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**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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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

TC07-007

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Transcript of Proceedings
July 29, 2008

ORIGINAL

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BEFORE THE PUBLIC UTILITIES COMMISSION,
GARY HANSON, CHAIRMAN
STEVE KOLBECK, VICE CHAIRMAN
DUSTY JOHNSON, COMMISSIONER

COMMISSION STAFF

Rolayne Ailts Wiest
Kara Semmler
Greg Rislov
Harlan Best
Terri LaBrie Baker
Dave Jacobson
Bob Knadle
Brian Rounds
Deb Gregg

APPEARANCES

Talbot Wieczorek
Mary Sisak (by telephone)
Brett Koenecke

PRECISION REPORTING

Cheri Wittler, RPR, CRR



1 TRANSCRIPT OF PROCEEDINGS, held in the above-entitled
2 matter, at the Joe Foss Building, 523 East Capitol Avenue,
3 Pierre, South Dakota, on the 29th day of July 2008, commencing
4 at 9:40 a.m.

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1 CHAIRMAN HANSON: We are on item TC07-007, In the
2 Matter of the Petition of Brookings Municipal Utilities doing
3 business as Swiftel Communications For Suspension or
4 Modification of Dialing Parity, Number Portability, and
5 Reciprocal Compensation Obligations.

6 We will take Swiftel's Motion to Compel filed against
7 Midcontinent first.

8 MS. SISAK: Thank you. This is Mary Sisak on behalf
9 of Swiftel. It is our understanding that Midcontinent has filed
10 to withdraw from this case and, therefore, possibly it's
11 appropriate to put this Motion to Compel to a later date. If
12 Midcontinent's motion is granted, then it would seem no need to
13 go forward.

14 CHAIRMAN HANSON: Is Midcontinent represented here?
15 Mr. Gerdes.

16 MR. GERDES: Chairman, I hope so. I'm Dave Gerdes.
17 Yes, sir. I'm sorry. I was not paying attention earlier.
18 What's the question?

19 CHAIRMAN HANSON: Ms. Sisak stated that -- or yes,
20 stated that it was her understanding that Midcontinent had
21 withdrawn.

22 MR. GERDES: We have filed a Motion to Withdraw,
23 that's correct, Mr. Chairman, from this docket.

24 CHAIRMAN HANSON: Thank you. Ms. Wiest, what action
25 is necessary from the Commission then?

1 MS. AILTS WIEST: I think I would agree with Ms. Sisak
2 that since there is a pending motion to withdraw that this
3 Motion to Compel should just be deferred at this time.

4 CHAIRMAN HANSON: All right. Thank you. We will
5 defer it then.

6 Swiftel's Motion to Compel filed against MCC, item
7 number 2.

8 MS. SISAK: Yes. This is Mary Sisak again. Swiftel
9 filed discovery and request for production of documents, served
10 them on Mediacom. Mediacom failed to respond or to object to
11 any of Swiftel's Interrogatories or document requests. Swiftel
12 sent a number of e-mail communications to Mediacom asking if
13 they intended to respond.

14 We did receive one response from them that they did
15 intend to respond. However, we received no response. And
16 last -- or yesterday, I believe, Mediacom filed a motion to join
17 in Sprint's argument against Swiftel's Motion to Compel Sprint
18 to respond to Interrogatories.

19 I have a couple of points to make about that. First
20 it is our argument that because Mediacom failed to object in a
21 timely fashion to any of the discovery requests or requests for
22 production of documents, that they have lost that opportunity to
23 object, and they must now simply respond to all of the
24 questions.

25 Two, with respect to a motion to join in Sprint's

1 argument, I don't believe that's an appropriate motion.
2 Mediacom and Sprint are two separate parties. They have filed
3 to intervene separately in this case. They were granted party
4 status separately in this case.

5 Swiftel served separate questions and, in fact,
6 different questions on Mediacom, questions different than the
7 ones that were served on Sprint. And, therefore, it's simply
8 not possible for Sprint's arguments to also apply to the
9 questions propounded to Mediacom.

10 And, therefore, we would ask the Commission to order
11 Mediacom to answer all of the questions and produce all of the
12 documents requested.

13 CHAIRMAN HANSON: Thank you. Is Mediacom represented?

14 MR. KOENECKE: Yes, we are, Commissioner.

15 Brett Koenecke for Mediacom. I apologize to Ms. Sisak. As
16 everyone knows, there are a number of ongoing dockets regarding
17 Swiftel, Mediacom, and Sprint and other related parties.

18 We entered into a stipulation recently to get out of
19 dockets involving similar issues, and I'll just come in with
20 palms up and say I confess that I thought this was one of those
21 dockets that we were getting out of.

22 Ms. Cremer alerted me to that on Thursday afternoon
23 and I wish I had the luxury Mr. Gerdes had of just being able to
24 get out of this docket but I don't. I focused my attention this
25 weekend on preparing the dockets I owed Ms. Sisak under her

1 motion and other dockets we're going to consider later here and
2 filed the joinder as sort of a last-ditch effort.

3 I would ask the Commission to just simply treat
4 Mediacom similarly with Sprint. We're both seeking to join
5 forces in that -- the Brookings territory. And if that's not
6 appropriate, then we will answer the questions and do so as soon
7 as we possibly can. I apologize to Ms. Sisak and the
8 Commission. We just dropped the ball.

9 CHAIRMAN HANSON: Well, we can probably help you get
10 out of it if you really want to get out of it.

11 Ms. Sisak, do you have a reply?

12 MS. SISAK: Well, if I understand Mr. Koenecke's
13 comment, he I believe offered to answer all of the questions,
14 and that is what we -- that's what Swiftel is requesting that
15 the Commission order them to do in the Motion to Compel. So we
16 would agree with that.

17 CHAIRMAN HANSON: Thank you. Ms. Wiest, did you have
18 anything?

19 MS. AILTS WIEST: Did staff have an opinion?

20 MS. CREMER: This is Karen Cremer from staff. And
21 basically I -- staff's position would be they should answer
22 those that are clearly different than Sprint's answer -- well,
23 they need to answer all of them, and if it's the same as
24 Sprint's answer, they can say that. And if it's different, they
25 should answer them.

1 CHAIRMAN HANSON: Thank you. Commissioners, is there
2 a motion or questions?

3 MS. AILTS WIEST: I just have one clarification
4 perhaps. This is Rolayne Wiest. I think the Commission should
5 grant the Motion to Compel for Mediacom to respond. I think
6 Ms. Sisak has said that they lost their right to object to
7 anything. I'm not sure that was actually in her motion. She
8 stated that she reserves the right to file a further motion in
9 the event that Mediacom responds or objects. So to the extent
10 that Mediacom objects, I think we would take that up, you know,
11 at a different date.

12 So at this point I believe what the Commission should
13 do is direct -- or grant the Motion to Compel that Mediacom does
14 need to respond to these discovery.

15 CHAIRMAN HANSON: Thank you. Commissioners, is there
16 a motion?

17 COMMISSIONER KOLBECK: I'll motion as the staff's
18 request that Mediacom needs to respond to the Motion to Compel.

19 CHAIRMAN HANSON: According to the recommendations by
20 staff.

21 COMMISSIONER KOLBECK: Yes.

22 CHAIRMAN HANSON: Discussion? Commissioner Johnson.

23 COMMISSIONER JOHNSON: Aye.

24 CHAIRMAN HANSON: Commissioner Kolbeck.

25 COMMISSIONER KOLBECK: Aye.

1 CHAIRMAN HANSON: Hanson votes aye. The motion
2 carries.

3 The third item before us at this time is Swiftel's
4 Motion to Compel against Alltel.

5 Ms. Sisak.

6 MS. SISAK: Thank you. Swiftel has filed a number
7 of -- or filed to compel a number of Interrogatories and
8 document requests against Alltel. And Alltel in its response
9 has further clarified and supplemented some of the questions.
10 And so I will point that out as we go through them.

11 The first group of questions that Swiftel raised,
12 Interrogatories 3, 7, 8, and 9, they all ask Alltel to identify
13 information about telecommunications carriers that they exchange
14 traffic with, interconnection arrangements that they have in
15 South Dakota and MTA-12 carriers that they're porting numbers to
16 and switches that they are interconnected with.

17 And all of this information is important and relevant
18 to go to the claim and the arguments made by Swiftel in its
19 Petition, Suspension Petition, concerning the burden that will
20 be imposed on Swiftel if its Suspension Petition is not granted.

21 Alltel essentially argues that -- a couple of things.
22 One is that -- that it only seeks to have Swiftel carry traffic
23 to Sioux Falls and, therefore, any information about any other
24 points in South Dakota where traffic may or may not be carried
25 are not relevant.

1 They also argue that it is Swiftel's burden to prove
2 its case, and it seems to me that their argument is essentially
3 that we have to come up with all the information and they
4 shouldn't have to provide any information to help us prove that
5 argument.

6 We believe that their arguments on both points are
7 simply wrong. Alltel intervened in this case and obtained full
8 party status and, therefore, as a party to this case all of the
9 rights of being a party apply to Alltel. But all of the
10 obligations of being a party also apply to Alltel.

11 We would also point out that although it is Swiftel's
12 burden to prove its case, Swiftel also has the right to respond
13 to the arguments made by the other parties that -- the arguments
14 that the other parties raised to refute Swiftel's case. And, in
15 fact, the information that we are requesting directly goes to
16 various arguments and claims made by Alltel and by Sprint that
17 seek to refute Swiftel's cost showing.

18 As to Alltel's point that they only seek to have
19 Swiftel carry traffic to Sioux Falls and, therefore, because of
20 this concession no other information is relevant, well, that's
21 simply not correct. The legal argument that Alltel and Sprint
22 both make to justify their claim that Swiftel must carry traffic
23 to Sioux Falls is that Swiftel is required by law to carry
24 traffic anywhere within the LATA. Simply because Alltel -- even
25 if you assume for the sake of argument that they would never

1 request anything other than Swiftel to carry traffic to
2 Sioux Falls, it's the legal principle that Swiftel is seeking a
3 suspension of. And Swiftel is basically asking this Commission
4 to say, no, it would be too costly and too burdensome to require
5 Swiftel to comply with a legal requirement that they carry
6 traffic anywhere in the LATA.

7 Now this is the -- you know, the legal principle that
8 Alltel and Sprint are putting forward, and this is the basis of
9 Swiftel's petition asking -- even if that is the legal
10 requirement, don't make Swiftel do it and the right we have
11 under the Communications Act to make that argument is the
12 suspension petition process.

13 But I would also point out a couple of practical
14 things about Alltel's supposed concession. One is Alltel --
15 even if Alltel makes this concession on its behalf, it cannot
16 make this concession on behalf of any other carrier that would
17 seek to take advantage of a legal principle established that
18 Swiftel must carry traffic anywhere in the LATA.

19 And I would also note that as a practical matter
20 Alltel's concession is rather meaningless since it appears
21 Alltel will no longer be providing service in South Dakota as of
22 the end of this year when Verizon acquires them.

23 So for all of those reasons we believe that Alltel's
24 arguments against our motion must fail, and our Motion to Compel
25 should be granted.

1 CHAIRMAN HANSON: Mr. Wieczorek.

2 MR. WEICZOREK: Thank you, Mr. Chair. Can everybody
3 hear me okay on this thing? First a couple of points. Before I
4 jump into the specific Interrogatories, I think our brief does a
5 pretty good job of explaining what's going on here.

6 This Commission's already heard today different
7 arguments over relevancy and things like that. But I think it's
8 important to remember the test of relevancy or whether
9 something's discoverable turns on the issues in play. As my
10 brief fully describes, Swiftel's primary point here is a
11 transport question. So the question really becomes what is the
12 cost for Swiftel to transport.

13 Now Alltel in response to these first -- her first
14 block of Interrogatories -- well, from out of the gate Alltel in
15 its initial responses said, hey, look, we're not going to ask
16 you to take it anywhere but Sioux Falls. Now she did ask
17 another question saying what do you think Swiftel's obligation
18 is under the law? Well, take it somewhere in the LATA. We
19 think that's what the law requires. But we're not going to ask
20 you to take it anywhere but Sioux Falls.

21 So I am at a loss to understand how knowing whether we
22 have a POI in Martin, South Dakota to exchange traffic has any
23 bearing on this case. This Commission could very well decide,
24 yes, you have an obligation to deliver traffic within a LATA but
25 we're going to give you a suspension saying you don't have to

1 take it anywhere but Sioux Falls. That's the concession
2 Alltel's given.

3 So how in the world -- every switch we connect to is
4 Alltel. Every switch in MTA-12, directly or indirectly we have
5 to provide that. Where do we deliver our traffic to any company
6 in MTA-12 and I believe South Dakota, how is that becoming
7 relevant? The question is what transport's going to have to be
8 provided. Transport for Alltel is to Sioux Falls. That's the
9 concession given.

10 It's almost as if because Alltel intervenes, Alltel
11 now has to somehow carry enough information and provide enough
12 information so Swiftel can say what every other carrier does
13 that didn't intervene.

14 Ms. Sisak is correct an Alltel concession is not
15 necessarily binding on other party -- parties not present. But
16 certainly if Alltel has conceded and nobody else in this
17 proceeding has conceded, we're not asking to take it any further
18 than Sioux Falls. This Commission can very easily decide that's
19 where we're only going to require you to take it.

20 The same reason that Alltel's concession doesn't bind
21 anybody else, all the information on Alltel's network has
22 absolutely no bearing on everybody anybody else's network. So
23 for the argument that they need this information to determine
24 these 14 other carriers they say that they might have to
25 transport traffic to, I don't think that carries any water.

1 On the focus, the focus is on Swiftel. That's the
2 standard. That's the standard this Commission has adopted.
3 That's the standard of the federal act. That's what this
4 Commission has looked at in prior suspensions. So the question
5 is to Swiftel and what has to be proven in this case is where do
6 you have to carry your traffic and what's it going to cost? All
7 that anybody who's intervened is saying, we're only asking to
8 carry it to Sioux Falls, that seems to be the baseline.

9 And the fact that some other company out of --
10 T-Mobile didn't intervene, and they might ask to be carried
11 someplace else. That shouldn't put a burden on Alltel to
12 provide a lot of extra peripheral information that has no
13 bearing on this case or Alltel's position on this case. And I
14 believe that concession remedies the questions and the
15 information requested under those Interrogatories.

16 CHAIRMAN HANSON: Thank you. Staff, did you have
17 anything?

18 MS. CREMER: Well, I didn't have the pleasure of
19 sitting through the last one you had, but when they group these
20 together do you want to take them one by one or do you want me
21 to just group them -- I mean, some of what she's asking for --
22 some of what Brookings is asking for is irrelevant and as to,
23 you know, what are we looking at here, 3 and 4, 7, 8? Yeah.

24 You know, some of it is burdensome and some of it's
25 not relevant and I am -- you know, some of it can be covered by

1 their confidentiality agreement, I believe. I'm not sure how
2 you approach these.

3 MS. AILTS WIEST: I think you just take it -- I mean,
4 if you have a different position on each one, just take them
5 separately.

6 MS. CREMER: I really don't. I don't believe this
7 needs to be granted as to this grouping.

8 MS. AILTS WIEST: Oh, okay.

9 CHAIRMAN HANSON: Commissioners? Any questions?
10 Is there a motion on 3, 7, 8, and 9?

11 COMMISSIONER JOHNSON: I would move that the
12 Commission deny the Motion to Compel with regard to
13 Interrogatories 3, 7, 8, and 9.

14 CHAIRMAN HANSON: Discussion?
15 Commissioner Johnson.

16 COMMISSIONER JOHNSON: Aye.

17 CHAIRMAN HANSON: Commissioner Kolbeck.

18 COMMISSIONER KOLBECK: Aye.

19 CHAIRMAN HANSON: Hanson votes yes. Motion carries.
20 The next item is Interrogatory 4.

21 Ms. Sisak.

22 MS. SISAK: Yes. Interrogatory No. 4, let's see,
23 Alltel -- Interrogatory No. 4 asks Alltel to identify its
24 switches, interoffice transport routes, intercompany
25 transmission facilities, points of interconnection with other

1 carriers, call record data, transport transmission equipment,
2 facilities, and a couple of other things.

3 Alltel essentially argued that they provided this
4 information in Interrogatory 4. And in our Motion to Compel
5 what we'd point out is that the only thing Alltel provided in a
6 response to Interrogatory 4 was two switches. It did not
7 provide any information on interoffice transport routes,
8 intercompany transmission facilities, points of interconnection
9 with other carriers; and, therefore, their answer is not
10 complete.

11 And they also object, although it's not entirely clear
12 which part of the question they object to or whether they object
13 to the entire question. But with respect to this specific
14 information, Swiftel would again make its argument that we have
15 the right to try to prove our case and try to refute their
16 contrary arguments.

17 And one of the things that has been raised and one of
18 the points that Alltel has made is that the cost exhibits
19 provided by Swiftel to show their potential costs are not
20 realistic. And the information which shows where Alltel's
21 existing facilities are and points of interconnection and
22 switches will essentially show what is realistic in the realm of
23 possibility of what Alltel may ultimately require of Swiftel or,
24 frankly, any entity that ultimately purchases Alltel's
25 facilities as a result of the Verizon acquisition of Alltel.

1 And for that reason we would ask that Alltel be
2 compelled to provide the answer for their remaining information
3 requested in Interrogatory 4.

4 CHAIRMAN HANSON: Mr. Wieczorek.

5 MR. WEICZOREK: Thank you, Chairman. Again, this
6 information is similar to what was just asked for in that first
7 group. Again, Alltel's position that, hey, look, you only have
8 to bring it as far as Sioux Falls. That's all we're asking.
9 That's the only position we're taking in this.

10 Why does that make an interconnection in Martin
11 relevant? Why does it even make the intermachine trunking
12 that might exist between Rapid and Sioux Falls? That's for
13 calls we're carrying over to Sioux Falls and then delivering
14 out. I mean, that's not something that's going to deal with
15 Swiftel. Swiftel's going to deliver to Sioux Falls.

16 So the information -- to the extent that we thought
17 there was readily available information that might respond to it
18 even though we questioned the relevancy or whether anything
19 would be admissible given the standards that have to be met and
20 the burden and the elements and the test for suspension we
21 provided, it should be sufficient that they know where our
22 switches are at. There's in intermachine trunking between those
23 two. We provided that diagram. We provided the routing
24 information out of -- for the exchanges in South Dakota.

25 If for some reason that has relevancy -- I'm not even

1 sure that even has any type of relevancy or is going to be
2 admissible in any case in this proceeding.

3 I'm at a loss to understand what the argument's going
4 to be. Again, it goes to we have provided sufficient
5 information for her to set their costs, and that is what's the
6 transport that we have to take to Sioux Falls. And none of this
7 information goes to any of those transport questions beyond
8 that.

9 CHAIRMAN HANSON: Thank you. Ms. Cremer.

10 MS. CREMER: Staff believes this information sought is
11 not relevant and would recommend denial.

12 CHAIRMAN HANSON: Ms. Wiest, did you have something?

13 MS. AILTS WIEST: Yeah. I just had a question for
14 Ms. Sisak.

15 Is that correct, in your opinion, Ms. Sisak, that none
16 of the information goes to their transport costs to Sioux Falls?

17 MS. SISAK: No. We do not agree with that argument.

18 MS. AILTS WIEST: Specifically what would affect that
19 that you asked for here?

20 MS. SISAK: Interoffice transport routes, intercompany
21 transmission facilities, points of interconnection with other
22 carriers.

23 MS. AILTS WIEST: All of those would be relevant to if
24 you only had to transport to Sioux Falls?

25 MS. SISAK: Yes. Assuming they have any intercompany

1 transmission facilities, points of interconnection with other
2 carriers, and interoffice transport routes to Sioux Falls, that
3 would most definitely be relevant. And, by the way, they must
4 have it because they claim to have a point of presence in
5 Sioux Falls.

6 MR. WIECZOREK: A switch in Sioux Falls.

7 MS. SISAK: Or a switch in Sioux Falls. So they must
8 have these other things as well.

9 MS. AILTS WIEST: I guess my point would be to the
10 extent this is relevant to cost to transport to Sioux Falls,
11 then I think the information should be provided.

12 CHAIRMAN HANSON: Commissioners, did you have any
13 questions?

14 Tal -- excuse me. Mr. Wieczorek, did you have
15 anything?

16 MR. WEICZOREK: I'm not sure -- like I said, if I'm
17 going to be ordered to compel something we think is relevant, I
18 don't know what it would be. It would seem to me that the only
19 thing that would be -- that you could argue on the point of
20 interconnect that would be relevant is do you have a point of
21 interconnect with a carrier closer than Sioux Falls.

22 And then because otherwise then if we're going to
23 argue we've got to take it to Martin, clearly Martin's much
24 further away. So if we're only saying Sioux Falls, that seems
25 to be -- to limit their -- or their length of traffic there. Or

1 the only thing maybe you could argue -- and I'm just speculating
2 because, frankly, Swiftel -- they say, yeah, it's relevant, we
3 need it to determine, but they don't explain how they're going
4 to go use it. So it's purely guessing here. Maybe the argument
5 would be we got a trunk that goes right by Swiftel territory.
6 Is there a way to look into that?

7 But, like I said, what relevancy does what we have
8 going on in Minneapolis have to do with transports for them?
9 What relevancy does it have to do with interconnect in Martin?
10 What relevancy does what's going on with with our switch in
11 Rapid have do with this?

12 So I'm at a loss to see that there's any -- this is
13 going to lead to anything that's going to be admissible. All
14 it's going to be is just go give us as much information and
15 everything you've got about your network and MTA-12 in
16 South Dakota and none of it's going to be used by anybody but we
17 want to put you through the exercise. That's what this is doing
18 here.

19 CHAIRMAN HANSON: Ms. Sisak.

20 MS. SISAK: Yes. Thank you. Alltel has argued in
21 this same case that Swiftel's cost exhibits are exaggerated and
22 unreasonable because Swiftel has modeled separate trunks for
23 individual carriers and Alltel has argued that a more efficient
24 way of providing transport would be to combine everything on
25 common trunks.

1 But if all carriers that Swiftel may have to transport
2 traffic to are located at different points, even in or around
3 Sioux Falls, then that would go to show that Alltel's argument
4 is false and that -- and common trunks could not be used and
5 that separate trunks would be required.

6 CHAIRMAN HANSON: Commissioners, any questions?

7 COMMISSIONER JOHNSON: Well, I do find Ms. Sisak's
8 last comment, I mean, compelling. I mean, I think it's a good
9 point.

10 I would look to Ms. Wiest. Is there any way we could
11 narrow the interrogatory to get at the information that would be
12 perhaps admissible or lead to admissible information at hearing?

13 MS. AILTS WIEST: Well, I guess my original point was
14 to the extent that this goes to transporting costs that are
15 related to -- you know, that are transportation to Sioux Falls,
16 it would seem to be relevant in that respect.

17 COMMISSIONER JOHNSON: Do we need to put parameters
18 around that, or is that sort of a general statement, would that
19 be acceptable? I mean, what's around Sioux Falls?

20 MS. AILTS WIEST: I don't know.

21 CHAIRMAN HANSON: Is there a way in which we can
22 phrase the -- a motion that compels a limited arena there?

23 MS. AILTS WIEST: I mean, could it be related to
24 transport, you know, costs that are related to -- that are
25 relevant or related to transporting traffic to Sioux Falls?

1 MS. SISAK: Would it be appropriate for me to make a
2 suggestion?

3 CHAIRMAN HANSON: Certainly.

4 MS. SISAK: Alltel has argued that it has made a
5 concession, that there is a specific point to which -- or almost
6 that -- only a specific point to which it would ever ask Swiftel
7 to transport traffic. Alltel must know what that point is so
8 they could identify that point and then provide all the related
9 information associated with that point.

10 CHAIRMAN HANSON: Mr. Wieczorek.

11 MR. WEICZOREK: Well, yeah. Our switch in Sioux Falls
12 might have points of interconnect with a number of different
13 carriers that have absolutely nothing to do with it. I mean,
14 the actual location of the switch, I don't see that there's --
15 well, I'm sure Swiftel has that or it's available in the
16 documents that -- the information and -- the LERG.

17 So I'm not exactly sure what she'd be looking for, you
18 know. We can provide the location of our switch in Sioux Falls.

19 MS. AILTS WIEST: Well, yes. I would agree with
20 Ms. Sisak's statement then.

21 CHAIRMAN HANSON: Okay. Thank you. Just trying to
22 figure out how to phrase a motion at this point. Excuse me.

23 COMMISSIONER JOHNSON: I wonder, Mr. Chairman. It
24 seems like there's a little bit of a gap between what the
25 parties are talking about. I mean, Mr. Wieczorek, his

1 concession has been we'll tell you where the switch is but
2 Ms. Wiest and I think Ms. Sisak were talking about other
3 associated infrastructure and other costs related to that. Am I
4 missing that?

5 MS. AILTS WIEST: No. I would go with what Ms. Sisak
6 stated, and it would give the point and then the cost, and she
7 can correct me if I'm wrong, related to delivery to that point,
8 once that point is identified.

9 COMMISSIONER JOHNSON: I'd ask, Mr. Chairman, if
10 we can have Ms. Sisak state her point once again and see if
11 Mr. Wieczorek has any objection to that.

12 CHAIRMAN HANSON: Ms. Sisak.

13 MS. SISAK: Yes. My suggestion was that Alltel would
14 specify as part of their concession the specific point to which
15 they would or may seek Swiftel to carry traffic, and then in
16 connection with that specific point identify their switch. If
17 there is a switch there, their interoffice transport routes that
18 are associated with that point, their intercompany transmission
19 facilities associated with that point, points of interconnection
20 with other carriers associated with that point.

21 CHAIRMAN HANSON: Mr. Wieczorek.

22 MR. WEICZOREK: First of all, Ms. Wiest talks in terms
23 of cost, and I can't give them what their -- I'm not sure that
24 she's really asking for costs here. She's talking about -- I
25 certainly can tell you we can certainly give you identification

1 of, hey, here's where our switch is currently located in
2 Sioux Falls.

3 Now I don't want to get into a game if the Commission
4 says, you know, I have to carry their switch in Sioux Falls we
5 move the switch two blocks over that all the sudden there's an
6 issue. We can give what we know today.

7 If you say provide all your intermachine trunking,
8 well, there's intermachine trunking going to Rapid City. I
9 don't see how that has any bearing. Perhaps the easiest way to
10 do this would say, okay, if Swiftel carries to the switch at
11 Alltel, what other switches is Alltel directly interconnected
12 with on that switch, what other carriers. Because could Swiftel
13 carry to Alltel and Alltel hand it off to somebody else?

14 Perhaps that's about the only thing that I could see
15 would be arguably relevant to figure out the costs whether they
16 could use the traffic or a direction using an Alltel switch they
17 didn't use for SDN.

18 But if you go into identify all these other -- all
19 this other information on interconnection, well, that switch,
20 you know, is indirectly interconnected to everything and is
21 directly interconnected to probably maybe a half a dozen
22 other -- well, some. Probably not a half a dozen. Some other
23 LECs. Because we provide traffic direct to some other LECs.
24 It's connected to SDN. It's connected to Qwest.

25 So, you know, I could see where the information --

1 hey, where's your switch and what other switches are you
2 directly interconnected with would have some relevance, but
3 beyond that I can't see that it makes much sense.

4 CHAIRMAN HANSON: Ms. Wiest, do you have a --

5 MS. AILTS WIEST: I guess I would still lean toward
6 what Ms. Sisak stated as to what it be narrowed down to.

7 CHAIRMAN HANSON: Any discussion by the Commissioners?

8 Ms. Sisak, this is Commissioner Hanson. Why would it
9 not be appropriate -- sufficient, rather, for Alltel to simply
10 provide you with the switch's location and the other direct
11 connections that it has? Why would that not be enough
12 information?

13 MS. SISAK: I'm sorry. The switch -- the proposal is
14 that they would identify the switch to which they would ask --
15 the only switch to which they would ever ask Swiftel to route
16 traffic and then the other points of interconnection? I didn't
17 quite -- I couldn't hear Mr. Wieczorek, and so I'm not quite
18 sure if I'm understanding your question.

19 CHAIRMAN HANSON: Well, then I'll ask Mr. Wieczorek to
20 restate his suggestion.

21 MR. WEICZOREK: Well, again --

22 CHAIRMAN HANSON: And please let me know if you cannot
23 hear him.

24 MR. WEICZOREK: Yeah. Again, I think what -- you
25 know, like I said, it's difficult for me to do an analysis on

1 her arguments because in the -- she attempts to say it's
2 relevant because we need to figure out costs, but she doesn't
3 explain how it actually plays in.

4 To me the only thing you can make an argument say,
5 okay, I got to take it to your Sioux Falls switch. Now perhaps
6 I could only use one DS-1 if you're directly connected to, let's
7 say, RCC, and you could hand off directly to RCC. So that might
8 be relevant, are you directly connected to RCC? Who you
9 directly connected to?

10 But beyond that, my intermachine trunking from
11 Sioux Falls to Rapid, who cares? It doesn't have any bearing on
12 this case.

13 So to me -- I'm actually kind of trying to come up
14 with her argument, you know, what would actually maybe be an
15 argument she could do for the cost. And, again, I want to
16 reiterate, you know, there's a switch at a certain location in
17 Sioux Falls today and we're asking to be carried to Sioux Falls
18 but people move switches occasionally or upgrade switches and
19 put them in a different building. So I don't want to be stuck
20 to a location, physical location, specifically in Sioux Falls.

21 CHAIRMAN HANSON: Excuse me. Mr. Wieczorek, you had a
22 specific suggestion?

23 MR. WEICZOREK: Well, my suggestion is identify the
24 current location of your switch and who you're directly
25 interconnected to. Because if perhaps there's the ability --

1 perhaps there would be an argument, that we carry this to Alltel
2 and Alltel can hand it off to XYZ Company because they're
3 directly interconnected. And we can do it -- you know, maybe
4 there's an argument of one track there.

5 You know, it's not -- it's not a -- there's not some
6 mystery here. Four years ago we talked about it in LNP, and
7 Alltel's position was, look, ILECs, you can carry either SDN or
8 Qwest back to one switch and you can branch out and do the
9 transport that way. That hasn't changed in our four years. I
10 mean, that's what this issue is about. It's not some mystery as
11 to what paths are available out there.

12 So, you know, I -- if it's a direct connect to
13 Alltel's switch, then it's a direct connect to Alltel's switch.
14 The only other thing I think anybody could ever make an argument
15 as to relevancy on this if you're directly connected to RCC or
16 some XYZ wireless company, maybe you could hand off there too
17 and that would impact your costs.

18 But beyond that intermachine trunking to Rapid City?
19 You're going to -- I can't imagine Commission's going to say I
20 have to indirectly connect their calls to some carrier
21 West River.

22 CHAIRMAN HANSON: Ms. Sisak, it was within that
23 framework that I was asking why it would not be appropriate to
24 simply have Alltel identify their switch location and those
25 entities that they are directly connected to and whether or not

1 that would satisfy Swiftel.

2 MS. SISAK: Thank you. I would respond in this way,
3 and possibly I misunderstood the Commission's earlier ruling.
4 But it was my understanding that Alltel represented that they
5 would never require Swiftel to carry traffic to any point beyond
6 their switch in Sioux Falls.

7 During the course of this conversation I have
8 essentially asked Alltel to put that in writing and more
9 importantly to identify where that switch is.

10 The cost of transport is based on miles. And as one
11 of the earlier conversations by the Commissioners, the question
12 was raised, well, how do we identify what's around Sioux Falls?
13 And my suggestion was to simply have Alltel pick a point. Now
14 Alltel is backing away from that.

15 So we get back to the original question of, number
16 one, what is -- what are they really offering as far as a
17 concession and, number two, where is this magic point? How can
18 we price the cost of facilities to a point that they -- that
19 Alltel will not specify and will not commit to?

20 And that really goes back to my other argument that
21 their concession is worthless, since the point where traffic has
22 to be carried, the cost of that is based on mileage and so the
23 point is very important. And if they won't commit to a point,
24 then we don't really know where we're going to have to transport
25 traffic. And that opens the door, I believe, widely.

1 So my response -- my specific response to your direct
2 question is without a commitment from Alltel as to the specific
3 point where they -- the only point where they would require
4 Swiftel to carry traffic, then it just becomes a guessing game
5 as to where that point might be, and then what we need to know
6 to be able to make an educated guess is what their network
7 really looks like and where it would be most likely they would
8 ask us to carry traffic.

9 And there may be multiple points in Sioux Falls for
10 all I know. I just don't know.

11 CHAIRMAN HANSON: Do either of the other Commissioners
12 have any questions at this time? If not -- excuse me.

13 COMMISSIONER KOLBECK: Nothing. Just talking to
14 myself.

15 CHAIRMAN HANSON: I think we all will be after this is
16 over. Interrogatory No. 4, I am -- excuse me. Did you have
17 something?

18 MS. AILTS WIEST: I have one question.

19 CHAIRMAN HANSON: Go right ahead.

20 MS. AILTS WIEST: Well, then Mr. Wieczorek, when you
21 kind of equivocated on the point in Sioux Falls you don't want
22 to be stuck to a specific location, is it your point that it
23 would be in Sioux Falls?

24 MR. WEICZOREK: Yeah. My point is it's -- and as far
25 as writing, we put it in writing in the Responses to

1 Interrogatories. We did that up front in the initial Responses.
2 We clarified it in a conference call where I had Ron Williams on
3 the call with Ms. Sisak back right after the Fourth of July.

4 All I'm saying is, look, we have a switch in
5 Sioux Falls. There's no plans to move it. But I think it would
6 be inappropriate for a Commission to order, you know, it's on
7 506 12th Street in Sioux Falls. I mean, that becomes
8 unrealistic. What's going to happen four years from now?

9 I mean, that's all I'm saying is I don't want to get
10 into an argument down the line somewhere if you upgrade your
11 switching, move it across the street, somehow the suspension
12 changes.

13 And Sioux Falls is not -- well, as everybody here
14 knows, Sioux Falls is the biggest city in South Dakota, but it
15 ain't that big. To get to the other side of Sioux Falls only
16 adds a couple of miles -- 6 from one side to the other, but our
17 switch is kind of in the middle of Sioux Falls, if I recall
18 correctly. If she wants to add a couple of miles in case we
19 move to the south side of Sioux Falls, I'm not going to panic
20 about that.

21 MS. AILTS WIEST: Okay. Thank you.

22 CHAIRMAN HANSON: How would we phrase a gregarious --
23 or untie the knot on that? State that they will identify where
24 the present location of the switch is and all direct connections
25 to it?

1 MS. AILTS WIEST: Right. With the understanding that
2 it would be carrying traffic to its switch in Sioux Falls. I
3 mean, I guess there's just a minor quibble that possibly could
4 be moved someplace different in Sioux Falls.

5 CHAIRMAN HANSON: Commissioners, should I make a
6 motion like that, how would it be supported? Are you looking at
7 different directions?

8 COMMISSIONER JOHNSON: Well, sorry. Go ahead.

9 COMMISSIONER KOLBECK: That's all right.

10 COMMISSIONER JOHNSON: I mean, I don't think this
11 interrogatory asks for any sort of a -- it doesn't ask for
12 Alltel to make a promise about a specific location. I mean,
13 couldn't we ask them to identify the specific point that at this
14 time they would expect the connection would take place at as
15 well as the interoffice transport routes, intercompany
16 transmission facilities, and point of interconnection with other
17 carriers that are directly connected to that point?

18 CHAIRMAN HANSON: That's what I said when I said I.D.
19 the present location.

20 COMMISSIONER JOHNSON: Okay.

21 CHAIRMAN HANSON: I don't see anything that are
22 actions here by a motion of that nature would restrict future
23 movement of that switch.

24 COMMISSIONER JOHNSON: Yeah. I mean, I don't have any
25 problem with your motion.

1 CHAIRMAN HANSON: Okay. I will make that motion then.
2 Would you phrase my motion for me?

3 MS. AILTS WIEST: No. I'm sorry. I believe
4 Commissioner Johnson did add more -- you talked about direct
5 connections, and I believe Commissioner Johnson added in -- is
6 that correct, Commissioner Johnson?

7 CHAIRMAN HANSON: Identifying the present condition of
8 the switch and those that are directly connected to the switch.
9 And did you have something to add to that?

10 COMMISSIONER JOHNSON: I did. I at the time
11 inadvertently added some of the additional wording that
12 Ms. Sisak and her client had added in Interrogatory No. 4. In
13 some of these instances I don't know exactly how it could be
14 used but as long as we're talking about just in and around
15 Sioux Falls, the other wording I added I don't have any
16 heartburn with it.

17 Now that being said, it's not the pending motion so I
18 would be supportive of your motion or an amended motion with
19 that additional wording.

20 CHAIRMAN HANSON: What is the additional wording?

21 COMMISSIONER JOHNSON: If you look at Interrogatory 4,
22 Swiftel asks for the switches as well as interoffice transport
23 routes, intercompany transmission facilities, and points of
24 interconnection with other carriers. And, again, I would want
25 them to be directly related to the Sioux Falls location we're

1 talking about. And I think Mr. Wieczorek's point about
2 Rapid City or Minneapolis is well taken at least by me.

3 CHAIRMAN HANSON: Ms. Wiest, I gathered from your
4 previous statements that you believe that the verbiage that was
5 added by Commissioner Johnson is appropriate?

6 MS. AILTS WIEST: Yes.

7 CHAIRMAN HANSON: All right. I'll accept that as a
8 motion then. And discussion on the motion?

9 Commissioner Johnson.

10 COMMISSIONER JOHNSON: Aye.

11 CHAIRMAN HANSON: Commissioner Kolbeck.

12 COMMISSIONER KOLBECK: Aye.

13 CHAIRMAN HANSON: Hanson votes aye. Motion carries.

14 Brings us to Interrogatories 10, 23, and 24. And I
15 would just mention that we have one hour left on the phone link.
16 And at 2 o'clock we will begin hearings on other matters.

17 Interrogatories 10, 23, and 24, Ms. Sisak.

18 MS. SISAK: Thank you. Alltel responded in part --
19 (Inaudible).

20 CHAIRMAN HANSON: Ms. Sisak, we cannot hear you.

21 MS. SISAK: Oh, can you hear me at this time?

22 CHAIRMAN HANSON: Thank you.

23 MS. SISAK: Okay. Alltel responded in part to some of
24 these Interrogatories. And so my argument will be limited to
25 these questions that -- to the extent they seek information

1 quantifying the volume of traffic sent to Swiftel through the
2 Qwest tandem.

3 And this information is important in this proceeding
4 to calculate the economic impact on Swiftel but also to test
5 various claims made by Alltel in its testimony.

6 For example, at page 4 of Mr. Williams' testimony
7 Alltel alleges that there is no need for Swiftel suspension
8 petition because Swiftel has been able to successfully negotiate
9 interconnection agreements with Alltel and others.

10 At page 10 Mr. Williams states that Swiftel has
11 overstated the need for transport by modeling direct connections
12 to each competitor when other connections, indirect connections
13 would be more efficient. Alltel also states that it is
14 indirectly connected to Swiftel and that it terminates traffic
15 to Swiftel through Qwest.

16 The information that we seek will provide data which
17 tests all of these claims made by Alltel. In other words, how
18 much traffic does Alltel really send to Swiftel through the
19 Qwest tandem. And we can then compare that to how much traffic
20 Swiftel is able to recognize and to bill reciprocal comp to
21 Alltel for the traffic.

22 And I think the Commission is well-aware of the
23 phantom traffic issue where the incumbent LECs like Swiftel
24 receive a lot of traffic through the Qwest tandem that they can
25 never identify.

1 Now I would also note that Alltel claims it doesn't
2 have this information. But we challenge that assertion. Qwest
3 bills Alltel for the use of the Qwest tandem. So Qwest must
4 send Alltel a bill. And even if the information is not now in
5 Alltel's possession, surely Alltel can obtain that information
6 from Qwest.

7 CHAIRMAN HANSON: Mr. Wieczorek.

8 MR. WEICZOREK: Yeah. Thank you, Mr. Chairman. This
9 is really an arbitration question. I mean, that's what this is
10 about. I mean, it's not a suspension question, these
11 Interrogatories. They go to what reciprocal comp and whether
12 Swiftel feels that it's properly identifying their traffic.

13 Again, our traffic being delivered is not part of any
14 kind of suspension. It's about whether they have to take
15 traffic to a point outside their service area.

16 You know, I don't see how this leads them to any
17 information that has any bearing on this case. It's a -- like I
18 said, if -- I don't see where the relevancy of this information
19 exists or how it's going to be admissible in any case or going
20 to lead to anything. And beyond that I'm not sure what else I
21 can say about it.

22 CHAIRMAN HANSON: I wish to make sure that -- earlier
23 Ms. Sisak said she could not hear some of the replies.
24 Ms. Sisak, were you able to hear that?

25 MS. SISAK: I believe I was able to hear most of it.

1 Although, Mr. Wieczorek's voice is rather soft.

2 MR. WEICZOREK: I'm an easy going guy.

3 CHAIRMAN HANSON: We will ask him to get close to the
4 mic. and, please, it's really important that both parties are
5 able to hear each other in order to hopefully reach some common
6 ground here as we go through this process. So please
7 immediately let us know if you cannot hear any of the speakers
8 including myself. Thank you.

9 Staff, did you have -- staff does not have anything to
10 add to this item.

11 Ms. Wiest.

12 MS. AILTS WIEST: Well, Ms. Sisak's argument is
13 that -- first of all, she's limiting it to the extent the volume
14 of traffic is sent to Swiftel through the Qwest tandem, and she
15 states it will calculate the economic impact on Swiftel. Based
16 upon those assertions and that limitation, I think it should be
17 granted to that extent, to the extent that Alltel has that
18 information.

19 CHAIRMAN HANSON: Thank you. Commissioners, what are
20 your druthers?

21 COMMISSIONER JOHNSON: Just a clarification question
22 for Ms. Wiest. Ms. Wiest, there were -- were the other
23 questions in the Interrogatory answered? I think you just
24 addressed the volume of traffic sent to Swiftel or the Qwest
25 trunk; is that right? The Qwest tandem, rather.

1 MS. AILTS WIEST: That's the only thing I heard
2 Ms. Sisak mention. And what I have written down, which I could
3 be wrong, is she was limiting it to the extent of the volume of
4 traffic sent to Swiftel through the Qwest tandem.

5 COMMISSIONER JOHNSON: Ms. Sisak, is there anything
6 else that we've missed?

7 MS. SISAK: Well, no. I think that's accurate. But
8 if you look, for example, Interrogatory 10 specifically asks
9 about calls by volume of traffic and Subpart C through the Qwest
10 tandem. Interrogatory 23 asks for the identification of
11 interMTA minutes of use and intramTA minutes of use. And so
12 then, you know, the caveat that we have added is, you know,
13 through the Qwest tandem. And then Interrogatory 24 also
14 specifically addresses the Qwest tandem.

15 So I think what we're basically saying is
16 Interrogatory 10, Subpart A and B, we're not seeking any further
17 response on that. And Interrogatory 23, Subparts 1 and 2 as it
18 relates to traffic that is not through the Qwest tandem we're
19 not seeking any further response on that.

20 MS. AILTS WIEST: Well, then in Interrogatory 24 that
21 would be the Qwest tandem and Swiftel, not Qwest tandem and
22 rural ILEC end office.

23 MS. SISAK: I'm sorry. I didn't understand your
24 question.

25 MS. AILTS WIEST: Well, in 24 you said between the

1 Qwest tandem and a rural ILEC end office, but I thought you were
2 limiting it to everything between Qwest and Swiftel.

3 MS. SISAK: Well, actually I was limiting it
4 through -- through the Qwest tandem I did not further limit
5 it -- but, of course, if the Commission feels that it's
6 appropriate to further limit 24, that is obviously the
7 Commission's prerogative.

8 CHAIRMAN HANSON: Commissioner Johnson, does that
9 answer your question then?

10 COMMISSIONER JOHNSON: Yeah.

11 CHAIRMAN HANSON: Is there a motion then on
12 Interrogatories 10, 23, 24?

13 COMMISSIONER JOHNSON: I'll hazard one. Sorry. I'll
14 hazard one. I'll move the Commission grant in part the Motion
15 to Compel for Interrogatories 10, 23, and 24, only to the extent
16 that they deal with traffic and information delivered to Swiftel
17 through the Qwest tandem.

18 Did I get that right?

19 MS. AILTS WIEST: Yes. And my only other caveat was
20 to the extent they actually have that information.

21 COMMISSIONER JOHNSON: Right.

22 CHAIRMAN HANSON: And that is part of the motion then?

23 COMMISSIONER JOHNSON: (Nods head).

24 CHAIRMAN HANSON: Discussion on the motion?

25 Commissioner Johnson.

1 COMMISSIONER JOHNSON: Aye.

2 CHAIRMAN HANSON: Commissioner Kolbeck.

3 COMMISSIONER KOLBECK: Aye.

4 CHAIRMAN HANSON: Hanson votes yes. Motion carries.
5 Interrogatories 11, 25, and 26.

6 Ms. Sisak.

7 MS. SISAK: Yes. Interrogatory 11, 25, and 26
8 requests financial information from Alltel. And we believe that
9 this information will address Alltel's argument that Swiftel's
10 petition will adversely affect competing carriers in Swiftel's
11 area.

12 In its response to Swiftel's petition Alltel argued
13 that Swiftel's request was inconsistent with the public interest
14 in a competitive exchange market. And they further argued that
15 it would impact competition and it will have a negative impact
16 on economic and the competitive climate in the affected market.

17 And we believe that this information will go to that
18 argument.

19 CHAIRMAN HANSON: Mr. Wieczorek.

20 MR. WEICZOREK: Yeah. I think the arguments set forth
21 in the brief are pretty straight forward. This Commission's
22 already decided the focus is on Swiftel and its customers. It
23 doesn't seem to make any sense that to prove up their burden
24 they have to prove that we're profitable? I don't --

25 We're one telecommunications carrier out of hundreds.

1 The focus is not back on Alltel. You know, essentially her
2 argument would be, hey, if you're profitable, we can get the
3 suspension because you're already making money. That doesn't
4 make any sense. It would be impossible then to -- given a
5 suspension. Because the test then becomes we as a Commission
6 have to look at every other carrier's profitability before we
7 even decide on a suspension.

8 If it -- it makes sense that the economic focus, of
9 course, is on Swiftel and its customers. The public interest
10 becomes is the competition business something that will inhibit
11 competition? So it doesn't make sense tat we have an economic
12 analysis of every potential competitor to determine whether
13 suspension is allowed.

14 That's all I would have unless there are questions.

15 MS. AILTS WIEST: I recommend denial.

16 MS. SISAK: I'm sorry. I didn't hear the last
17 comment.

18 MS. AILTS WIEST: This is Rolayne Wiest, and I'm going
19 to recommend denial.

20 CHAIRMAN HANSON: Ms. Cremer.

21 MS. CREMER: Thank you. This is Karen Cremer from
22 staff. I think in order to help move this on I'm going to give
23 Commissioner Johnson my microphone, and if staff has something
24 to add to it, we'll come over and use his mic. but otherwise it
25 might make things go quickly. You don't need to ask staff each

1 and every time unless we have something unique to offer.

2 CHAIRMAN HANSON: Unless you raise your hand.

3 MS. CREMER: Unless I raise my hand. And in this case
4 I would agree with Ms. Wiest.

5 CHAIRMAN HANSON: Thank you. Interrogatories 11, 25,
6 and 26 I will move denial. Is there any discussion?

7 Commissioner Johnson.

8 COMMISSIONER JOHNSON: Aye.

9 CHAIRMAN HANSON: Commissioner Kolbeck.

10 COMMISSIONER KOLBECK: Aye.

11 CHAIRMAN HANSON: Commissioner Hanson votes yes. The
12 motion carries. Interrogatory 13.

13 Ms. Sisak.

14 MS. SISAK: Yes. In Interrogatory 13 we asked Alltel
15 to provide information identifying the rate centers that they
16 populate the LERG to rate calls to one center and to route calls
17 to a different center.

18 Alltel did provide some information. However, the
19 information they provided does not show the rate centers. And
20 we are simply asking them to show the rate centers.

21 CHAIRMAN HANSON: Mr. Wieczorek.

22 MR. WEICZOREK: Yeah. I guess with the Commission's
23 direction, am I hearing the question's going to be what rate
24 center is -- in response to 13, that NPANXX is assigned to? Is
25 that their request?

1 CHAIRMAN HANSON: Ms. Sisak.

2 MS. SISAK: I could not hear Mr. Wieczorek's comment.

3 MR. WEICZOREK: I was just trying to clarify the
4 request being made is it's limited -- the request is being
5 limited to the -- identifying the rate centers for the NPANXXs
6 that are a part of DR-13.

7 MS. SISAK: I'm sorry. I still didn't hear the --
8 yeah. I heard identify the NPANXXs that are a part of --

9 MR. WEICZOREK: I was just trying to get the
10 clarification they're looking for the billing rate centers for
11 the NPANXXs for DR-13. I'm not sure I -- well, I believe from
12 what she's said she's narrowed the request, and I'm just trying
13 to make sure I understand what narrowing is.

14 MS. SISAK: No. Mr. Wieczorek, I don't believe you've
15 understood my position. Alltel has provided information listing
16 NPANXXs that supposedly rate calls to one rate center and route
17 calls to a different rate center. But the chart provides -- oh,
18 and the information that Alltel provided was limited to
19 South Dakota.

20 We're not challenging that limitation. But you did
21 not identify the rate center. We're simply asking you to
22 identify the rate centers that match the information you
23 provided.

24 MR. WEICZOREK: I think that could be accomplished.

25 CHAIRMAN HANSON: Under those circumstances I'm ready

1 to take Ms. Sisak's statement as a motion.

2 I'm not certain exactly how to rephrase that into a
3 motion.

4 MS. AILTS WIEST: Well, if he's going to provide it,
5 do we even need a motion?

6 CHAIRMAN HANSON: Well, it appears that the two of you
7 have agreed on it. Do you need to be compelled to do that,
8 Mr. Wieczorek?

9 MR. WEICZOREK: I don't believe so, Your Honor.
10 Mr. Chairman.

11 MS. SISAK: Is it Alltel's statement here that they
12 will provide the information?

13 CHAIRMAN HANSON: I believe they are on record as
14 saying that they will provide the information. Is that correct,
15 Mr. Wieczorek?

16 MR. WEICZOREK: Yes, Mr. Commissioner.

17 CHAIRMAN HANSON: They are on record. So we will then
18 move to Interrogatory 14.

19 MS. SISAK: Thank you. In Interrogatory 14 we asked
20 Alltel to simply state whether it allowed the subscribers to
21 select a long distance carrier other than Alltel. We asked this
22 question because Swiftel argued that grant of its petition would
23 serve the public interest by ensuring choice of long distance
24 providers for consumers.

25 In its response Alltel contends that this is not true

1 and that Swiftel's request is inconsistent with the public
2 interest. We really don't understand what -- frankly why this
3 is a particular issue for Alltel. Again, all we ask Alltel to
4 do is to state whether it allows its subscribers to select the
5 long distance carrier other than Alltel.

6 If they say no, that will go to support our claim that
7 Swiftel's service does provide consumer choice in long distance
8 which possibly could be lost. And if they say yes, well, then
9 that would go to, you know -- be a point against an argument
10 made by Swiftel.

11 CHAIRMAN HANSON: Mr. Wieczorek.

12 MR. WEICZOREK: You know, we've talked about the fact
13 that what Alltel does is not relevant for this proceeding, and
14 I, you know -- I'm not sure that -- I look at what they
15 requested suspension for and mostly goes to almost exclusively
16 transport type issues so I'm not sure how the fact what Alltel
17 offers its customers, whether they offer 1,000 minutes for
18 30 bucks a month or 10,000 minutes and that includes long
19 distance or whether they have an option to choose their long
20 distance carrier has any bearing on this matter at all.

21 CHAIRMAN HANSON: Ms. Wiest.

22 MS. SISAK: I'm sorry. Commissioners, may I respond
23 to that, or may I ask a question about Mr. Wieczorek's comment?

24 CHAIRMAN HANSON: First we'd like to hear from
25 Ms. Wiest.

1 MS. AILTS WIEST: Based on Ms. Sisak's arguments, I
2 think it possibly could be relevant so I would say grant the
3 Motion to Compel on this one.

4 CHAIRMAN HANSON: You do still need to speak,
5 Ms. Sisak?

6 MS. SISAK: Well, not at this time.

7 CHAIRMAN HANSON: Thank you. Commissioners, is there
8 a motion?

9 COMMISSIONER JOHNSON: I think this is going to be
10 redundant and so I apologize to Ms. Sisak but can you explain to
11 me again why that information -- why you think it's reasonable?

12 MS. SISAK: Yes, sir. And actually this does bring up
13 my comment really on Mr. Wieczorek's argument. Mr. Wieczorek
14 continues to argue that the only thing relevant in this
15 proceeding is information about Swiftel. And that's simply not
16 correct.

17 When Alltel or any other party makes a claim or
18 challenges the claims made by Swiftel, then, of course, it is
19 relevant to be able to test whether there is any merit to the
20 objection.

21 And the point here is we made a statement that we --
22 that Swiftel allows consumer choice in long distance provider,
23 and that is in the public interest. That's part of the overall
24 public interest argument of Swiftel's service. Alltel sought to
25 challenge that, and so we are simply trying to identify for the

1 Commissioners which carriers allow choice in long distance
2 provider and which carriers don't and whether or not any other
3 carrier out there does provide choice of long distance provider.

4 So it is part of the argument we are trying to make as
5 to what is in the public interest. And I would also point out
6 that because we haven't had the hearing yet and because we
7 haven't done all the testimony and briefing, that's an open
8 question. And to deny discovery means that we never have the
9 opportunity to explore a challenge to one of our points.

10 COMMISSIONER JOHNSON: And I am handicapped --
11 Commissioner Johnson again. I'm handicapped because I didn't go
12 through the original LNP proceeding where I feel like you all
13 plowed a lot of this ground. But it hasn't quite dawned on me
14 yet why a proceeding, you know, asking for suspension of, you
15 know, modification of dialing parity, number portability, and
16 recip. comp obligations, how whether or not you can select a
17 long distance carrier, how that is a marketing or a service
18 offering of customers, how that comes into play in this
19 suspension proceeding.

20 MS. SISAK: May I respond to that?

21 COMMISSIONER JOHNSON: Oh, yeah. I'm sure I missed
22 something easy and profound, but I just don't get it yet.

23 MS. SISAK: Well, one of the findings -- I'm sorry.
24 Did someone else want to respond? No. One of the findings made
25 by the Commission in the LNP cases -- well, first of all, public

1 interest is one of the requirements that the Communications Act
2 requires a local exchange carrier to demonstrate to be granted a
3 suspension petition. So it's one of the necessary elements, a
4 public interest showing.

5 The question I think that you're asking is why would
6 this be part of the public interest showing. In the original
7 LNP case frankly long distance calling really didn't come up.
8 But what did come up in the original LNP case was universal
9 service. And it was, rather, a broad-based finding actually
10 that the Commission found that anything that impacts universal
11 service should be looked at and should be considered.

12 And toll calling, whether Alltel or anyone else wants
13 to admit it, is part of the universal service. And, in fact,
14 when you are granted ETC designation like Alltel is, one of the
15 things they have to commit to is the possibility that they may
16 have to provide equal access. In other words, access to other
17 long distance providers.

18 So I think it's well established that the whole
19 question of the benefit of having alternative long distance
20 carriers is part of a universal service evaluation and is part
21 of the public interest evaluation, and public interest
22 evaluation is one of the elements that Swiftel must prove in
23 this case.

24 COMMISSIONER JOHNSON: But how would this proceeding
25 change the obligation that Alltel and other ETCs have to provide

1 that equal access?

2 MS. SISAK: It would not. But, again, it goes to
3 refute Alltel's contention that -- well, Alltel's contention
4 that Swiftel's argument is wrong, that somehow the fact that
5 Swiftel provides access to other long distance providers is in
6 the public interest. It is Alltel that claimed that that is not
7 a true statement.

8 COMMISSIONER JOHNSON: Ms. Wiest, do you have any
9 other clarifying comments to help me out? I think I'm most of
10 the way there.

11 MS. AILTS WIEST: No. Again, the discovery standards
12 as was discussed in the previous case are very broad. To the
13 extent that it possibly could be relevant, then if they're
14 supposed to be able to have access to that information, she
15 makes an argument as to public interest, which is one of them,
16 and that's why I recommended granting it. And it's not -- I
17 mean, it's just not a burdensome request either.

18 COMMISSIONER JOHNSON: No. That's a good point.
19 Thanks.

20 CHAIRMAN HANSON: Is there a motion?

21 COMMISSIONER KOLBECK: I motion to grant Interrogatory
22 No. 14.

23 CHAIRMAN HANSON: Discussion? Commissioner Johnson.

24 COMMISSIONER JOHNSON: I'll vote aye.

25 CHAIRMAN HANSON: Commissioner Kolbeck.

1 COMMISSIONER KOLBECK: Aye.

2 CHAIRMAN HANSON: Hanson votes aye. Motion carries.
3 Interrogatory 19.

4 MS. SISAK: Yes. Interrogatory 19, Alltel
5 responded -- Interrogatory 19 essentially asks three questions.
6 Alltel responded to the first question. They did not respond to
7 the second and to the third question, and we are simply asking
8 Alltel to respond to the remaining questions.

9 CHAIRMAN HANSON: Mr. Wieczorek.

10 MR. WEICZOREK: Well, again, how Alltel handles this
11 has got -- given the relationship -- Qwest has no bearing on
12 this case in any way. So I'm at a loss to know why she -- she
13 simply essentially a lot of this boils down to she gets to ask
14 this because we intervened is what the argument is. There's no
15 tying back as to how does this prove up my transport costs?

16 And so, you know, we've answered the question that it
17 assigns numbers to subscribers based on subscribers' community
18 of interest, and essentially that means that somebody who works
19 and spends most of their time in Sioux Falls might want a
20 Sioux Falls number. But we don't know whether that necessarily
21 jives with that's what their rate is.

22 CHAIRMAN HANSON: Ms. Sisak. Ms. Sisak, did you have
23 anything to reply on that?

24 MS. SISAK: Well, my first comment was I really
25 couldn't hear Mr. Wieczorek's comments. So I don't know what he

1 said.

2 CHAIRMAN HANSON: I need you to speak up immediately
3 when you cannot hear or understand. And I'll apologize for your
4 not being able to hear that. Like I say, it's really important
5 that we have a two-way communication here and that all of the
6 parties are able to hear each other.

7 Mr. Wieczorek --

8 MR. WEICZOREK: Yeah. I just said that I believe
9 we've answered it. And as a clarification, if somebody comes in
10 and they work in Sioux Falls, basically spend all their time in
11 the Sioux Falls area, they might get a number for Sioux Falls.
12 But Alltel doesn't go back and say, oh, let's do a correlation
13 to make sure that their actual address is in the Sioux Falls
14 rate center.

15 COMMISSIONER JOHNSON: Ms. Sisak, we're going to swap
16 out mics. here. You've been able to hear the Commissioners
17 fine?

18 MS. SISAK: Yes, I have.

19 COMMISSIONER JOHNSON: Mr. Wieczorek is speaking as
20 loud as we are so I think it's probably a mic. problem as
21 opposed to a speaker problem.

22 CHAIRMAN HANSON: Thank you. Ms. Sisak, did you hear
23 that, and are you able to comment on it?

24 MS. SISAK: Well, I think I heard part of it. It
25 sounded like Mr. Wieczorek said that Alltel would answer the

1 question. Possibly I misunderstood.

2 MR. WEICZOREK: Possibly she did. I believe I said
3 that we had answered the question, we believe, all three
4 questions.

5 MS. SISAK: Your answer is Alltel assigns numbers to
6 subscribers based on the subscribers' community of interest.
7 And so then the second part of the question says Alltel assigns
8 telephone numbers to the subscribers in the rate centers in
9 which they reside? Is that no? I guess I don't think that the
10 response given responds to subparts 2 and 3.

11 MR. WEICZOREK: And perhaps that's the clarification
12 that was missed. I believe my statement was, for example, if
13 somebody works and lives in the Sioux Falls area, they might ask
14 for a Sioux Falls number. However, they might -- maybe they
15 live right over the border in Alliance.

16 Alltel does not necessarily go through and look at a
17 map as to whether they crossed over a rate center. But we don't
18 keep that kind of information either as to, okay, did we
19 actually give this guy a number in Sioux Falls, that's a
20 Sioux Falls number but he lives right over the border in the
21 Alliance rate center. So that's how we assign number, and we
22 don't track it beyond that.

23 MS. SISAK: Well, if I may, it sounds like you're
24 suggesting that the answer to subparts 2 and 3 is you don't
25 know.

1 MR. WEICZOREK: I don't know or it could happen that
2 somebody could live in a different rate center and have a number
3 that's assigned to a neighboring rate center.

4 CHAIRMAN HANSON: Ms. Wiest.

5 MS. SISAK: Commission, you know, I don't know how to
6 further respond. I don't know if that's -- well, I don't know
7 if Alltel is submitting that as their answer or their revised
8 answer. If they are submitting that comment from Mr. Wieczorek
9 as a revised answer, we will accept that.

10 MR. WEICZOREK: I'm sorry. I think -- you can treat
11 it as a revised answer is that those situations undoubtedly
12 occur, but they're not necessarily tracked.

13 MS. AILTS WIEST: Is there any reason for a motion
14 then on this one?

15 CHAIRMAN HANSON: Mr. Wieczorek, you're telling us
16 that you're not able to provide that information; is that
17 correct?

18 MR. WEICZOREK: Yeah. I can't tell you that I know of
19 every time it occurred, but I can tell you that it undoubtedly
20 occurs where somebody lives or has a billing address in a
21 different rate center for the numbers assigned. It just
22 happens. I mean, people -- that's the way people get their
23 numbers.

24 They might have a P.O. box in Sioux Falls, have their
25 bills sent there but actually live outside of Sioux Falls, and

1 we would have no way of even knowing that they had been assigned
2 to a different rate center.

3 MS. AILTS WIEST: Again, is any motion required here?

4 CHAIRMAN HANSON: Ms. Sisak, it doesn't sound like a
5 motion is necessary here because there isn't anything to compel.

6 MS. SISAK: We accept that as Alltel's answer.

7 CHAIRMAN HANSON: Thank you. We're moving on to
8 Interrogatory 21, and if it is not obvious at this juncture,
9 I'll point it out that we will not be visiting telecommunication
10 dockets under items 8 and 9 that are on today's agenda.

11 Interrogatory 21, Ms. Sisak.

12 MS. SISAK: Yes. Interrogatory 21 we will not pursue.

13 CHAIRMAN HANSON: Interrogatories 36, 37, and 38.

14 Ms. Sisak.

15 MS. SISAK: Yes. Interrogatory 36 we will not pursue.
16 Interrogatory 37, what is the anticipated minutes of use that a
17 combined Alltel Verizon will terminate to Swiftel? What is the
18 anticipated minutes of use that Swiftel will terminate to a
19 combined Alltel Verizon?

20 The cost of transport is based on two things. Well,
21 the cost of transport is based on two things; number of minutes
22 transported and distance. Well, those two primary elements. In
23 light of the Alltel Verizon announced merger, Alltel's minutes
24 of use -- well, I believe at the end of this year it's going to
25 be a combined Alltel Verizon and, therefore, we seek this

1 information to be able to accurately price the cost of the
2 burden to Swiftel.

3 MR. WEICZOREK: Just a quick response. And that --
4 first of all, we responded to both of those Interrogatories
5 saying we don't have any idea at this time. And, second,
6 Verizon, you know, has announced that they're going to divest
7 South Dakota. So it's not -- it doesn't appear it's going to be
8 combined in any case.

9 MS. SISAK: That actually goes to Interrogatory 38,
10 which asks whether it is anticipated that Verizon or Alltel will
11 divest certain frequencies or properties, and if so, to identify
12 them. And Alltel answered that it does not know.

13 MR. WEICZOREK: And I will tell the Commission that
14 when it was announced by Verizon that they would divest
15 South Dakota, North Dakota and part of I think 19 other states I
16 supplemented that in an e-mail to Ms. Sisak. And that's as much
17 information as we know too.

18 CHAIRMAN HANSON: Commissioners?

19 MS. AILTS WIEST: Is there anything left to compel
20 here, Ms. Sisak?

21 MS. SISAK: Well, I believe that, frankly, the -- any
22 due diligence before a merger, parties exchange information
23 about their operations, their traffic, their anticipated traffic
24 pattern, and all other such information. So, frankly, for
25 Alltel to claim that in response to Interrogatory No. 37 it

1 doesn't have any information, I find that hard to believe.

2 Further, with respect to Interrogatory 38 for Alltel
3 to claim that there have been no discussions and it has no idea
4 as to which properties will be divested, I find that hard to
5 believe as well.

6 But if they are going to provide an Affidavit that is
7 their answer, then we will use that Affidavit.

8 CHAIRMAN HANSON: Thank you, Ms. Sisak.
9 Commissioners, the merger is a proposed merger at this juncture,
10 and what we understand that has been filed to the FCC is that
11 there will be a divestiture.

12 And I'm going to move that we deny 37, 38. Discussion
13 on that motion?

14 Commissioner Johnson.

15 COMMISSIONER JOHNSON: Aye.

16 CHAIRMAN HANSON: Commissioner Kolbeck.

17 COMMISSIONER KOLBECK: Aye.

18 CHAIRMAN HANSON: Commissioner Hanson votes aye.

19 Motion carries. We're on Admission 1.

20 MS. SISAK: We are not pursuing -- Alltel has answered
21 that so we are going to drop the pursuit of Admission 1.

22 CHAIRMAN HANSON: Request For Production 9.

23 MS. SISAK: The Request For Production 9 asks for
24 copies of the ETC certification filings made before the
25 South Dakota Commission. And in those filings the parties

1 provided information about their number of lines and various
2 other information that, well, we believe obviously is in
3 Alltel's possession, and that would go to the question about
4 whether or not Swiftel's petition would harm competition and the
5 public interest.

6 CHAIRMAN HANSON: Mr. Wieczorek.

7 MR. WEICZOREK: Excuse me. Again, I'm going to -- I'm
8 becoming a broken record up here, but there is nothing in those
9 ETC filings that is going to assist the Commission or lead to
10 any admissible evidence that's going to assist the Commission in
11 making a determination as to whether Swiftel receives a
12 suspension on some transport issues, primarily transport issues.

13 Alltel does not file those broken out by specific area
14 because they're in ETC statewide. I -- further, this would be a
15 lot of information as this Commission would know that I --
16 number one, it's just overly broad and has absolutely nothing to
17 do with this case, or even any argument that has some tangential
18 connection is so minute that to go through the exercise is not
19 worth doing.

20 CHAIRMAN HANSON: Ms. Wiest.

21 MS. AILTS WIEST: I recommend denial of Request For
22 Production No. 9.

23 CHAIRMAN HANSON: Commissioners.

24 COMMISSIONER KOLBECK: I was just going to say motion
25 to deny Request For Production 9.

1 CHAIRMAN HANSON: Commissioner Johnson.

2 COMMISSIONER JOHNSON: Are you looking for a vote?

3 CHAIRMAN HANSON: Yes, I am.

4 COMMISSIONER JOHNSON: Aye.

5 CHAIRMAN HANSON: Commissioner Kolbeck.

6 COMMISSIONER KOLBECK: Aye.

7 CHAIRMAN HANSON: Commissioner Hanson votes yes.

8 Request For Production 12.

9 MS. SISAK: Yes. We asked for a trunk diagram of
10 traffic routed between Alltel and the Petitioner. They provided
11 a diagram, but it does not show the types of traffic routed and
12 so their response is not complete and we simply ask them to
13 complete the response.

14 CHAIRMAN HANSON: Mr. Wieczorek.

15 MR. WEICZOREK: Yes. Thank you, Commissioner. We
16 provided them with the diagram we had. And then in the
17 Interrogatories we provided explanations of how we route. So I
18 think between those two things the Interrogatory -- or the
19 Request For Production is responded to.

20 CHAIRMAN HANSON: Ms. Wiest.

21 MS. AILTS WIEST: Yes. I believe a diagram was
22 produced according to Alltel so I'm not quite sure what would be
23 compelled at this point.

24 CHAIRMAN HANSON: Commissioners.

25 COMMISSIONER JOHNSON: I would move that the Request

1 For Production of item 12 is denied.

2 CHAIRMAN HANSON: Discussion?

3 Commissioner Johnson.

4 COMMISSIONER JOHNSON: Aye.

5 CHAIRMAN HANSON: Commissioner Kolbeck.

6 COMMISSIONER KOLBECK: Aye.

7 CHAIRMAN HANSON: Hanson votes aye. Motion carries.

8 Request For Production 14.

9 MS. SISAK: Yes. We asked for a copy of the merger
10 agreement between Verizon and Alltel and, frankly, we believe
11 that production of this document will go to test some of
12 Alltel's claims as to what the proposed merger -- how it will
13 impact Swiftel's burden to transport traffic to a combined
14 Alltel Verizon.

15 CHAIRMAN HANSON: Mr. Wieczorek.

16 MR. WEICZOREK: We don't see how it has any bearing on
17 this case. I would defer to my conversation earlier on the
18 information and Interrogatories requested in the merger.

19 CHAIRMAN HANSON: Ms. Wiest.

20 MS. AILTS WIEST: I recommend denial.

21 CHAIRMAN HANSON: Commissioners.

22 COMMISSIONER JOHNSON: I move for denial. Sorry.

23 CHAIRMAN HANSON: I'll accept your motion.

24 Commissioner Johnson.

25 COMMISSIONER JOHNSON: Aye.

1 CHAIRMAN HANSON: Commissioner Kolbeck.

2 COMMISSIONER KOLBECK: Aye.

3 CHAIRMAN HANSON: Hanson votes aye. Motion carries.

4 MS. SISAK: Commissioner, I did not hear the motion.

5 CHAIRMAN HANSON: The motion was to deny the Request
6 For Production 14 as it was not relevant. The vote was 3-0 the
7 motion carries that the Request For Production 14 is denied.

8 We are now on to Swiftel's Motion to Compel that was
9 filed against Sprint. Interrogatories 3, 8, and 10.

10 MS. SISAK: Yes. Interrogatories 3, 8, and 10
11 actually are I think the same as Interrogatories -- well, some
12 of the Interrogatories against Alltel.

13 CHAIRMAN HANSON: Ms. Sisak, I apologize for
14 interrupting you. We've run into real time constraints here,
15 and it's been brought up whether we should even attempt the
16 challenge of this particular -- of these Interrogatories and
17 Motions to Compel, and then we have Alltel's following that.

18 We have a meeting, and we're up against time right now
19 in order to prepare for that second meeting, hearing today,
20 starting at 2 o'clock. And so I am going to defer all of the
21 remaining items on the agenda and ask for a motion to adjourn.

22 MS. SISAK: Commissioner, may I make one comment?

23 CHAIRMAN HANSON: Yes, you may.

24 MS. SISAK: If it's at all possible, I believe we
25 could quickly handle the redacted material that concerns the

1 Certificate of Authority cases. The reason why I even ask for
2 this indulgence is because that hearing begins on August 20 and
3 it's my understanding that this might not be taken up until
4 basically sometime after August and our testimony is due on
5 August 6.

6 CHAIRMAN HANSON: Which are those items?

7 MS. SISAK: This is the information that we seek on
8 the agreement between Swiftel and Mediacom.

9 CHAIRMAN HANSON: Which Interrogatories are those? Do
10 you know?

11 MS. SISAK: Well, it's in Docket TC06-178 and 188, and
12 there's a list of redacted contract items that we are seeking.

13 CHAIRMAN HANSON: Which one is it on the agenda? 2
14 and 3?

15 MS. SISAK: Yes.

16 CHAIRMAN HANSON: And you believe we can cover those
17 quickly and succinctly?

18 MS. SISAK: Yes.

19 CHAIRMAN HANSON: I would encourage all of the parties
20 that have been involved today -- there seemed to have been
21 some -- at least in my opinion some items that have been brought
22 before us that certainly could have been accomplished prior to
23 coming before us, and inasmuch as folks were not able to hear
24 each other today for a period of time it appears that some of
25 the folks were not able to communicate real well prior to coming

1 here today. And I would appreciate it very much if the
2 Commission's time were used a little bit better for the hearings
3 that we need to set.

4 Certainly we do want to provide everyone the
5 opportunity to be heard here. However, I would again encourage
6 all the parties to work together to come to some conclusions
7 prior to submitting them to the Commission.

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STATE OF SOUTH DAKOTA)

:SS


CERTIFICATE

COUNTY OF HUGHES)

I, CHERI MCCOMSEY WITTLER, a Registered Professional Reporter, Certified Realtime Reporter and Notary Public in and for the State of South Dakota:

DO HEREBY CERTIFY that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 29th day of July, 2008, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Pierre, South Dakota this 13th day of August, 2008.


Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter
Certified Realtime Reporter

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