
BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF SPRINT
COMMUNICATIONS COMPANY L.P. FOR
ARBITRATION PURSUANT TO THE
TELECOMMUNICATIONS ACT OF 1996 TO
RESOLVE ISSUES RELATING TO AN
INTERCONNECTION AGREEMENT WITH
BROOKINGS MUNICIPAL UTILITIES D/B/A
SWIFTEL COMMUNICATIONS

Docket No. TC06-176

Rebuttal Testimony of Jo Shotwell

**On Behalf of Brookings Municipal Utilities D/B/A Swiftel
Communications**

February 16, 2007

**REBUTTAL PRE-FILED TESTIMONY
JO SHOTWELL**

1 **I. BACKGROUND**

2 **Q. Please state your name and business address.**

3 A. My name is Jo Shotwell and my business address is 3721 Executive Center Drive, Suite
4 200, Austin, Texas.

5 **Q. Please state the name of your employer, your position, and whom you represent in
6 this proceeding.**

7 A. I am employed with CHR Solutions, Inc. (CHR) as a Senior Vice President of Business
8 Compliance. My responsibilities for CHR include management of the firm's state and
9 federal regulatory practice, including regulatory policy development, contract
10 management services, as well as overall management of the Austin office. CHR is a
11 telecommunications management consulting company with offices in Austin, Dallas,
12 Houston, Lubbock, Texas, and Minneapolis, Minnesota with satellite offices in other
13 states. In this proceeding, CHR is representing Brookings Municipal Utilities d/b/a
14 Swiftel Communications (Swiftel) located in Brookings, South Dakota.

15 **Q. Please describe your educational background and your experience within the
16 industry.**

17 A. I graduated from Florida State University with a Bachelor of Science Degree and have
18 been employed in the telecommunications industry approximately 39 years. I was
19 employed with Central Telephone and Utilities, now part of the Embarq system, for over
20 eight years in Florida and Texas. In 1977 I joined the Public Utility Commission of
21 Texas (PUC) and worked in the engineering division until 1984. While at the PUC I was

1 involved with certification, quality of service, access, and tariff and rate design issues for
2 telecommunications utilities regulated by the PUC. Since 1984 I have been in the
3 telecommunications consulting business.

4 **Q. Have you previously appeared as an expert witness?**

5 A. Yes, I have appeared before the Texas PUC on numerous occasions. I have also
6 appeared before the State of Oklahoma and the State of New Mexico telecommunications
7 regulatory agencies. In addition, I have presented testimony in proceedings in the state
8 District Court in Austin, Texas as well as before the Texas Legislature on issues related
9 to telecommunications.

10 **Q. Please describe your experience in regard to competitive issues in the**
11 **telecommunications arena.**

12 A. Since 1996, I have worked closely with the firm's clients in responding to the obligations
13 of the federal Telecommunications Act of 1996. This work has entailed review and
14 analysis of the changes in law and working with our clients to assist in understanding and
15 implementing the changes, and in addressing the issues with the new competitive
16 entrants. I have also assisted our clients in the development of their competitive ventures
17 in non-rural areas.

18
19 **II. PURPOSE OF TESTIMONY**

20 **Q. Please state the purpose of your testimony in this proceeding.**

21 A. I've been requested by Swiftel to address the regulatory obligations and responsibilities
22 of small, rural telecommunications carriers with respect to providing local
23 interconnection to a local exchange competitor. I will address several of the arbitration

1 issue points brought forth by Sprint Communications Company L.P. in its Petition for
2 Arbitration. More specifically, I will address:

- 3 1) Regulatory requirements of telecommunications carriers outlined in Sections 251(a),
4 251(b), and 251(c) of the federal Telecommunications Act of 1996 (FTA); and
5 2) Unresolved issues submitted by Sprint in its Petition to Arbitrate.

6 **Q. Are you providing legal analysis?**

7 A. No. I am not an attorney and the purpose of my testimony is not to provide legal
8 analysis. Rather, my testimony is based on my experience in the industry on regulatory
9 policy issues.

10
11 **III. REGULATORY REQUIREMENTS OF TELECOMMUNICATIONS CARRIERS**

12 **Q. Please provide an overview of the changes enacted in the FTA.**

13 A. In 1996 Congress passed wide-sweeping changes to the Communications Act of 1934.
14 The changes were monumental, and the first significant legislative changes made to
15 national telecommunications policy for many years. The legislative changes were to
16 broadly define national rules for opening the local networks of the incumbent local
17 exchange carriers (ILECs) to local competition while at the same time maintaining the
18 goals of universal service throughout the nation. Recognizing that the ILEC industry is
19 comprised of more than 1,000 ILECs across the nation that vary significantly in the
20 number of customers served, customer demographics, the geography and density of the
21 service areas, Congress approved special provisions to address the different operating
22 characteristics of a multi-state Bell Operating Company, mid-size companies and the
23 small rural companies like Swiftel. Congress was clear that one size of regulation does

1 not fit all companies. Therefore, Congress enacted special provisions that allow the
2 smallest companies across the nation to request suspensions or modification from certain
3 FTA requirements. In addition, the FTA automatically provided rural companies an
4 exemption from the provision of interconnection, services, and network elements.

5 **Q. Please explain your understanding of the regulatory duties of carriers as defined in**
6 **Section 251 of the FTA.**

7 A. Section 251 of the FTA is titled “Interconnection” and outlines duties related to
8 interconnection. Section 251(a) is a general duty that applies to all telecommunications
9 carriers, including local exchange carriers, interexchange carriers, and other types of
10 telecommunication carriers. Section 251(b) outlines specific duties of local exchange
11 carriers and Section 251(c) outlines additional duties that apply to incumbent local
12 exchange carriers.

13 Section 251(a) (1) of the FTA requires all telecommunications carriers “to interconnect
14 directly or indirectly, with the facilities and equipment of other telecommunications
15 carriers.” Section 251(a) does not require a telecommunications carrier to transport and
16 terminate another carrier’s traffic or to directly interconnect¹ with another carrier, nor
17 does 251(a) require the exchange of traffic. The duty of 251(a) is simply the “physical
18 linking of two networks for the mutual exchange of traffic.”² Furthermore, 251(a) duties
19 can not be arbitrated under Section 252 of the FTA.

¹ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) *aff’d in part and vacated in part sub nom., Competitive Telecommunications Ass’n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utils. Bd. V. FCC*, 120 F.3d 753 (8th cir. 1997), *aff’d in part and remanded, AT&T Corp. V. Iowa Utils. Bd.*, 525 U.S. 366, 119 S.Ct. 721, 142 L.Ed. 2d 835 (1999); Order on Reconsideration. 11 FCC Rcd 13042 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996), Third Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 97-295 (rel. August 18, 1997), (*Local Competition Order*), at para. 997.

² Local Competition Order at para. 176.

1 Section 251(b) outlines duties of all local exchange carriers, including ILECs and
2 competitive local exchange carriers (CLECs) stating that “Each local exchange carrier
3 has the following duties...” The duties under 251(b) are: resale, number portability,
4 dialing parity, access to rights of way; and the duty to establish reciprocal compensation
5 for transport and termination of telecommunications, The Local Competition Order
6 referenced earlier states that “reciprocal compensation for transport and termination of
7 calls is intended for a situation in which two carriers collaborate to complete a local
8 call.”³

9 Section 251(c) outlines additional duties for incumbent local exchange carriers. The
10 duties include the duty to negotiate, interconnection at any technically feasible point,
11 access to unbundled network elements, resale at a discount, and collocation. Rural ILECs
12 have a rural exemption from the duties of Section 251(c) unless the state Commission
13 determines that the rural exemption should be lifted in accordance with Section
14 251(f)(1)(B).

15 **Q. Please explain the difference in interconnection under Section 251(a) and 251(c).**

16 A. In the Local Competition Order, the FCC found that indirect interconnection satisfies a
17 telecommunications carrier’s duty under section 251(a),⁴ while 251(c) interconnection is
18 direct interconnection at any technically feasible point.⁵ An indirect interconnection
19 occurs when traffic is exchanged via a third-party’s network, i.e. generally through a
20 tandem connection arrangement. A direct connection allows for the “transmission and

³ Local Competition Order at para. 1034.

⁴ Local Competition Order at para. 997: “[W]e find that indirect connection...satisfies telecommunications carrier’s duty to interconnect pursuant to section 251(a).”

⁵ Local Competition Order at para. 997: “[S]ection 251(c) specifically imposes obligations upon incumbent LECs to interconnect, upon request, at all technically feasible points. This direct interconnection, however, is not required under section 251(a) of all telecommunications carriers.”

1 routing of telephone exchange service and exchange access.”⁶ The Local Competition
2 Order goes one step further in stating at paragraph 190 that, “Thus, all carriers (including
3 those traditionally classified as IXCs) may obtain interconnection pursuant to section
4 251(c)(2) for the purpose of terminating calls originating from their customers residing in
5 the same telephone exchange (i.e. non-inter-exchange calls).”

6 Therefore, if a CLEC requests interconnection for the purpose of directly exchanging
7 traffic, either local or access traffic, with an ILEC via direct trunking arrangements, the
8 carrier must do so under 251(c).

9 **Q. Sprint witness Mr. Burt argues that Sprint’s service will help introduce competition**
10 **in the Swiftel service territory and that its business model is consistent with the pro-**
11 **competitive goals of the FTA. Is this significant in this proceeding?**

12 A. No. Under the process established by the FTA, these are the types of arguments Sprint
13 should make in a proceeding to lift Swiftel’s rural exemption. Sprint, however, did not
14 follow the procedure in the FTA to lift Swiftel’s rural exemption and, therefore, these
15 considerations are not before the Commission at this time.

16 Further, Sprint’s argument ignores the protections from competition afforded to rural
17 carriers, like Swiftel, in the FTA. It is important to note that rural carriers are treated
18 differently, in part, to ensure that universal service is preserved. In a rural carrier’s
19 service territory, it is not enough to simply argue that Sprint’s service will help to
20 introduce competition. Rather, the Act demands that the Commission examine the
21 consequences of that competition on Swiftel, its subscribers, and universal service.

22
23 **IV. UNRESOLVED ISSUES – PETITION TO ARBITRATE**

⁶ Local Competition Order at para. 186.

1 **Q. Sprint requested Section 251(a) interconnection from Swiftel but has proposed**
2 **contract provisions that would require direct connections. What is the significance**
3 **of this?**

4 A. As stated earlier, Section 251(a) does not require Swiftel to directly interconnect with
5 Sprint for the exchange of local and access traffic. It seems clear that Sprint is attempting
6 to circumvent the Section 251(c) rural exemption provisions that are in effect for Swiftel
7 by attempting to “negotiate” Section 251(a) provisions.

8 **Q. Swiftel demonstrates that it refused to negotiate Section 251(a) interconnection with**
9 **Sprint. What is the significance of this?**

10 A. Because Swiftel did not negotiate Section 251(a) interconnection, this is not an open
11 issue and, therefore, it is not subject to arbitration.

12 **Q. Are you aware of any other rural ILEC that refused to negotiate a Section 251(a)**
13 **interconnection request with Sprint?**

14 A. Yes. I am familiar with Sprint’s request for interconnection to a client of the firm -
15 Brazos Telephone Cooperative, Inc. (Brazos) in Texas.⁷ Sprint requested negotiation of
16 an interconnection agreement pursuant to Section 251(a) and (b) of the FTA. Brazos
17 refused to negotiate an agreement under Section 251(a) and (b) arguing that the
18 interconnection requested by Sprint was in fact Section 251(c) interconnection and that
19 Brazos was exempt from the requirements of Section 251(c).⁸ Sprint filed a petition for
20 arbitration of Section 251(a) and (b) at the Public Utility Commission of Texas. The
21 Texas PUC granted a Motion to Dismiss against Sprint, ruling that Sprint must lift

⁷ Sprint also placed a similar request to Eastex Telephone Cooperative, Inc. of Texas which was dismissed by the Texas Public Utility Commission.

⁸ After receipt of the request for interconnection and during discussions with Sprint, Brazos became aware that interconnection was actually requested for a third party carrier.

1 Brazos' rural exemption before Brazos is required to negotiate and arbitrate
2 interconnection and section 251(b) & (c) obligations. On appeal, Sprint asserted that
3 Brazos violated Sections 251(a) and (b) and asked the court, among other things, to direct
4 the Texas PUC to arbitrate and approve an interconnection agreement. The United States
5 District Court for the Western District of Texas upheld the decision of the Texas PUC.
6 Essentially, the Court found that because Brazos was exempt from the duty to negotiate
7 any interconnection agreement with Sprint, the Texas PUC had no authority to arbitrate
8 any agreement between Sprint and Brazos. A copy of the Court's decision is attached
9 hereto as Exhibit 1.⁹

10 **Q. How is the Brazos proceeding similar to the Swiftel proceeding?**

11 A. In this proceeding, Swiftel refused to negotiate Section 251(a) interconnection, however,
12 Swiftel did continue discussions with Sprint under Sections 251(b)(2), (3) and (5).
13 Accordingly, applying the Brazos case, the Commission should not arbitrate provisions
14 related to Section 251(a) interconnection.

15 **Q. How does Sprint address the Commission's authority to arbitrate Section 251(a)**
16 **under Section 252 arbitration provisions of FTA?**

17 A. Mr. Burt argues that the Commission has the authority to arbitrate issues in dispute.
18 (Burt at 36.) Mr. Burt also argues that the issues related to interconnection are in dispute
19 because Swiftel agreed to negotiate these issues. In support of his position, Mr. Burt
20 refers to a series of letters attached to his testimony as Attachment JRB-4. A fair reading
21 of those letters, however, shows that Swiftel was requesting information from Sprint so
22 as to understand its request for an agreement concerning Sections 251(a) and 251(b)(2),

⁹ Sprint has subsequently filed an appeal of this Order at the United States Court of Appeals for the Fifth Circuit, Case No. 06-51231.

1 (3) and (5) of the FTA. The Commission should not find that merely continuing to gather
2 information constitutes “negotiation” of interconnection by Swiftel. Such a finding
3 would have a chilling effect on future Section 251 discussions and deter rural ILECs from
4 any communications with competitors. A ruling in support of Sprint’s argument would
5 lead to more arbitration petitions where the issues are less well defined by the Parties.
6 In addition, Mr. Burt points out that this Commission has approved a 251(a) and (b)
7 agreement between Swiftel and Western Wireless. Although the Western Wireless
8 agreement may have referenced 251(a) & (b) sections of FTA, it must be pointed out that
9 wireless interconnection duties predate the FTA and falls under other provisions of the
10 Communications Act. In addition, Parties can agree to negotiate issues that they are not
11 required to negotiate. Therefore, even if Swiftel may have agreed to enter an agreement
12 concerning Section 251(a) interconnection with Western Wireless, it has no bearing on
13 this arbitration.

14 **Q. If Swiftel has a duty to interconnect under Section 251(a), why do you believe Sprint**
15 **is insisting that the terms and conditions of interconnection must be included in the**
16 **agreement between the Parties?**

17 A. As stated earlier, Section 251(a) is a general interconnection requirement. Through its
18 proposed agreement language, Sprint seeks to impose very specific interconnection
19 requirements on Swiftel, including requirements that apply to incumbent local exchange
20 carriers (ILECs) pursuant to Section 251(c) of the Act. For example, Mr. Farrar argues
21 that Sprint is entitled under the FTA to establish one point of interconnection (POI) at
22 any point within the LATA and cites Section 251(c) (2) (B) of the FTA to support this
23 position. (Farrar at 15-17.) Sprint did not request interconnection under 251(c) and,

1 therefore, can not support this argument based on a provision not at issue in this
2 proceeding. Furthermore, Swiftel is exempt from Section 251(c) requirements. This
3 further supports my conclusion that Sprint is attempting to obtain the benefits of Section
4 251(c), to which it is not entitled, through a request for interconnection pursuant to
5 Section 251(a).

6 In addition, it must be pointed out that Section 251(c) (2) (B) is clear that the point of
7 interconnection is “at any technically feasible point *within the carrier’s network.*”
8 (emphasis added) Therefore, if Sprint is providing local exchange service to end users
9 within the service area of Swiftel, Sprint must have a POI within Swiftel’s network.
10 Requiring Swiftel to delivery local traffic to a point outside its network will impose
11 significant costs on Swiftel. If such a request was part of a Section 251(c) negotiation,
12 Swiftel would be entitled to file a petition for suspension or modification against such a
13 requirement based on a cost and public interest showing.

14 **Q. As a policy matter, is there any harm to granting interconnection as requested by**
15 **Sprint and including Sprint’s proposed interconnection provisions?**

16 A. Yes. The FTA recognizes that some of the provisions intended to advance competition
17 may not be appropriate for rural ILECs. As a result, Section 251(f)(1)(A) of the FTA
18 exempts rural ILECs from the specific interconnection requirements in Section 251(c)
19 until the state commission makes a finding that the request for interconnection is not
20 unduly economically burdensome, is technically feasible, and is consistent with universal
21 service. In addition, even if the rural exemption is lifted, rural ILECs like Swiftel have
22 the right under Section 251(f)(2) of the Act to ask the state commission to suspend or
23 modify any requirement found in Section 251(b) or (c) of the FTA.

1 By its tactic of requesting interconnection under section 251(a) of the FTA, it appears
2 that Sprint seeks to deny Swiftel of the protections afforded to it as an exempt rural
3 carrier under the Act. This Commission's authority to protect the public interest would
4 be diminished if Sprint can successfully avoid a Commission examination of the rural
5 exemption and a suspension petition simply by calling its request a Section 251(a)
6 interconnection request.

7 **Q. How should the Commission resolve the issue concerning 251(a) interconnection?**

8 A. The Commission should grant the Motion to Dismiss filed by Swiftel and strike all
9 provisions and language concerning interconnection in the agreement as specified in
10 Swiftel's Motion to Dismiss.¹⁰

11 **Q. Mr. Burt argues that the Commission should dismiss the petition for suspension or**
12 **modification of certain Section 251(b) requirements filed by Swiftel. In the**
13 **alternative, Sprint states that the Commission should adopt Sprint's language and**
14 **then decide the suspension petition issues. How should the Commission address**
15 **Sprint's arguments concerning the petition for suspension or modification of Section**
16 **251(b) requirements?**

17 A. It appears that Swiftel's petition for suspension or modification raises significant issues
18 concerning the requirements of Section 251(b) (2), (3) and (5) which should be examined
19 by the Commission. Further, rather than adopt Sprint's language and then decide the
20 suspension petition issues, the better course of action from a public policy perspective
21 would be to decide the suspension petition issues before requiring the ILEC to incur the

¹⁰ Swiftel's Motion to Dismiss was included as part of its November 13, 2006 Response of Brookings Municipal Utilities d/b/a/ Swiftel Communications and Motion to Dismiss and Opposition to Motion to Consolidate.

1 expense to implement agreement provisions that may ultimately be suspended or
2 modified.

3 **Q. How do you respond to Mr. Burt's argument that such a course of action would**
4 **significantly delay Sprint's ability to enter Swiftel's service area?**

5 A. Sprint's argument is without merit. The main impediment to Sprint's ability to enter
6 Swiftel's service area is the fact that neither Sprint nor MCC are certificated to provide
7 local exchange service in Swiftel's service area. It is my understanding that although
8 both carriers have requested certification by the Commission, there is a question as to
9 whether their applications are complete. Further, it is my understanding that the cases are
10 only now in the process of being scheduled for hearing and that the certification
11 proceedings may not be completed until June 12, 2007 or later should the Commission
12 determine the certification applications are not complete. Pursuant to the FTA, Swiftel's
13 suspension proceeding must be completed by July 29, 2007. Based on these timelines,
14 Swiftel's suspension petition may not delay Sprint's ability to enter the market at all.
15 Furthermore, neither Sprint nor MCC can obtain an NNX code from Neustar until
16 certification has been completed because Neustar requires a copy of the certification
17 order as well as other business documents to obtain a code. Once the NNX code has been
18 obtained, it may take up to 66 days for a code to become effective. Thus, Sprint or MCC,
19 whichever entity is the actual service provider, will not be ready to provide service until
20 mid-August at the earliest.

21 In addition, in connection with Sprint's argument that it should be allowed to transport all
22 traffic over the same trunk, Sprint witness Mr. Burt admits that Sprint does not have the
23 capability to accurately identify the traffic at this time and has not provided any

1 indication of when the capability will be available. This is a further impediment to
2 Sprint's ability to implement interconnection as it has requested that is entirely of its own
3 making.

4 **Q. Mr. Burt alleges that an unfavorable ruling on Arbitration Issue 1 will keep Sprint**
5 **and MCC from entering the market "if it is not clear that end-users served through**
6 **the joint efforts of Sprint and MCC are able to make and receive calls through the**
7 **interconnection established between Sprint and Swiftel." (Burt at 29.) Do you**
8 **agree?**

9 A. I believe Mr. Burt's argument is a red-herring. Arbitration Issue 1 in Sprint's Petition
10 concerns the definition of "end user." Interconnection is the physical connection between
11 telecommunications carriers. As I indicated before, if Sprint is a telecommunications
12 carrier, Swiftel must, subject to suspensions and the rural exemption being lifted,
13 interconnect with Sprint. Similarly, if MCC is a telecommunications carrier, Swiftel
14 must interconnect with MCC, either directly or indirectly. Mr. Burt has not identified
15 anything in the agreement language proposed by Swiftel that would prohibit MCC from
16 indirectly interconnecting to Swiftel through Sprint.

17 **Q. Mr. Burt states that the Commission should resolve Issue No. 1 by ruling that**
18 **"Sprint is a telecommunications carrier with all the rights afforded a**
19 **telecommunications carrier under the Act, including the right to interconnect with**
20 **Swiftel for purposes of Sprint's wholesale business model." (Burt at 32.) Mr. Burt**
21 **goes on to state that the Commission should order the parties to adopt the language**
22 **proposed by Sprint in Section 1.1 (Scope of Agreement); Section 2.7 (definition of**
23 **end user) and Section 20.6 (third party beneficiaries). Do you agree?**

1 A. No. As an initial matter, none of the sections referenced by Sprint concern the issue of
2 whether Sprint is a telecommunications carrier. Further, it appears that there was no
3 issue raised as to whether Sprint is a telecommunications carrier. Rather, Swiftel argues
4 that Sprint requested negotiation as a CLEC and, therefore, the agreement should apply to
5 Sprint as a CLEC. Further, the agreement should be limited to the exchange of traffic
6 with Sprint's end users. I note, however, that the issue of whether Sprint is a CLEC in
7 connection with its arrangement with MCC will most likely be examined in the pending
8 certification proceeding.

9 **Q. Why is it important that the agreement specify that Sprint is a CLEC?**

10 A. The simple answer to this question is that Sprint requested negotiation as a CLEC and it
11 was on that basis that Swiftel engaged in negotiations with Sprint. In addition, the rights
12 and obligations of Swiftel to Sprint as a CLEC versus a wireless carrier versus an
13 interexchange carrier (IXC) are different. For example, if Sprint, as an IXC, requested
14 negotiation of an interconnection agreement and reciprocal compensation, I suspect
15 Swiftel would have refused to have any discussions with Sprint because Swiftel provides
16 service to IXCs through its state and federal tariffs. So, Sprint requested negotiation as a
17 CLEC and then at some point in the process proposed language that included toll traffic
18 as part of the agreement.

19 The issue with respect to wireless traffic is slightly different in that intraMTA wireless
20 traffic is local and subject to reciprocal compensation and is generally exchanged through
21 indirect interconnection arrangements where the traffic is transited through a third party
22 tandem. However, the definition of what constitutes local traffic is different for wireline
23 to wireline traffic versus wireline to wireless traffic. Accordingly, if Sprint as a CMRS

1 carrier requested negotiation of an interconnection agreement and reciprocal
2 compensation, I suspect the terms and conditions proposed by Swiftel would be different.

3 **Q. Why do you think Sprint has proposed to expand the agreement to include IXC and**
4 **CMRS traffic?**

5 A. It seems clear that Sprint proposed these changes to ensure that it can transport all types
6 of traffic over a single trunk group, including local wireline, inter- and intraMTA
7 wireless and interstate and intraLATA toll traffic over a single trunk. The more troubling
8 aspect of this proposal is that Sprint can not identify the jurisdiction of the traffic or the
9 originating carrier for Swiftel to appropriately bill the originating carrier.

10 **Q. Mr. Burt alleges that Sprint is “jointly” providing service with MCC. Do you**
11 **agree?**

12 A. No. Although Mr. Burt makes this statement, he also states that “Sprint and MCC have
13 independent obligations under their contract to provide parts of their network and
14 expertise...” (Burt at 9.) and that “Sprint is providing telecommunications services *to* the
15 cable companies in the business model described.” (Burt at 24, emphasis added.) Taken
16 together, these statements make it clear that Sprint leases some of its facilities and
17 services and its expertise to MCC. MCC then combines the facilities and services
18 purchased from Sprint with its own facilities and services to provide local exchange
19 service to end users.

20 **Q. Mr. Burt discusses UNE-P and resale and states that its service to MCC is similar.**
21 **Do you agree?**

22 A. The facilities provided by Sprint could be referenced as an unbundled element but not an
23 unbundled network element *platform*. Based on its own description of UNE-P and

1 resale, Sprint's relationship with MCC is nothing more than the leasing agent or
2 underlying carrier of single or multiple network elements but is not providing an
3 unbundled network platform. For example, MCC is leasing some switching and transport
4 from Sprint and uses its own loop to the end user customer.

5 **Q. Why is it important to understand whether and how MCC purchases functions**
6 **from Sprint?**

7 A. Because only one carrier is entitled to reciprocal compensation under Section 251(b) (5)
8 for the transport and termination of local traffic. It is clear from Mr. Burt's own
9 description of Sprint's service that Sprint does not provide the functions necessary to
10 transport and terminate local traffic. Accordingly, Sprint is not entitled to reciprocal
11 compensation under the FCC's rules.

12 **Q. Please explain.**

13 A. The FCC's Local Competition Order at paragraph 1034 defines the reciprocal
14 compensation duties of the FTA and states that "reciprocal compensation for transport
15 and termination of calls is intended for a situation in which two carriers collaborate to
16 complete a local call." Under the testimony provided by Mr. Burt where he describes the
17 facilities provided to MCC so that MCC is able to provide local exchange service, it is
18 clear Sprint is an underlying facility provider only and does not provide local exchange
19 service to MCC's end users. Because Sprint is not providing local exchange service,
20 reciprocal compensation provisions of Section 251(b) (5) do not apply to Sprint.
21 Therefore, there is no reciprocal compensation obligations as proposed by FTA.
22 Section 251(b)(5) "reciprocal compensation arrangement is defined by the FCC's rules in
23 47 C.F.R. 51.701(e) as an "arrangement between two carriers is one in which each of the

1 two carriers receives compensation from the other carrier for the transport and
2 termination on each carrier's network facilities of telecommunications traffic that
3 originates on the network facilities of the other carrier." "Transport" is defined in
4 51.701(c) as "transmission and any necessary tandem switching of telecommunications
5 traffic subject to section 251(b)(5) of the Act from the interconnection point between the
6 two carriers to the terminating carrier's end office switch that directly serves the called
7 party, or equivalent facility." "Termination" is defined in 51.701(d) as "the switching of
8 telecommunications traffic at the terminating carrier's end office switch, or the equivalent
9 facility, and delivery of such traffic to the called party's premises." Since Sprint does not
10 provide either the "transport" as defined in 51.701(c) or the "termination" as defined in
11 51.701(d), Sprint is nothing more than a third-party carrier that provides facilities that
12 allows another carrier (i.e. MCC) to provision telecommunications services to end users.
13 As I concluded above, Sprint is not entitled to reciprocal compensation for local traffic
14 that is exchanged between Swiftel and MCC and the Commission should not allow Sprint
15 to represent themselves as the CLEC that receives compensation for functions provided
16 by MCC. Accordingly, Sprint's proposed language in Section 1.1 of the Agreement and
17 its definition of "end user" should not be adopted.

18 **Q. Based on your industry knowledge, is MCC an "end user" of Sprint as described by**
19 **Sprint?**

20 A. No. The traditional definition and use of the term "end user" references a customer or
21 user of services provided by a retail service provider.

22 **Q. Does this conclude your testimony?**

23 A. Yes, it does.