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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE ARBITRATION OF
SPRINT COMMUNICATIONS COMPANY L.P. FOR
ARBITRATION PURSUANT TO THE TELECOMMUNICATIONS TC06-175
ACT OF 1996 TO RESOLVE ISSUES RELATING
TO AN INTERCONNECTION AGREEMENT WITH INTERSTATE
TELECOMMUNICATIONS COOPERATIVE, INC.
=====

Transcript of Proceedings
Telephone Conference
January 16, 2007
=====

COMMISSION STAFF

ROLAYNE AILTS-WIEST
GREG RISLOV
KARA VAN BOCKERN
HARLAN BEST

ORIGINAL

APPEARANCES

TALBOT J. WIECZOREK,
GUNDERSON, PALMER, GOODSSELL & NELSON,
Attorneys at Law, P.O. Box 8045,
Rapid City, South Dakota 57709,
appearing on behalf of Sprint Communications;

MONICA M. BARONE,
Senior Counsel, Sprint Communications Company,
6450 Sprint Parkway, Overland Park, Kansas 66251,
appearing on behalf of Sprint Communications;

JAMES A. OVERCASH,
WOODS & AITKEN, Attorneys at Law, 301 South 13th
Street, Suite 500, Lincoln, Nebraska 68508,
appearing on behalf of ITC;

MEREDITH A. MOORE,
CUTLER & DONAHOE, Attorneys at Law, 100 North
Phillips Avenue, 9th Floor, Sioux Falls,
South Dakota 57104,
appearing on behalf of ITC.

Reported by Carla A. Bachand, RMR, CRR

1 TUESDAY, JANUARY 16, 2007

2 CHAIRMAN JOHNSON: Mary Sisak, are you on?

3 MS. SISAK: Yes, I'm here.

4 CHAIRMAN JOHNSON: Jim Adkins. Is Jim Adkins on?

5 MR. ADKINS: Present.

6 CHAIRMAN JOHNSON: Thanks. Peter Rasmussen.

7 MR. RASMUSSEN: Here.

8 CHAIRMAN JOHNSON: Marlene Bennett.

9 MS. BENNETT: Present, Mr. Chairman, and I have Ann
10 Kieper and Dave Fridley with me also of Martin Group.

11 CHAIRMAN JOHNSON: Ann Kieper and who?

12 MS. BENNETT: Dave Fridley.

13 CHAIRMAN JOHNSON: James Overcash.

14 MR. OVERCASH: I am here, Commissioner.

15 CHAIRMAN JOHNSON: Thanks. Talbot Wieczorek.

16 MR. WIECZOREK: I'm here, Mr. Chairman.

17 CHAIRMAN JOHNSON: Monica Barone.

18 MS. BARONE: Here.

19 CHAIRMAN JOHNSON: Meredith Moore.

20 MS. MOORE: Present, Mr. Chairman.

21 CHAIRMAN JOHNSON: Richard Helsper.

22 MR. HELSPER: Present.

23 CHAIRMAN JOHNSON: Are there other parties or
24 individuals on the phone we haven't announced? Okay, this is
25 the meeting of the South Dakota Public Utilities Commission.

1 It is Tuesday, January 16th, 2007 at a little after 3 o'clock.
2 This is the time and place for the ad hoc commission meeting.
3 We will be dealing with two items today. The first is
4 TC06-175. I would note that because all parties are on the
5 telephone and because we have a court reporter, I would ask
6 that every time you speak, you announce who you are. That
7 would be very helpful, thank you.

8 TC06-175 is in the matter -- this is Commissioner
9 Dusty Johnson. I'm joined here in Pierre with Commissioners
10 Gary Hanson and Steve Kolbeck. This docket, the first docket
11 is in the matter of the petition of Sprint Communications
12 Company L.P. for arbitration pursuant to the Telecom Act of '96
13 to resolve issues relating to an interconnection agreement with
14 ITC, Incorporated. The question before the commission today
15 is, shall the commission grant ITC's motion to compel
16 discovery? That motion was filed on January 9th. Can you all
17 on the phone hear us fine here in Pierre?

18 (Several people on the phone responded affirmatively.)

19 CHAIRMAN JOHNSON: Unless anybody has anything
20 preliminary, we would turn to ITC to make oral arguments.

21 MR. OVERCASH: This is James Overcash on behalf of
22 ITC.

23 CHAIRMAN JOHNSON: Go ahead, please.

24 MR. OVERCASH: I'd offer first into evidence five
25 exhibits that were attached to our motion, which were labeled

1 A, B, C, D and E, which are comprised of the discovery
2 responses.

3 CHAIRMAN JOHNSON: The exhibits have been offered.
4 Does anyone have any objection?

5 MR. WIECZOREK: On behalf of Sprint -- Talbot
6 Wieczorek -- Sprint does not.

7 CHAIRMAN JOHNSON: Does staff have any objection?

8 MS. VAN BOCKERN: No objection.

9 CHAIRMAN JOHNSON: Hearing no objection, those
10 exhibits will be so entered. Go ahead, Mr. Overcash.

11 MR. OVERCASH: This is James Overcash. For the
12 record, there are three items contained in our motion to
13 compel, the request for a verification, the Request for
14 Admission No. 3 and Interrogatory No. 7. In those three items
15 additional information has been provided by Sprint and there's
16 no longer a need for this commission to address the discovery
17 requests that are outlined in our motion to compel.

18 CHAIRMAN JOHNSON: Could you repeat those three areas?
19 I picked up Interrogatory No. 7.

20 MR. OVERCASH: Request for Admission No. 3 and our
21 first request that we had submitted was a request for a
22 verification to make sure it reflected that it provided a
23 verification of the additional information with regard to
24 Request for Admission 3 and Interrogatory No. 7.

25 CHAIRMAN JOHNSON: Thank you.

1 MR. OVERCASH: Thank you. This is James Overcash.
2 The first request I'd like to speak to --

3 CHAIRMAN JOHNSON: Mr. Overcash, hold off. We are
4 going to try to adjust the volume in here a little bit. You
5 are a little soft and I don't know that it's on your end, it's
6 probably on ours. If you could pause for a moment, again, I
7 apologize. You are also cutting out. Is there anything you
8 could do on your end?

9 MR. OVERCASH: I'm speaking right into the phone.
10 There sounds like there's maybe a mobile phone or something on.

11 CHAIRMAN JOHNSON: If somebody is on a wireless phone,
12 if you could try to get to a land line, we would appreciate
13 that. The nature of the conferencing system is sometimes when
14 it picks up something, it moves to that phone as opposed to the
15 person we really want to hear from. We are going to go ahead
16 and turn up the volume. We may have to ask you to repeat
17 yourself, Mr. Overcash, because you are cutting in and out a
18 little bit, but let's go ahead and attempt to start again.

19 MR. OVERCASH: Thank you, Mr. Commissioner. This is
20 James Overcash. The first request I would like to address are
21 Document Request No. 2 and Document Request No. 3. The
22 supplemental information as well as the primary response is
23 Sprint provided copies of (inaudible) the remaining issue for
24 this commission --

25 CHAIRMAN JOHNSON: Mr. Overcash, I am sorry. We lost

1 you for about five seconds there.

2 MR. OVERCASH: I'm sorry, it does sound like there is
3 a cellular phone that's coming over the top. I could be
4 mistaken.

5 MR. HELSPER: This is Rich Helsper. I think that
6 cellular phone just hung up.

7 MR. OVERCASH: It sounds clear now.

8 CHAIRMAN JOHNSON: Again my apologize. Let's go ahead
9 and try it again.

10 MR. OVERCASH: For the record, Mr. Chairman, this is
11 James Overcash and I have talked to the first request. I would
12 like to speak to you about Document Request No. 2 and 3. Those
13 are requests that ask for contractual relationships regarding
14 Sprint. Sprint had provided a copy of Sprint's South Dakota
15 tariff as well as their agreement that identified their
16 interconnection agreement with Qwest and the agreement with
17 PrairieWave. The remaining issue before this commission is to
18 consider whether Sprint provide a copy of the agreement that
19 exists between Sprint and MediaCom or I'll refer to them today
20 as MCC.

21 Sprint has objected to Document Request 2 and 3 and
22 it's currently refused to provide an agreement really on two
23 grounds. One, that the information cannot be adequately
24 protected by a protective order, and two, that any contractual
25 relationships between Sprint and any third parties, including

1 MCC, are not relevant to this proceeding. Mr. Chairman.

2 CHAIRMAN JOHNSON: Yes?

3 MR. OVERCASH: Can you still hear me okay?

4 CHAIRMAN JOHNSON: I don't know. Did you pause for a
5 while on your end?

6 MR. OVERCASH: No.

7 CHAIRMAN JOHNSON: Then that's a bad sign.

8 MR. OVERCASH: That's a bad sign. I'll try to pick it
9 up back from the top and I apologize for the problems we are
10 having.

11 CHAIRMAN JOHNSON: You were doing good until 10 or 15
12 seconds ago.

13 MR. OVERCASH: There you go. The first issue in terms
14 of what Sprint objects to or the basis of the objection is a
15 lack of an adequate protective order. Generally speaking, in
16 terms of the production of confidential information, there is a
17 process that's followed. That is, in effect, a discovery
18 request is made by a party, in this case ITC. Sprint has
19 identified or would identify responsive information that may be
20 confidential. If Sprint wants that information protected by a
21 protective order, they would request a protective order, not
22 unilaterally choose not to provide the information.

23 Here in this case Sprint has not made such a motion.
24 In addition there's an adequate protective order already in
25 place. (Inaudible) protective order, the proper procedure

1 would be to request the order, in our minds, provide that
2 document and information that Sprint views as confidential to
3 the commission and to counsel for an in camera review and then
4 a discussion and decision and maybe an argument on their
5 request for an additional protective order.

6 We presume that the commission would hold some type of
7 hearing to make the determination as to whether, first, the
8 information is subject to protection, and then two, what types
9 of restrictions should be put in place in regards to that
10 document and information. The use by Sprint of an objection to
11 unilaterally stop ITC from reviewing information is erroneous
12 and Sprint must be ordered to produce the documents requested.
13 The commission's protective order previously entered in this
14 proceeding (inaudible) --

15 CHAIRMAN JOHNSON: Mr. Overcash.

16 MR. OVERCASH: -- (Inaudible) information revealed to
17 be confidential. Additionally, Sprint's request from
18 (inaudible) agreements before those agreements are provided to
19 ITC is improper. Sprint has no right to make this unilateral
20 modification to these existing documents. Additionally, we
21 believe that the information requested by Sprint is important
22 to this proceeding as well as to this arbitration process.
23 That is why there is a protective order previously entered by
24 the commission in this proceeding, because of the tight
25 schedule, that it would be burdensome and unnecessary to review

1 a new motion for protective order during this current time
2 frame. Currently we understand that Sprint is unilaterally
3 withholding documents and has not sought a revision in the
4 current protective order from this commission. We believe that
5 the current delay in providing this information based upon a
6 protective order objection is improper and delays and
7 compresses the time schedule already involved. We
8 believe (inaudible) the objection should be overruled.
9 Sprint's second basis of objection is relevancy.

10 CHAIRMAN JOHNSON: Mr. Overcash?

11 MR. OVERCASH: Yes, sir.

12 CHAIRMAN JOHNSON: We lost you at relevancy. I am
13 going to -- normally we don't have these problems, but I might
14 try one other thing. Those of you that are not speaking, if
15 you could mute your phone. I don't know why we have a high
16 level of sensitivity right now, but it seems as though we do.
17 We are working on some other possible solutions on our end as
18 well, but I apologize for interrupting your flow. We lost you
19 at relevancy.

20 MR. OVERCASH: Thank you, Mr. Chairman. There is
21 music on, I assume that's not you being on hold.

22 CHAIRMAN JOHNSON: No.

23 VICE-CHAIR HANSON: Somebody put it on hold.

24 CHAIRMAN JOHNSON: All right, it's gone. Somebody
25 mistook hold for mute. Go ahead.

1 MR. HELSPER: I still hear the music.

2 MS. MOORE: I still hear music.

3 CHAIRMAN JOHNSON: That's actually Richard losing his
4 mind. I'm kidding. Mr. Helsper, I hear it as well. All
5 right, we are going to -- we are going to take a five-minute
6 break so that we can try to resolve some technical issues on
7 our end, so if everybody could just pause, my apologies, but we
8 were losing enough of Mr. Overcash, I don't think we can
9 continue at this rate.

10 (Whereupon, the meeting was in recess at 3:28 p.m.,
11 and subsequently reconvened at 3:29 p.m., and the following
12 proceedings were had and entered of record:)

13 CHAIRMAN JOHNSON: We think we have solved the
14 problem. Another round of apologies to Mr. Overcash and
15 everyone involved and let's go ahead and pick it back up from
16 where you left off.

17 MR. OVERCASH: Thank you, Mr. Chairman. Again for the
18 record, this is James Overcash. What I was about to discuss
19 was the relevancy objection that Sprint has made to our
20 Document Request No. 2 and No. 3. As reflected in our filing,
21 the relevancy standard in discovery is broad and provides that
22 discovery allows for information and documents. There really
23 is two prongs, one, that it's relevant to the subject matter
24 involved in the pending proceeding or reasonably calculated to
25 lead to the discovery of admissible evidence. It should be

1 recognized by the commission that the information may not be
2 admissible in a court of law and admissibility of items that
3 are requested in discovery is not a requirement for the
4 information to be discoverable.

5 Here Sprint clearly raises the issue about the Sprint/
6 MCC relationship in their arbitration petition. If you would
7 review paragraph 23 of the Sprint petition in our filing, I
8 want to read you one sentence. It says, specifically in South
9 Dakota Sprint has entered into a business arrangement with MCC
10 Telephone, Inc., to support its South Dakota affiliates, MCC
11 Telephone of the Midwest, Inc., offering its local and long
12 distance services to the general public in the service
13 territories of Interstate.

14 Clearly here Sprint is the party that has raised the
15 relationship with the third party, MCC. It seems apparent and
16 basic that when a contractual relationship is raised in the
17 arbitration petition by Sprint and thus the Sprint/MCC
18 relationship is obviously directly connected to the consumers
19 in South Dakota, that the contractual relationship is clearly
20 relevant to this arbitration proceeding. A full understanding
21 and evaluation of the relationship between Sprint and MCC is an
22 integral, necessary and substantial part of understanding
23 whether Sprint may, under applicable law, require
24 interconnection between Sprint and ITC for end user customers
25 of the carrier different than Sprint, in this case MCC.

1 Any argument that the agreement does not meet the
2 broad standard of relevancy for discovery is erroneous and
3 raises the obvious question of what's in these documents and
4 what, if any, impact they may have on Sprint's claims.
5 Attempting to shield these documents should not be allowed and
6 the commission should grant our motion to compel in regards to
7 these two document requests.

8 Next I'd like to address the commission Interrogatory
9 No. 14. That interrogatory requests Sprint to identify
10 individuals that negotiated the business arrangement between
11 Sprint and MCC. Sprint objected to Interrogatory 14 on two
12 grounds. One, that it was overly burdensome, and two, that it
13 was irrelevant or not calculated to lead to admissible
14 evidence. Sprint's response to the motion to compel did not
15 address Sprint's unsupported overly burdensome objection and we
16 believe this objection is demonstrated in our paper filing as
17 erroneous.

18 Sprint's second objection regarding relevancy is
19 equally invalid. The Sprint/MCC relationship has been raised
20 by Sprint. The relationship is relevant and the discovery of
21 the names of the individuals involved in the development of
22 that relationship is relevant to this proceeding within the
23 broad standards that are applicable to discovery. As a side
24 note, it's interesting that in their response to our motion to
25 compel, Sprint argues in their discovery request that the

1 contract in effect speaks for itself. This may be true, and
2 frankly, the contract may contain valuable information, but we
3 have not seen this contract because Sprint has refused to
4 provide it. In regards to interrogatory No. 14, we would
5 request Sprint be ordered to provide the information that's
6 requested.

7 Our request on Interrogatory No. 15, we requested
8 Sprint provide the names of individuals from MCC that
9 negotiated the business relationship between MCC and Sprint.
10 Sprint objected to Interrogatory 15 as follows. And I'll
11 quote, Sprint objects to this request to the extent that it
12 asks Sprint to respond to discovery on behalf of MCC. MCC is
13 not a corporate affiliate of Sprint and Sprint has no authority
14 to obtain discovery from MCC. Sprint further objects to this
15 request as being irrelevant and not calculated to lead to
16 admissible evidence.

17 We believe Sprint's objections are wholly without
18 basis. Although ITC understands that Sprint has no authority
19 to obtain any information from MCC or for that matter direct
20 MCC to take any action, all that is requested is Sprint's
21 knowledge regarding the identity of these individuals.
22 Sprint's unexplained objection in regards to relevancy should
23 also be ignored by the commission and the details of these are
24 in our paper filings. We believe that the names of the
25 individuals that Sprint has knowledge of that were involved

1 from MCC is relevant to the applicable proceeding and within
2 the bounds of discovery and we would ask the commission grant
3 our motion in regards to Interrogatory No. 15.

4 In regards to Interrogatory Nos. 16, 17 and 18, all
5 these interrogatories are related. In this proceeding, Sprint
6 has asserted that it is a telecommunications carrier under the
7 1996 Telecommunications Act. It must be a common carrier in
8 order to also be in effect a telecommunications carrier. One
9 of the major elements of this analysis is determining whether
10 the entity holds itself out indiscriminately to serve all.

11 For example, in these three sets of interrogatories,
12 Interrogatory No. 16 requests Sprint identify all agreements
13 between Sprint and any party that provide for the same terms,
14 conditions and pricing of the Sprint/MCC agreement. In effect,
15 the type of information that's being looked for is are we
16 holding things out indiscriminately, is everyone being served.

17 Sprint objects to Interrogatory No. 16 and 17, and
18 they did not answer 18 because it was a follow-on to 17, on
19 three basis. One, that it is trade secret and confidential.
20 They also provide some unexplained general objections and they
21 state the contracts with third parties are irrelevant. We have
22 addressed the unexplained general objections in our filing.
23 Regarding the trade secret claim made by Sprint, the discussion
24 I previously provided regarding the applicability of protective
25 orders in discovery is equally applicable here and I will not

1 consume your time by restating that discussion now.

2 Regarding relevancy, the information is clearly
3 relevant. Sprint is attempting to maintain that it's holding
4 itself out as a telecommunications slash common carrier when it
5 acts under its individually negotiated agreement in providing
6 service to MCC Telephone. However, this self-certification is
7 not enough. Sprint must demonstrate that Sprint is a
8 telecommunications carrier in this situation. Consequently,
9 the information regarding Sprint's other carrier relationships
10 may likely be relevant to how individually negotiated
11 agreements are used by Sprint. Whether Sprint's conduct
12 qualifies as a common carrier is relevant to this proceeding,
13 as it allows this commission to test whether there is a
14 nondiscriminatory holding out of any offering being made by
15 Sprint.

16 Currently ITC does not believe Sprint is a common
17 carrier and thus Sprint is not entitled to create a potentially
18 confusing situation by interconnecting to ITC for a third
19 party, in this case MCC's end user. ITC believes that MCC must
20 seek interconnection directly with ITC for these customers.
21 Sprint cannot be allowed to make self-certification claims and
22 then not provide the information and documents necessary to
23 investigate these claims. ITC requests that Sprint be ordered
24 under our motion to compel to respond to Interrogatories 16, 17
25 and 18 to provide the appropriate documentation.

1 My next interrogatory I'd like to address is No. 20.
2 Interrogatory No. 20 requests a diagram that shows the Sprint/
3 MCC network. Sprint has provided conceptual diagrams but no
4 diagrams of the actual network. Sprint has now stated in their
5 response to the motion to compel that Sprint has no diagrams
6 that show Sprint's and MCC's network in South Dakota. ITC now
7 agrees that if no diagram exists, no diagram may be produced.
8 We agree that Sprint cannot produce what they do not have in
9 their possession, and based upon this representation by Sprint
10 that no information and diagrams exist that are responsive to
11 this request, the motion to compel is withdrawn regarding this
12 request.

13 Likewise, and somewhat related to that Interrogatory
14 20 is Document Request No. 5. In Document Request No. 5, ITC
15 has specific -- has requested specific and detailed documents
16 regarding the location of network resources, including, for
17 example, transportation resources. Sprint has now stated in
18 their response to the motion to compel that they do not have
19 this information, although it is unknown how Sprint will be
20 able to support MCC's network without this information. Sprint
21 cannot produce again what they do not have in their possession
22 and with the supplement of information provided by Sprint and
23 based upon Sprint's representation that Sprint does not have
24 this information, the motion to compel is withdrawn in regards
25 to this Document Request No. 5.

1 The last document request I would like to address this
2 afternoon is Document Request No. 6. In Document Request No.
3 6, ITC requests copies of documents and other discovery
4 responses that's in Sprint's possession that they have provided
5 in other cases. For example, the Swiftel arbitration
6 proceeding and Sprint and MCC's certification proceeding in the
7 Swiftel area, and again, those matters are similar and issues
8 are similar to this proceeding.

9 Sprint has objected to this request with general
10 objections it is overly broad and also states that these
11 requests seek irrelevant information. Clearly there may be
12 information in the listed proceedings that we list under
13 Document Request No. 6 that are relevant or may lead to the
14 discovery of relevant information for this proceeding.
15 Reviewing Sprint and other parties' responses in those other
16 proceedings will allow ITC to more fully understand the Sprint/
17 MCC relationship and provide information that will allow for
18 the development of a complete record in this proceeding.

19 While it may not be proper to consolidate these
20 proceedings, this request by ITC is clearly within the bounds
21 of relevancy as set forth in South Dakota law. This request
22 simply requires Sprint provide copies of information and
23 responses that are already in Sprint's possession and have been
24 submitted in other proceedings. For that reason we would
25 request that you would order Sprint to fully respond to

1 Document Request No. 6.

2 Commission, I've gone through a number of document
3 requests and I have tried to be expeditious about using your
4 time and reviewing our arguments that have previously been
5 submitted in paper form to you. I'd like to just summarize the
6 numbers that we are speaking about here for your records and
7 for the record. ITC requests its motion to compel be granted
8 in regards to Document Request No. 2, Document Request No. 3,
9 Interrogatory No. 14, No. 15, No. 16, No. 17 and No. 18 and
10 Document Request No. 6.

11 Additionally, the motion is withdrawn based upon
12 Sprint's representation that no information or documents exist
13 in their possession regarding Interrogatory No. 20 and Document
14 Request No. 5. Thank you for your consideration of our motion,
15 commission. I appreciate your time.

16 CHAIRMAN JOHNSON: Thanks very much, Mr. Overcash, and
17 that actually went very well. I don't know what we all did on
18 our end, but it fixed the problem certainly. Normally we hold
19 questions until we have heard from all parties. I know there
20 are some clarification questions people want to ask to be able
21 to aid in their understanding, so as long as it's all right
22 with my colleagues, I might have us take questions at this time
23 from Mr. Overcash. Let's go ahead and proceed. Ms. Wiest, you
24 had some questions.

25 MS. WIEST: Yes, I just wanted to clarify. This is

1 Rolayne Wiest. When you were talking about -- this is when you
2 were cutting in and out, so I don't know if I have this
3 correct. Talking about Document Request No. 2 and 3, you
4 mentioned some documents that had been provided by Sprint and
5 then I believe you said that the remaining issue is the copy of
6 the agreement between Sprint and MCC. Is that the only
7 document at issue now?

8 MR. OVERCASH: Yes, in regards to Interrogatory No. 7,
9 Sprint has identified their agreement between Sprint and MCC
10 and in that they have identified one agreement and so when I
11 say the only one left is production of that one agreement, that
12 is because only one Sprint/MCC agreement has been identified
13 under Interrogatory No. 7.

14 MS. WIEST: So just to clarify, for Document Request
15 No. 2 and No. 3, the only thing that you are seeking to compel
16 at this time is a copy of the agreement between Sprint and MCC?

17 MR. OVERCASH: James Overcash again. Correct, if you
18 heard me. It sort of cut in and out there.

19 MS. WIEST: Okay. That's the only question I have
20 right now.

21 CHAIRMAN JOHNSON: This is Commissioner Johnson. But
22 didn't in Document Request No. 2 you ask for agreements with
23 all end users?

24 MR. OVERCASH: We did in South Dakota. My
25 understanding is that the agreement -- that there is a single

1 agreement, that is with MCC and they do not have other current
2 agreements with other cable companies in South Dakota.

3 CHAIRMAN JOHNSON: Okay, thanks very much. We don't
4 have technical difficulties. We are all looking through our
5 paperwork here for questions, so we will pause for just a
6 moment. Anybody else have any other questions at this time?
7 All right, I believe at this time we have no other questions.
8 Although I might ask one more, Mr. Overcash. Dusty Johnson
9 here. You are asking for a list of those individuals that
10 negotiated on behalf of Sprint with MCC and that the
11 individuals that they are aware of for MCC that negotiated with
12 Sprint. Can you -- you addressed this a little bit in your
13 brief and a little bit in your oral arguments. Could you give
14 me a little bit fuller understanding of how that could lead to
15 some information that may be relevant?

16 MR. OVERCASH: Well, for example, Commissioner, and we
17 obviously haven't -- this is James Overcash for the record --
18 there has not been an exchange of direct testimony, but I
19 believe that Sprint will attempt to discuss or have someone
20 discuss what the relationship is between MCC and Sprint and
21 what the factors were in how they have become a common carrier.
22 I think that is interesting but also it may not be someone that
23 was involved in the development of the relationship to start
24 with. I think it's important to know the people that are
25 involved in the relationship. For that matter, too, if they

1 were involved in the development of the relationship and it
2 happens to be someone that Sprint puts on the stand in South
3 Dakota to maybe explain a different topic, if I knew that they
4 participated in the development of the Sprint/MCC relationship,
5 I may be able to ask questions that are relevant at that time
6 with the knowledge that they had also participated in the
7 development of that agreement.

8 Additionally, in terms of MCC, a nonparty to this
9 proceeding, we may want to do some type of a discovery request
10 or request for someone from MCC to appear or to provide
11 information and it makes it difficult to direct that request to
12 a large organization without knowing who participated in the
13 negotiation and determination as to what that agreement was
14 going to provide. Currently -- maybe all that is in the
15 agreement, Commissioner, maybe there's a list of who
16 participated. I assume someone has signed it, but again, I
17 haven't seen the agreement yet to know what information may or
18 may not be contained in there.

19 CHAIRMAN JOHNSON: All right.

20 MR. OVERCASH: I think it also is important for the
21 commission to remember that when we are in the discovery stage
22 of the proceeding, we are talking about information that may
23 lead to the discovery of relevant information. It's a very
24 broad standard that has to be met to allow the discovery to
25 take place. But I think this listing of names that

1 participated in the agreement that's central to what's going on
2 here is clearly within the bounds of that relevancy
3 requirement.

4 CHAIRMAN JOHNSON: Thank you, that is helpful. Any
5 other questions for Mr. Overcash at this time? If not, we will
6 turn to oral arguments from Sprint, the other party to the
7 case. Mr. Wieczorek, are you on the line?

8 MR. WIECZOREK: Yes.

9 CHAIRMAN JOHNSON: Would you like to proceed?

10 MR. WIECZOREK: Yes. Can you hear me okay?

11 CHAIRMAN JOHNSON: We can hear you great.

12 MR. WIECZOREK: I'll take these in the same order that
13 Mr. Overcash did and try to make sure I get all of his points
14 without being redundant to my written submissions. A couple of
15 points I'd like to make that would apply to all these requests
16 is that South Dakota law provides a privilege against
17 disclosing trade secrets. I don't disagree with Mr. Overcash
18 that the formum for protecting that would be a filing for a
19 protection order under 15-6-26, but these arbitrations are on
20 kind of a short leash, and in my filings, I have requested the
21 commission, if it should order discovery of this information,
22 that it give us some of those protections rather than
23 submitting a separate motion for it. I have put that in the
24 response. If the commission wants a separate motion at some
25 time on that, I would be happy to make it. With that, I'd like

1 to address the issues as I see them, as I see what's being
2 pushed here.

3 First is that of the agreement. Essentially his
4 request would be -- the agreement between MCC and Sprint. The
5 one thing that I think is obvious here is that this service is
6 in the provision to individuals, end users jointly with MCC and
7 Sprint. We provided in discovery the Sprint cable operator's
8 outline that goes to every cable operator, any cable operator
9 in this state or any other state that provides these services
10 where Sprint would work with cable companies to provide
11 services to end users.

12 The agreement we then enter into with cable companies
13 deals with multiple issues, multiple issues, multiple services,
14 some that are not regulated, and those are highly confidential
15 and highly technified by the cable companies because these
16 cable companies, in working with Sprint, are trying to compete
17 with like ILECs, who of course would like to see everybody's
18 costs.

19 The first thing I would say about how Mr. Overcash has
20 presented his argument is he is -- there is a substantial
21 difference between saying that I need to know how this
22 relationship works functionally versus asking for rates and
23 costs. Of course the rates and costs are very important to
24 cable companies. I don't see how the agreement has anything to
25 do with the relationship, they know how we are going to

1 provision this. We explain how we are going to move the
2 traffic, but the agreement brings the -- I don't think it has
3 anything additional dealing with interconnection.

4 Now, if the commission should feel there is an
5 agreement as to actually how or the relationship that exchanges
6 in moving the traffic has some relevance, we are requesting
7 that the commission give us a protective order and allow us to
8 redact the highly confidential things such as rates, rollouts,
9 those types of things from documents. As I understood Mr.
10 Overcash's argument, those are not -- that is not information
11 that would necessarily be something he would be looking for in
12 any case, the rates (inaudible).

13 CHAIRMAN JOHNSON: Mr. Wieczorek, hold on just a
14 second here. Our court reporter lost you, you faded out a bit
15 about 30 seconds ago. Ms. Bachand, do you know where you last
16 had clarity?

17 (Whereupon, the Court Reporter read back a portion of
18 the dialogue.)

19 CHAIRMAN JOHNSON: Can you hear us?

20 MR. WIECZOREK: Yeah, I think I've got an idea. I
21 have already got my hand set picked up. Are you ready for me
22 to continue, Mr. Chairman?

23 CHAIRMAN JOHNSON: Yes.

24 MR. WIECZOREK: Mr. Chairman?

25 CHAIRMAN JOHNSON: Go ahead and proceed.

1 MR. WIECZOREK: So to the extent that the commission
2 would find or desire the agreement be produced, I think it's
3 allowable and appropriate for us to be able to redact that
4 highly confidential information that could be used by a
5 competitor. If the relationship -- if the desire is, as Mr.
6 Overcash says, to see how these parties interrelate in the
7 delivery of traffic, that's not necessary to know in any case.
8 It shouldn't be surprising, this commission sees it quite often
9 where there are switch contracts, contracts with third-party
10 vendors, they are always subject to confidentiality agreements
11 and Sprint as a party has to protect those agreements under
12 those confidentiality agreements and that's what we are doing
13 here. Nor does it fly in the face of this commission's
14 protective order because the protective order was clear that we
15 did not waive other privileges or confidentiality, we would be
16 entitled to raise those issues later if the company went beyond
17 the means of discovery or relevancy.

18 With that, I would move on to No. 14 as to how the
19 parties would be relevant. Even with Mr. Overcash's
20 explanation of why identities of who negotiated the contract
21 could be relevant, I don't believe they are relevant or lead to
22 admissible evidence. Certainly he can ask every one of our
23 witnesses, if he wants to cross-examine them, did you have any
24 part in drafting the agreement. I'm not sure that has -- you
25 could ask it at the hearing, but I'm not sure what that brings

1 to any kind of cross-examination or admissible evidence. You
2 certainly can't go into what was the negotiations. That has
3 definitely no relevance, absolutely not admissible to any type
4 of proceeding as to what the historic relevance in negotiations
5 with a third party is when providing services.

6 For that reason, I think for Sprint there's no need
7 for a -- I'm not sure where they draw their lines. In addition
8 to the relevancy, this would cause Sprint, if they are trying
9 to figure out every MCC person on it or who negotiated it or
10 sent anything out, they would have to go through every box and
11 e-mail and see who was involved on behalf of MCC's side and
12 that doesn't make any sense. We are not calling any MCC
13 witnesses (inaudible).

14 CHAIRMAN JOHNSON: Mr. Wieczorek, we lost you again
15 about 30 seconds ago. Our apologies. Mrs. Bachand, where did
16 you leave off?

17 (Whereupon, the Court Reporter read back a portion of
18 the dialogue.)

19 MR. WIECZOREK: I'm actually going to try using the
20 speaker on my phone because I can generally talk louder and
21 maybe that will come through better. I actually think the
22 court reporter did a pretty good job there at the end. On my
23 14 and 15, I don't see the relevancy of the MCC identities and
24 even if there would be some arguable relevancy, it's overly
25 broad and unduly burdensome because the Sprint personnel would

1 have to go back through all their documents, pull up whatever
2 documents they had in storage on historical negotiation and try
3 to figure out every MCC person that might have been involved.
4 I don't think that's appropriate and I think the amount of work
5 for what -- even if you would take Mr. Overcash's analogy of
6 the establishment of admissible evidence or potential
7 admissible evidence, the amount of work would not provide --
8 with the amount of work necessitated to try to run all this
9 down for what little relevancy or what little evidence might be
10 received is inappropriate.

11 The next interrogatories he had were 16 and 17. Those
12 had to do with telecommunications. Mr. Overcash, though they
13 don't really brief it in their motion, started talking about
14 common carrier status. These are not relevant from the
15 standard of common carrier. First of all, I made a statement
16 that we have to serve all the -- the standard is that we have
17 to indiscriminately serve similarly situated people. We are
18 indiscriminately serving or proposed indiscriminately to serve
19 the end users in conjunction with MCC in the Swiftel area.
20 Also it's clear that we are indiscriminately serving all cable
21 companies by our proposal that we sent out.

22 These blur somewhat when it gets down in the later
23 interrogatories, 16 and 17. If you look at what they are
24 asking, in 16 and 17 and 18, 16 asks that we identify all
25 agreements nationwide between Sprint and any party that

1 provides the same terms and conditions. Now, the interrogatory
2 on its face is not limited to cable companies. We are
3 presuming because of the way it was asked it would have to be
4 limited to cable companies. In reading 16, you also have to
5 read 17, which then asks give us every agreement with anybody
6 nationwide that differs, and then 18, how do they all differ?

7 These, first of all, I don't believe there's any
8 relevance to what we are doing in South Dakota to what we are
9 doing in other states or nationwide with other companies.

10 Secondly, if you look at every document and do an in-depth
11 analysis of every variation for every party we serve is clearly
12 overly broad and unduly burdensome on to Sprint and it's an
13 inappropriate request. In this situation, in South Dakota in
14 this cable operation, we offer it to any cable operation in
15 South Dakota. We currently have one company that has signed on
16 and that's MCC.

17 And if the commission would find there is relevancy of
18 documents and a contract we should stop what's in this state,
19 not what we have done in New York, not the agreements we have
20 with people in Ohio or any other state. Those agreements are
21 going to be -- those agreements are made with even separate
22 companies, for example, Time Warner, and those agreements are
23 subject to confidentiality agreements. We would have to put
24 those parties on notice. And this request for every agreement
25 nationwide is simply overly broad.

1 I want to make sure I hit on every one. His last one,
2 I believe he said 20 -- Interrogatory 20 and Request for
3 Production No. 5 they thought were satisfied and Request for
4 Admission No. 3. The Document Request No. 6 asks for discovery
5 in these other proceedings. Sprint has no problem with giving
6 ITC the discovery in the proceedings in which it is involved.
7 Sprint has objected to providing discovery in its arbitration
8 with Brookings or the CLEC proceeding with Brookings. We don't
9 see how that's relevant or likely to lead to admissible
10 evidence in this situation. Also we have confidentiality
11 orders that we have in the other arbitration and we would have
12 to scrub those documents to see what we have gotten from Sprint
13 that Sprint has received from the Brookings company that might
14 be confidential, and finally, it was ITC that was against
15 consolidation of those actions and now it wants all the
16 discovery, which we think is inappropriate.

17 Given with all the interruptions, Mr. Chairman, I
18 believe I have hit on every issue, but I would certainly be
19 glad to take questions.

20 CHAIRMAN JOHNSON: Thanks very much, Mr. Wieczorek.

21 MR. WIECZOREK: (Inaudible).

22 CHAIRMAN JOHNSON: Thanks very much, Mr. Wieczorek.

23 At this time we will see if anybody has any questions. I have
24 one with regard to Interrogatory 14 and 15. I understand your
25 argument about you don't think it will lead to admissible

1 evidence. To me the request on its face doesn't appear overly
2 burdensome and so if it's a close call, one might be
3 predisposed toward granting the motion to compel. Could you
4 give me an idea as to what would make 14 and 15 so burdensome?

5 MR. WIECZOREK: As to 14, I believe on its face when
6 it was first asked, it was overly burdensome. When ITC
7 narrowed their request to anybody at the director level or
8 above, I believe it would remove the overly burdensome and as
9 to 14, I believe I just argued as not likely to lead to
10 admissible evidence. As to 15, a blanket request for us to
11 identify who we might have been getting information from from
12 MCC, that would cause us to have to go back through all our
13 paperwork we have received from MCC during the course of the
14 negotiations to try to identify everybody on MCC's behalf, and
15 even if you limited it to a certain level of office, the
16 negotiator, there's no guarantee we know exactly what these
17 people's positions were at MCC when we start trying to figure
18 out everybody who was involved or sent a piece of paper or was
19 involved in e-mail strings and identify them and running them
20 down and see what their level was at MCC.

21 MS. BARONE: This is Monica Barone and I would also
22 add this agreement -- this is Monica Barone with Sprint.

23 CHAIRMAN JOHNSON: Yes, go ahead, Ms. Barone.

24 MS. BARONE: I would just add that this agreement was
25 entered into (inaudible) I'm sorry?

1 CHAIRMAN JOHNSON: Ms. Barone, you are --

2 MS. BARONE: This agreement was entered into a couple
3 of years ago and it makes it very difficult for us to track
4 down the identity of those who were involved in the
5 negotiations. Thank you.

6 CHAIRMAN JOHNSON: Thank you, Ms. Barone. Mr.
7 Wieczorek, did you have anything additional on that question?

8 MR. WIECZOREK: To follow up with Ms. Barone, I do
9 not.

10 CHAIRMAN JOHNSON: Thanks, we will take other
11 questions from advisors or commissioners at this time for Mr.
12 Wieczorek or anyone from Sprint. It doesn't appear -- go
13 ahead, Commissioner Kolbeck.

14 COMMISSIONER KOLBECK: Mr. Wieczorek, do you agree
15 with Ms. Barone on that, that that would be very difficult to
16 find those employees, and if so, what would make it so
17 difficult? How old are those contracts?

18 MR. WIECZOREK: Commissioner, obviously I wasn't
19 involved in the negotiation on behalf of Sprint or MCC in their
20 agreement. I believe, from what information I have been able
21 to obtain, those negotiations took place more than two years
22 ago to set up the standard agreement, and so having worked with
23 corporations on both sides before, my guess would be that those
24 boxes are long ago in storage or in people's desk drawers
25 spread throughout the nation at different offices of Sprint,

1 potentially MCC, and to track all down everybody who was
2 involved in that and make a determination of whether they met
3 even a certain level of director or manager is going to end up
4 being very difficult.

5 CHAIRMAN JOHNSON: Thanks, Mr. Wieczorek. Any other
6 questions for Sprint? Seeing none, at this time, thanks, Mr.
7 Wieczorek. Thanks, Ms. Barone. At this time we will proceed
8 to staff and staff arguments.

9 MS. VAN BOCKERN: This is Kara Van Bockern for staff.
10 I will just --

11 CHAIRMAN JOHNSON: Can you go ahead and start over. I
12 had muted you.

13 MS. VAN BOCKERN: This is Kara Van Bockern for staff.
14 I will simply start from the beginning and go through the list
15 of document requests and interrogatories that the parties did.
16 First, the Document Requests 2 and 3, the contracts, any
17 contract between MCC and Sprint, I can understand where the
18 parties would want or ITC would want that contract to fully
19 understand the relationship between Sprint and MCC. I do,
20 however, believe that some information contained in that
21 contract would be irrelevant, some confidential, highly
22 competitive type information that could be redacted and still
23 allow the parties a complete understanding of the relationship
24 between MCC and Sprint. So I would urge the commissioners to
25 look at a redaction possibly of that contract.

1 14 and 15, interrogatory requests, the requests for a
2 list of all of those involved in the negotiation, I would think
3 through personnel, through the use of computers, it could be
4 possible to find those involved in the negotiation, and it
5 wouldn't be too terribly burdensome. However, I would think
6 the only real relevant people involved in that negotiation
7 would be those parties to the contract, and those names would
8 all be apparent, if a redacted contract according to Document
9 Requests 2 and 3, would be produced.

10 Interrogatory Requests 16, 17, 18, it seems to me this
11 type of information, to understand the common carrier status
12 could be found using other types of information, possibly those
13 contracts, those dockets as they came before other state
14 commissions to understand what their decisions were, the
15 information they looked at, and that could avoid the disclosure
16 of very confidential contracts out there that could contain a
17 lot of information very much irrelevant to what's happening in
18 South Dakota right now. So I think there's other ways to find
19 that without requiring complete disclosure of every single
20 contract out there. Aside from that, that does -- it's a very
21 burdensome request I think that could be very difficult,
22 considering the amount of contracts entered into with both
23 consumers and other companies.

24 Finally, that takes us to Document Request No. 6 and
25 that would be the request for discovery from other dockets

1 currently before the commission and I would agree with Sprint
2 that that information is provided to parties to the case and
3 isn't necessary for disclosure to a nonparty.

4 CHAIRMAN JOHNSON: Thanks, Ms. Van Bockern. Any
5 questions from commissioners or staff, for staff, or
6 commissioner advisors for staff? Hearing none, are there any
7 other questions for any of the parties? You know, I have I
8 think a couple. Mr. Overcash, are you there?

9 MR. OVERCASH: Yes, Commissioner.

10 CHAIRMAN JOHNSON: You know, I'm trying to hone in on
11 16, 17, 18 to determine, trying to weigh the relative merits of
12 giving this. I mean, particularly 17, we are talking about all
13 agreements out there that may be different anywhere in the
14 country. Do you really think that level, that kind of a
15 request is going to be necessary for you to get a feel for
16 whether or not there is a common carrier status here for
17 Sprint?

18 MR. OVERCASH: Commissioner, I haven't looked at the
19 agreements in terms of what's available. I haven't even looked
20 at the agreement in South Dakota because it hasn't been
21 produced. If you look at the combination of Interrogatory No.
22 16, that just says identify all the ones that are exactly the
23 same in terms of they have the same terms, conditions and
24 pricing. I don't know if that is everyone is exactly the same
25 or there are none exactly the same. So I suppose from the

1 standpoint of the interrogatory -- if the answer is every
2 agreement is exactly the same, everybody gets the same pricing,
3 the same terms and conditions, then 17 doesn't become very
4 burdensome. I could see that the relevancy of limiting it and
5 it was -- I guess the thought was in terms of relevancy to
6 where they are providing back office operations to a carrier,
7 that that was the concept of those agreements, it wasn't in
8 regards to one of their subsidiary's wireless offerings in
9 Texas, it was regards to the back office operations. But in
10 terms of narrowing that scope and then narrowing to the scope
11 of whether they are all the same or whether they are not all
12 the same, I don't know if I think that analysis is very
13 burdensome to start with. My presumption would be, frankly, I
14 don't think they are going to be the same. And so from that
15 standpoint of just I guess a representation that they are not
16 identical may be enough in terms of people's understanding of
17 what's going on here and does it rise to the level of being a
18 common carrier.

19 CHAIRMAN JOHNSON: Thanks, Mr. Overcash. Did you have
20 a response to staff's point, Ms. Van Bockern's point that
21 perhaps by looking at other commissions' decisions, other
22 filings, information that already is in the public domain
23 there, that the same type of information could be gathered by
24 your party?

25 MR. OVERCASH: Mr. Commissioner, I don't believe, if

1 you look at -- we are talking about like, for example, the case
2 currently before us, I haven't yet seen a copy of the agreement
3 between MCC and Sprint. My guess would be, and I believe
4 Sprint to be very capable lawyers, that they have taken the
5 same tack in every other jurisdictions and so even if I
6 scrubbed the other jurisdictions, I wouldn't be able to come up
7 with terms and conditions that I could find on a public record.
8 I may be mistaken by that, but I would believe Ms. Barone to be
9 a very good lawyer and to have done her work in terms of making
10 sure if they consistently hold the position that these are not
11 going to be in the public domain, that I would be unable to
12 find that information in the public domain anywhere.

13 MS. BARONE: This is Ms. Barone, may I respond?

14 CHAIRMAN JOHNSON: Sure, go ahead.

15 MS. BARONE: Thank you, Mr. Chairman. I would just --
16 I think this gets down to legal argument and the basic argument
17 or the legal standard here is the offer that Sprint has made to
18 cable companies. Sprint has provided evidence and attachments
19 to the interrogatories demonstrating how we make this offer
20 available to all cable companies. The contracts themselves,
21 however, are going to -- each cable company typically is
22 different and has different needs and have different geographic
23 scopes, different number of household tasks, and typically they
24 don't want the exact same thing as every other cable company.

25 The bottom line is whether Sprint is offering its

1 services, offering its services in different ways to all cable
2 companies, and we believe we put the evidence in the record
3 that we are doing that already. The actual contract is going
4 to have or contain those terms and conditions that reflect what
5 that particular cable company needs. So to the extent that we
6 are trying to compare all of the cable companies across the
7 country, that would be extremely burdensome because as has been
8 stated before, we are looking at different states, we are
9 looking at different cable companies, we are looking at
10 different services, different requests, and that would be
11 beyond what we believe is relevant to the state of South
12 Dakota. One, whether Sprint is offering its services
13 differently, and number two, we have one cable company in the
14 state of South Dakota and if there was another cable company
15 that wanted to partake in some of these services or all of
16 these services, Sprint would be willing to provide those as
17 well. But again, it depends on the cable company and their
18 particular circumstances.

19 CHAIRMAN JOHNSON: Thanks, Ms. Barone. I have one
20 other question for Mr. Overcash. What would Swiftel's (sic)
21 opinion be if -- how would you view a commission move to allow,
22 allow for redaction with regard to Document Requests 2 and 3?

23 MR. HELSPER: Are you talking to me or Swiftel?

24 CHAIRMAN JOHNSON: How would Swiftel view the
25 commission's -- if we were to give Sprint an opportunity to

1 redact the agreement between MCC and Sprint?

2 MR. OVERCASH: This is Jim Overcash. I didn't
3 recognize if you are asking Swiftel that or if you are asking
4 me that.

5 CHAIRMAN JOHNSON: I'm sorry. Go ahead, Mr. Overcash.

6 MR. OVERCASH: I'm sorry, Mr. Chairman. From our
7 standpoint, in regards to the Sprint/MCC agreement in South
8 Dakota, we do not believe it's proper for Sprint to
9 unilaterally redact and make choices in that agreement what is
10 or is not confidential and then provide I'll say what's left on
11 the bone to ITC. We do believe it may be appropriate and we
12 think Sprint could have done this in terms of providing a
13 motion for a more restricted protective order.

14 Let's not lose sight of the concept that the parties
15 worked on a protective order before discovery was even set in
16 this proceeding and it would be -- it was fully my expectation
17 at that time that Sprint would know that we would be asking for
18 the Sprint/MCC agreement. At the same extent, do I think
19 Sprint could have sought a more restrictive protective order
20 and provided the Sprint/MCC agreement for review in camera by
21 the commission and by attorneys for parties? I believe they
22 could have gone down some process like that and they chose not
23 to.

24 CHAIRMAN JOHNSON: Thank you very much. Any other
25 questions by commissioners, advisors for any of the parties?

1 Commissioner Kolbeck.

2 COMMISSIONER KOLBECK: Yes. This is Commissioner
3 Kolbeck. I was just wondering, this is for Mr. Wieczorek or
4 Ms. Barone. Is there any ballpark figure as to how many
5 contracts we are talking about? Are we talking about hundreds,
6 thousands, tens of thousands, how many agreements Sprint has
7 with MCC that would be the same or different? I don't care, I
8 am looking for some sort of reference point as to what we are
9 talking about.

10 CHAIRMAN JOHNSON: Commissioner Kolbeck, are you
11 talking about with respect to Interrogatory 16, 17 and 18?

12 COMMISSIONER KOLBECK: Yes.

13 CHAIRMAN JOHNSON: Mr. Wieczorek.

14 MR. WIECZOREK: Mr. Chairman or Commissioner Kolbeck,
15 it kind of depends on how you read their question. Their
16 question was wide open and talked about all agreements and
17 didn't limit it to cable companies. I'm not in-house with
18 Sprint, but if you went all types of agreements, I'm sure there
19 are thousands. If you limit it to cable companies, I'm sure
20 it's significantly less than that, but there are agreements.
21 So that's the best I can provide the commission at this point
22 in response to your question.

23 MS. BARONE: This is Ms. Barone and I agree with Mr.
24 Wieczorek. I agree that the question was very broad and it
25 would be hundreds, maybe thousands of agreements. With respect

1 to cable companies, there are 12, but we have to remember those
2 cable companies, number one, don't operate in South Dakota.
3 It's not fair whether the commission -- first of all, we would
4 have to contact every single one of those companies that are
5 not located in South Dakota and request their permission to
6 reveal their contracts and go through a process of -- I don't
7 even know if we can get permission. I would have to go back
8 and look at each and every contract to see the parameters of
9 our relationships before I could even respond to that request.

10 What really concerns me is that these are cable
11 companies that are not located in the state of South Dakota and
12 in I believe almost every state except for one we have
13 typically produced the one contract that was in question, and
14 specifically I would suggest that, number one, I still don't
15 believe that the contract itself is relevant because it's the
16 offer, not the contract resulting from the offer, that's
17 relevant.

18 And number two, these companies are located outside of
19 the state of South Dakota and, number three, it would take a
20 lot of effort to try to get those contracts produced in a
21 situation where we don't believe the relevancy of the
22 interconnections that we are requesting from Interstate in this
23 proceeding.

24 CHAIRMAN JOHNSON: Thank you very much. Any other
25 questions by advisors or commissioners?

1 MS. WIEST: This is Rolayne Wiest. I had a question
2 for Mr. Overcash. Going to 16, 17 and 18, would it be a
3 problem to limit these to table type agreements?

4 MR. OVERCASH: This is James Overcash. I believe it
5 would not be a problem in terms of it would be 12 agreements.
6 I would also tell you if they had produced the 12 agreements in
7 response to 16, 17 and 18, I do not believe we would have filed
8 a motion to compel in regards to those interrogatories and the
9 related document requests.

10 MS. WIEST: And then the interrogatory states,
11 identify all agreements. But you want the production of the
12 agreements as well, not just the identification of them?

13 MR. OVERCASH: Correct.

14 MS. WIEST: And --

15 MR. OVERCASH: All documents that are identified in
16 the interrogatory requests.

17 MS. WIEST: So for 16, 17 and 18, to the extent that
18 Sprint would produce the 12 agreements?

19 MR. OVERCASH: That would be acceptable.

20 MS. WIEST: Thank you.

21 MS. BARONE: We will reiterate our objection to
22 producing contracts that are not relevant to the state of South
23 Dakota.

24 CHAIRMAN JOHNSON: That was Ms. Barone, correct? Any
25 other questions?

1 MS. BARONE: Just so the record is clear -- this is
2 Monica Barone -- we could be in breach of our contracts with
3 those companies outside the state of South Dakota if we do not
4 get their permission and we can't guarantee they will grant
5 permission to produce those contracts.

6 CHAIRMAN JOHNSON: All right, thank you. Other
7 commissioner or advisor questions.

8 MS. WIEST: Yes, again this is Rolayne Wiest. Mr.
9 Overcash, how would you go about resolving that problem?

10 MR. OVERCASH: Well, it's difficult since I have never
11 looked at the contracts and so someone can tell you what may or
12 may not be in them. Typically the contracts that I have seen
13 with most companies that contain a confidentiality requirement
14 also provide for a process by which if that document is
15 required to be produced in relationship to some type of legal
16 proceeding, and I believe this arbitration would qualify as
17 that type of proceeding, the requirement upon a party like
18 Sprint would be to provide notice of that requirement to
19 provide the document to the other party to the agreement. The
20 other party to the agreement then has the opportunity to again
21 understand what the protective order involved in the agreement
22 is, understand who's going to see the document.

23 Here again we are talking about the production of
24 documentation that is subject to a protective order that's been
25 stipulated by the parties and already entered into this

1 agreement, so when we are talking about the flow of a
2 confidential document, it's not something that's going to be
3 set out to the whole United States. We are talking about
4 something that's being provided underneath the order of this
5 commission and that if they provide probably notice to the
6 other side, they have probably complied. At the same degree,
7 Ms. Wiest, it's difficult to tell you what those documents say
8 because I've never seen them. I can just tell from you my
9 experience what's typical and what's typical when the document
10 is required for a legal proceeding, that it's only a notice
11 requirement.

12 CHAIRMAN JOHNSON: Thanks, Mr. Overcash. Other
13 questions by commissioners or advisors. Hearing none, I think
14 at this time it might be most helpful for the commissioners to
15 receive advice from Ms. Wiest. We have heard lots of new
16 information, and Rolayne, if you are all right with that, if
17 you want to provide any kind of a recommendation or guidance
18 toward commissioners as we move forward making our decision.

19 MS. WIEST: Thank you. This is Rolayne Wiest. With
20 respect to Document Request No. 2 and 3, it appeared that the
21 issue was essentially the copy of the agreement between Sprint
22 and MCC. In my opinion, based on the issues that are set forth
23 in this proceeding, the copy of that agreement is relevant to
24 the proceeding and it should be provided. To the extent that
25 there are trade secret or highly confidential information in

1 that agreement, the protective order does specifically state
2 that a party didn't waive its right to redact competitively
3 sensitive material from any designated material. So I believe
4 that they would be -- that Sprint would be allowed to present
5 the agreement in a redacted form, to the extent that after ITC
6 has had an opportunity to see that, to understand what has been
7 redacted, then I assume ITC could come back and say too much
8 was redacted or make other types of motions against that, but
9 at this point I think it should be allowable to provide that in
10 a redacted form.

11 With respect to I think we are down to 14 and 15, I
12 think that information should be provided. I don't see it as
13 that burdensome. And I would agree with Mr. Overcash, based on
14 the standards that are for discovery, I think it would meet
15 that standard. 16, 17 and 18, I do have more of a problem with
16 that, but the problem is that reading of the cases, it does
17 appear to be an issue as to a common carrier status and so I
18 have a problem saying that this is not relevant, other
19 agreements with other carriers. And so at this point I would
20 say that Sprint should be required to provide those agreements
21 with other cable companies to the extent that they are able to
22 do so within the confines of those agreements. I don't see how
23 I can overrule confidentiality requirements within the
24 agreements. But to the extent, like Mr. Overcash stated, that
25 those agreements are allowed to be provided, then subject to

1 some sort of a legal proceeding, then I think they can be
2 provided.

3 And then I believe the last one is, yeah, Document
4 Request No. 6. Again, I think given the standard for
5 discovery, that that Document Request No. 6 should also be
6 granted. I understand Mr. Wieczorek's concerns about the
7 problems with confidentiality. Again, to the extent that the
8 information in those responses are confidential, then they will
9 just have to state in their response that this was confidential
10 and if they can't overcome that confidentiality, it won't be
11 provided.

12 CHAIRMAN JOHNSON: Do commissioners have clarifying
13 questions for Ms. Wiest on her recommendation? You know, on
14 16, 17 and 18, Ms. Wiest, I'm still sort of struggling with --
15 you would have them provide the agreements, but that's not what
16 16, 17 and 18 asks for. Didn't they ask for the agreements to
17 be identified, and then in 18, to articulate the differences?

18 MS. WIEST: Yes, that's right, and that would have
19 been my first preference, is to say, well, identify the
20 agreements, but I thought in their response they mentioned that
21 pursuant to a document request, they would have to be provided
22 anyway -- maybe somebody can correct me on that -- when I asked
23 Mr. Overcash about whether they needed to be actually produced
24 as opposed to just identified.

25 CHAIRMAN JOHNSON: Explain that to me again, why they

1 would need to be produced as opposed to identified.

2 MS. WIEST: I guess the question is -- maybe I should
3 ask this of Mr. Overcash -- is it your understanding that to
4 the extent they identify documents in there pursuant to another
5 document related request, they would actually have to produce
6 the document, Mr. Overcash?

7 MR. OVERCASH: That would be correct, Ms. Wiest, in
8 terms of if there were documents that are identified in the
9 interrogatories that, pursuant to document request I believe
10 No. 1, they would have to be -- that that document request
11 requests that all agreements and documents identified, a copy
12 would be produced.

13 MS. WIEST: If the commissioners are uncomfortable
14 with my recommendation, I guess an alternative could be to
15 limit them to actually just identifying the documents and then
16 stating which document that they identify do have identical
17 terms and conditions and stating which documents have perhaps
18 material differences in terms and conditions and limiting those
19 requests to that. That would be my alternative.

20 CHAIRMAN JOHNSON: Would you, under Interrogatory 18,
21 would you just have them state that there are material
22 differences or would you have them outline all of the
23 differences that I think 18 asks for?

24 MS. WIEST: I guess that second alternative I had was
25 just that they identify the agreements, the ones that are the

1 same, same terms and conditions that the Sprint/MCC, and then
2 they be required to identify -- to state which ones have
3 different material terms and conditions, but not necessarily
4 identify each different term and condition in all 12 contracts.

5 CHAIRMAN JOHNSON: Okay. Ms. Wiest, with regard to
6 your recommendation on Interrogatory 15, that has to do with
7 the negotiators for MCC, I'm struggling with this one. This
8 seems to be more burdensome than 14 and I don't know that we
9 get -- that there's quite the same benefit. Can you say
10 anything that will ease my concerns?

11 MS. WIEST: I guess I don't see how identifying the
12 people, especially when you are talking about the director
13 level or above, would be all that burdensome, to the extent
14 that they know it. But if they were negotiating with MCC, they
15 know who they are negotiating with. If you get the one person
16 on the one side who was doing the negotiation on Sprint's side,
17 then I would think that that person would know who they were
18 negotiating with on the MCC side.

19 CHAIRMAN JOHNSON: Yeah, I think my concern comes
20 from, I just know how many people -- I haven't ever been
21 involved in an agreement like this, but I know with agreements
22 with far less complexity how many folks can be involved and I
23 know what happens to memories and e-mail trails after two
24 years. Your recommendation is probably a good one, it's one
25 that I'm having a hard time getting to. Commissioner Kolbeck,

1 did you have a question or comment?

2 COMMISSIONER KOLBECK: Yes, I do. On that
3 Interrogatory No. 14 and 15, where does the term director come
4 from and how much authority do they have?

5 CHAIRMAN JOHNSON: To whom are you directing that?

6 COMMISSIONER KOLBECK: Mr. Wieczorek or Ms. Barone,
7 what is the director level in Sprint? What does that mean? Is
8 that a first level manager, are they three from the top? Could
9 you give me a little explanation on that?

10 MS. BARONE: I think that probably depends on the
11 department. Director over managers, directors typically report
12 to the VP, but not in all organizations. As you can imagine,
13 we have a number of organizations and in some respects some
14 directors report to directors and some report to VPs, but
15 managers are below directors.

16 CHAIRMAN JOHNSON: Ms. Barone, we heard you fine,
17 except I think early on you said the directors are over
18 managers and then later on you said managers are over
19 directors. I probably misheard you. Could you clarify which
20 is the case?

21 MS. BARONE: You had it right the first time.
22 Managers report to directors, directors typically report to
23 vice-presidents, but in some parts of the organization, you may
24 have a director report to a director who reports to the
25 vice-president. So it depends on the specific organization,

1 but managers always report to directors.

2 CHAIRMAN JOHNSON: Okay, thank you very much.

3 MS. BARONE: I'll say typically because I don't know
4 every single organization within our company. I don't know,
5 there may be managers reporting to other level managers, I just
6 don't know.

7 CHAIRMAN JOHNSON: Thank you. Other questions? Any
8 other questions on behalf of commissioners or advisors? Let's
9 go ahead and provide a brief opportunity for rebuttal. Mr.
10 Overcash, anything that you would like to throw in the mix
11 here?

12 MR. OVERCASH: Not unless there's any other questions
13 that need to be answered. Again for example, on the
14 identity -- the identity of individuals, I think we are looking
15 for the important people that are involved there. Well, I just
16 don't think the objection serves in terms of what we want. The
17 identity of individuals speaks for themselves. I also think in
18 regards to we have people that are -- we have Sprint that
19 is calling themselves a common carrier. Those other agreements
20 become important and I appreciate the consideration the
21 commission is giving to all these issues on this motion to
22 compel. So thank you for that and unless there's a question
23 for me, I would not have anything else to burden your time
24 with, Mr. Chairman.

25 CHAIRMAN JOHNSON: Thanks, Mr. Overcash. Any comments

1 by commissioners or any motions? I don't mind making a motion,
2 but I think mine might differ from the recommendation given by
3 Mrs. Wiest, by Ms. Wiest, so I don't want to jump in there if
4 one of you have something ready to go.

5 VICE-CHAIR HANSON: It was interesting to say because
6 mine was going to differ from it, too. So it will be
7 interesting if we agree. There are so many different items
8 here, I can't imagine that three of us will agree completely on
9 all of them. I'm struggling a bit with the 16, 17 and 18.
10 Just to get some discussion out on the floor here on where we
11 are so we can get to some fruition on these, the item No. 2, I
12 concur that I support with a redaction, understanding that
13 there is some competitively sensitive material and certainly
14 there needs to be that redaction. On 14 and 15, I believe we
15 should have signatories only that should be pursued -- I think
16 it's too broad and I do support them, but it should be limited
17 to signatories only.

18 On 16, 17 and 18, again, I think it's too broad.
19 There is that which is not relative to South Dakota and any
20 form of motion that is put together I think should be included
21 so that it's -- let me make it more clear. That which is not
22 relative to South Dakota should not be a part of the motion.
23 It should be only limited to documents that have material
24 differences. On the last item, No. 6, I do not think that we
25 should compel that item at all. That's just to give you an

1 idea where I am on these items so that if you are planning on
2 attempting to articulate a motion, you might know.

3 CHAIRMAN JOHNSON: Well, and perhaps the easiest thing
4 to do, bifurcate isn't the right word because we have more than
5 two issues. I see them as four sub groupings of motions to
6 compel and perhaps I'll offer them up individually and we can
7 take a vote, if that would be appropriate. First I would move
8 that with regard to DC 2 and DR 3, that the commission agree
9 with the motion to compel Sprint to produce the agreement
10 between MCC and Sprint, but that Sprint would have an
11 opportunity to redact the appropriate information.

12 VICE-CHAIR HANSON: Second.

13 COMMISSIONER KOLBECK: I concur.

14 CHAIRMAN JOHNSON: Motion is made and carries. With
15 regard to Interrogatory 14, I guess there will be more than
16 four sub sets here because I may bust this into two. With
17 regard to Interrogatory 14, I would move that we agree with the
18 motion to compel for director level and higher for those that
19 negotiated on behalf of Sprint.

20 COMMISSIONER KOLBECK: I'll second.

21 VICE-CHAIR HANSON: It's 14 and 15?

22 CHAIRMAN JOHNSON: This is just for 14.

23 VICE-CHAIR HANSON: I'll concur.

24 CHAIRMAN JOHNSON: That motion is made and carries.

25 With regard to Interrogatory 15, I would move that we not

1 compel Sprint to provide information on those that negotiated
2 on behalf of MCC.

3 VICE-CHAIR HANSON: I'll second.

4 COMMISSIONER KOLBECK: I'll dissent.

5 CHAIRMAN JOHNSON: The motion carries by a two-one
6 vote. With regard to Interrogatories 16 through 18, I would
7 move that the commission agree that Sprint should provide a
8 list of agreements with cable providers, noting only which of
9 those have essentially identical terms and then noting those
10 which have material differences and just make that list
11 available, but that the agreements themselves not be produced.

12 VICE-CHAIR HANSON: Second.

13 COMMISSIONER KOLBECK: I concur.

14 CHAIRMAN JOHNSON: Motion carries. And finally, with
15 regard to DR 6, I would move that Sprint be required to produce
16 that information.

17 COMMISSIONER KOLBECK: I'll second that.

18 VICE-CHAIR HANSON: I'll dissent.

19 CHAIRMAN JOHNSON: With a two-one vote, that motion
20 carries. Probably good we bifurcated them because there were a
21 few instances we were not in agreement. I believe that
22 resolves all outstanding issues with respect to this docket. I
23 would pause for just a moment to make sure that that is the
24 case.

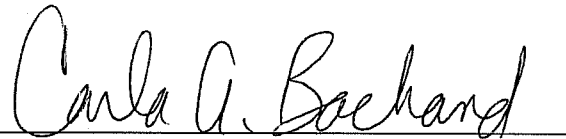
25 MS. WIEST: I believe so.

C E R T I F I C A T E

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3 STATE OF SOUTH DAKOTA)
) ss.
4 COUNTY OF HUGHES)

5 I, Carla A. Bachand, RMR, CRR, Freelance Court
6 Reporter for the State of South Dakota, residing in Pierre,
7 South Dakota, did report and transcribe from a telephone
8 conference call the preceding pages, and the transcript is of
9 the audible portions of the hearing.

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11 Dated this the 19th day of January 2007.

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16 Carla A. Bachand, RMR, CRR
17 Freelance Court Reporter
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