

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

IN THE MATTER OF THE APPLICATION OF)	ORDER GRANTING MOTION
MCC TELEPHONY OF THE MIDWEST, INC.)	TO CONSOLIDATE
D/B/A MEDIACOM FOR A CERTIFICATE OF)	HEARINGS; ORDER
AUTHORITY TO PROVIDE LOCAL EXCHANGE)	GRANTING MOTION TO
SERVICES IN THE BROOKINGS EXCHANGE)	COMPEL IN PART
)	TC06-188

On November 6, 2006, the Public Utilities Commission (Commission) received an Application for Certificate of Authority from MCC Telephony of the Midwest, Inc. d/b/a Mediacom (MCC) to provide facilities-based and resold basic local exchange services. The services proposed will include non-switched, switched local services and special access services in the Brookings rural exchange area.

On November 9, 2006, the Commission electronically transmitted notice of the filing and the intervention deadline of November 27, 2006, to interested individuals and entities. Brookings Municipal Utilities d/b/a Swiftel Communications (Swiftel) filed to intervene on November 21, 2006. South Dakota Telecommunications Association (SDTA) filed to intervene on November 22, 2006. Swiftel and SDTA were granted intervention. On March 30, 2007, the Commission issued an Order Setting Procedural Schedule; Order for and Notice of Hearing scheduling the hearing to be held on June 29, 2007. On May 21, 2007, the Commission received a Joint Motion for Delay of Hearing.

At its May 22, 2007, meeting, the Commission considered the Joint Motion for Delay of Hearing. Commission Staff recommended approval. The Commission unanimously voted to grant the Joint Motion for Delay of Hearing. On August 3, 2007, the Commission received a Joint Motion for Delay of Hearing.

At its August 7, 2007, meeting, the Commission considered the Joint Motion for Delay of Hearing. Commission Staff recommended approval. The Commission unanimously voted to grant the Joint Motion for Delay of Hearing. On January 11, 2008, the Commission received a Joint Motion for Delay of Hearing.

At its January 29, 2008, meeting, the Commission considered the Joint Motion for Delay of Hearing. Commission Staff recommended approval. The Commission unanimously voted to grant the Joint Motion for Delay of Hearing. On May 13, 2008, the Commission received a Motion to Request the Commission Enter a Protective Order.

At its May 20, 2008, meeting, the Commission considered the Motion to Request the Commission Enter a Protective Order. All parties agreed to entry of the Order. Commission Staff recommended approval. The Commission unanimously voted to grant the Motion to Request the Commission Enter a Protective Order.

The parties have agreed to pre-file testimony according to the following schedule:

<u>Event</u>	<u>Date</u>
Simultaneous Direct Testimony Due	July 9, 2008

The Parties agreed Swiftel may present new arguments that are connected to discovery it obtains through a Motion to Compel, or is otherwise produced late, in its Reply Testimony due August 4, 2008.

The Parties also agreed MCC may then reply specifically to the new Swiftel arguments by August 13, 2008.

Pursuant to an Order for and Notice of Hearing dated May 28, 2008, the hearing in this matter has been scheduled to begin at 9:00 A.M. on August 20, 2008, and continuing at 8:00 A.M. on August 21-22, 2008, in the Visitors Center, 650 East Capitol, Pierre, South Dakota.

On June 26, 2008, Swiftel filed a Motion to Compel Responses and Production of Documents Addressed to Mediacom as Propounded by Brookings Municipal Utilities d/b/a Swiftel Communications. On July 9, 2008, MCC filed a Motion for Extension of Time to File Additional Direct Testimony. On July 10, 2008, MCC filed its response to the Motion to Compel. At its July 14, 2008 meeting, the Commission granted Swiftel's Motion to Compel in part and granted MCC's Motion for Extension of Time.

On July 21, 2008, the Commission received Swiftel's Motion to Compel Redacted Portions of Agreement. This was an issue that arose in Swiftel's previous Motion to Compel. On July 21, 2008, the Commission received MCC's Motion to Consolidate Hearings that requested that the hearing in this docket be consolidated with the hearing in Docket TC06-178. On July 29, 2008, the Commission received MCC's Response to Motion to Compel. On August 8, 2008, the Commission received from Swiftel a Supplement to Motion to Compel. On August 11, 2008, the Commission received Staff's Response to Request for Production of Contractual Language, Sprint's Brief and Argument on Redacted Sections of MCC Telephony, Inc.'s and Sprint's Agreement, and Swiftel's Argument in Support of the Redacted Material Sought by Swiftel.

At its July 29, 2009 meeting, the Commission considered the motions. The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31, specifically SDCL 49-31-69 through 49-31-75, inclusive. The Commission voted unanimously to grant the Motion to Consolidate Hearings. The Commission deferred action on the Motion to Compel Redacted Portions of the Agreement. At its August 6, 2008, meeting, the Commission again considered the Motion to Compel. MCC and Sprint argued that the portions of the Agreement that Swiftel was seeking access to were highly confidential. Without objection from any of the parties, the Commission decided to review the Agreement in-camera in order to be able to make a ruling on the issues in the Motion to Compel. At its August 12, 2008, meeting, the Commission listened to the arguments of the parties regarding the portions of the Agreement that Swiftel was still seeking to be compelled. Commission Staff recommended denial of the motion. The Commission voted unanimously to deny the motion regarding: (1) page 25, the portion entitled MFN; Termination Rights; (2) page 43, the portion entitled Termination; (3) page 44, the portion entitled Termination for Convenience; (4) pages 1 and 2, the redacted portions regarding the term of the Agreement; and (5) page 20, the portion entitled Transport for Commercial Business. The Commission unanimously voted to grant the motion regarding Appendix 5, Service Level Agreements. The Commission voted to grant the motion for Appendix 1 – Initial Market List and Deployment Schedule, limited to the service territories that Swiftel serves as an incumbent local exchange carrier (Commissioner Kolbeck, dissenting). The parties agreed Swiftel would be allowed to file testimony on or before August 19, 2008, that addressed the additional information that was ordered to be produced.

It is therefore

ORDERED, that MCC's Motion to Consolidate Hearings is granted; and it is

FURTHER ORDERED, that Swiftel's Motion to Compel is granted in part and denied in part.

Dated at Pierre, South Dakota, this 20th day of August, 2008.

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, electronically.
By: <u>Alaine Kolbo</u>
Date: <u>8/20/08</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Gary Hanson
GARY HANSON, Chairman

Steve Kolbeck
STEVE KOLBECK, Commissioner,
Dissenting in Part

Dustin M. Johnson
DUSTIN M. JOHNSON, Commissioner