

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE PETITION OF)	ORDER DENYING
SPRINT COMMUNICATIONS COMPANY L.P.)	INTERVENTION
FOR ARBITRATION PURSUANT TO THE)	
TELECOMMUNICATIONS ACT OF 1996 TO)	TC06-176
RESOLVE ISSUES RELATING TO AN)	
INTERCONNECTION AGREEMENT WITH)	
BROOKINGS MUNICIPAL UTILITIES D/B/A)	
SWIFTEL COMMUNICATIONS)	

On October 16, 2006, Sprint Communications Company L.P. (Sprint) filed a petition to arbitrate, pursuant to SDCL 49-31-81 and ARSD 20:10:32:29-32, and Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), certain terms and conditions of a proposed Interconnection Agreement between Sprint and Brookings Municipal Utilities d/b/a Swiftel Communications (Swiftel). Sprint filed a list of unresolved issues consisting of: (1) Should the definition of End User in this Agreement include end users of a service provider for which Sprint provides interconnection, telecommunications services or other telephone exchange services? (2) Does the Telecommunications Act authorize the Commission to arbitrate terms and conditions for interconnection obtained under Section 251(a) of the Telecommunications Act? If yes, what terms and conditions should the Commission impose on the parties in this proceeding? (3) Should the Interconnection Agreement permit the parties to combine wireless and wireline traffic on interconnection trunks? (4) Should the Interconnection Agreement permit the parties to combine all traffic subject to reciprocal compensation charges and traffic subject to access charges onto the interconnection trunks? (5) What is the appropriate reciprocal compensation rate for the termination of telecommunications traffic? (6) Should Sprint's proposed language regarding Local Number Portability be adopted and incorporated into the Interconnection Agreement? (7) Should the ILEC-proposed Directory Listing provisions, as modified by Sprint, be adopted and incorporated into the Interconnection Agreement? (8) Termination: A) Should the termination provision of the Interconnection Agreement permit the existing Interconnection Agreement to remain in effect while the parties are in the process of negotiating and/or arbitrating a replacement Interconnection Agreement? B) Should the Interconnection Agreement contain provisions that allow the parties to terminate the Agreement for: 1) a material breach; 2) if either party's authority to provide service is revoked or terminated; or, 3) if either party becomes insolvent or files for bankruptcy? (9) What 911 liability terms should be included in the Interconnection Agreement? (10) What Force Majeure terms should be included in the Interconnection Agreement? Sprint respectfully requests the Commission to arbitrate each of the remaining disputes between Sprint and Swiftel, to find in Sprint's favor and to adopt Sprint's proposed contract language. In accordance with ARSD 20:10:32:30, a non-petitioning party may respond to the petition for arbitration and provide additional information within 25 days after the Commission receives the petition.

On October 19, 2006, the Commission electronically transmitted notice of the filing and the intervention deadline of November 10, 2006, to interested individuals and entities. On October 30, 2006, the Commission received a Joint Motion of Interstate Telecommunications Cooperative, Inc. and Brookings Municipal Utilities d/b/a Swiftel Communications for Deferral of Hearing on Sprint Communications Company's Request for Consolidation. On November 3, 2006, the Commission received a Petition to Intervene from South Dakota Telecommunications Association (SDTA). On November 13, 2006, the Commission received Sprint's Opposition to SDTA's Petition to Intervene

and Response of Interstate Telecommunications Cooperative, Inc. to the Petition for Arbitration and Request for Consolidation of Sprint Communications Company L.P. At its November 14, 2006, meeting, the Commission deferred SDTA's request for intervention and the request to consolidate Dockets TC06-175 and TC06-176.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31, including 49-31-3 and 49-31- 81, and 47 U.S.C. sections 251 and 252. The Commission may rely upon any or all of these or other laws of this state in making its determination.

At its December 6, 2006, meeting, the Commission considered the Petition to Intervene. The Commission voted to deny intervention to SDTA (Commissioner Kolbeck dissented). The Commission finds that allowing an intervenor into the proceeding is inconsistent with the federal statutory scheme which sets forth the processes to be followed by state commissions in arbitration proceedings. An arbitration proceeding is clearly contemplated as a proceeding between the party petitioning for arbitration and the non-petitioning party. See 47 U.S.C. § 252. This makes sense as the result of the arbitration is a binding interconnection agreement between the two parties. The Commission would further note that its rules allow for the input of non-parties to the Interconnection Agreement. Pursuant to ARSD 20:10:32:34, a person may file comments on the arbitrated agreement with the Commission.

It is therefore

ORDERED, that SDTA's Petition to Intervene is denied.

Dated at Pierre, South Dakota, this 28th day of December, 2006.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Alaine Kolbeck</u>
Date:	<u>12/29/06</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Dustin M. Johnson
DUSTIN M. JOHNSON, Chairman

Gary Hanson
GARY HANSON, Commissioner

STEVE KOLBECK, Commissioner
Dissenting