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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 APPLICATION
OF SPRINT COMMUNICATIONS COMPANY L.P. TC06-178
FOR AUTHORITY TO PROVIDE LOCAL EXCHANGE
SERVICES IN CERTAIN RURAL AREAS SERVED BY
BROOKINGS MUNICIPAL UTILITIES D/B/A
SWIFTEL COMMUNICATIONS

IN THE MATTER OF THE APPLICATION OF MCC TC06-188
TELEPHONY OF THE MIDWEST, INC. D/B/A
MEDIACOM FOR A CERTIFICATE OF AUTHORITY TO
PROVIDE INTEREXCHANGE AND LOCAL EXCHANGE
SERVICES IN THE BROOKINGS EXCHANGE

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Transcript of Proceedings
July 14, 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
Harlan Best
Terri LaBrie Baker

APPEARANCES
Talbot Wieczorek (by telephone)
Mary Sisak (by telephone)
Brett Koenecke (by telephone)
Richard Coit

PRECISION REPORTING

Cheri Wittler, RPR, CRR

1 TRANSCRIPT OF PROCEEDINGS, held in the above-entitled
2 matter, at the State Capitol Building, 500 East Capitol Avenue,
3 Pierre, South Dakota, on the 14th day of July 2008, commencing
4 at 8:30 a.m.

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1 CHAIRMAN HANSON: Ladies and gentlemen, it's 8:30.
2 We are in the South Dakota State Capitol Building. This is
3 the South Dakota Public Utilities Commission meeting of
4 July 14, 2008.

5 With me today are Commissioner Kolbeck and
6 Commissioner Johnson. My name is Gary Hanson. And our agenda
7 today is an ad hoc commission meeting. The first item is
8 telecommunications TC06-178, In the matter of the application of
9 Sprint Communications Company, LP for authority to provide local
10 exchange services in certain rural areas served by Brookings
11 Municipal Utilities doing business as Swiftel Communications.

12 The question before the Commission today is shall the
13 Commission grant the Motion to Compel.

14 There was a Swiftel Motion to Compel Responses and
15 Production of Documents which were addressed to -- which was
16 addressed to Sprint Communications, and shall I go with the --
17 with Swiftel, or is there a need for staff to chat first?

18 MS. AILTS WIEST: This is Rolayne Wiest. The only
19 thing I might ask the parties if it might in the interest of
20 time be beneficial to do these two together to the extent that a
21 number of them concern similar items, or do you guys want to
22 keep them separate?

23 MS. SISAK: Rolayne, this is Mary speaking
24 representing Swiftel. I think they need to be kept separate
25 because the procedural posture of the two entities, Sprint and

1 MCC, is slightly different. But I hear you on your request for
2 brevity, and I think I've arranged things to try to accomplish
3 that.

4 CHAIRMAN HANSON: Thank you, Mary. This is
5 Gary Hanson. I think the first thing I should do is make
6 certain -- something I skipped over at the beginning. Make
7 certain everyone's on the line and has access to the meeting.

8 Obviously, Mary, you are able to join us. Brett
9 Koenecke, are you with us this morning?

10 MR. KOENECKE: Yes, I am, Commissioner. Thank you.

11 CHAIRMAN HANSON: Good morning. Diane Browning?
12 Diane Browning, are you with us? I'm not hearing a response
13 from Diane.

14 Tal Wieczorek, are you with us today?

15 MR. WIECZOREK: I am, Commissioner.

16 CHAIRMAN HANSON: Good morning, Tal. Are you working
17 with Diane this morning?

18 MR. WIECZOREK: Yeah. I represent Sprint. She's
19 in-house counsel. She was going to try to get on the call, but
20 she wasn't sure she was going to make it.

21 CHAIRMAN HANSON: All right. Well, we know you're
22 capable of handling it. However, do you wish to make certain
23 she's on the line first?

24 MR. WIECZOREK: No. I think we can proceed.

25 CHAIRMAN HANSON: All right. Thank you very much.

1 Then we will proceed. And, Ms. Sisak, did you have -- excuse me
2 for interrupting you. Did you have something further to add
3 before you give your presentation?

4 MS. SISAK: No, I did not.

5 CHAIRMAN HANSON: We're of hopes that you folks have
6 been able to chat over a number of issues prior to this and we
7 don't need to reargue all of them. So if there are areas of
8 agreement, please let us know that.

9 Is there anyone's name who I did not call when I was
10 calling roll from people who had called in? If not, thank you.
11 Let's begin then.

12 MS. SISAK: Thank you. This is Mary Sisak
13 representing Swiftel.

14 CHAIRMAN HANSON: Mary, could you speak just a little
15 bit louder for our court reporter? We're trying to tune it in a
16 little bit here, but if you have a headset or something -- and I
17 promise I'll try not to interrupt you too many more times.

18 MS. SISAK: Is this better?

19 CHAIRMAN HANSON: Slightly.

20 MS. SISAK: How about now?

21 CHAIRMAN HANSON: That is better. Yes.

22 MS. SISAK: Okay. I think we have -- or I think
23 Swiftel based on the comments made by Sprint is not going to
24 pursue argument on a number of questions, and I will identify
25 them. But I'm going to take them in order.

1 The first three questions raised by Swiftel in its
2 motion, questions 2, 3, and 4, have to do with the agreement
3 between Sprint and Mediacom. And Sprint has offered to allow
4 Swiftel to use the agreement that was provided in the
5 arbitration in this proceeding.

6 However, there was some language in that offer about
7 the need to amend the protective agreement. And Swiftel's
8 response to that is the following:

9 We, again, don't seek to just require Sprint to
10 photocopy agreements. But I think what might be productive and
11 effective is for Sprint to simply state here that they have
12 provided the agreement, and we will all accept the fiction that
13 the agreement that was provided in the arbitration has been
14 faxed and provided here, which will eliminate the necessity of
15 them reproducing it. It will eliminate the need to modify the
16 prior protective agreement. And I think that resolves that
17 aspect of the issue.

18 My further point on that issue, however, is that the
19 agreement that was provided in the arbitration was redacted.
20 And the first thing that I would like to make clear is that I
21 can argue in this motion hearing why a redacted agreement and
22 specifically referred to the portions redacted is not sufficient
23 in this proceeding.

24 So I'm seeking Sprint's agreement that I can argue
25 that the redacted provisions should not be redacted for the

1 purpose of providing the agreement in this proceeding.

2 CHAIRMAN HANSON: Thank you. Tal, did you have
3 something you wish to add to that?

4 MR. WIECZOREK: Well, as to the redacted portion, we
5 redacted highly confidential information. The Commission
6 allowed us to do that during the arbitration. I guess I can't
7 necessarily address any specific argument she has on what's been
8 redacted because I don't know what she has issue with.

9 CHAIRMAN HANSON: Mary, do you wish to reply to that?

10 MS. SISAK: Well, yes. As I said, the agreement
11 provided in the arbitration, the purpose for which it was
12 provided is different than the purpose for which it's being
13 provided in this proceeding.

14 In this proceeding Sprint is relying on this
15 agreement, this agreement with Mediacom, to meet some of its
16 statutory obligations and Commission rule obligations, in other
17 words, to meet its burden of proof that it is in fact or should
18 be certificated to provide services in Swiftel's service area.

19 So we believe that the provisions that have been
20 redacted, many of them, are necessary terms and conditions to
21 test exactly what Sprint and Mediacom are going to be doing and
22 how that impacts Sprint's ability to provide service in
23 Swiftel's service area.

24 And I have made a list, but, again, what I'm seeking
25 from Sprint is permission to essentially recite my list and why

1 they should not be redacted here.

2 CHAIRMAN HANSON: Thank you. Ms. Wiest, did you have
3 anything to add to this, any questions?

4 MS. AILTS WIEST: No. I guess it's up to -- I mean,
5 up to Sprint to say if they are going to object to them saying a
6 list of what has been redacted?

7 CHAIRMAN HANSON: It's an interesting situation. If
8 something's been redacted, you don't know what it is.

9 MS. SISAK: Well, that's correct. However, Sprint did
10 not redact the title of various sections. In some cases what
11 was redacted was simply maybe a couple of terms or conditions in
12 part of a larger section.

13 MS. AILTS WIEST: I guess it's up to Sprint. I don't
14 have the agreement. I don't know what was redacted.

15 CHAIRMAN HANSON: Tal.

16 MR. WIECZOREK: Yeah. Thank you, Commissioner. You
17 know, the difficulty I guess I have from just off the cuff in it
18 is I don't know what she's going to specifically address. And
19 right now I've got the redacted agreement sitting in front of
20 me. So I'm not even sure I can specifically argue. Most of the
21 stuff redacted was fairly highly confidential information. And
22 if she's got an argument for you, it's just going to be
23 difficult for me to respond to it since I only have the redacted
24 copy sitting in front of me. I don't know what -- I don't know
25 all the terms that have been taken out.

1 So, you know, I guess I don't have a -- if she wants
2 to provide the list in her analysis, I guess what I'm saying to
3 the Commission is that I'm not prepared to respond to that today
4 because I just don't have that material sitting here in front of
5 me.

6 CHAIRMAN HANSON: Thank you. I'm going to ask
7 Mr. Koenecke and folks that are here in our audience, please
8 speak up or either raise your hand if you wish to speak so that
9 I don't -- rather than trying to go round robin calling on
10 people here, if you have something that you need to insert since
11 we have a number of people on the phone.

12 And Mr. Coit has just stepped up to the microphone
13 here so we'll ask Rich to speak.

14 MR. COIT: Thank you, Mr. Chairman, Commissioners.
15 Richard Coit with the South Dakota Telecommunications
16 Association.

17 I'm not exactly sure what the question before the
18 Commission right now is. It would seem to be I think a question
19 of whether Swiftel should have the right to argue for the I
20 think provisioning of the agreement in an unredacted form. Or
21 at least I think maybe that's the question.

22 I would like to comment on that a little bit. With
23 respect to this agreement, first I would say that we are at a
24 significant disadvantage because I have never seen any form of
25 the agreement. I am not -- or SDTA is not a party to the

1 arbitration proceeding. So we have not actually seen even the
2 redacted version.

3 With respect to the agreement, though, I would just
4 like the Commission to be aware that we have a particular
5 interest in the agreement for the purposes of these
6 certification proceedings.

7 We believe that one of the issues before the
8 Commission -- and this is really a factual issue but certainly
9 plays into the question of whether Sprint is even a provider of
10 telecommunications services that deserves any sort of
11 certification under the Commission statutes. In the discovery
12 responses Sprint has referred to the fact that the FCC and the
13 courts have already approved this business model that it has
14 with Mediacom or MCC Telephony. And based on that because
15 there's been this approval of the business model, the
16 agreement's not relevant and it's not material to these
17 proceedings.

18 We would strongly disagree with that. And one of the
19 things that I would like to point out is if you go to the FCC
20 decision and the Time Warner request for declaratory ruling
21 case -- and this is decision referenced as DA07-709 and it's
22 dated March 1, 2007. And the Commission -- the FCC at that time
23 addressed the question of whether a provider of wholesale
24 telecommunications services such as Sprint in this case is doing
25 for -- or intends to do for MCC, that in that situation is that

1 carrier entitled to interconnection under the 251 provisions of
2 the federal law?

3 And what the FCC decided in that case is that in
4 looking at whether a company is entitled to interconnection
5 under those federal statutes, it's not necessarily determinative
6 whether it's retail services or wholesale services, that there
7 wasn't any intention to take carriers that are providing
8 wholesale services and deprive them of the right to
9 interconnection.

10 And it all turned on the question of whether if you're
11 a provider of wholesale services, are you a common carrier that
12 would be entitled to these interconnection rights? And in
13 determining whether someone's a common carrier the issue is
14 basically is that carrier holding themselves out to the
15 public -- are they -- are they holding themselves out to the
16 extent that they fall under the Commission's regulation.

17 And in that decision there's an important paragraph.
18 And it's paragraph 17. And the Commission after finding that,
19 you know, they weren't going to make a distinction between
20 wholesale and retail and they weren't going to say wholesale
21 carriers weren't entitled to interconnection. They did say
22 this: "We do not find it appropriate to revisit any State
23 Commission's evidentiary assessment of whether an entity
24 demonstrated that it held itself out to the public sufficiently
25 to be deemed a common carrier under well established case law."

1 So basically what the Commission decided was -- or
2 indicated is that the question of common carrier status
3 certainly is to a large degree a factual question. And I think
4 that's important for this certification.

5 If you go to the state certification statutes or the
6 state statutes that govern this Commission's jurisdiction,
7 49-31-3 references the fact that this Commission has general
8 supervision and control over common carriers.

9 A common carrier is a provider of telecommunications
10 services to the public. And if you actually look at the
11 definition of telecommunications services, it makes it very
12 clear there that in order to provide telecommunications services
13 and fall under this Commission's jurisdiction or regulation, you
14 have to be providing them to the public.

15 So getting back to the question here, and that is
16 whether this contract is relevant, it seems to me that the terms
17 of that contract are very relevant to determining whether it's
18 the sort of agreement that Sprint is holding out to any other
19 entity other than MCC and if there's another carrier such as MCC
20 that might be interested in those wholesale services is
21 Sprint -- you know, are they holding themselves out in such a
22 way that that's clear?

23 It seems kind of odd to me that if they're holding
24 themselves out as a common carrier, why is this agreement so
25 confidential? That would be my first question.

1 So all in all I look at this agreement and I think
2 this agreement is incredibly relevant and I don't know how we
3 can make any sort of argument that -- or how we can really
4 address this question of whether they have common carrier status
5 without having the agreement. And I think this Commission would
6 want the agreement, and I think the parties have a right to the
7 agreement.

8 So we would just argue that the agreement should be
9 provided and in an unredacted form so it can be reviewed in its
10 entirety. And I think they have the obligation to show their
11 common carrier status, and we would support any claim by Swiftel
12 that that agreement be provided.

13 Thank you.

14 CHAIRMAN HANSON: Thank you. Response from parties?
15 Sprint? Did you have something?

16 MR. WIECZOREK: Well, it's a response to Mr. Coit's
17 argument. You know, this is a discovery argument. He was
18 arguing more to the merits, first of all.

19 Second of all, the information that we removed from
20 this we presented to the Commission in the arbitration that --
21 the type of information we'd want to remove. The Commission let
22 us submit a redacted copy.

23 You know, perhaps the better way to deal with this
24 redacted issue is to have that specific list provided in writing
25 to Sprint. Sprint can respond to why that information would be

1 confidential. And then this matter is not set until later in
2 August. And I believe the Commission has a hearing where you
3 can take up the redacted portions as a separate proceeding. I
4 believe that hearing is on the 29th.

5 But, you know, it's hard for me to say -- I mean, I
6 don't know whether Ms. Sisak was saying that she wants every
7 piece of this or whether she just wants a certain section. So
8 it's hard for me to predispose and guess at that.

9 As to Mr. Coit's argument, you know, he's making an
10 argument as to relevancy. A question of relevancy is really a
11 hearing question. This is a discoverability question, and it's
12 not uncommon for this Commission to allow people to produce
13 information redacted. It occurs every day here.

14 CHAIRMAN HANSON: Thank you. Ms. Semmler or Mr. Best,
15 do you have something to add?

16 MS. SEMMLER: Thank you. This is Kara Semmler. It
17 seems it would be easier to deal with this question in two steps
18 as Mr. Wieczorek suggested. Step one, the agreement's been
19 offered. It's been produced in its redacted form.

20 Step two, maybe we do look specifically at those
21 redacted elements. And we do have a Commission meeting at the
22 end of the month we could look specifically at those redactions
23 and decide whether in this particular setting and this
24 particular set of dockets whether or not they should be redacted
25 or available.

1 But it seems easier to me to deal with it in two
2 separate steps.

3 CHAIRMAN HANSON: Thank you. Excuse me. Ms. Wiest,
4 did you have something to add?

5 MS. AILTS WIEST: Yes. I would agree that it probably
6 would be easier. I was unaware that the parties were making the
7 argument about the redaction. I don't remember that being
8 discussed in any of the responses. And so I have not looked at
9 that issue.

10 I don't know that the agreement has ever been filed
11 with the Commission in the arbitration proceeding either. I
12 just don't recall if anybody filed it with testimony or
13 anything. So I'm at a loss because I haven't seen it.

14 CHAIRMAN HANSON: Thank you. Commissioners, any
15 questions or thoughts at this juncture on this item?

16 COMMISSIONER JOHNSON: Only that without being able to
17 look at anything, it would be difficult for us to resolve this
18 issue today.

19 CHAIRMAN HANSON: Exactly.

20 MS. SISAK: This is Mary Sisak. May I just make one
21 observation on the request?

22 CHAIRMAN HANSON: Certainly. Go ahead.

23 MS. SISAK: Swiftel doesn't object to the two-phase
24 process. The only thing we'd like to bring to your attention is
25 reply testimony is due on August 4, and pursuant to the

1 Commission's procedural schedule, Swiftel is granted the right
2 to include in its reply testimony arguments concerning any of
3 the documents that may be produced pursuant to a Motion to
4 Compel.

5 And if the hearing that we're talking about is the
6 August 29 hearing, it would probably mean that Swiftel would not
7 be able to file its reply testimony on August 4. But if we
8 could have maybe until August 8 to file our reply testimony,
9 then that should be sufficient.

10 MS. AILTS WIEST: Is that okay with Sprint?

11 MR. WIECZOREK: Well, I've got some concern about
12 that. Commission's order called for simultaneous direct and
13 simultaneous reply. Swiftel has not filed any direct in this
14 proceeding, and so I have some concern as to whether I'm just
15 going to get -- they're going to just dump everything into a
16 reply, direct and essentially rebuttal.

17 I mean, because the concern I would have is the reply
18 testimony has to be replying to my direct. Well, if my direct
19 doesn't talk about this order, how can she now shove this order
20 in or I mean the agreement in and have extensive testimony on
21 there and then I'm stuck with no ability to --

22 MS. SISAK: I'm sorry, Mr. Wieczorek. My
23 understanding of the agreement that was between the parties and
24 which was included in the Commission's procedural schedule is
25 any new issues raised by Swiftel in its reply could be responded

1 to by Sprint, if I recall the agreement correctly.

2 MR. WIECZOREK: And I believe that is correct. And I
3 was getting to that. Because if you push this back much,
4 Commission, we're looking at a hearing starting on the 20th.
5 You push it to the 8th, you're just going to have some short
6 time on that.

7 And as I understand now, Ms. Sisak's position is it's
8 going to be directly -- what she would be filing would be only
9 reply testimony replying to our direct. And then anything new
10 in the discovery.

11 So if that's what's occurring here, then I think the
12 Order handles it. And then I don't think I have a big problem
13 with her taking a couple more days. The 8th might be a little
14 bit long because then if we have to get a response out, we're
15 then saddling on the Commission just a couple days before the
16 hearing.

17 MS. SISAK: Well, the alternative would be if the
18 motion hearing is on the 29th on the redacted material, if you
19 turned it all over by the 30th, then -- the 30th is --

20 MR. WIECZOREK: The 30th is a Wednesday, I believe.

21 MS. SISAK: Well, I'm sorry. I'm trying to get my
22 calendar in order here. If you turned it all over by the 30th,
23 then we would only need until the 6th to file our reply.

24 MR. WIECZOREK: I probably -- Commission, I don't see
25 that that would be a problem because, I mean, either she gets --

1 gets certain redacted pages or she doesn't.

2 MS. SISAK: Okay.

3 MR. WIECZOREK: The one thing that I would like is if
4 we're extending reply testimony to the 6th, that should be for
5 both parties because Swiftel shouldn't -- well, I guess I'm not
6 sure I've got even reply testimony given the fact that Swiftel's
7 never filed direct. But reply testimony should be the same for
8 both parties.

9 MS. AILTS WIEST: Is that okay?

10 MS. SISAK: That's fine with Swiftel.

11 MS. AILTS WIEST: Okay. So the only thing that we'd
12 be changing is the date from the 4th until the 6th.

13 MS. SISAK: Okay. And so then we will amend or file a
14 new motion on the redacted material.

15 As to my first point on questions 2, 3, and 4, my I
16 guess alternative proposal to Sprint's proposal and my
17 alternative was that they simply state here at this hearing that
18 they have provided the redacted agreement and then we will not
19 require them to reproduce it.

20 MR. WIECZOREK: Yeah. And on behalf of Sprint, the
21 material we produced in the arbitration through discovery can be
22 treated as if reproduced in this proceeding subject to the
23 protection order in this proceeding.

24 MS. SISAK: That's fine. But that means I don't have
25 to modify any other entity's arbitration protective agreement.

1 MR. WIECZOREK: That's correct. And I would agree
2 with that.

3 MS. AILTS WIEST: Does that take care of 2, 3, and 4
4 then?

5 MS. SISAK: Yes. And we will further argue the
6 redaction. But otherwise that takes care of 2, 3, and 4.

7 MS. AILTS WIEST: Okay.

8 CHAIRMAN HANSON: Thank you. The Commission's
9 appreciative of the cooperation between the two parties and hope
10 that you'll be able to find some common ground on the other
11 areas.

12 Discovery request 5 and 6.

13 COMMISSIONER JOHNSON: I'm sorry to interrupt. This
14 is Commissioner Johnson. I just want to verify that for those
15 entities who are parties to this proceeding but not to the
16 arbitration, I mean they'll obviously gain access to the
17 information under question; is that right?

18 MR. WIECZOREK: I guess I'm -- I'm assuming you're
19 referring to SDTA.

20 COMMISSIONER JOHNSON: Right.

21 MR. WIECZOREK: The Order for Intervention set forth
22 at SDTA would not participate in any prehearing discovery, I
23 believe. I'll just have to double-check that. I'm not sure
24 that that agreement barred them from reviewing discovery. But
25 if there's not -- if it wasn't -- they weren't so restricted in

1 the order for intervention, I don't see a problem as long as
2 they've signed the confidentiality agreement.

3 COMMISSIONER JOHNSON: Okay. Sure. And I had not
4 reviewed that document prior to coming up so, Tal, you're
5 probably right. And as long as it's taken care of on that
6 stuff, I'm fine. Thanks.

7 CHAIRMAN HANSON: Please proceed then on 5 and 6.

8 MS. SISAK: Yes. On questions 5 and 6 Swiftel asked
9 for various information, statements that Sprint has made
10 concerning its intention to continue in its CLEC business and
11 also separately to statements that it made about its contention
12 to continue in its cable -- or its business in relation with
13 cable companies.

14 In response Sprint directed us to some of their
15 websites. And the information on those websites is not only
16 voluminous, it's difficult to understand. It's difficult to
17 review. And the bottom line here is what we've simply asked
18 them to do was to identify whether there were any materials
19 related to the question.

20 In its response to our motion, Sprint provided the
21 following answer: "Sprint can answer that it is not seeking to
22 terminate its arrangement with MCC." And Swiftel accepts that
23 statement as far as it goes, but we would also accept in
24 response to this question a statement as to whether or not there
25 are any statements about any abandonment or change in its CLEC

1 business or provision of service of cable companies.

2 If there are no such statements, Sprint can simply say
3 so. If there are such statements, Sprint can simply say that
4 there are such statements.

5 CHAIRMAN HANSON: Mr. Wieczorek.

6 MR. WIECZOREK: Yes. Thank you, Commissioner.
7 Request number 5 -- and I'll take these -- they're slightly
8 different -- asks for copies of all statements made to financial
9 analysts concerning Sprint's CLEC business, and they break that
10 out, the CLEC business other than with cable and then the same
11 question as to the joint provisioning service we do with cable
12 companies.

13 The objection is an overly broad and unduly burdensome
14 objection because if you -- if you -- you know, Sprint's a
15 fairly large company. There are probably literally hundreds of
16 financial analysts that cover Sprint. If these financial
17 analysts have gotten any kind of statement from anybody at
18 Sprint, that is what she's asking we divulge.

19 Now I don't know how we could go forward and try to
20 interview everybody who might have had contact with a financial
21 analyst to see if they made any comment about the CLEC business.

22 The same is for her number 6 which asks for any
23 comments ever made in the last three years made to shareholders.
24 Well, you know, we can point her to our general public business
25 statement, you know, or annual reports, our FCC filing and those

1 types of documents. Those set forth the corporate's position.

2 Now to try to run down or make a -- to interview
3 everybody at Sprint as to what statements might have been made
4 about the businesses, I think would be the epitome of being an
5 overly broad request.

6 The reason -- the reason the answer or the response
7 talks about Sprint can answer as not seeking to terminate its
8 arrangements with MCC, that's in direct reply to Swiftel's
9 analysis on why they said they need this information because
10 they said they needed it because they were concerned about
11 financial difficulties that Sprint had and whether it's going to
12 reassess its commitments to CLEC service and the likelihood that
13 Sprint will seek to terminate its arrangements with MCC.

14 And Sprint has no -- is not seeking to terminate its
15 arrangements with MCC, and that's why we provided that clear
16 statement in our response.

17 So given that that was their primary motivation, we
18 provided that. We think it's responded to at least that extent.
19 Given the way she's phrased her questions, we believe they're
20 overly broad and unduly burdensome.

21 MS. SISAK: Sprint has an investor relations
22 department, and they also have a department for all of their
23 media communications. I don't think it's overly burdensome to
24 ask Sprint to ask for their investor relations group and their
25 media relations group whether or not they've released any such

1 statements. And we can limit it to the past three years.

2 CHAIRMAN HANSON: Ms. Semmler or Ms. Wiest, do either
3 of you have something?

4 MS. SEMMLER: This is Kara Semmler. It just doesn't
5 seem like that's what the question's requesting. The question
6 does seem overly broad and does appear to be asking for a copy
7 of any and all statements made to financial analysts or
8 shareholders. It seems broad. It doesn't seem to be asking the
9 question that Mary must want answered. So I would agree with
10 the objection.

11 CHAIRMAN HANSON: Ms. Wiest.

12 MS. AILTS WIEST: I guess I think it might be possible
13 for them to respond to it. And I think Ms. Sisak has narrowed
14 it somewhat and if it would be narrowed to the point if they
15 asked your investor relations department and media relations
16 department if they've released any such statements as to I
17 believe abandonment of the cable partnership? Is that correct,
18 Ms. Sisak?

19 MS. SISAK: Well, yes. Abandonment or change in the
20 CLEC business or provision of service with cable companies in
21 the past three years.

22 MS. AILTS WIEST: That doesn't seem overly burdensome
23 to me, Mrs. Wieczorek, if it was limited to the fact that you
24 just asked those two departments if they've released any such
25 statements as to those.

1 MS. SISAK: I'm sorry. But my point here is if we at
2 least know that there's something to look for, then we can go to
3 their website and try to hunt it down.

4 MR. WIECZOREK: Yeah. But the way this is being
5 phrased is if there's been a change. Well, the investor
6 relationships and the financial people talking to the financial
7 analysts are going to say, well, we announced here's what the
8 CLEC has increased this month or here's a signing. We signed up
9 a new cable operator. Or we've started provisioning service
10 through a cable operator in this spot.

11 I mean, you could -- you know, the question says
12 concerning. It doesn't say -- you know, so any reference to
13 CLEC operations is what we're --

14 MS. SISAK: Well, we can further limit it and we can
15 say just ask them if there's been abandonment or change in the
16 sense of reducing Sprint's commitment to the CLEC business or
17 the cable business.

18 CHAIRMAN HANSON: I would think that that could have
19 been limited at the beginning. I'm surprised we got as far as
20 we are here, and I see the points that are being made by Sprint
21 as having significant validity, especially from a standpoint of
22 discussion that's transpired here just now.

23 Are there -- are there other areas as we go through
24 this process that we can find some compromise areas where -- it
25 seems pretty obvious right off the bat that the original

1 requests were overly broad and that they could have been made --
2 prior to reaching this meeting, that some compromise could have
3 been made.

4 So I'm hoping as we go through this if there are other
5 areas you're going to be able to work that out much more quickly
6 than what we're doing here. Otherwise, this is going to be a
7 very, very long meeting.

8 I appreciate the fact that some compromise is being
9 worked out at this juncture. Mr. Wieczorek, the suggestions
10 that are being made by Ms. Sisak, are those palatable?

11 MR. WIECZOREK: Well, I'm assuming any such limiting
12 would be limited to official corporate statements taken, that it
13 wouldn't be -- it's not a casual conversation. Because, I mean,
14 people do call --

15 MS. SISAK: That is correct. We're not asking for
16 casual conversations. We're asking for official corporate
17 statements.

18 CHAIRMAN HANSON: Please allow Mr. Wieczorek to finish
19 his statement before jumping in. We do want to have this a free
20 flow but make sure he at least finishes his sentence.

21 Mr. Wieczorek, were you done?

22 MR. WIECZOREK: And the difficulty I have with --
23 frankly, Commissioner, I appreciate that that likely limits it
24 considerably. I will have to represent to the Commission I
25 don't have the power to just say, yes, I agree. If the

1 Commission does say that we should collect that and limits the
2 Order accordingly, that's certainly something I'll go back to my
3 client and collect.

4 CHAIRMAN HANSON: Thank you. Any further thoughts,
5 Ms. Sisak?

6 MS. SISAK: No. I'm sorry, Commissioner. And I
7 apologize for interrupting. I just did want to make clear that
8 we're not asking for whatever -- conversations from employees
9 that are not authorized representatives of the corporation.

10 CHAIRMAN HANSON: It seems to some respect that there
11 just has not been a lot of communication or that the
12 communication has been faced with some intransigence going back
13 and forth on this issue. Because in listening to the two of you
14 chat this out, you seem to reach compromises far more quickly
15 here than you have in the past through all of the duration of
16 this process. So I'm hoping that if there's some communication
17 gap there, that you can bridge that.

18 Is there anything further that we need to discuss then
19 on 5 and 6 at this juncture?

20 Commissioner Johnson?

21 COMMISSIONER JOHNSON: Mr. Chairman, is it your
22 preference that, you know, we deal with these as we go? Do you
23 want to save motions until the end.

24 I ask that because it appears as though Mr. Wieczorek
25 isn't in a position to essentially be able to reach a compromise

1 on this issue, and so if you'd like, we could certainly make a
2 motion to do as I think we have read, even if not officially.

3 COMMISSIONER HANSON: That would be fine. And it's
4 probably easier to remember making those in the process,
5 especially with discovery requests on 2, 3, 4, the timing and
6 things of that nature.

7 So by all means, if you'd like to make that motion,
8 please go ahead.

9 COMMISSIONER JOHNSON: My motion would be to limit the
10 discovery requests under 5 and 6 to state official corporate
11 statements made regarding the abandonment or reduction of
12 Sprint's commitment to CLEC or cable businesses for the last
13 three years.

14 CHAIRMAN HANSON: Any discussion on that motion?

15 COMMISSIONER JOHNSON: And certainly if the parties
16 have tweaks to the wording, I'm certainly amenable to that.

17 CHAIRMAN HANSON: Well, we're going to allow the
18 parties to comment on the motion.

19 MS. SISAK: This is Mary Sisak. That motion, we have
20 no comment. We think that's a great motion.

21 CHAIRMAN HANSON: Mr. Wieczorek?

22 MR. WIECZOREK: I have no comment, Mr. Chairman.

23 CHAIRMAN HANSON: All right. Thank you. Then
24 Commissioner -- excuse me. Discussion? Commissioner Johnson?

25 COMMISSIONER JOHNSON: Are you asking for a vote or

1 discussion?

2 CHAIRMAN HANSON: Vote.

3 COMMISSIONER JOHNSON: Aye.

4 CHAIRMAN HANSON: Commissioner Kolbeck.

5 COMMISSIONER KOLBECK: Aye.

6 CHAIRMAN HANSON: Hanson votes aye. Motion carries.

7 Let's dispose of the first item then as well, discovery requests
8 2, 3, and 4.

9 Ms. Wiest, I'm going to impose upon you to give us
10 a -- I think the date of August 6 from August 4, is it, and if
11 you would tell us what the -- I'm not recalling exactly. I have
12 notes here, but I'm not exactly recalling all of the items that
13 were discussed there.

14 MS. AILTS WIEST: With respect to 2, 3, and 4, I
15 believe how we ended up was that the reply testimony date will
16 be changed until the 6th, and essentially Swiftel will need to
17 file something that specifically points to what information that
18 is redacted that it is now seeking and the Commission will rule
19 on that at a later date.

20 CHAIRMAN HANSON: Thank you. Do the parties have
21 anything that they noticed that should be included in addition
22 to what Ms. Wiest pointed out?

23 MS. SISAK: This is Mary Sisak. We believe
24 Ms. Wiest's proposed motion is appropriate and acceptable.

25 CHAIRMAN HANSON: Mr. Wieczorek.

1 MR. WIECZOREK: I have no objection to her language.

2 CHAIRMAN HANSON: Commission discussion or question?

3 COMMISSIONER JOHNSON: Mr. Chairman, maybe it's not
4 necessary but I think Ms. Sisak had noted earlier that that time
5 line is acceptable as long as they receive any unredacted
6 wording that the Commission allows them to have on the 30th.
7 And so to a certain extent our motion -- if that agreed upon
8 time line's contingent upon delivery, our motion should probably
9 be as well.

10 CHAIRMAN HANSON: Thank you. Any further discussion
11 on that? We don't have a motion before us at this juncture
12 unless we allow Ms. Wiest to make motions.

13 So I'll move that the reply to testimony be moved to
14 the August 6 date and that the other items as presented by
15 Ms. Wiest and Mr. Johnson, the redaction and Swiftel, be
16 included in that motion.

17 Is there any further clarification that needs to be
18 made?

19 Discussion?

20 Commissioner Johnson.

21 COMMISSIONER JOHNSON: Aye.

22 CHAIRMAN HANSON: Commissioner Kolbeck.

23 COMMISSIONER KOLBECK: Aye.

24 CHAIRMAN HANSON: Hanson votes aye. The motion
25 carries. We are at items discovery request 7, 8 and 9. And

1 Ms. Sisak, you have the floor.

2 MS. SISAK: Thank you. On 7, 8, and 9 Sprint has also
3 offered to I guess make available in this proceeding specific
4 documents that were filed in the arbitration. And I think
5 we've -- Sprint has also agreed that its statements in this
6 hearing allows -- basically they state that they are making them
7 available in this proceeding, and we simply -- Swiftel does not
8 require them to reproduce it. And that's acceptable for 7, 8,
9 and 9 for Swiftel.

10 CHAIRMAN HANSON: So no action you're saying is
11 necessary by us on 7, 8, and 9 at this juncture.

12 MS. SISAK: I believe that's the case, unless I have
13 misstated anything and Sprint disagrees with what I have stated.

14 CHAIRMAN HANSON: Mr. Wieczorek?

15 MR. WIECZOREK: No. I believe that accurately
16 reflects my e-mail to her of June 12.

17 CHAIRMAN HANSON: Wonderful. Ms. Wiest or
18 Ms. Semmler, do either of you have anything?

19 MS. AILTS WIEST: I don't.

20 CHAIRMAN HANSON: Thank you very much. We will move
21 on then to discovery request 10, 11, and 12.

22 Ms. Sisak.

23 MS. SISAK: Yes. Discovery request 10, 11, and 12
24 concern questions on Sprint's maintenance budget for services in
25 the Swiftel service area. Sprint's response in the opposition

1 to our Motion to Compel is that Sprint did not obtain this data
2 on a state-specific level or that it would be extremely
3 burdensome to produce it on that level.

4 And in response to -- or Sprint's response in the
5 Motion to Compel we would accept that information, kind of a
6 total maintenance budget for their CLEC's facility.

7 MS. AILTS WIEST: Across the nation?

8 MS. SISAK: Well, yes. I mean, Sprint's argument in
9 their motion is that it's too burdensome to break it out on a
10 state-specific level so we would accept that they just provide
11 the total number.

12 CHAIRMAN HANSON: Mr. Wieczorek.

13 MR. WIECZOREK: Well, I'm at a little bit of a loss
14 given the fact that I haven't been able to see how they keep
15 those CLEC numbers. I'm sure they've got them in some base of
16 what their expenditures are. I don't know whether they budget
17 it that way. I'm assuming that some kind of historical --
18 historical expense information should be acceptable if there's
19 not a specific CLEC budget.

20 MS. SISAK: If there's no specific -- I'm sorry.

21 MR. WIECZOREK: No. I guess I'm assuming -- I'm out
22 here on a limb a little bit because obviously I haven't talked
23 to my client about what they have. But I'm assuming at some
24 level they've got their CLEC operation as a line item in their
25 reports.

1 CHAIRMAN HANSON: Ms. Sisak.

2 MS. SISAK: I was simply going to say if they have no
3 specific CLEC budget, that would be an acceptable statement to
4 Swiftel as well.

5 MR. WIECZOREK: All right. I will see what they've
6 got and see what's available. And that's about all I can
7 promise today. I don't even know what they have on that
8 level.

9 I'll see if I can get some pulled CLEC numbers.

10 MS. AILTS WIEST: Can we just leave it that the
11 parties will work out 10, 11, and 12?

12 MR. WIECZOREK: I think that's acceptable from
13 Sprint's standpoint because if I come back and if I go talk to
14 my people and they have some issue with how -- or what kind of
15 material they can produce, I can certainly sit down with Mary
16 and probably figure out a -- an acceptable way to produce that.

17 MS. AILTS WIEST: Is that all right with you,
18 Ms. Sisak?

19 MS. SISAK: That's fine with Swiftel.

20 CHAIRMAN HANSON: We'll move on then -- thank you.
21 We'll move on then to discovery request 26.

22 MS. SISAK: That is all that Swiftel has this morning
23 for Sprint.

24 MS. AILTS WIEST: You don't need any of your other --

25 MS. SISAK: No. We're not pursuing at this time --

1 based on Sprint's responses we're not pursuing the other matters
2 raised in the motion.

3 MS. AILTS WIEST: Okay.

4 CHAIRMAN HANSON: Including the Motions to Compel
5 on -- I have pages and pages of items here. I just want to make
6 sure we're clear. So on the remaining portion -- not that I'm
7 glad -- not happy to hear this.

8 MS. SISAK: Let me be specific then. How is that?

9 CHAIRMAN HANSON: Okay. Great.

10 MS. SISAK: Request 26, production of documents 1, 3,
11 5, 7, we are not pursuing further. I guess there is one
12 clarification. We had a general request that all Sprint
13 responses be provided under oath. And I -- I apologize. I
14 don't recall if Sprint has agreed to do so.

15 MS. AILTS WIEST: I think they already did it, didn't
16 they?

17 MR. WIECZOREK: I provided an oath last week. I'm
18 assuming that anything additionally is what Ms. Sisak's saying.
19 If I produce something, an additional and resupply to the data,
20 certainly do that using the same oath.

21 MS. AILTS WIEST: And just to make this very clear,
22 I'm going to assume if you have not brought it up, Ms. Sisak,
23 that is no longer part of your Motion to Compel; is that
24 correct?

25 MS. SISAK: That's correct.

1 MS. AILTS WIEST: Okay. Thanks.

2 CHAIRMAN HANSON: Ms. Sisak, when you were referring
3 to the documents just a moment ago you said request for
4 production of documents 1, 3, 5, and 7. On my information I
5 have 1, 4, 5, and 7. 4 instead of 3.

6 Did you misspeak, or did I have it incorrect?

7 MS. SISAK: Well, I think I actually have 1, 3, 4, 5,
8 and 7. So I forgot to include one.

9 CHAIRMAN HANSON: Okay. Excellent. Thank you very
10 much. We will then move to Swiftel -- Motions to Compel MCC.
11 And Ms. Sisak?

12 MS. SISAK: Yes. All of the questions that we asked
13 of MCC are directly related to their obligations to demonstrate
14 that they meet the qualifications to be certificated.

15 MCC's sole argument and response seems to be that the
16 Commission has already certificated MCC in other parts of
17 South Dakota and, therefore, Swiftel cannot challenge its
18 technical, managerial, or financial capabilities.

19 Swiftel has two responses to that. The first response
20 is we disagree strongly. We believe that South Dakota Law
21 specifically states that if an applicant is seeking to expand or
22 to amend their certificate, that the application -- and I quote
23 from 49-31-69, "An application for an amended certificate is
24 subject to the same requirements as an application for an
25 initial certificate." And, therefore, even though MCC may have

1 been certificated in other areas, they still must meet all of
2 the requirements to be granted a certificate in Swiftel's
3 service area.

4 In addition, because Swiftel is a rural telephone
5 company, there are additional requirements that they must meet
6 for the ETC requirements, which I believe were not even part of
7 their earlier showing in other parts of South Dakota.

8 So the only thing I believe we're left with then after
9 that question is whether or not the questions asked by Swiftel
10 will produce evidence that has bearing on this case. And I
11 think if you look at our discovery requests, they either are
12 specifically related to various parts of the South Dakota rules
13 concerning the requirements to be certificated and to be
14 certificated in a rural area or they are specifically related to
15 statements made by MCC in its application.

16 And, therefore, we believe that MCC should be required
17 to provide all the information requested.

18 CHAIRMAN HANSON: Mr. Koenecke.

19 MR. KOENECKE: Good morning, Commissioners. I guess
20 I'll leave Swiftel to second-guess the Commission staff and the
21 Commission about my client's abilities to provide those
22 services. I'm certainly not going to be asking the Commission
23 to relitigate those aspects and spend its time and resources on
24 those things over and over again.

25 I think the reading by Swiftel of that provision and

1 law is -- well, it's as overbroad as the questions that have
2 been asked of MCC in the discovery request. So I won't, you
3 know, burden you any further with discussion on that.

4 That would be our position is that those things are --
5 essentially they've been decided. They're res judicata, and I'm
6 not going to ask the Commission to revisit those. I'll leave it
7 to Swiftel to do that.

8 CHAIRMAN HANSON: Ms. Wiest.

9 MS. AILTS WIEST: We need to go through these point by
10 point so if you could start with your first ones, Ms. Sisak.

11 MS. SISAK: Well, I'm assuming that's the Commission's
12 pleasure.

13 CHAIRMAN HANSON: Yes. Ms. Wiest is speaking for the
14 Commission.

15 MS. AILTS WIEST: I guess my point is to a certain
16 extent, you know, just based on what our discussions have been
17 with Sprint you've modified some of these requests that are
18 similar requests. So I'm not sure why we would say, you know,
19 that you would be granted everything here when you've modified
20 the exact same requests in the Sprint situation.

21 And so I think it would be helpful if we just went
22 through them one by one so that we could figure that out.

23 MS. SISAK: Okay. I will begin. Question 2 asks for
24 the agreement that MCC has with Sprint. And although Sprint has
25 provided the agreement for this proceeding, this proceeding is a

1 separate proceeding, and we believe that Mediacom must provide
2 it for us to be able to use it in this proceeding.

3 CHAIRMAN HANSON: Does that apply to 2, 3, 4, and 30
4 on your discovery requests?

5 MS. SISAK: I think it applies to 2, 3, and 4. And 30
6 is a little bit different.

7 CHAIRMAN HANSON: Thank you. Mr. Koenecke -- excuse
8 me. Mr. Coit would like to make a statement.

9 MR. COIT: Thank you, Mr. Chairman, Commissioners. I
10 again would just like to reiterate that we really do believe
11 this agreement is relevant. The answer that's referenced in the
12 motion that Swiftel filed indicates that MCC objected to
13 providing the agreement on the grounds it's not likely to lead
14 to the discovery of admissible evidence.

15 The business arrangements between MCC and Sprint are
16 not relevant to this certification proceeding. And we would
17 strongly disagree with that.

18 And the important thing from our perspective, I guess,
19 is, you know, whether it comes from Sprint or whether it comes
20 from MCC, if it's the same agreement, it doesn't really matter.
21 It's just -- it needs to be provided in a way, though, that it's
22 obviously in this docket and usable in this docket.

23 So whichever way that happens, if we get it through
24 Sprint, that's fine. If we get it through MCC, that's fine as
25 well. It's just I think it's important for SDTA given that I

1 think there are some, you know, questions with respect to this
2 common carrier status. And there's a legal issue there. And I
3 think that's the issue -- or at least one of the issues that
4 we're most interested in. So thank you.

5 CHAIRMAN HANSON: Thank you. Ms. Semmler, did you
6 have anything to add at this juncture? If not, that's fine.

7 Mr. Koenecke.

8 MR. KOENECKE: Well, thank you, Commissioner. I guess
9 it is the same agreement. I guess any averment that somehow it
10 might be a different agreement somehow in this proceeding as
11 opposed to the other ones, I don't quite understand that.

12 Frankly, I haven't seen the agreement. But given the
13 Commission's ruling in the case we just had a half an hour ago,
14 I don't see why that same procedure wouldn't be usable in this
15 instance here. I'm not going to ask the Commission to
16 relitigate that either. You've decided, as I understand it,
17 that a redacted version somehow is going to be discussed between
18 the parties and brought up for hearing in a couple of weeks.

19 And frankly we'd follow along in that same vein from
20 here. I'm not going to ask you to go over that ground again.
21 If that's acceptable there, I think it should be acceptable
22 here.

23 CHAIRMAN HANSON: Ms. Wiest.

24 MS. AILTS WIEST: Is that acceptable to Ms. Sisak?

25 MS. SISAK: Yes. Except that since it was Sprint that

1 provided the agreement in the other proceedings, I guess Sprint
2 has to allow us to use the agreement in this proceeding. You
3 know, that's -- if no one has a problem with doing that, then we
4 accept Mediacom's change in response and they change their
5 objection to providing a redacted copy of the agreement and we
6 will reserve our rights to file a motion for the redacted
7 portion.

8 MS. AILTS WIEST: And that would be acceptable with
9 you, Mr. Wieczorek, is that Sprint would allow it to be used in
10 this proceeding also?

11 MR. WIECZOREK: Thank you, Ms. Wiest. I don't have an
12 objection to that. The reason -- the reason a redacted copy was
13 produced by MCC is MCC is not involved in the arbitration. It
14 is the same agreement. I'll provide that to Mr. Koenecke so he
15 has a copy of the redacted copy. And I don't have an objection.

16 I think the way -- the way maybe procedurally is I can
17 provide it to Mr. Koenecke, and he can produce it on behalf of
18 MCC to Swiftel so it's produced by MCC. But I don't have a
19 problem with it being used in a redacted form here.

20 MS. AILTS WIEST: So let's just use this same
21 procedure with the change in the testimony, and I believe that's
22 the same also for this proceeding.

23 MS. SISAK: That's fine for Swiftel.

24 MR. KOENECKE: That's acceptable. Thank you.

25 MS. SISAK: Did you want me to discuss question 30?

1 MS. AILTS WIEST: Sure.

2 MS. SISAK: Question 30 is I guess maybe a little bit
3 similar to our prior discussion. We asked for financial
4 arrangements made with Sprint. MCC objected. I believe in the
5 same question posed to Sprint, Sprint said none. And we simply
6 asked for an answer from MCC.

7 If the answer is none, that's fine. But we don't
8 believe that an objection is appropriate because it does go to
9 the showing that they must make -- be certificated.

10 MS. AILTS WIEST: So can MCC provide that,
11 Mr. Koenecke?

12 MR. KOENECKE: That might very well be the case. If
13 none is the answer, then it is. If Sprint says it's none, we'd
14 have to discuss that with them. But I'd certainly be willing to
15 revisit an answer to number 30 based on that representation.

16 Mr. Wieczorek, do you know if your answer to a
17 similarly posed 30 was none, no financial arrangements?

18 MR. WIECZOREK: In response to Mr. Koenecke and for
19 the Commission's enlightenment, I have not reviewed MCC's
20 Interrogatories so I'm not sure what's identical to what's been
21 asked of Sprint. I'm not comfortable commenting on that without
22 pulling those Interrogatories up and reviewing those.

23 MR. KOENECKE: Well, I'm sorry to put you on the spot,
24 but I'll certainly commit to the parties to revisit number 30.

25 MS. AILTS WIEST: So is any action by the Commission

1 necessary?

2 Ms. Sisak?

3 MS. SISAK: Well, I don't know if there's -- I don't
4 know. I don't know if there needs to be a motion that
5 specifically says that MCC will provide the redacted agreement
6 and that MCC will I guess review whether there are any other
7 financial arrangements with Sprint.

8 CHAIRMAN HANSON: I think as long as we have come to
9 that juncture at this meeting, that even though that we're
10 dealing with honorable folks, I think it's responsible for us to
11 at least take that action as a motion and then we know everyone
12 knows where the mile marker is.

13 I will make that motion then and ask the fellow
14 Commissioners if there's any discussion on it.

15 COMMISSIONER JOHNSON: Just so that I can verify, the
16 motion is to have MCC provide a redacted copy of the agreement,
17 and then, secondly, to have them re-respond to the discovery
18 request for 30.

19 CHAIRMAN HANSON: That's correct.

20 COMMISSIONER JOHNSON: Great. Thanks.

21 CHAIRMAN HANSON: Commissioner Kolbeck.

22 COMMISSIONER KOLBECK: Is there any discussion of the
23 dates, times, the procedural schedule?

24 MS. AILTS WIEST: Yes. I believe the same change
25 would be made to that procedural schedule. That's correct.

1 CHAIRMAN HANSON: That's a good catch, Commissioner
2 Kolbeck. Thank you. That will be made part of the motion as
3 well.

4 Any further discussion by the Commissioners?

5 If not, Commissioner Johnson.

6 COMMISSIONER JOHNSON: Aye.

7 CHAIRMAN HANSON: Commissioner Kolbeck.

8 COMMISSIONER KOLBECK: Aye.

9 CHAIRMAN HANSON: Hanson votes aye. Motion carries.
10 We're looking at request 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15,
11 and 16.

12 MS. SISAK: MCC has stated in their response that they
13 will provide responses to 7, 8, 13, 14, 15, and 16. So we are
14 not further pursuing those questions at this time.

15 CHAIRMAN HANSON: Would you run that by again.

16 MS. SISAK: 7, 8, 13, 14, 15, and 16.

17 CHAIRMAN HANSON: Thank you.

18 MS. SISAK: We also are not pursuing question 5.

19 CHAIRMAN HANSON: Thank you.

20 MS. SISAK: With respect to question 6, MCC did
21 provide an answer, but their answer refers to equipment --
22 Sprint's equipment per the agreement with Sprint. And I'm not
23 quite sure what that answer means. If that means the agreement
24 that they've agreed now to provide pursuant to 2, then this
25 question is also -- can be taken off the table. But if they're

1 referring to some other agreement with Sprint, and that would be
2 an agreement that specifically lists the Sprint equipment, then
3 that should be provided.

4 CHAIRMAN HANSON: Mr. Koenecke.

5 MR. KOENECKE: Commissioners, I believe that the
6 agreement referenced there does refer to the agreement we've
7 previously discussed here that will be provided in redacted
8 form.

9 CHAIRMAN HANSON: So, Ms. Sisak, can that be taken
10 off?

11 MS. SISAK: Yes. Although, I guess what I would like
12 is a formal response supported by an oath that this information
13 is provided pursuant to the agreement provided pursuant to
14 question 2.

15 CHAIRMAN HANSON: Any opposition to that,
16 Mr. Koenecke?

17 MR. KOENECKE: No. I don't think so. If the question
18 is will we provide that answer on oath, then the answer is yes.
19 If I can restate, Ms. Sisak, what I think you meant is that --
20 well, actually I can't. Would you please say again what you're
21 requiring.

22 MS. SISAK: Yes. If I understand what you said, you
23 said that the response to 6 is part of the agreement which will
24 be provided in response to discovery request 2.

25 MR. KOENECKE: And I believe that it is.

1 MS. SISAK: And all we're asking --

2 MR. KOENECKE: But I don't know for sure. Not having
3 seen the agreement, as I stated before, I don't know for sure,
4 but I believe that to be the case. And so I think if we're
5 going to be consistent with what the Commissioners just did
6 which was order a response to, I believe, 30, then I guess as
7 much as I hate to say it, Commissioners, you should order a
8 response to this as well in order to eliminate confusion down
9 the road.

10 CHAIRMAN HANSON: Thank you. Let's continue dealing
11 with -- then I assume that takes care of 6, Ms. Sisak.

12 MS. SISAK: Yes.

13 CHAIRMAN HANSON: Okay. Let's continue then with 9.

14 MS. SISAK: 9 and 10, we asked for information about
15 MCC's annual maintenance budget for its equipment and facilities
16 and their annual construction budget. And we believe that both
17 of these items go to the question of their technical capability.

18 CHAIRMAN HANSON: Mr. Koenecke.

19 MR. KOENECKE: Just excuse me a minute, Commissioner.
20 I'm reviewing a document.

21 No. We stand on our objection that those questions
22 are unduly burdensome and not relevant to the issues here. I
23 don't see at all where that should be a part of this proceeding
24 myself. I can't agree to that.

25 CHAIRMAN HANSON: Ms. Wiest. Excuse me. Staff.

1 Ms. Semmler, did you have something? Mr. Best.

2 MS. SEMMLER: We don't have anything further.

3 CHAIRMAN HANSON: Would you speak into the mic.,
4 please.

5 MS. SEMMLER: Staff doesn't have anything further to
6 share. We don't have any comment. Thanks.

7 CHAIRMAN HANSON: Thank you. Ms. Wiest, do you have
8 something?

9 MS. AILTS WIEST: I was trying to look back to see
10 what happened in the preceding one. I guess the difference here
11 is that they're not saying they don't have it. So I don't know
12 that they have shown that it is unduly burdensome in this
13 instance. I'm not sure that it would be that burdensome to
14 provide it.

15 CHAIRMAN HANSON: Commissioners, any comments or
16 questions?

17 COMMISSIONER JOHNSON: Thank you. I have a question
18 for Ms. Sisak. Help me understand how this information is going
19 to be -- or may lead to admissible evidence.

20 MS. SISAK: Well, for example, if they have no budget
21 to maintain their facilities or to construct new facilities --
22 well, let me take it one at a time. If they have no budget to
23 maintain their facilities, I think it certainly goes frankly to
24 their technical qualifications. But it also may go to their
25 financial capabilities. And it also goes to the public

1 interest, which is an additional showing that they must make
2 because Swiftel is a rural service area. Will it impact
3 universal service? Is it in the public interest?

4 And I think if they are going to have an underfunded
5 or an underdeveloped network that is not really capable of
6 providing high quality service, that's something that should be
7 taken into consideration.

8 With respect to the construction budget, what we
9 already know from the evidence presented is that Mediacom's
10 facilities do not pass all of the subscribers currently served
11 by Swiftel. We don't know how many subscribers are not going to
12 be served because Mediacom to date has refused to provide that
13 information to Swiftel.

14 But, in any event, we know there are some. And if
15 there is no budget to construct anymore facilities, then that
16 would certainly impact on the question about whether or not
17 any remaining subscribers or any new subscribers will get
18 service -- excuse me. Any of the currently unserved subscribers
19 or any new subscribers will get service.

20 CHAIRMAN HANSON: Commissioner Johnson, would you like
21 to ask Mr. Koenecke to respond?

22 COMMISSIONER JOHNSON: Yeah. That -- yeah. That's
23 appropriate. Mr. Koenecke, any thoughts on that?

24 MR. KOENECKE: Well, I guess my thoughts would be,
25 Commissioner, is that we're here engaged in a serious question

1 whether Mediacom's going to be allowed to enter the Brookings
2 territory and for a company like Mediacom to commit resources to
3 further construction there when there is apparently some doubt
4 as to whether that's going to occur is -- that would be
5 troublesome for them to commit resources there and not have them
6 available someplace else.

7 But, in any event, we did answer in response to
8 question 11 that we have no current definite plans for
9 construction in Brookings in the time frame they've asked.

10 COMMISSIONER JOHNSON: Yeah. I'm done. Thank you,
11 Mr. Chairman.

12 MS. AILTS WIEST: Could a possible compromise be to
13 limit this to the Brookings area, Ms. Sisak?

14 MS. SISAK: Yes. That would be acceptable.

15 MS. AILTS WIEST: Because I think you had -- or the
16 second one. That was for all of South Dakota. So what if we
17 just went with number 9 for the Brookings area?

18 MS. SISAK: That's acceptable.

19 COMMISSIONER JOHNSON: Mr. Koenecke, does your client
20 have that information?

21 MR. KOENECKE: I don't know, Commissioner. It would
22 be, you know, difficult for me to presume that they didn't. But
23 I don't know. As I sit here, I'm not with anybody from Mediacom
24 at present, there was not on the line, and I couldn't say. But
25 it would be difficult to assume that they didn't, I think.

1 CHAIRMAN HANSON: Any further comments by any of the
2 parties? If not, is it acceptable to the Commission if we order
3 a response to under 9, we limit it to the Brookings area, if --
4 we order a response if the information exists and it be under
5 oath and we limit it to the Brookings area?

6 Any discussion on that?

7 That will be my motion then. Discussion? If not, a
8 vote.

9 Commissioner Johnson.

10 COMMISSIONER JOHNSON: Just so I can clarify. So we
11 are in essence granting the Motion to Compel on item 9 and
12 denying the Motion to Compel on item 10.

13 Am I understanding that right?

14 MS. AILTS WIEST: Technically I think they've
15 withdrawn their motion on 10 if she agreed that 9 would be
16 sufficient.

17 COMMISSIONER JOHNSON: Okay. Perfect. Thanks very
18 much. Thanks, Mr. Chairman.

19 CHAIRMAN HANSON: Commissioner Johnson.

20 COMMISSIONER JOHNSON: Aye.

21 CHAIRMAN HANSON: Commissioner Kolbeck.

22 COMMISSIONER KOLBECK: Aye.

23 CHAIRMAN HANSON: Hanson votes aye. Motion carries.
24 And on item 6 it appears that we were going to order a response
25 on 6. I just -- any discussion on -- excuse me. I'll make a

1 motion that we order a response on 6.

2 Any discussion?

3 If not, Commissioner Johnson.

4 COMMISSIONER JOHNSON: Aye.

5 CHAIRMAN HANSON: Commissioner Kolbeck.

6 COMMISSIONER KOLBECK: Aye.

7 CHAIRMAN HANSON: Hanson votes aye. Motion carries.

8 We are on item 11 then.

9 MS. SISAK: Yes. Based on our conversation here
10 today, Swiftel also will not pursue 11 and 12 at this time. So
11 we'll remove that from discussion.

12 CHAIRMAN HANSON: Thank you. And that should take
13 care of -- let's see. We are then on item discovery request 19,
14 20, 21, 22, 23, and 24.

15 MS. SISAK: Yes.

16 CHAIRMAN HANSON: Ms. Sisak.

17 MS. SISAK: Yes. Thank you. These questions -- MCC
18 has relied on its agreement with Sprint to argue that it has met
19 all the requirements to be certificated. But its agreement with
20 Sprint does allow for the termination of the agreement by either
21 party. And so these questions simply say if you're not -- if
22 that agreement is terminated, how will you continue to provide
23 service that you're committing to now?

24 And the reason why we think these questions are
25 important is because, number one, we don't know what the term of

1 the agreement is yet because that's been material that we --
2 that has not been provided in this proceeding. So we don't know
3 what the term of the agreement is.

4 And it's possible that the agreement may be about to
5 expire any day now. We just don't know. But it would seem to
6 me that if that's the case, it would be important to know that
7 because then if Mediacom truly is going to be able to meet its
8 commitment, it would have to have some alternative mechanism
9 other than what it is planning to do with Sprint. And so we're
10 simply asking for the response, how do you intend to meet your
11 obligation if there is no Sprint?

12 We would also point out that in their application
13 Mediacom actually refers to the fact that it would use service
14 from other entities. And we asked Mediacom to state and to
15 state whether any such other entities have been identified and,
16 if so, to identify them. And Mediacom did not answer that
17 question either. So we believe that these questions are
18 important and will shed light on whether or not Mediacom can
19 actually meet its technical, managerial -- well, technical and
20 managerial capabilities to be certificated.

21 CHAIRMAN HANSON: Thank you. Mr. Koenecke.

22 MR. KOENECKE: Well, Commissioner, I have two thoughts
23 here. The first one is that the Commission is -- or we're going
24 to go through this process whereby we exchange a redacted
25 version of this agreement which will -- A, something I haven't

1 seen and, B, likely to shed light on this.

2 You know, what strikes me about the questions we're
3 discussing at this time is they're -- they're hypothetical and
4 out in the future. You know, discovery requests are about
5 facts. And to -- these questions are about, well, what are you
6 going to do if then, you know, but why.

7 These questions would be incredibly difficult to
8 answer. They would require knowledge of facts which aren't
9 apparent. They'd be out in the future. And, you know, I don't
10 know that anybody else has had to answer questions, well, what
11 are you going to do if something happens with respect to an
12 agreement or with respect to equipment or what have you.

13 So I think asking us to answer these questions is just
14 really burdensome and would require us to perform an analysis of
15 a number of factors which would be -- I don't see what the
16 result would be -- how is the result useful if the contract
17 identified is not renewed or terminated as posed in question 19,
18 explain how we would provide voice grade access.

19 Well, it would depend on how the contract is not
20 renewed or is terminated. If it's terminated next week, then
21 that's one thing. If it's terminated two years down the road,
22 then the question of how we provide those services would be
23 answered differently. And I don't see the usefulness of going
24 down that path.

25 I guess that's my response. I don't know why we're

1 being asked these questions. I don't know why we're being made
2 to answer them, and if we were, it would be burdensome and not
3 useful.

4 CHAIRMAN HANSON: Ms. Semmler, do you have something?

5 MS. SEMMLER: I do. I think, again, step 1 as
6 Mr. Koenecke mentioned, to wait with the contract, the agreement
7 to exchange hands, and it may shed some light on these
8 questions. And, again, I agree it's pretty hard to look into
9 the crystal ball and foresee some of these circumstances. So
10 they do seem burdensome.

11 CHAIRMAN HANSON: Ms. Wiest.

12 MS. AILTS WIEST: Well, maybe I'm looking at it too
13 simplistically but to my mind the question is -- I mean, to the
14 extent they do have a plan if these services are terminated,
15 they can let them know about that plan. Now, if MCC does not
16 have any plans about what would happen, then I think the answer
17 is, well, we don't have any plans for that. When it happens
18 we'll come up with a plan.

19 So to that extent I don't see it as burdensome. I
20 don't think it requires MCC to go out and figure out a plan in
21 the event this happens. The question is does it have one.

22 CHAIRMAN HANSON: Thank you. Good point.

23 Mr. Koenecke, what about that, replying to the extent that MCC
24 has a plan and not requiring you to go out and invent one or
25 analyze certain areas that you have not up to this juncture?

1 MR. KOENECKE: I guess, Commissioner, I appreciate
2 Ms. Wiest's thoughts, but I see my witnesses sitting on the
3 stand then being hit with questions, well, you don't even have a
4 plan for the ultimate event A. You don't have a plan. You
5 don't have a plan. And that sounds very -- very accusatory for
6 a company executive on the stand to have to, you know, be faced
7 with giving that answer when the question is such a hypothetical
8 in nature.

9 I appreciate Ms. Wiest's comments, but I don't think
10 my witnesses are going to look very good if they get this
11 eventual question, well, you don't have a plan. I don't want
12 them to have to answer that. I don't see why they should have
13 to have a plan for something that it was scarcely spelled out in
14 the questions that we're discussing at this point.

15 CHAIRMAN HANSON: Mr. Coit.

16 MR. COIT: Yes. Thank you, Mr. Chairman. I do feel
17 somewhat compelled to comment on this. You know, this entire
18 certification process, you know, which is really, you know, a
19 process that's proceeding in two different dockets -- because of
20 the fact that we have a so-called joint provisioning arrangement
21 through which these -- through which these local
22 telecommunications services are going to be offered by MCC.

23 I mean, they're relying on this joint provisioning
24 arrangement. If they're relying on a joint provisioning
25 arrangement, what happens if it goes away? That's really what's

1 being asked here. And I would think that that would be a
2 question that is very important.

3 If the agreement is terminated, if Sprint decides that
4 they're not going to provide these wholesale telecommunications
5 services to CLECs anymore and they decide that, you know, as a
6 company that's not something that they see any profit in and
7 they just want to go in a different direction, what then is the
8 plan? And that's really -- that's what's being asked here.

9 And I would agree with Ms. Wiest that to ask that they
10 provide some information if they have a plan -- you know,
11 they're the ones that are relying on the joint provisioning
12 arrangement. They could come in, and they could have their own
13 plans and not rely on Sprint and, you know, proceed as any other
14 CLEC. But they're the ones that are relying on the joint
15 provisioning arrangement. And in those circumstances it would
16 seem to me that these are very relevant questions.

17 CHAIRMAN HANSON: Thank you. Commissioners, I'm
18 inclined to believe that MCC should respond to the extent that
19 they actually have a plan. Your thoughts, please.

20 COMMISSIONER KOLBECK: Mr. Chairman.

21 CHAIRMAN HANSON: Please.

22 COMMISSIONER KOLBECK: This is Commissioner Kolbeck.
23 I agree. I think that there should be some -- there's always
24 disaster responses or any other questions when it comes to
25 telecommunications. And I feel that having a plan if the

1 agreements do go south is not burdensome.

2 CHAIRMAN HANSON: I will make the motion then that on
3 items 19 through 24, inclusive, that the Commission order a
4 response to the extent only that MCC actually has a plan and
5 that they not be required to construct a plan or work towards
6 any other hypothetical arenas that they do not actually have
7 something existing at the present time.

8 Discussion? Mr. Kolbeck.

9 COMMISSIONER KOLBECK: Yes. Is this a yes or no
10 question totally, or if they do have a plan, they're not
11 required to produce it; correct?

12 CHAIRMAN HANSON: That's correct. Commissioner
13 Johnson, did you have something?

14 Commissioner Johnson.

15 COMMISSIONER JOHNSON: Aye.

16 CHAIRMAN HANSON: Commissioner Kolbeck.

17 COMMISSIONER KOLBECK: Aye.

18 CHAIRMAN HANSON: Hanson votes aye. The motion
19 carries.

20 Ladies and gentlemen, we have a grain warehouse
21 meeting that has been scheduled -- a hearing that was scheduled
22 to begin at 10 o'clock today. We will drop the grain -- excuse
23 me. The grain rules hearing will begin at 10, which is in
24 5 minutes so we don't have time to take up any of the other
25 discovery requests at this time.

1 The phone lines will drop that we presently have, and
2 they will begin again as soon as the rules hearing is over. We
3 cannot tell you how long -- what the duration of that meeting is
4 going to be. However, we do not anticipate that it's going to
5 be a lengthy meeting.

6 So the Commission is going to take a 5-minute break,
7 and then we will start in again at 10 o'clock. And thank you
8 all for joining us. We look forward to -- is that something
9 that you folks are able to work with?

10 MS. SISAK: Commissioner. This is Mary Sisak. I had
11 one question. I was given a different phone number for the
12 10:30 time. So when we call back in should we use the new phone
13 number?

14 CHAIRMAN HANSON: Staff has just informed me that,
15 yes, you should, that the present phone numbers will drop at 10
16 and that the new ones will begin when we're ready and we will be
17 on the web.

18 MS. SISAK: Okay. And so then we should just
19 immediately call back this new number and as soon as the other
20 hearing is concluded, this one will resume?

21 CHAIRMAN HANSON: That's correct.

22 (Discussion off the record)

23 CHAIRMAN HANSON: The Commission will stand in recess
24 on this item, and we will begin the next one in approximately
25 4 minutes.

1 (A recess is taken)

2 CHAIRMAN HANSON: This is the South Dakota Public
3 Utilities Commission continuation of the meeting of July 14 that
4 started at 8:30 this morning on the matters of TC06-178 and
5 TC06-188. Check the phone lines to see who is joining us today.

6 Tal Wieczorek.

7 MR. WIECZOREK: I'm on, Mr. Chairman.

8 CHAIRMAN HANSON: Diane Browning?

9 MR. WIECZOREK: Mr. Chairman, she cannot make it
10 today.

11 CHAIRMAN HANSON: Mary Sisak.

12 MS. SISAK: Present.

13 CHAIRMAN HANSON: Brett Koenecke.

14 MR. KOENECKE: I'm here, Commissioner.

15 CHAIRMAN HANSON: And is there anyone else joining us
16 on the phone lines today?

17 Mary, would you just say hello again.

18 MS. SISAK: Mary Sisak is present.

19 CHAIRMAN HANSON: Thank you. I believe when you first
20 said hi and confirming you were on it was a little soft and
21 difficult to hear. That certainly is quite clear. Thank you.

22 We'll resume then at where we left off with discovery
23 request 25.

24 Ms. Sisak.

25 MS. SISAK: Yes. Based on other responses provided or

1 other questions that will be responded to, Swiftel will not
2 pursue discovery request 25.

3 CHAIRMAN HANSON: Thank you. Request 28.

4 MS. SISAK: Yes. Discovery request 28 was answered in
5 part. The part that was not answered, however, is the
6 following: For each interface point identify all Sprint
7 equipment at the interface point. For each interface point
8 identify all Mediacom equipment at the interface point.

9 Swiftel believes that a response to those two parts of
10 the question is appropriate and necessary for this proceeding.
11 What it will tell us is it will basically tell us what Mediacom
12 does not have in its possession in order to provide service.
13 And it goes back to that question of if their arrangement with
14 Sprint is terminated, it will tell us what they must somehow
15 replace in order to continue to provide service. And that will
16 let us evaluate how difficult it would be for Mediacom to
17 provide service without Sprint.

18 CHAIRMAN HANSON: Mr. Koenecke.

19 MR. KOENECKE: Thank you, Commissioner. I would agree
20 on Mediacom's behalf that we will provide information about our
21 equipment, but I just -- I don't see how we're supposed to get
22 that information from Sprint and then certify that under oath to
23 Ms. Sisak.

24 These proceedings are similar in nature and probably
25 should be combined for the basis of hearing, but it's really not

1 for me to certify what Sprint's equipment is.

2 CHAIRMAN HANSON: Ms. Sisak.

3 MS. SISAK: Yes, Commissioner. I'd like to respond to
4 that. Mediacom has represented that it's working with Sprint in
5 partnership, and, therefore, there should be no burden on
6 Mediacom to be able to ask its partner to identify its
7 equipment.

8 CHAIRMAN HANSON: Mr. Wieczorek, did you have a
9 comment on that?

10 MR. WIECZOREK: Well, we've identified -- Sprint's
11 identified their equipment to the extent -- to the extent that
12 that identification of equipment's needed to assist MCC in
13 certification, I don't see that Sprint would have any objection
14 to that information being used in MCC's proceeding.

15 CHAIRMAN HANSON: Mr. Koenecke, would you be opposed
16 then to providing the information to the extent that MCC is
17 capable of providing it and that Sprint is willing to provide
18 it?

19 MR. KOENECKE: No, Commissioner.

20 CHAIRMAN HANSON: Excuse me.

21 MR. KOENECKE: No, Commissioner. I'd be glad to do
22 that. I have no objection to that.

23 CHAIRMAN HANSON: All right. Thank you. Does that
24 require an order by the --

25 MR. KOENECKE: Not for my benefit, Commissioner.

1 CHAIRMAN HANSON: Okay. Thank you. Commissioners?
2 Ms. Wiest.

3 MS. AILTS WIEST: I was just wondering if Ms. Sisak
4 had a response to that.

5 MS. SISAK: A response to whether or not a motion
6 should be required?

7 MS. AILTS WIEST: No. Are you satisfied with what MCC
8 has stated? Is any motion required I guess is my point.

9 MS. SISAK: Well, I believe that MCC has stated that
10 they will provide the responses to the two parts of the
11 question. If that is correct, then we will accept that
12 response.

13 MR. KOENECKE: Yes. We'll provide what we can. We
14 intend to provide answers to both questions.

15 MS. SISAK: Then Swiftel accepts that.

16 CHAIRMAN HANSON: Commissioners? We will proceed then
17 to discovery request 32.

18 MS. SISAK: Oh, thank you. Yes. Based on information
19 that is going to be provided pursuant to other questions in
20 today's hearing, Swiftel will not pursue discovery request 32.

21 CHAIRMAN HANSON: Thank you. Request for production
22 of documents 1, 4, 5, and 7.

23 Ms. Sisak.

24 MS. SISAK: With respect to production of documents 1,
25 4, and 5, these all have to do with the agreement between Sprint

1 and Mediacom. It is Swiftel's understanding that there is only
2 one agreement and, therefore, we would argue that it is not at
3 all burdensome for Mediacom to provide. And I also believe and
4 I ask Mediacom to correct me if I'm wrong that they have already
5 said that they will provide the agreement in response to
6 discovery request.

7 MR. KOENECKE: We said we'd provide it, if I can
8 answer that, Commissioner Hanson.

9 CHAIRMAN HANSON: Please.

10 MR. KOENECKE: Sorry to move right into that without
11 your prompting me. But we said we'd participate in the same
12 manner as we're going to proceed in the other docket, which is
13 to provide that redacted copy and then have further
14 discussion -- as I understood it, have further discussions in
15 preparation or moving up towards the next regular scheduled
16 hearing.

17 CHAIRMAN HANSON: Ms. Sisak, is that sufficient?

18 MS. SISAK: That's sufficient. I guess really my
19 clarification was just that in the discovery request we asked
20 that they identify the document. In the production request we
21 asked that they produce it. If they have already agreed to
22 produce it, 1, 4, and 5 are not necessary.

23 CHAIRMAN HANSON: What about 7?

24 MS. SISAK: 7 is a little different. 7 asks that they
25 produce all documents that they've relied on to support their

1 answers to these discovery requests. So to the extent there are
2 any documents that they relied on to answer any of the other
3 discovery requests that they have now been required to respond
4 to pursuant to this hearing, we would ask that they provide
5 those documents.

6 CHAIRMAN HANSON: Mr. Koenecke.

7 MR. KOENECKE: Yeah. We'll reevaluate that answer,
8 Commissioner, in light of what's going on previously here. And
9 it may very well be that the answer is apparent and easy. It
10 might very well be that the answer is none. But we'll certainly
11 provide an answer to Swiftel based on what we've decided here
12 this morning.

13 MS. SISAK: And that is sufficient for Swiftel.

14 CHAIRMAN HANSON: All right. Thank you. Then we will
15 move on to request for production of document 3.

16 MS. SISAK: And again because of answers previously
17 provided pursuant to this hearing, Swiftel will withdraw its
18 request for request of production of document 3 and 8.

19 CHAIRMAN HANSON: Thank you. Are there any other
20 items that need to come before us today in regards to TC06-178
21 or TC06-188?

22 MR. KOENECKE: Commissioner, Brett Koenecke here.
23 Last week I was out of the office at a long scheduled conference
24 on rate cases. And standing in my stead was Mike Shaw of my
25 office, not regular a appearant before the Commission, and my

1 assistant Lori Ravnaas.

2 They filed a motion on Wednesday or Thursday, I don't
3 recall which, to extend the date by which we could file our
4 direct testimony. Apparently there were some difficulties in
5 getting the -- a couple of the Mediacom testimonies finalized
6 and signed.

7 As of this morning I understand that those have been
8 moved forward and are on the way to my office for filing later
9 today. They would be the testimonies of Rod Cundy and
10 John Varvel. And I would ask Swiftel's indulgence in that
11 regard or in the alternative for a Commission Order receiving
12 those two testimonies for the purposes of hearing next month.

13 CHAIRMAN HANSON: Ms. Sisak.

14 MS. SISAK: Swiftel does not object to the filing of
15 that testimony today.

16 CHAIRMAN HANSON: We'll accept that as the response
17 then, Mr. Koenecke.

18 MS. AILTS WIEST: Hasn't it already been filed? I
19 mean, I have testimony of John Varvel was filed on 7-10 -- was
20 filed on 7-9. Is there more testimony?

21 MR. KOENECKE: No. There's more testimony. I don't
22 think those were signed by the witnesses. I think that was the
23 problem.

24 MS. AILTS WIEST: Okay.

25 MR. KOENECKE: And I'm still out of the office. I

1 frankly don't know what they've filed, if anything, yet today
2 so --

3 CHAIRMAN HANSON: All right. We will accept parties
4 have agreed to the slight change of course there. And in the
5 matter of TC06-188 there is a second question, and that is shall
6 the Commission grant the motion for extension of time to file
7 direct testimony?

8 Comment? And it appears that you've reached an
9 agreement to that. Since that is a question before the
10 Commission, I will accept a motion.

11 COMMISSIONER KOLBECK: TC06-188, I'll motion that the
12 Commission grant the motion for extension of time to file direct
13 testimony.

14 CHAIRMAN HANSON: Any discussion?

15 Commissioner Johnson.

16 COMMISSIONER JOHNSON: Aye.

17 CHAIRMAN HANSON: Commissioner Kolbeck.

18 COMMISSIONER KOLBECK: Aye.

19 CHAIRMAN HANSON: Commissioner Hanson votes aye. And
20 I believe that concludes the matters that are before the
21 Commission for this hearing.

22 And is there a motion to adjourn?

23 COMMISSIONER KOLBECK: So moved.

24 CHAIRMAN HANSON: Is there a second?

25 COMMISSIONER JOHNSON: Second.

1 CHAIRMAN HANSON: The Commission is adjourned, and we
2 sincerely appreciate the work that all of the parties did in
3 reaching agreements during this and facilitating the process.
4 Thank you very much.

5 (The proceeding is concluded at 10:45 a.m.)
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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 14th 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 17th day of July, 2008.



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

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