

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE PETITION OF)	ORDER GRANTING IN PART
BROOKINGS MUNICIPAL UTILITIES D/B/A)	AND DENYING IN PART
SWIFTEL COMMUNICATIONS FOR)	MOTIONS TO COMPEL;
SUSPENSION OR MODIFICATION OF DIALING)	ORDER GRANTING MOTION
PARITY, NUMBER PORTABILITY AND)	TO WITHDRAW
RECIPROCAL COMPENSATION)	
OBLIGATIONS)	TC07-007

On January 30, 2007, Brookings Municipal Utilities d/b/a Swiftel Communications (Swiftel) filed with the Public Utilities Commission (Commission) a Petition for Suspension or Modification of Local Dialing Parity, Number Portability and Reciprocal Compensation Obligations. In its Petition, Swiftel states that it requests the Commission grant a suspension or modification of 47 U.S.C. Sections 251(b)(2), (3) and (5) of the Communications Act of 1934, as amended. "Swiftel requests modification of the local number portability requirement such that it is not required to implement wireline local number portability until 4 months after a competitive LEC is certificated to provide service in Swiftel's service territory. Swiftel also requests modification of the local number portability requirement such that Swiftel is not required to transport numbers beyond its service territory. Swiftel requests modification of the dialing parity requirement such that Swiftel is not required to provide local dialing and it is not required to transport traffic outside of its service territory. Swiftel also requests modification of the toll dialing parity requirement such that Swiftel is not required to perform the equal access function at the end office or establish access traffic transport facilities other than the common trunks to South Dakota Network (SDN). Swiftel also asks the Commission to modify any requirement that Swiftel would not be able to collect access charges for toll traffic. Swiftel requests a modification of the reciprocal compensation requirements such that it is not required to pay reciprocal compensation on traffic terminating to a wireless carrier within the MTA that is handed off to an IXC in accordance with Swiftel's wireline local calling areas. Swiftel also requests immediate temporary suspension of the 251(b)(2), (3) and (5) requirements as described [in its Petition] pending this Commission's consideration of this request."

On February 1, 2007, the Commission electronically transmitted notice of the filing and the intervention deadline of February 16, 2007, to interested individuals and entities. On February 12, 2007, the Commission received Petitions to Intervene from Alltel Communications, Inc. (Alltel) and Sprint Communications Company L.P. (Sprint). On February 14, 2007, the Commission received a Petition to Intervene from Midcontinent Communications (Midcontinent). On February 15, 2007, the Commission received a Petition to Intervene from South Dakota Network, LLC (SDN). On February 16, 2007, the Commission received Petitions to Intervene from MCC Telephony of the Midwest, Inc. d/b/a Mediacom (MCC) and South Dakota Telecommunications Association (SDTA). On March 5, 2007, the Commission received an Opposition of Brookings Municipal Utilities d/b/a Swiftel Communications to Petition to Intervene filed by Midcontinent Communications. On March 9, 2007, the Commission received Midcontinent's Reply to Swiftel's Opposition to Midcontinent's Intervention Petition. On March 13, 2007, the Commission received a Withdrawal of Opposition of Brookings Municipal Utilities d/b/a Swiftel Communications to Petition to Intervene filed by Midcontinent Communications. At its March 13, 2007 meeting, the Commission granted all of the Petitions to Intervene. On April 2, 2007, the Commission issued a protective order.

On April 17, 2007, the Commission received Alltel's Response to the Swiftel Petition for Suspension or Modification, Sprint's Response to Swiftel's Petition for Suspension or Modification and General Response of Intervenor South Dakota Network, LLP to Swiftel's Petition. On April 18, 2007, the Commission received SDTA Answer to Petition and Mediacom's General Response to Swiftel's Petition. On April 19, 2007, the Commission received a General Response of Midcontinent to Swiftel's Petition. On July 9, 2007, the Commission received a Stipulation signed by the parties which the Commission granted at its August 7, 2007, meeting. On January 9, 2008, the Commission received a Stipulation signed by the parties which the Commission granted at its February 26, 2008, meeting.

On July 7, 2008, the Commission received a Motion to Compel Responses and Production of Documents Addressed to Midcontinent Communications as Propounded by Brookings Municipal Utilities d/b/a Swiftel Communications. On July 11, 2008, the Commission received Alltel's Motion to Compel Discovery from Brookings Municipal Utilities, Motion to Compel Responses and Production of Documents Addressed to Sprint as Propounded by Swiftel, Motion to Compel Responses and Production of Documents Addressed to Alltel as Propounded by Swiftel and Motion to Compel Responses and Production of Documents Addressed to Mediacom as Propounded by Swiftel. On July 24, 2008, the Commission received Alltel Communications, Inc.'s Response to Swiftel Communications' Motion to Compel, Swiftel's Responses to Alltel's Motion to Compel Discovery Requests and Sprint's Resistance to Swiftel's Motion to Compel. On July 28, 2008, the Commission received Midcontinent's Motion to Withdraw from the Docket and Joinder of Mediacom to Sprint's Resistance to Swiftel's Motion to Compel.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31, including 49-31-3, 49-31-79 through 49-31-81, and 47 U.S.C. sections 251 and 252. The Commission may rely upon any or all of these or other laws of this state in making its determination.

At its July 29, 2008 meeting, the Commission considered Swiftel's Motions to Compel against Midcontinent, Mediacom, and Sprint. Based on Midcontinent's Motion to Withdraw from the Docket, action was deferred on the Motion to Compel filed against Midcontinent. The Commission voted unanimously to grant the Motion to Compel filed by Swiftel against MCC since MCC had failed to respond to any of Swiftel's discovery requests. With respect to Swiftel's Motion to Compel filed against Alltel, the Commission made the following rulings. The Commission voted unanimously to deny the motion for interrogatories 3, 7, 8, and 9. For Interrogatory 4, the Commission voted unanimously to require Alltel to respond but limited the response to Alltel's current switch location in Sioux Falls and associated interoffice transport routes, intercompany transmission facilities, and points of interconnection with other carriers that are directly connected to that switch. For interrogatories 10, 23, and 24, Swiftel limited its request to the traffic sent to Swiftel through the Qwest tandem. The Commission voted unanimously to grant the motion to compel, limited to the traffic delivered to Swiftel through the Qwest tandem and to the extent Alltel has that information. For interrogatories 11, 25, and 26, the Commission voted unanimously to deny the motion. For interrogatory 13, after discussion, the parties agreed on what information would be provided so no Commission action was necessary. For interrogatory 14, the Commission voted unanimously to compel the information requested. For interrogatory 19, after discussion between the parties, it was determined that no motion to compel was necessary. For interrogatory 21, Swiftel informed the Commission that it was no longer pursuing this interrogatory. For interrogatory 36, Swiftel informed the Commission that it was no longer pursuing this interrogatory. For interrogatories 37 and 38, the Commission voted unanimously to deny the motion. For admission 1, Swiftel informed the Commission that it was no longer pursuing this interrogatory. For request for production 9, the Commission voted unanimously to deny the interrogatory. For request for production 12, the Commission voted unanimously to deny the interrogatory. For request for production 14, the Commission voted unanimously to deny the interrogatory.

At its August 6, 2008 ad hoc meeting, the Commission considered Swiftel's Motion to Compel against Sprint and Alltel's Motion to Compel against Swiftel. For Swiftel's Motion to Compel against Sprint, the Commission ruled as follows. For interrogatories 3, 8, and 10, Swiftel stated it is not pursuing those interrogatories. For interrogatory 4, Swiftel and Sprint agreed that they would accept the ruling that was made in the Swiftel Motion to Compel against Alltel. For interrogatories 5, 55, and 56, the Commission unanimously voted to grant the motion, limiting them to the Swiftel area. For interrogatory 11, the Commission unanimously voted to grant the motion to the extent the information exists. For interrogatory 12, some of the information had been provided. Thus, the information still being requested was limited and the Commission voted unanimously to grant the motion but limited to the business and residential breakdown for the years 2006 and 2007. For interrogatories 14, 17, 18, 19, 44 and 45, Swiftel stated that it was no longer pursuing those interrogatories. For interrogatory 63, the Commission voted unanimously to deny the motion to compel. For interrogatory 66, Swiftel stated it was no longer pursuing this interrogatory. For interrogatory 33, the parties agreed to accept the same resolution as was achieved for interrogatory 19 regarding Swiftel's Motion to Compel against Alltel, thus no action was necessary. For interrogatory 34, the Commission voted unanimously to deny the motion. For interrogatory 35, the Commission voted unanimously to deny the motion to compel. For interrogatory 42, Swiftel stated that because interrogatory 11 was not compelled, it would not pursue interrogatory 42. For interrogatory 43, the Commission voted unanimously to compel but limited to Sprint providing a statement as to whether it has attempted to enter into agreements with interexchange carriers. For interrogatory 46, Swiftel stated that it was not pursuing this interrogatory. For interrogatory 49, the Commission voted unanimously to deny the motion. For interrogatory 64, Swiftel stated that it was not pursuing this interrogatory. For interrogatory 68, Sprint stated that it would provide the information. For interrogatory 69, Swiftel stated that it was not pursuing this interrogatory. For request for production 1, Sprint did not object to it so no action was needed. For request for production 2, the Commission voted unanimously to deny the motion. For requests for production 8, 13, 15 and 17, Swiftel stated that it was no longer pursuing these interrogatories.

With respect to Alltel's Motion to Compel against Swiftel, Alltel filed a letter on August 5, 2008, stating that it is no longer seeking any motions to compel regarding interrogatories 20, 40, 41, and 44 and requests for productions 30 and 33. With respect to the remaining parts of the motion to compel, the Commission ruled as follows. For interrogatory 3, Alltel narrowed its request and the Commission voted unanimously to grant the narrowed interrogatory. For interrogatory 8(a), the Commission voted unanimously to grant the motion but with the identity of the carriers concealed. For interrogatory 12, the parties agreed as to how Swiftel would respond and no action was required. For interrogatory 14, the parties agreed on how to handle that interrogatory and no action was required. For interrogatory 42, after discussion, the parties agreed that no action was needed. For interrogatory 43, the Commission voted unanimously to require Swiftel to provide additional information to clarify exhibit 3 as requested by Alltel. For request for production 14, the Commission voted unanimously to grant the motion but limited it to any contracts or business arrangements that are currently in effect.

At its regularly scheduled meeting of August 12, 2008, the Commission considered Midcontinent's Motion to Withdraw from the Docket. Commission Staff recommended approval of the Motion. The Commission unanimously voted to grant Midcontinent's Motion to Withdraw from the Docket.

It is therefore

ORDERED, that Swiftel's Motion to Compel filed against MCC is granted; and it is

FURTHER ORDERED, that Swiftel's Motion to Compel filed against Alltel is granted in part and denied in part; and it is

FURTHER ORDERED, that Swiftel's Motion to Compel filed against Sprint is granted in part and denied in part; and it is

FURTHER ORDERED, that Alltel's Motion to Compel filed against Swiftel is granted in part; and it is

FURTHER ORDERED, that Midcontinent's Motion to Withdraw from the Docket is granted.

Dated at Pierre, South Dakota, this 15th day of August, 2008.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.
By: <u><i>Delaine Kolbe</i></u>
Date: <u>8/15/08</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Gary Hanson
GARY HANSON, Chairman

Steve Kolbeck
STEVE KOLBECK, Commissioner

Dustin M. Johnson
DUSTIN M. JOHNSON, Commissioner
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