 Then going to Discovery Request 18 and --

25 MS. BARONE: Mr. Wieczorek, I just want to make sure

1 we are clear on the record. (Inaudible comment.)

2 COURT REPORTER: I didn't get that. (Inaudible
3 comments.)

4 CHAIRMAN JOHNSON: We didn't hear who asked the
5 question, we don't have that for the record and we would like
6 to ask that the question be restated. The statement made by
7 Ms. Barone.

8 MS. BARONE: Thank you, Mr. Chairman, I apologize.
9 This is Ms. Barone. I wanted to clarify that we stand on our
10 objection with regard to the rate. (Inaudible) it's hard to
11 hear sometimes. I wanted to make sure the record is clear. I
12 believe Mr. Wieczorek had a follow-up on that one with respect
13 to the redacted version.

14 MR. WIECZOREK: I wanted to make clear, and I thank
15 Ms. Barone for pointing that out, that I just don't want to
16 rehash all these arguments as to rates within the agreement, I
17 believe they are all confidential and we are going to -- my
18 assumption is the commission doesn't want to hear arguments as
19 to whether or not we should produce that and we will get an
20 order as to the redacted version, but I don't want it on the
21 record that I have waived my objection.

22 With that I would go on, her next motion to compel is
23 under 18 and 20, which I believe she grouped together.

24 (Inaudible) in responding to her provided information that was
25 exactly the information that was populated in the cell. My

1 understanding is that they are going to (inaudible) they
2 represented they are going to get their standard SS7 signaling
3 field, they get the standard SS7 data. In our agreement we
4 have proposed that if there is an issue with their ability to
5 measure traffic, that we would then use factors and we would
6 show them how we calculated our factors and give them a right
7 to how we calculated that. I believe that's more than
8 sufficient in responding to the discovery that she has proposed
9 on behalf of 18 and 20.

10 Obviously as we roll out of service, there might be
11 unforeseen circumstances. Sprint is not somehow taking the
12 position they are going to play hide the ball on where the
13 traffic is originating. We are going to lead -- I represent to
14 this commission that Sprint is going to work to make sure
15 everybody knows how to appropriately track and bill this
16 traffic. I believe we have supplied enough information at this
17 point on it. Going beyond that, beyond basically referencing
18 standard type of information that's recognized in the industry
19 that establishes those factors, I don't know how much further
20 you would go with that. I don't know what else you would
21 compel at this point beyond what we have provided and we
22 believe that we have more than adequately responded to 18 and
23 20.

24 The next discovery request she had was 23 through 26
25 that dealt with equipment. I want to make it clear to this

1 commission, as part of the original discovery, we provided a
2 diagram setting forth how -- generally what type of equipment
3 we were going to use, when that equipment was on MCC's -- MCC's
4 equipment and when that equipment was our equipment. We
5 provided a general diagram, it was not a South Dakota diagram.
6 I'm not exactly sure why it would be necessary to have a
7 specific diagram showing where all your equipment is in South
8 Dakota. In addition, in the discovery we have identified our
9 point of presence, it's in Sioux Falls. This also identified
10 what switch we will be using and I'm not sure where requirement
11 for anything else for equipment -- I'm not sure why you need
12 model numbers or anything like that beyond how are you getting
13 the traffic to me and what (inaudible) the best case argument
14 is what switch are you going to use to deliver that traffic to
15 me because the traffic in other switches might have
16 idiosyncrasies that on the information or the field that go
17 with this for some reason, but beyond that, I don't see a need
18 to go out and try to figure out every model and make number of
19 every piece of equipment that's being used.

20 A final determination whether there is a direct
21 interconnect hasn't been made, that's going to be a question
22 for the commission. (Inaudible.) We have provided them
23 everything, where our point of presence is, everything on their
24 side of the line, everything that's going to get the traffic to
25 them and I don't see what additional they would need or that

1 would, number one, be necessary or even relevant and lead to
2 any kind of admissible evidence in this proceeding.

3 From that point she goes to -- from the discovery
4 requests to the document requests, and her Request for
5 Production 1, I do have objections that (inaudible) and she
6 pointed out that she was unclear as to which we are objecting
7 to. We did cite the 1C where she asks for any documents that
8 were relevant to any interrogatory response and I had actually
9 added D to that where the request for any document we might
10 intend to clarify our responses. Those are fairly broad. To
11 the extent that we provided documents that go with our
12 responses, those were diagram documents and cable offerings
13 that Sprint undergoes, it's been provided. Her blanket demands
14 for any potentially relevant document, we believe that's
15 overbroad.

16 The next one she hit on was Production Request No. 3,
17 that was the diagram of the facilities that was identified in
18 Questions 24 and 25. I believe the diagrams we have given have
19 been sufficient. We do not have a South Dakota diagram. We
20 have a general diagram of how this facility works. We
21 supplemented it with call flow diagrams. To the extent the
22 diagram of the facilities is necessary, I believe that
23 suffices.

24 The next production question she had was 4 and 6,
25 those dealt with contracts and the addendum in the agreement

1 between MCC and Sprint. Again, I would stand by my argument
2 that I made in the ITC case, that those are not relevant, not
3 likely to lead to admissible evidence, highly confidential and
4 trade secret and should the commission order discovery of the
5 MCC/Sprint agreement, that we be allowed to redact it and
6 provide a redacted copy. I have no objection to, if the
7 commission orders a redacted copy, to Ms. Sisak, she might feel
8 something was redacted that should not have been, she can
9 e-mail the question what she thinks should not have been
10 redacted, e-mail that point to me, copy staff and we could try
11 to see if we could resolve that without the need for a hearing.

12 Under Request for Production 5, she asked for a
13 populated call record that deals with the multijurisdictional,
14 multiuse trunk she is describing. This is the
15 multijurisdictional, multiuse trunk being developed by Sprint
16 in this market and other markets. We do not have populated
17 call record samples at this point. I represent to the
18 commission that Sprint is very careful with the confidential
19 information that might divulge information on end users, but I
20 don't anticipate that Sprint would have any issue with
21 providing commonly things in the industry, records in the
22 industry used to make sure that they can read our SS7 data and
23 see what kind of call data records we collect.

24 Finally No. 8, request a diagram of the network, how
25 we are going to process calls. We have given a general diagram

1 and we have given a six-page sample of how to -- a call flow
2 diagram, six different call variations as part of the discovery
3 and I believe that's sufficient. I would be open to any
4 questions from the commission at this point.

5 CHAIRMAN JOHNSON: Thank you, Mr. Wieczorek. We will
6 see if there are commissioner and advisor questions for Sprint.
7 I do have one regarding Discovery Requests 18 and 20. Mr.
8 Wieczorek, it appears as though Sprint provided a number of the
9 fields, but the discovery request also asked for what records
10 would be provided as necessary for audit purposes. Do you
11 think the response fully addressed that question?

12 MR. WIECZOREK: 18 and 20 you said, Mr. Commissioner?

13 CHAIRMAN JOHNSON: Yes, that's right.

14 MR. WIECZOREK: You know, we have identified the
15 (inaudible) the SS7 information that's generally used and
16 actually render the bill and I believe Sprint -- we have also
17 agreed that any billing factors, we will provide those on paper
18 if we come up with those. I believe the proposed agreement
19 states that if they don't like our billing factors,
20 (inaudible). So I believe it is sufficient at this point, the
21 information that was provided for them to establish and do any
22 type of audit that would be necessary.

23 I would say, Commissioner, we are not -- if after we
24 start providing service, Swiftel would approach Sprint because
25 they are having problems reading it and need additional

1 information for audit, I do not see Sprint having an issue with
2 that. One of the problems we have in this is our negotiations
3 did not get very far so we are not exactly sure Sprint needs
4 some kind of special provision of information to do audits that
5 would be different from the industry standards. So I think we
6 have said we would provide industry standard information. If
7 there is something specific beyond that you need, I think all
8 they would have to do is tell us.

9 CHAIRMAN JOHNSON: Well, I understand that, I'm just
10 trying to make sure that the discovery requests are responded
11 to as fully as possible and I'm just trying to make sure that
12 everything is squared away on that front. Other questions by
13 commissioners or advisors for Mr. Wieczorek? We have one by
14 Commissioner Kolbeck.

15 COMMISSIONER KOLBECK: I guess -- this is Commissioner
16 Kolbeck -- some of the AMA records are not available at this
17 time or SS7 fields populated. Do you have any idea when they
18 will be?

19 MR. WIECZOREK: (Inaudible) the multijurisdictional,
20 multiuse trunks are just coming into use at Sprint.

21 CHAIRMAN JOHNSON: We are going to ask you to start
22 your answer over. I think we lost a few of your words at the
23 beginning.

24 MR. WIECZOREK: Mr. Kolbeck, my understanding is that
25 the information is not readily available at Sprint at this time

1 because the multijurisdictional, multiuse trunks are just
2 rolling out and they are just -- Sprint is just establishing
3 them, so if you go through our response to the motion to
4 compel, you will see that we have a lot of fields we say we
5 know we will populate and then there are additional fields that
6 generally you would not, but if in the processing those fields
7 need to be populated so the call and the point of origins can
8 be properly mapped and traffic properly discerned for billing
9 purposes, point of origin, whether it's access, whether it's
10 subject to recip comp, we will populate those additional
11 fields. And that's why I believe some of those fields have
12 not -- the final determination has not yet been made on which
13 fields are populated.

14 MS. BARONE: Mr. Wieczorek, this is Monica Barone. If
15 I could add a couple of comments here. First, what Sprint is
16 attempting to do first of all is to win the right to be able to
17 send this traffic over these interconnection trunks and that's
18 one of the issues in this proceeding. First we have to win the
19 right to do it and then once we win the right, then we work on
20 the development side, start developing after you win the right.

21 So in South Dakota, if and when we win the right, we
22 would develop, we would start development at that point, and
23 one thing I would just clarify, that the information, this is
24 how we responded to questions. The information -- we told what
25 we would populate in terms of mandatory fields. We told what

1 we would populate with respect to optional fields and we
2 identified those fields that we thought would be or we believed
3 are applicable to billing. So what we did was provided
4 everything we will bill when we can, when we do have the right,
5 and then if Swiftel takes that information and if they have the
6 ability to track that information, then they are going to be
7 able to fill off of those particular records or that particular
8 information because that information is inherent in (inaudible)
9 SS7.

10 If, however, Swiftel is unable to do that because they
11 have some constraints on their side and they are unable to bill
12 us, then Sprint is willing to develop factors. Then at that
13 point if there is a question regarding our factors or how we
14 came up with this information or the interstate (inaudible) or
15 access versus recip comp traffic, then we will give them the
16 right to audit our factors, audit our numbers so that they can
17 assure themselves that we are not sending or trying to
18 arbitrage, because that's not Sprint's intention.

19 It's our intention to provide all that information so
20 they can bill on their own, because if I recall correctly,
21 there was a discovery request that asks whether we would bill
22 off actual records. When they have that ability to do that,
23 then we are done. If they can't, then they have to get with us
24 in order to determine what other information they may need. We
25 don't know, we don't know what their limitations are, if any.

1 MS. SISAK: This is Mary Sisak. May I respond to a
2 couple of the comments made?

3 CHAIRMAN JOHNSON: Go ahead.

4 MS. SISAK: First, it's my understanding that you have
5 already won the right to do the universal trunk proposal in
6 Iowa and if they are not currently transporting traffic under
7 that agreement, then I think Sprint could at least answer the
8 question as to when they are going to be transporting traffic
9 under that agreement. But I think the question that the
10 commissioner asked was whether or not the call records or a
11 sample call record might be available and I think the fact that
12 Sprint is doing this arrangement or doing this same type of
13 arrangement in Iowa might provide the answer to that question.

14 The second point that I'd like to make is I think the
15 question was asked of Mr. Wieczorek as to whether or not the
16 information Sprint provided addresses the question about what
17 records they would provide for audit purposes, and I'm not
18 quite sure what Mr. Wieczorek said, but what I am sure of is
19 nowhere in their answer that they are now going to support
20 under oath do they say that the information they provided
21 answers that part of the question as well. So at a minimum, it
22 would appear that they need to supplement their answer.

23 CHAIRMAN JOHNSON: Thank you very much. Are there
24 other commissioner questions or advisor questions for Mr.
25 Wieczorek? If not, then we will turn to staff for any comments

1 or recommendations they would have at this time.

2 MS. VAN BOCKERN: This is Kara Van Bockern for staff.
3 I'll start with --

4 CHAIRMAN JOHNSON: Start over.

5 MS. VAN BOCKERN: This is Kara Van Bockern for staff.

6 UNIDENTIFIED VOICE: Excuse me, I don't hear anything.

7 CHAIRMAN JOHNSON: All right, let's give it another
8 shot.

9 MS. VAN BOCKERN: Can you hear me now? Can you hear
10 me? This is Kara Van Bockern for staff.

11 CHAIRMAN JOHNSON: We are going to take Ms. Van
12 Bockern at a different microphone.

13 MS. VAN BOCKERN: This is Kara Van Bockern for staff.
14 I assume you can hear me now as I'm right over the microphone.
15 I'll start with 13, 14 and 15, and staff takes the position
16 that as far as services, that that information should be
17 disclosed as discoverable. However, rate information we don't
18 see as relevant and pertinent to this proceeding. 18 and 20,
19 from the arguments that have taken place, it sounds as if all
20 information currently available has been produced, that being
21 industry standard type information, so it appears as if Sprint
22 has responded as completely as possible at this time. 23
23 through 26, regardless of whether or not Sprint sees that
24 information as being useful, staff takes the position that it
25 is discoverable, and therefore, compelling discovery is

1 appropriate.

2 Production of Documents No. 1, all relevant documents
3 to the responses should be produced, however, with the
4 understanding that anything open to redaction should be. . .
5 Staff takes the position on No. 3 that such diagram would be
6 discoverable, if it exists, so if it exists, that it should be
7 produced. And the contract, No. 4 and 6 again, again a
8 redacted production of that document staff believes would be
9 appropriate. No. 5, again, what the parties have -- what
10 Sprint has should be produced, and same with No. 8, whether or
11 not Sprint sees it as useful, if they have got it, it should be
12 produced.

13 CHAIRMAN JOHNSON: Any questions for staff by
14 commissioners or advisors? I do have -- Ms. Van Bockern, this
15 is Commissioner Johnson. Like with PDR 5 and PDR 8, the
16 objections at this time -- or rather the motions at this time I
17 think have been withdrawn by Swiftel because they understand
18 that Sprint does not currently have the fully populated call
19 sample or a particular diagram in its possession, but I believe
20 Swiftel asked that Sprint's objections be denied so then in the
21 future if these items come into being, that they would be
22 produced as part of ongoing discovery. Did you have a take on
23 that or recommendation?

24 MS. VAN BOCKERN: I should have clarified. That is
25 what I intended to convey, Commissioner, that in the event

1 those documents do come into being, that they be produced. So
2 the objection not be withheld by the commission.

3 CHAIRMAN JOHNSON: Okay. Thanks very much. Other
4 commissioner or advisor questions for staff. Hearing none, are
5 there any additional questions that commissioners or advisors
6 would have for any parties? Hearing none, I would perhaps ask
7 Ms. Wiest to provide any analysis or recommendations she might
8 have for the commissioners.

9 MS. WIEST: Going from the top of my list, they will
10 provide it under oath so that I don't think is relevant
11 anymore. With respect to Discovery Request 4, I believe Mrs.
12 Sisek said they responded but did not withdraw objections so
13 they ask the objection be denied. With respect to those
14 requests, that objections be denied even though responded, I
15 don't believe that the commission at this point will be
16 deciding those kinds of objections because we are not going to
17 decide whether the information is actually relevant. Those
18 objections can be made at the hearing.

19 With respect to DC 5, that was withdrawn. 13, 14 and
20 15, I would suggest that -- I don't believe that Sprint has
21 provided all the information that was requested by those
22 discovery requests. I think one of the issues, though, are as
23 to rates, and with regard to whether the rates are relevant, I
24 think the standard in this case would be that they should not
25 have to be -- that the rates they consider highly confidential,

1 which I think is consistent with our decision in the other
2 case, that those rates, types of rates could be redacted. And
3 maybe the parties could work on whether there could be other
4 methods that could be used with respect to going to the issue
5 about whether a rate is charged or not as what Ms. Sisak
6 stated. So with respect to 13, 14 and 15, I believe that
7 those -- that motion to compel should be granted, but subject
8 to those issues with respect to redaction of highly
9 confidential material.

10 With respect to 18 and 20, Sprint did provide other
11 information. Again, I don't think they provided all the
12 information and I would again point to the identification of
13 audits as something that I didn't think was provided in that
14 response. 23, 24, 25 and 26, I believe Ms. Sisak's argument
15 was with respect to the diagrams that they had already
16 provided, they believed that Sprint had limited facilities, so
17 actually identifying the -- identifying the facilities should
18 not be overly burdensome on Sprint and so I would state that
19 the commission should grant that motion to compel.

20 PDR 1, Sprint, according Ms. Sisak, she believes that
21 Sprint would still object to 1C, or going to this MCC and
22 Sprint document, consistent with the decision in the ITC
23 docket, I believe that document should be produced. And also
24 consistent, it can be in a redacted format subject to future
25 objections by the other parties.

1 PDR 3, again, they don't have the diagram, so I don't
2 believe that the commission needs to actually act on that.
3 They did request that we deny the objection, but again, I think
4 those types of objections should be acted on by the commission
5 at a hearing when information is going to be presented.

6 PDR 4 and 6 I believe should be compelled, those
7 documents that were requested, again subject to redaction. PDR
8 5, I believe Sprint should be compelled to provide it if and
9 when they do have one in the future. And PDR 8, I don't think
10 there's anything to rule on that.

11 CHAIRMAN JOHNSON: Questions by commissioners for Ms.
12 Wiest. So for PDR 5, Ms. Wiest, you did note that Sprint
13 should be required to provide the fully populated call sample
14 when one -- if and when one is developed. Would that not
15 also -- would it make sense for that also to apply for the
16 diagrams requested in PDR 3 and PDR 8, if those are developed
17 by Sprint?

18 MS. WIEST: PDR 3, I believe they said they don't have
19 a diagram. That could be. I'm not sure what she requested for
20 that one, but I could have missed that, Ms. Sisak requested
21 that for that one.

22 CHAIRMAN JOHNSON: PDR 8 I think also requested a
23 diagram Sprint did not currently have in its possession.

24 MS. WIEST: With PDR 8 they did provide that POD 8.1,
25 and I could be misunderstanding, but I thought they had

1 provided the information, but Ms. Sisak was still objecting to
2 the objection, to the objection standing, but maybe she could
3 clarify both those.

4 CHAIRMAN JOHNSON: Ms. Sisak, could you answer the
5 question I posed with regard to PDR 3 and PDR 8?

6 MS. SISAK: Yes, I think that the same type of ruling
7 could apply to PDR 3 and 8 that apply or that was recommended
8 for PDR 5.

9 CHAIRMAN JOHNSON: Thank you very much. Any other
10 questions by commissioners for Ms. Wiest?

11 MS. WIEST: There is one other point on 13, 14 and 15
12 I think I had. I think there's a question about whether we
13 would limit that to South Dakota and cable companies, I believe
14 that was an issue in those cases, too.

15 CHAIRMAN JOHNSON: Did you have a recommendation?

16 MS. WIEST: I'm trying to reconcile this with the
17 decision in the ITC case.

18 MS. SISAK: This is Mary Sisak. I think I can help.
19 The objection only applies to South Dakota and to the specific
20 agreement that we are negotiating.

21 MS. WIEST: Thank you, that would help a lot.

22 CHAIRMAN JOHNSON: Thank you very much.

23 MS. SISAK: If you want to limit it to South
24 Dakota (inaudible).

25 CHAIRMAN JOHNSON: All right, any other questions by

1 commissioners for Ms. Wiest or any parties? If there aren't
2 any, I might offer up some motions. It doesn't appear as
3 though the commission needs to rule on DR 4 as there's been
4 agreement on that, or DR 5. So I might start with DR 13, 14
5 and 15. I would move that the commission grant the motion to
6 compel allowing -- however, allowing Sprint an opportunity to
7 redact the highly confidential rate information.

8 COMMISSIONER KOLBECK: I'll second.

9 VICE-CHAIR HANSON: I'll concur.

10 MR. WIECZOREK: Mr. Chairman, I'm sorry for the
11 interruption, this is Talbot Wieczorek. It would be my
12 understanding, given Ms. Sisak's clarification, that those
13 questions would be just for South Dakota, is that -- in 14, 15
14 and 16, that those are limited to South Dakota, not nationwide.

15 MS. SISAK: This is Mary Sisak. That is correct, the
16 questions are not nationwide, they are just South Dakota.

17 MR. WIECZOREK: I just wanted to make sure of that,
18 Mr. Chairman, with that understanding.

19 CHAIRMAN JOHNSON: No, I think that's a very good
20 interruption, Mr. Wieczorek, and I would just make a motion for
21 the record that DR 13, 14 and 15, that discovery on those items
22 would be limited to cable companies and to offerings in South
23 Dakota.

24 VICE-CHAIR HANSON: Second.

25 COMMISSIONER KOLBECK: I concur.

1 CHAIRMAN JOHNSON: That motion carries. With regard
2 to DR 18 and 20, I think almost all the information has been
3 provided by Sprint. Perhaps just from a semantics or
4 rhetorical perspective, I think they could supplement their
5 answer a bit to more fully answer the questions posed. As a
6 result, I would move that the commission grant the motion to
7 compel for 18 and 20.

8 VICE-CHAIR HANSON: I'll second.

9 COMMISSIONER KOLBECK: I'll dissent.

10 CHAIRMAN JOHNSON: That motion carries two-one. With
11 regard to DR 23, 24, 25 and 26, I would move that the
12 commission grant the motion to compel.

13 VICE-CHAIR HANSON: Second.

14 COMMISSIONER KOLBECK: I'll concur.

15 CHAIRMAN JOHNSON: That motion carries. With regard
16 to PDR 1, as well as for PDR 4 and 6, I would move that the
17 commission find that the agreement between MCC and Sprint
18 should be produced subject to redactions for highly
19 confidential information made by Sprint.

20 VICE-CHAIR HANSON: Second.

21 COMMISSIONER KOLBECK: I concur.

22 CHAIRMAN JOHNSON: Motion carries. With regard to PDR
23 3, PDR 5 and PDR 8, I would find that no discovery at this time
24 needs to be compelled because Sprint has noted it doesn't have
25 those documents. But the objections by Sprint would be denied

1 in that if such documents come into being at a future date,
2 that they would be produced as part of discovery.

3 COMMISSIONER KOLBECK: I'll second.

4 VICE-CHAIR HANSON: I agree with the first half of
5 your motion, not the second, so I'll dissent.

6 CHAIRMAN JOHNSON: The motion carries two-one. I
7 believe that resolves all the issues before the commission at
8 this time with regard to this docket. But I'll pause to see if
9 that's the case. Hearing no other concerns or business before
10 the commission, I would call this commission meeting closed.
11 Thank you. My apologies for the difficulties to all the
12 parties.

13 (Whereupon, the proceedings were concluded.)
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF HUGHES)

I, Carla A. Bachand, RMR, CRR, Freelance Court Reporter for the State of South Dakota, residing in Pierre, South Dakota, did report and transcribe from a telephone conference call the preceding pages, and the transcript is of the audible portions of the hearing.

Dated this the 19th day of January 2007.

Carla A. Bachand

Carla A. Bachand, RMR, CRR
Freelance Court Reporter