



**South Dakota Telecommunications Association**  
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June 6, 2007

Ms. Patty Van Gerpen, Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Ave.  
State Capitol Building  
Pierre, SD 57501

RE: Docket TC07-007, Petition of Brookings Municipal Utilities d/b/a Swiftel  
Communications for Suspension or Modification

Dear Ms. Van Gerpen:

Enclosed for filing in the above referenced docket you will find an original version of the  
“Direct Testimony of Dan Davis” submitted as a witness for the SDTA.

As is evidenced by the Certificate of Service, also provided, service has been made to Swiftel  
Communications and other intervening parties.

Thank you for your assistance in filing and distributing copies of this pre-filed testimony.

Sincerely,

Richard D. Coit  
SDTA Executive Director and General Counsel

CC: Richard J. Helsper  
Benjamin H. Dickens  
Mary J. Sisak  
Talbot J. Wieczorek  
Darla Pollman Rogers  
David A. Gerdes  
Stephen B. Rowell  
Karen E. Cremer  
Brett Koenecke

**STATE OF SOUTH DAKOTA  
PUBLIC UTILITIES COMMISSION**

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In the Matter of the Petition of Brookings Municipal Utilities D/B/A Swiftel Communications for Suspension or Modification of Dialing Parity, Number Portability and Reciprocal Compensation Obligations.	) ) ) ) ) ) ) )	Docket No. TC07-007
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**DIRECT TESTIMONY OF DAN DAVIS**

**ON BEHALF OF THE SOUTH DAKOTA TELECOMMUNICATIONS  
ASSOCIATION**

**JUNE 6, 2007**

1 **I. Background**

2  
3 **Q1. Please state your name, employer and business address.**

4  
5 **A.** My name is Dan Davis. I am employed with Consortia Consulting (“Consortia”),  
6 formerly known as TELEC Consulting Resources, Inc. My business address is  
7 233 South 13th Street, Suite 1225, Lincoln, Nebraska, 68508.

8 **Q2. On whose behalf are you testifying?**

9 **A.** I am testifying on behalf of the South Dakota Telecommunications Association  
10 (“SDTA”).<sup>1</sup> SDTA represents the interests of numerous cooperative, independent  
11 and municipal telephone companies operating throughout the State of South  
12 Dakota.

13 **Q3. What is your current position?**

14 **A.** I am a Senior Consultant at Consortia.

15 **Q4. What are your duties and area of expertise at Consortia?**

16 **A.** My duties and areas of expertise at Consortia are interconnection rules and  
17 regulations, negotiations with carriers for interconnection, and intercarrier  
18 compensation. I have testified in arbitration proceedings and at hearings  
19 regarding wireless Local Number Portability (“LNP”), wireless interconnection

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<sup>1</sup> SDTA member companies are: Alliance Communications Cooperative, Armour Independent Telephone Company, Beresford Municipal Telephone Company, Bridgewater-Canistota Independent Telephone, Cheyenne River Sioux Tribal Telephone Authority, Faith Municipal Telephone Company, Fort Randall Telephone Company, Golden West Telecommunications Cooperative, Hills Telephone Company, Interstate Telecommunications Cooperative, James Valley Telecommunications, Jefferson Telephone Company d.b.a. Long Lines, Kadoka Telephone Company, Kennebec Telephone Company, McCook Cooperative Telephone Company, Midstate Communications, Inc., Mount Rushmore Telephone Company, PrairieWave Community Telephone, RC Communications, Inc., Roberts County Telephone Cooperative, Santel Communications Cooperative, Inc., Sioux Valley Telephone Company, Splitrock Properties, Inc., Stockholm-Strandburg Telephone Company, Swiftel Communications, Tri-County Telecom, Inc., Union Telephone Company, Valley Telecommunications Cooperative, Venture Communications Cooperative, Vivian Telephone Company, West River Cooperative Telephone Company, West River Telecommunications Cooperative, and Western Telephone Company.

1 and compensation, ETC designation rules, and universal service rules. In  
2 addition, I write and file comments with the Federal Communications  
3 Commission (“FCC”) and state commissions on behalf of clients in the areas of  
4 interconnection, intercarrier compensation, and universal service. I have also  
5 assisted in competitive local exchange carrier (“CLEC”) implementation issues  
6 and financial modeling on behalf of clients.

7 **Q5. What was your professional experience prior to your current position?**

8 **A.** I have worked in the telecommunications industry for 22 years, the last six of  
9 which have been at Consortia. Prior to my position with Consortia, I worked at  
10 ALLTEL (formerly known as Aliant Communications prior to merging with  
11 ALLTEL) as the Regulatory/Financial manager of their Nebraska CLEC  
12 operations. Prior to that position, I worked for Aliant Communications in areas of  
13 Regulatory Policy and Separations and Access.

14 **Q6. What is your educational background?**

15 **A.** I have a Master’s degree in Finance and a Bachelor’s degree in Business from the  
16 University of Nebraska.

17 **II. Purpose of Testimony**

18  
19 **Q7. Please generally describe the purpose of your testimony.**

20 **A.** The purpose of my testimony is to support Swiftel Communications’ (Swiftel)  
21 Petition for Suspension or Modification filing pursuant to Section 251(f)(2)(B) of  
22 the Telecommunications Act of 1934 as amended (the “Act”). As stated in the  
23 SDTA Petition to Intervene, Sprint, with its interconnection request to Swiftel,  
24 seeks interconnection arrangements that would (1) require Swiftel to implement

1 intramodal LNP, that is porting of telephone numbers from Swiftel to  
2 Sprint/MCC, the CLEC providing LEC services in Brookings; (2) require Swiftel  
3 to pay for the cost of transport to calls to ported numbers to a location outside of  
4 the Swiftel local service area of Brookings (Sprint has identified its location to be  
5 in Sioux Falls); (3) require Swiftel to route locally rated calls to Sprint/MCC  
6 CLEC subscribers and to pay for the cost of transport to a location outside of the  
7 Swiftel local service area; (4) require Swiftel to route locally rated calls to  
8 Sprint's Commercial Mobile Radio Services ("CMRS" or wireless") subscribers  
9 who have numbers rated to the Brookings exchange and for Swiftel to pay for the  
10 cost of transporting such calls to a location outside of the Swiftel local service  
11 area; (5) move access traffic off the South Dakota Network's ("SDN") centralized  
12 equal access network and require Swiftel to provide end office equal access  
13 services; and (6) shift the cost of facilities for originating access traffic onto  
14 Swiftel as part of its proposed interconnection agreement irrespective of the fact  
15 that Interexchange Switched Access service ("Exchange Access") is governed by  
16 state and interstate access tariffs.

17 Swiftel therefore, requests the following from this Commission and SDTA  
18 supports such a request for (1) a modification of the LNP requirement such that  
19 Swiftel is not required to implement intramodal LNP until four (4) months after a  
20 competitive LEC is certified to provide local exchange services in Swiftel's local  
21 service area; (2) to the extent such a requirement exists, a modification of  
22 intramodal LNP such that Swiftel is not required to pay for the cost of  
23 transporting calls to local ported numbers to a location outside of the Swiftel local

1 service area; (3) to the extent such a requirement exists, modification of the  
2 dialing parity requirement such that Swiftel is not required to provide local dialing  
3 parity with respect to inter-exchange traffic and not required to pay for transport  
4 for ILEC to CLEC (wireline-to-wireline) traffic outside of its local service area;  
5 (4) modification of the dialing parity requirement such that Swiftel is not required  
6 to provide local dialing parity with respect to inter-exchange traffic and not  
7 required to pay for transport for ILEC to CMRS (wireline-to-wireless) traffic  
8 outside of its local service area; (5) to the extent such a requirement exists,  
9 modification of the toll dialing parity requirement such that Swiftel is not required  
10 to perform the equal access function at the end office or establish switched access  
11 transport facilities other than the common trunks to the SDN; (6) to the extent  
12 such a requirement exists, modification of requirements that would prevent  
13 Swiftel from collecting access charges on traffic destined for locations outside of  
14 its local calling area (on toll); and (7) the issuance of an immediate temporary  
15 suspension of the §§ 251(b)(2), (3) and (5) provisions to accommodate these  
16 requested modifications.

17 The issues addressed in the Swiftel Petition relating to originating carrier  
18 transport responsibilities, the scope of local dialing parity, and usage or non-usage  
19 of the SDN network are of critical importance to all rural telephone companies in  
20 South Dakota, and accordingly, SDTA supports the Swiftel Petition and strongly  
21 believes the modifications requested by Swiftel should be granted. SDTA's  
22 testimony is based on the pecuniary interests of other SDTA member LECs that

1 are likely to be bound and affected either favorably or adversely by the outcome  
2 of the proceeding.

3 **Q8. You state that SDTA supports Swiftel’s Petition for Suspension or**  
4 **Modification “to the extent such a requirement exists” on four of the six**  
5 **issues listed above. Will you please explain what you mean by “to the extent**  
6 **that such a requirement exists”?**

7  
8 **A.** Yes, I will briefly explain here and in more detail in the relevant sections of my  
9 testimony. SDTA submits that some of what Sprint has requested from Swiftel,  
10 Swiftel is under no obligation to provide pursuant to the Act and the attendant  
11 FCC rules. There is no requirement in the Act or FCC rules which imposes a duty  
12 on a Rural LEC (“RLEC”) such as Swiftel to (a) pay for transporting wireline-to-  
13 wireline calls to ported numbers to a location outside of the Swiftel local service  
14 area; (b) pay for transporting ILEC to CLEC (wireline-to-wireline) calls to a  
15 location outside of the Swiftel local service area; (c) implement equal access  
16 functionality in its end office and route Exchange Access traffic directly to Sprint;  
17 and (d) not be able to collect access charges on Exchange Access traffic. In  
18 situations where no duties or obligations exist under the Act to provide the  
19 interconnection services requested, SDTA submits that an RLEC need not seek  
20 such a suspension or modification. This is this case with respect to the a fore-  
21 mentioned four issues. It is SDTA’s position that the requirements imposed upon  
22 Swiftel under the Act are much more limited than Sprint implies. SDTA believes  
23 that under the Act, Swiftel’s only obligation is to provide LNP to a CLEC and to  
24 transport calls to ported numbers to a location within Swiftel’s local service area  
25 and, it appears based upon the U.S. Court of Appeals for the Eighth Circuit  
26 (Eighth Circuit”) case referred to in the Swiftel Petition for Suspension or

1 Modification, a requirement to provide local dialing parity to subscribers of  
2 CMRS carriers who have locally rated numbers to the Brookings exchange.

3 **III. Justification in Support of Suspension or Modification**

4  
5 **Q9. Please describe the order in which you will provide your testimony.**

6 **A.** I will provide my testimony on the following issues which Swiftel is seeking a  
7 suspension and modification and I will do so in the following order:

- 8 1. Modification of Local Number Portability Until 4 months after CLEC  
9 certification
- 10
- 11 2. Modification of the LNP Requirement of ILEC Originated Calls to CLEC  
12 Ported Numbers to the Extent that it Would Require Swiftel to Pay for  
13 Transport Beyond its Local Service Area
- 14
- 15 3. Modification of Dialing Parity to the Extent it Requires Swiftel to Transport  
16 ILEC to CLEC calls Outside of its Local Service Area
- 17
- 18 4. Modification of Dialing Parity to the Extent it Requires Swiftel to Transport  
19 ILEC to CMRS calls Outside of its Local Service Area
- 20
- 21 5. Modification of Toll Dialing Parity such that Swiftel is not Required to  
22 Perform the Equal Access Function at the End Office or Establish Access  
23 Transport Facilities other than the Common Trunks to the South Dakota  
24 Network
- 25
- 26 6. Modification of Requirements that would Prevent Swiftel from Collecting  
27 Access Charges on Toll Traffic
- 28
- 29

30 **1. Modification of Local Number Portability Until 4 months after CLEC**  
31 **Certification**

32  
33 **Q10. Do you believe that it would be in the public interest for an RLEC such as**  
34 **Swiftel to implement LNP prior to a carrier receiving certification to provide**  
35 **CLEC service in Swiftel's local service area?**

36  
37 **A.** No, I do not. SDTA submits that the public interest will not be served if Swiftel's  
38 subscribers are required to incur the cost for Swiftel to implement LNP prior to a  
39 carrier being certified to provide service in competition within Swiftel's certified



1 local service area. Since there would be no carrier to port a subscriber's number  
2 to until a carrier files and receives certification to provide Telephone Exchange  
3 Service and is ready to provide service in competition with Swiftel, it is not in the  
4 public interest for Swiftel to implement LNP until such time. SDTA agrees that  
5 Swiftel's request for modification of LNP until four months after a carrier has  
6 been certified is in the public interest as it will ensure that Swiftel's subscribers  
7 are not required to bear the cost of LNP unless and until they can port their  
8 numbers to another carrier.

9 **Q11. Do you believe that Swiftel's request that it not be required to implement**  
10 **intramodal LNP until four months after a carrier is certified is a reasonable**  
11 **amount of time so as not to affect or delay a CLEC's provision of service?**  
12

13 **A.** Yes, I do. I concur with Ms. Shotwell's testimony that there is some period of  
14 time after a carrier is certified before it is operationally able to provide local  
15 service (See Shotwell Testimony, p6, lns 6-13).

16 **2. Modification of the LNP Requirement of ILEC Originated Calls to CLEC**  
17 **Ported Numbers to the Extent that it Would Require Swiftel to Pay for**  
18 **Transport Beyond its Service Territory and;**  
19

20 **3. Modification of Dialing Parity to the Extent it Requires Swiftel to**  
21 **Transport ILEC to CLEC calls Outside of its Local Calling Area**  
22

23  
24 **Q12. Will you please explain why you have grouped Issues 2 and 3 together?**  
25

26 **A.** Yes, I will. Issue 2 involves the routing and transport of ILEC originated calls to  
27 subscribers who have ported their numbers from Swiftel to Sprint and thus would  
28 be subscribers of Sprint/MCC. Issue 3 involves the routing and transport of ILEC  
29 originated calls to subscribers of Sprint who have been assigned numbers by  
30 Sprint as opposed to porting their numbers to Sprint. Issue 2 and Issue 3 are both

1 asking for modification to the extent that there is a requirement for Swiftel to pay  
2 for the cost to transport local wireline-to-wireline calls beyond Swiftel's local  
3 service area. These two issues are much like an issue brought before the  
4 Commission in TC04-047 whereby Swiftel sought and received a suspension of a  
5 requirement to provide wireline-to-wireless LNP ("intermodal LNP"). The  
6 difference, therefore, between the issue in TC04-047 and issues (2) and (3) was  
7 that in TC04-047, one of the questions before the South Dakota Public Utilities  
8 Commission (the "Commission") was whether RLECs should be required to pay  
9 for transport to wireless carriers to locations outside of the Swiftel local calling  
10 area and under issues (2) and (3) the question is whether there is a requirement for  
11 the RLEC, Swiftel, to pay for transport to a CLEC location outside of the Swiftel  
12 local service area even though the CLEC is operating in Swiftel's exchange.  
13 In TC04-047, the Commission suspended the LNP requirement in large part, due  
14 to the cost of transport. According to the Commission, a source of significant  
15 uncertainty concerning the obligations and resulting costs to the RLECs and their  
16 customers was the unresolved apportionment of interconnection and transport  
17 obligations of the RLEC and the requesting wireless carrier.<sup>2</sup> As the Commission  
18 observed in granting Swiftel its suspension in TC04-047,<sup>3</sup> a proceeding is pending  
19 before the FCC to address this unresolved issue regarding the apportionment of  
20 transport costs for wireline-to-wireless calls when the wireless carrier has no point

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<sup>2</sup> See *In the Matter of the Petition of Brookings Municipal Utilities D/B/A Swiftel Communications for Suspension or Modification of 47 U.S.C. § 251(B)(2) of the Communications Act of 1934 as Amended*, TC04-052, Final Decision and Order; Notice of Entry, at para. 41.

<sup>3</sup> *Id.* at para. 22.

1 of interconnection (“POI”) within the RLECs local service area.<sup>4</sup> To date, the  
2 FCC has not resolved this outstanding issue.<sup>5</sup>

3 **Q13. The Commission granted Swiftel’s Petition for Suspension and Modification**  
4 **in TC04-047 in part due to uncertainty regarding transport obligations on**  
5 **calls from an RLEC to a wireless provider. Do you believe that there is**  
6 **requirement for Swiftel to pay the cost of transport for calls terminating to**  
7 **another Local Exchange Carrier for wireline-to-wireline calls?**

8  
9 **A.** No, I do not. Based upon Sprint’s Petition for Arbitration, Sprint apparently  
10 believes that it can establish a POI anywhere in the LATA, and require Swiftel to  
11 pay to get a local wireline-to-wireline call from the Swiftel local service area in  
12 Brookings to Sprint’s switch located in Sioux Falls, even though Sprint will be  
13 competing with Swiftel only in Brookings. SDTA submits that there is not an  
14 FCC rule that imposes an obligation on Swiftel, to be financially responsible for  
15 the transport of local calls to a CLEC such as Sprint/MCC at a location outside of  
16 the exchange in which Swiftel and Sprint/MCC compete for end user subscribers.  
17 Assuming Sprint/MCC captures an end user once served by Swiftel, given the  
18 subscriber will remain at the same location and will be served by Sprint/MCC  
19 facilities within the Brookings exchange, there would be no rationale to require  
20 Swiftel to transport calls from its switch in Brookings to some distant location

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<sup>4</sup> See *In the Matter of Sprint Corp, Petition for Declaratory Ruling Regarding the Routing and Rating of traffic by ILECs*, CC-Docket 01-92, Petition of Sprint, May 9, 2002.

<sup>5</sup> It should also be noted that on March 11, 2005, the United States Court of Appeals for the District of Columbia Circuit remanded to the FCC the *Intermodal LNP Order*, 18 FCC Rcd 23697 (2003), concerning porting between wireline and wireless carriers. The Court determined that the FCC had failed to prepare a Final Regulatory Flexibility Analysis regarding the impact of the *Intermodal LNP Order* on small entities which the Court found to have been required by the Regulatory Flexibility Act (“RFA”). The Court accordingly directed the FCC to prepare the required RFA analysis and stayed future enforcement of the *Intermodal LNP Order* as applied to carriers that qualify as small entities under the RFA until the FCC prepares and published that analysis. To date, such RFA has not been published.

1 outside of the rate center where the subscriber is located and where Sprint/MCC  
2 have facilities to serve that end-user.

3 **Q14. Do the Act and the attendant FCC rules support your position that Swiftel**  
4 **does not have to interconnect with Sprint outside of the Swiftel ILEC**  
5 **network nor require Swiftel to pay for transport costs outside of its network**  
6 **to the Sprint location in Sioux Falls?**

7  
8 A. Yes, they do. Section 251(c)(2) of the Act states, in pertinent part, that an ILEC  
9 only has the “duty to provide, for the facilities and equipment of any requesting  
10 telecommunications carrier, interconnection *with the local exchange carrier’s*  
11 *network . . . at any technical feasible point within the carrier’s network*”  
12 (emphasis added). Section 51.305 of the FCC’s rules, in a consistent manner,  
13 directs “an incumbent LEC shall provide . . . *interconnection with the incumbent*  
14 *LECs network . . . at any technically feasible point within the incumbent LEC’s*  
15 *network . . .*” (emphasis added). The same rule also provides that the  
16 interconnection need only be provided “at a level of quality that is equal to that  
17 which the incumbent LEC provides itself, a subsidiary, an affiliate, or any other  
18 party.”

19 These provisions dictate that that when a CLEC requests interconnection pursuant  
20 to Section 251 of the Act, the incumbent LEC must only establish an  
21 interconnection point within its incumbent LEC network. Rural LECs are not  
22 required to deliver their originating traffic to locations beyond the established POI  
23 on their network facilities.

24 **Q15. For the exchange of local wireline-to-wireline traffic, does an ILEC have any**  
25 **financial responsibility for transport cost beyond its POI?**  
26

1 A. No, it does not. As an example, where two carriers interconnect for purposes of  
2 exchanging local traffic, and as in the case of a traditional Extended Area Service  
3 (EAS) arrangement, a POI between the two networks is established and each  
4 carrier takes responsibility for transport to that POI. Based on the Act and FCC  
5 rules cited above, the POI, for purposes of exchanging local traffic, must be on  
6 the incumbent LEC's network. This limitation is consistent with the obligations  
7 imposed on interconnecting carriers in traditional direct interconnect situations  
8 and is determinative in defining the responsibilities of incumbent carriers in  
9 delivering traffic.

10 **Q16. If a CLEC such as Sprint chooses to locate its switch in a distant location**  
11 **from where it is providing local service and interconnect indirectly and**  
12 **utilize transit services to transport its traffic to the rural carrier's service**  
13 **area, are there any FCC rules that allows Sprint to shift the related**  
14 **transiting costs to the rural carrier and that rural carrier's customers?**

15 A. No, there are not. The rural carrier remains responsible only for delivering its  
16 originating traffic to the POI within its established ILEC network. In this case, as  
17 Swiftel only provides local exchange services in the exchange of Brookings,  
18 Swiftel's transport responsibility to Sprint does not extend beyond the Brookings  
19 exchange. To the extent Sprint chooses to locate its switch in Sioux Falls and  
20 chooses to use the network or services of another carrier on Sprint's side of the  
21 interconnection point, Sprint is responsible for making those arrangements and is  
22 likewise responsible for the costs arising out of that decision.

23  
24 When CLECs choose to locate their switching facilities at locations well outside  
25 the local calling area and choose to use indirect connections for their network  
26 efficiency benefits, RLECs should not be responsible to pay the cost of

1 transporting traffic to these distant, non-local locations. CLECs may elect to  
2 deploy their network in ways that are the most efficient for them, which they  
3 believe will foster competition in rural areas. In doing so, many CLECs limit the  
4 deployment of switches and utilize long haul transport facilities of tandem  
5 providers to connect to the networks of RLECs such as Swiftel. The current FCC  
6 rule which requires interconnection within the ILEC network places the  
7 responsibility for the cost of this transport be placed on the cost causer --  
8 specifically, the carrier that locates its “local switching” facilities far from the  
9 RLEC’s serving area in which the CLEC will or is providing its competitive local  
10 service.

11 **Q17. Would requiring an RLEC to be responsible for the cost of transport created**  
12 **by the network design choices of Sprint be contrary to good universal service**  
13 **policy?**

14 **A.** Yes it would. Sprint is seeking to impose additional transport cost on Swiftel’s  
15 end-users. Shifting additional costs to Swiftel and their end-users to transport  
16 calls to locations far removed from the existing service area is contrary to good  
17 universal service policy. The challenges of preserving universal service in high-  
18 cost rural areas are already substantial and should not be increased by adopting a  
19 position that works to shift even greater costs to rural carriers such as Swiftel and  
20 their subscribers, particularly costs associated with network facilities outside of  
21 the existing RLEC service areas.  
22

23  
24 **4. Modification of Dialing Parity to the Extent it Requires Swiftel to**  
25 **Transport ILEC to CMRS Calls Outside of its Local Service Area.**  
26

27 **Q18. Will you please explain your understanding of this issue?**  
28

1    **A.**    Yes, I will. This issue is similar to the issue decided by the Commission in the  
2            wireline-to-wireless LNP proceedings. As previously referenced, the proceeding  
3            specific to Swiftel was TC04-047. As I discussed previously in my testimony, in  
4            the LNP proceedings, the Commission granted the ILECs' request for suspension  
5            and modifications in part due to the significant uncertainties concerning the  
6            obligations and resulting costs to the ILECs and their customers due to the  
7            unresolved apportionment of interconnection and transport obligations of the  
8            RLEC and the requesting wireless carrier.<sup>6</sup> The only difference between the LNP  
9            proceedings and what Sprint is currently requesting is that instead of an RLEC  
10           having to transport a call to a ported number, Sprint, as a wireless carrier would  
11           have to have numbers assigned to it by the North American Numbering  
12           Administrator. Such numbers would need to be assigned to the Brookings rate  
13           center. Therefore, when a Swiftel wireline subscriber makes a call to a subscriber  
14           with a Sprint wireless number rated to the Brookings rate center, the wireline  
15           subscriber would dial the number on a 7-digit locally rated basis. Swiftel would  
16           then route such call to Sprint Wireless at a location within the LATA. Much like  
17           the LNP proceedings, the issue of whether or not Swiftel should have to pay for  
18           the cost of transport from Swiftel's local calling area to a location within the  
19           LATA of the CMRS carrier's choosing is the focus.

20    **Q19. Do you believe there is a requirement for Swiftel to pay for the cost of**  
21    **transport for wireline-to-wireless calls in which it must seek a suspension or**  
22    **modification from such requirement?**  
23

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<sup>6</sup> See *In the Matter of the Petition of Brooking Municipal Utilities D/B/A Swiftel for Suspension or Modification of 47 U.S.C. § 251(B)(2) of the Communications Act of 1934 as Amended*, TC04-047, Final Decision and Order; Notice of Entry, at para. 41.

1 A. Unlike the previous two issues, it would appear that there is a requirement for  
2 which Swiftel must seek a suspension or modification.

3  
4 **Q20. What venue was this requirement established?**

5  
6 A. As referenced in the Swiftel Petition, this requirement was established in the  
7 Eighth Circuit Court case.

8  
9 **Q21. Were you a witness on this issue in the Great Plains Communications, Inc.**  
10 **(“Great Plains”)–WWC License, L.L.C. (“Western Wireless”) arbitration**  
11 **case which decision was appealed to the U.S District Court of Nebraska and**  
12 **then to the Eighth Circuit?**

13  
14 A. Yes, I was.

15  
16 **Q22. Will you please explain your understanding of the Eighth Circuit’s decision**  
17 **as it relates to Local Dialing Parity to Wireless Carriers?**

18  
19 A. Yes, I will. The Eighth Circuit heard the issue after Western Wireless, a CMRS  
20 carrier and Great Plains, an ILEC, both appealed a district court judgment  
21 affirming in part and reversing in part, two rulings from the Nebraska Public  
22 Service Commission. One of the issues heard by the Eighth Circuit was identified  
23 by the parties as tandem routing and local dialing parity.

24 As back ground, the Court stated that the issue of tandem routing and local dialing  
25 parity concerns the effects of Western Wireless’s election not to directly connect  
26 with the Great Plains networks in each of the Great Plains local exchange area.

27 Since Western Wireless’s customers might live within the geographic boundaries  
28 of Great Plains network, the customers could have numbers that are rated to that  
29 location. With tandem routing, however, a call from the Great Plains network to  
30 the Western Wireless customer would have to travel to a routing point at the



1 interexchange carrier's tandem switch, a location potentially far away from the  
2 edge of the Great Plains network and rating location. The parties refer to this  
3 divergence as the issue of separate rating and routing points for numbers or  
4 separately rated and routed calls.<sup>7</sup>

5 **Q23. What was the contract language that was proposed by Great Plains?**

6 **A.** Great Plains proposed the following language:

7 In those Great Plains exchanges where Western Wireless has not  
8 requested a direct connection to Great Plains..., Great Plains shall  
9 continue to route calls originating from its exchanges to Interexchange  
10 Carriers in compliance with its equal access and toll dialing parity  
11 requirements.  
12

13 **Q24. What was the contract language that was proposed by Western Wireless?**

14 **A.** Western Wireless proposed the following language:

15 If Western Wireless obtains numbers, and rates those numbers to a  
16 Great Plains rate center where Western Wireless is licensed to provide  
17 service, calls from that rate center to the Western Wireless number  
18 block must be dialed as local calls and delivered to Western Wireless  
19 at a point of direct connection (if applicable) or at the third-party  
20 tandem.  
21

22 **Q25. Based upon Western Wireless' proposed language, in your view, in what**  
23 **instances would local dialing parity apply?**

24  
25 **A.** Local dialing parity would apply only in those instances where the wireless carrier  
26 has a number block that is rated as local to the exchange in which the landline  
27 subscriber originates the call. As the District Court stated, "Western Wireless is  
28 not proposing that all calls within an MTA be provided local treatment, but only  
29 that calls from a Great Plains customer to a Western Wireless customer with a  
30 locally rated numbers would have local calling."

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<sup>7</sup> See *United States Court of Appeals, for the Eighth Circuit*, No. 05-1725, WWC License., Plaintiff-Appellee v. Great Plains Communications, Inc., Defendant-Appellant, ("Eighth Circuit") at page 8.

1 **Q26. You previously stated that Issue 4 is similar to the issue decided by the**  
2 **Commission in the wireline-to-wireless LNP proceedings since the**  
3 **Commission granted the ILECs’ request for suspension and modifications in**  
4 **part due to the significant uncertainties concerning the obligations and**  
5 **resulting costs to the ILECs and their customers due to the unresolved**  
6 **apportionment of interconnection and transport obligations of the RLEC**  
7 **and the requesting wireless carrier. What did the Eighth Circuit state**  
8 **regarding apportionment of cost?**  
9

10 **A.** The Eighth Circuit stated, “We understand the issue of local dialing parity and  
11 tandem routing to be an issue of cost apportionment. If Western Wireless is  
12 required to establish and maintain points of direct interconnection within each  
13 individual Great Plains local exchange area, Western Wireless will face a  
14 substantial price for market entry. On the other hand, if Great Plains is required  
15 to extend local dialing parity to those Western Wireless customers who possess  
16 locally rated number, Great Plains will be required to bear the expense of  
17 transporting calls outside its local exchange networks.”<sup>8</sup>

18  
19 **Q27. What did the Eighth Circuit ultimately determine?**  
20

21 **A.** The Eighth Circuit ruled in favor of Western Wireless but recognized the  
22 following; “neither Congress nor the FCC has expressly defined the relevant area  
23 for a local exchange carrier’s provision of local dialing parity to a wireless  
24 competitor. Further, the FCC and the industry are well aware of the outstanding  
25 question, as demonstrated by the subject matter of a pending petition for  
26 declaratory ruling before the FCC. See Sprint Corp, Petition for Declaratory  
27 Ruling Regarding the Routing and Rating of Traffic by ILECs, CC Docket No.  
28 01-92 (May 9, 2002) (“Sprint Petition”) (Sprint, on behalf of its wireless division,  
29 asking the FCC to define the scope of the duty to provide local dialing parity

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<sup>8</sup> See *Eighth Circuit Decision*, at p. 13.

1 when there exists no direct point of interconnection within the local exchange  
2 network); Comments Sought on Sprint Petition for Declaratory Ruling Regarding  
3 the Routing and Rating of Traffic by ILECs, (establishing the pleading cycle and  
4 soliciting further comment on the Sprint Petition). In fact, on March 3, 2005, the  
5 FCC solicited further comments on the Sprint Petition, but the FCC has not yet  
6 issued a ruling. See Developing a Unified Intercarrier Compensation Regime, CC  
7 Docket No. 01-92, Further Notice of Proposed Rulemaking, FCC-05-33 (2005)  
8 (recognizing the continued pendency of the Sprint Petition and calling for further  
9 comments).”<sup>9</sup>

10 Although the Eighth Circuit ruled in favor of Western Wireless, the Eighth Circuit  
11 stated “that if and when the FCC rules, we may be required to revisit the issue. At  
12 such time, we would be armed with better arguments and a better understanding  
13 of the issue based upon the FCC’s expertise.”<sup>10</sup>

14 **Q28. Do you believe that Swiftel should be granted a suspension or modification of**  
15 **wireline-to-wireless local dialing parity?**

16  
17 **A.** Based upon Swiftel’s projected additional transport cost that would be incurred  
18 if wireless carriers request separate rating and routing and local dialing parity, I  
19 believe Swiftel’s Petition for suspension or modification should be granted on this  
20 issue. In addition, there continues to be uncertainty regarding how the FCC will  
21 ultimately rule on this issue. Granting Swiftel’s Petition for suspension and

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<sup>9</sup> The FCC recognized that the record suggests that there are a substantial number of disputes related to how carriers should allocate interconnection costs, particularly when the physical POI is located outside the local calling area where the call originates or when carriers are indirectly interconnected. According to the FCC, the disputes arise in part because of a lack of clarity among the various rules governing the costs of interconnection facilities. The FCC also noted that petitions have been filed seeking to clarify a LEC’s current obligations with regard to the rating and routing of calls to wireless numbers that are associated with the LEC’s rate center [See paragraph 143].

<sup>10</sup> *Id.*, at page 18.

1 modification on this issue would be consistent with the Commission’s previous  
2 suspension or modification on LNP based on the “resulting costs to the ILECs and  
3 their customers and unresolved apportionment of transport obligations.”

4 In addition, as Swiftel’s witness Ms. Shotwell testified, “the modifications  
5 requested by Swiftel would essentially preserve the status quo under which the  
6 wireless carriers have been operating since the implementation of the Act, during  
7 which time they have significantly increased the growth of wireless customers in  
8 South Dakota and other states.” (See Shotwell testimony, p.18, lns 13-18)

9 SDTA submits that granting the modifications requested by Swiftel will prevent a  
10 substantial increase in cost being incurred by Swiftel’s customers.

11 As was stated at the outset of this testimony, SDTA’s testimony is based on the  
12 pecuniary interests of other SDTA member LECs that are likely to be bound and  
13 affected either favorably or adversely by the outcome of this proceeding. As  
14 such, attached as an exhibit (Attachment A) to this testimony, are the direct DS1  
15 costs that the SDTA members would incur should a wireless carrier make a  
16 similar request to each of them to route wireless calls to Sioux Falls.

17 **5. Modification of Toll Dialing Parity such that Swiftel is not Required to**  
18 **Perform the Equal Access Function at the End Office or Establish Access**  
19 **Transport Facilities other than the Common Trunks to the South Dakota**  
20 **Network.**  
21

22 **Q29. Will you please explain your understanding of Sprint’s request that caused**  
23 **Swiftel to seek a suspension or modification of its toll dialing parity**  
24 **obligation?**  
25

26 **A.** Yes, I will. When Sprint CLEC requested to exchange local traffic with Swiftel,  
27 Sprint requested a direct trunk group with Swiftel and proposed that the direct

1 trunk group would also be used to transport intrastate and interstate access traffic.  
2 In addition, Sprint proposed for Swiftel to share in the cost of the direct trunk  
3 group to the Sprint location in Sioux Falls based partially on the amount of access  
4 traffic on this direct trunk.

5 **Q30. Do you believe Swiftel must negotiate and arbitrate the terms and conditions**  
6 **of Intrastate and Interstate Exchange Access pursuant to Sections 251(c) and**  
7 **252 of the Act?**

8  
9 **A.** No, I do not. SDTA submits that Swiftel has no obligation to discuss the terms  
10 and conditions of access traffic as part of Sprint’s request to negotiate the  
11 exchange of local traffic pursuant to Section 251(b). The terms and conditions  
12 that apply with respect to the provision of Exchange Access service are governed  
13 by State and Interstate access tariffs and price-lists and are not subject to  
14 negotiations pursuant to Section 251(c) of the Act.

15 **Q31. Does Sprint’s request as a CLEC for the exchange of local ILEC to CLEC**  
16 **traffic have any effect on the manner in which Swiftel routes its originating**  
17 **Exchange Access traffic?**

18  
19 **A.** No, it does not.

20 **Q32. Does Sprint’s request have any effect on the manner in which Swiftel receives**  
21 **compensation for the routing of Exchange Access traffic?**

22  
23 **A.** No, it does not. Congress expressly preserved the access charge regime in  
24 Section 251(g) of the Act which states in relevant part;

25 “On and after the date of enactment of the Telecommunications Act of  
26 1996, each local exchange carrier....shall provide exchange access,  
27 information access, and exchange services to interexchange carriers  
28 and information service providers in accordance with the same equal  
29 access and non-discriminatory interconnection restrictions and  
30 obligations (including the receipt of compensation) that apply to such  
31 carrier on the date immediately preceding the date of enactment of the  
32 Telecommunications Act of 1996.”  
33

1 **Q33. Is Sprint's request for Swiftel to route originating access traffic directly to**  
2 **Sprint over a direct connection contrary to findings of the FCC and this**  
3 **Commission, whereby SDN was established to provide centralized equal**  
4 **access on behalf of the rural LECs in South Dakota?**

5  
6 **A.** Yes, it is. Sprint's request would require Swiftel to perform the equal access  
7 functions at the Swiftel end office that are currently being performed on its behalf  
8 by SDN. Consistent with the Orders of the FCC<sup>11</sup> and the Commission,<sup>12</sup> Swiftel  
9 routes its access traffic to SDN where the equal access function is performed.  
10 SDN then routes the call to the end user subscriber's preferred interexchange  
11 carrier.

12 **Q34. According to the current NECA tariff, is Sprint allowed to Order the type of**  
13 **Direct Trunk for Exchange Access that it is currently requesting of Swiftel?**

14  
15 **A.** No, it is not. According to the National Exchange Carrier Association's FCC  
16 Tariff No. 5, Direct Trunked Transport is not available from end offices that  
17 provide equal access through a centralized Equal Access arrangement.<sup>13</sup> Sprint  
18 should not be allowed to circumvent switched access tariff provisions through its  
19 request to exchange local ILEC to CLEC traffic by means of its request for  
20 interconnection and the exchange of such local traffic pursuant to sections 251(b)  
21 and 251(c) of the Act.

22 **Q35. How should the Commission dispose of this issue?**  
23

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<sup>11</sup> See *In re the Application of SDCEA, Inc.*, File No. W-P-C-6486, Memorandum Opinion, Order and Certificate, November 21, 1990, DA 90-1654.

<sup>12</sup> See *In the Matter of the Application of South Dakota Network, Inc. and SDCEA, Inc., for Permission to Construct Centralized Equal Access Facilities*, Second Amended Order Granting Construction Permit and Approving Tariff, F-3860, February 14, 1994.

<sup>13</sup> See *National Exchange Carrier Association, Inc. (NECA) Tariff, F.C.C. No. 5*, 6<sup>th</sup> Revised at Section 5.2.1, Switched Access Service.

1 A. The Commission should deny Sprint's request outright and order Sprint to  
2 continue to order Exchange Access from the appropriate Intrastate and Interstate  
3 Access tariffs.

4 **6. Modification of Requirements that would Prevent Swiftel from Collecting**  
5 **Access Charges on Toll Traffic.**

6  
7 **Q36 Swiftel requests that the Commission modify any requirement that Swiftel**  
8 **would not be able to collect access charges for toll traffic. Would a request**  
9 **by Sprint that would prevent Swiftel from collecting access charges on calls**  
10 **routed to IXCs be consistent with the Act?**

11  
12 A. No, it would not be consistent with the Act. Specifically, Section 251(g) of the  
13 Act retained the access charge regime for calls routed to IXCs. Therefore, SDTA  
14 submits that there is no requirement that would prevent Swiftel from collecting  
15 access charges on traffic that is routed to an IXC.

16 **Q37. Does this conclude your testimony?**

17  
18  
19 A. Yes, it does.  
20  
21  
22

Transport Cost From Each SDTA Member To Sioux Falls

Company	From	To	Airline Miles	DS-1s	Rate Band	Channel Mileage Terms	Channel Terms	NRC	MRC	Total
1 Beresford	Beresford	Sioux Falls	27	2	2	2	1	\$791	\$1,648.50	\$2,439.50
2 CRST	Eagle Butte	Sioux Falls	242	2	2	2	1	\$791	\$9,336.90	\$10,127.90
3 Faith	Faith	Sioux Falls	281	2	3	2	1	\$791	\$10,851.48	\$11,642.48
4 GWTC	Wall	Sioux Falls	275	2	3	2	1	\$791	\$10,634.52	\$11,425.52
	Hot Springs	Sioux Falls	336	2	3	2	1	\$791	\$12,840.28	\$13,631.28
	Philip	Sioux Falls	247	2	3	2	1	\$791	\$9,622.04	\$10,413.04
	Pine Ridge	Sioux Falls	294	2	3	2	1	\$791	\$11,321.56	\$12,112.56
5 Vivian	Freeman	Sioux Falls	37	2	3	2	1	\$791	\$2,028.44	\$2,819.44
	Winner	Sioux Falls	157	2	3	2	1	\$791	\$6,367.64	\$7,158.64
	Custer	Sioux Falls	344	2	3	2	1	\$791	\$13,129.56	\$13,920.56
	Burke	Sioux Falls	130	2	3	2	1	\$791	\$5,391.32	\$6,182.32
	Mission	Sioux Falls	193	2	3	2	1	\$791	\$7,669.40	\$8,460.40
	Rosebud	Sioux Falls	207	2	3	2	1	\$791	\$8,175.64	\$8,966.64
6 ITC	Brookings Rural	Sioux Falls	53	2	3	2	1	\$791	\$2,607.00	\$3,398.00
	Clear Lake	Sioux Falls	83	2	3	2	1	\$791	\$3,691.80	\$4,482.80
7 Jefferson	Jefferson	Sioux Falls	66	2	2	2	1	\$791	\$3,043.14	\$3,834.14
8 Kennebec	Kennebec	Sioux Falls	157	2	2	2	1	\$791	\$6,297.30	\$7,088.30
9 McCook	Salem	Sioux Falls	31	2	3	2	1	\$791	\$1,811.48	\$2,602.48
10 Midstate	Kimball	Sioux Falls	106	2	1	2	1	\$791	\$4,308.30	\$5,099.30
11 Roberts Cnty	New Effington	Sioux Falls	159	2	3	2	1	\$791	\$6,439.96	\$7,230.96
12 Santel	Woonsocket	Sioux Falls	81	2	3	2	1	\$791	\$3,619.48	\$4,410.48
13 Stockholm	Stockholm	Sioux Falls	107	2	3	2	1	\$791	\$4,559.64	\$5,350.64
14 Venture	Highmore	Sioux Falls	137	2	2	2	1	\$791	\$5,582.10	\$6,373.10
	Britton	Sioux Falls	162	2	2	2	1	\$791	\$6,476.10	\$7,267.10
	Roslyn	Sioux Falls	139	2	2	2	1	\$791	\$5,653.62	\$6,444.62
	Sisseton	Sioux Falls	147	2	2	2	1	\$791	\$5,939.70	\$6,730.70
15 Swiftel	Brookings City	Sioux Falls	53	2	2	2	1	\$791	\$2,578.26	\$3,369.26
16 Tri-County	Salem	Sioux Falls	31	2	3	2	1	\$791	\$1,811.48	\$2,602.48
17 Union	Hartford	Sioux Falls	11	2	2	2	1	\$791	\$1,076.34	\$1,867.34
18 Valley	Herreid	Sioux Falls	226	2	2	2	1	\$791	\$8,764.74	\$9,555.74
19 West River	Bison	Sioux Falls	312	2	3	2	1	\$791	\$11,972.44	\$12,763.44
20 West River	Mobridge	Sioux Falls	227	2	2	2	1	\$791	\$8,800.50	\$9,591.50
21 Prairie Wave	Irene	Sioux Falls	38	2	2	2	1	\$791	\$2,041.86	\$2,832.86
22 Alliance	Crooks	Sioux Falls	9	2	3	2	1	\$791	\$1,015.96	\$1,806.96
	Garretson	Sioux Falls	18	2	other	2	1	\$545	\$1,197.62	\$1,742.39
23 Fort Randall	Wagner	Sioux Falls	84	2	3	2	1	\$791	\$3,727.96	\$4,518.96
	Mt Rushmore	Sioux Falls	334	2	3	2	1	\$791	\$12,767.96	\$13,558.96
24 Armour	Armour	Sioux Falls	82	2	3	2	1	\$791	\$3,655.64	\$4,446.64
25 Bridgewater	Bridgewater	Sioux Falls	37	2	3	2	1	\$791	\$2,028.44	\$2,819.44
26 Sioux Valley	Dell Rapids	Sioux Falls	19	2	3	2	1	\$791	\$1,377.56	\$2,168.56
27 Western	Faulkton	Sioux Falls	156	2	3	2	1	\$791	\$6,331.48	\$7,122.48
28 Kadoka	Kadoka	Sioux Falls	238	2	2	2	1	\$791	\$9,193.86	\$9,984.86
29 James Valley	Groton	Sioux Falls	147	2	other-2	2	1	\$566	\$5,574.30	\$6,140.63



## Interstate Rates

### NECA RATES AS OF JULY 1, 2006:

<u>Non-recurring Rates</u>		<u>Monthly Recurring Rates</u>			
<u>Installation Per Channel Term</u>	<u>Access Order</u>	<u>Rate Band</u>	<u>Channel Termination</u>	<u>Facility Per Mile</u>	<u>Channel Mileage Termination</u>
\$349.00	\$93.00	1	\$159.05	\$17.22	\$84.89
		2	\$165.17	\$17.88	\$88.16
		3	\$167.00	\$18.08	\$89.13

### Alliance Rates as of July 1, 2005

<u>Non-recurring Rates</u>		<u>Monthly Recurring Rates</u>			
<u>Installation Per Channel Term</u>	<u>Access Order</u>	<u>Rate Band</u>	<u>Channel Termination</u>	<u>Facility Per Mile</u>	<u>Channel Mileage Termination</u>
\$217.91	\$108.95	other	\$149.11	\$16.14	\$79.59

### James Valley Rates as of July 1, 2005

<u>Non-recurring Rates</u>		<u>Monthly Recurring Rates</u>			
<u>Installation Per Channel Term</u>	<u>Access Order</u>	<u>Rate Band</u>	<u>Channel Termination</u>	<u>Facility Per Mile</u>	<u>Channel Mileage Termination</u>
\$226.53	\$113.27	other-2	\$155.01	\$16.78	\$82.74