BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

In the Matter of the Petition of Sprint Communications Company L.P. for Arbitration Pursuant to the Telecommunication Act of 1996 to Resolve Issues Relating to an Interconnection Agreement with **Brookings Municipal Utilities d/b/a Swiftel Communications**	)	DOCKET TC06-176

DIRECT TESTIMONY

JAMES R. BURT

February 2, 2007

I. MR. BURT'S PROFESSIONAL BACKGROUND

Q. Please state your name, business address, employer and current position.

A. My name is James R. Burt. My business address is 6450 Sprint Parkway, Overland Park, KS 66251. I am employed as Director – Policy for Sprint Nextel.

Q. Please summarize your educational and professional background.

A. I received a Bachelor of Science degree in Electronics Engineering from the University of South Dakota at Springfield in 1980 and a Masters in Business Administration from Rockhurst College in 1989.

I became Director – Policy in February of 2001. I am responsible for developing state and federal regulatory policy and legislative policy for Sprint Nextel, including the coordination of regulatory and legislative policies across the various Sprint business units and the advocacy of such policies before regulatory and legislative bodies. In addition, I interpret various orders, rules, or laws for implementation by Sprint Nextel.

From 1997 to February of 2001, I was Director-Local Market Planning. I was responsible for policy and regulatory position development and advocacy from a CLEC perspective. In addition, I supported Interconnection Agreement negotiations and had responsibility for various other regulatory issues pertaining to Sprint's CLEC efforts.

From 1996 to 1997, I was Local Market Director responsible for Sprint's Interconnection Agreement negotiations with BellSouth.

I was Director – Carrier Markets for Sprint's Local Telecom Division from 1994 to 1996. My responsibilities included inter-exchange carrier account management and management of one of Sprint's Inter-exchange Carrier service centers.

From 1991 to 1994, I was General Manager of United Telephone Long Distance, a long distance subsidiary of Sprint/United Telephone Company. I had profit & loss, marketing and operations responsibilities.

From 1989 to 1991, I held the position of Network Sales Manager responsible for sales of business data and network solutions within Sprint's Local Telecom Division.

From 1988 to 1989, I functioned as the Product Manager for data and network services also for Sprint's Local Telecom Division.

Prior to Sprint I worked for Ericsson Inc. for eight years with positions in both engineering and marketing.

Q. Have you testified before any regulatory commissions?

A. Yes. I have testified in Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Maryland, Nebraska, Ohio, Pennsylvania and Texas and have supported the development of testimony in many other states.

Q. On whose behalf are you testifying?

A. I'm testifying on behalf of Sprint Communications Company L.P (hereafter referred to as "Sprint").

II. PURPOSE AND SCOPE OF TESTIMONY

Q. What is the purpose and scope of your testimony?

A. I will provide testimony on Sprint Arbitration Issues Nos. 1-4 and 6-10 and Brookings d/b/a/ Swiftel, hereinafter referred as ("Swiftel") Arbitration Issues No. 18 and 20. I will also describe the business model Sprint and MCC are attempting to deploy in Swiftel territory. In the course of addressing these issues, I will:

- Discuss Issue 1 and explain why Sprint is a telecommunications carrier and should be allowed to interconnect with Swiftel.
- Discuss Issue 2 and explain where Sprint has negotiated and arbitrated Section 251(a) and 251(b) agreements and why Sprint should be allowed to arbitrate an interconnection agreement under Sections 251(a) and 251(b) of the Act.
- Discuss Issue 3 and explain why Sprint should be allowed to combine wireline and wireless traffic over the same trunk group.

- Discuss Issue 4 and explain why Sprint should be allowed to combine local and access traffic on the same trunk group.
- Discuss Issue 6 and explain why Sprint's language should be adopted.
- Discuss Issue 7 and explain why Sprint's language should be adopted and clarify Sprint's concerns with respect to the language relevant to directory distribution.
- Discuss Issue 8 and explain why Sprint's language should be adopted to allow the existing contract to remain in effect until the parties negotiate a new contract.
- Discuss the Status of Issue 9. Sprint has agreed to remove its proposed additional language to this section. Therefore, this issue should be resolved.
- Discuss the Status of Issue 10 – Sprint has agreed to adopt Swiftel's additional proposed language in sections 20.1, 20.4 and 20.5. Sprint has also agreed to remove Sprint's proposed additional language in section 20.6. Therefore, this issue should be resolved.
- Discuss Swiftel Issue 18 and explain why Swiftel should not be relieved of its obligation to provide dialing parity.
- Discuss the status of Swiftel Issue 20. Sprint has provided Swiftel with the information it believes Swiftel has asked for. Therefore, this issue should be resolved.

Q. How is the balance of your testimony structured?

A. I will first explain the business model Sprint and MCC are attempting to implement in South Dakota. Second, I will address the issues that are in dispute between Sprint and Swiftel.

An outline of the remainder of my testimony is as follows:

Section III: Sprint/Cable Business Model

- A. Sprint's Business Model Proposes to Bring a New Competitive Voice Service to Swiftel's Serving Territory
- B. Sprint's Business Model Utilizes the Combined Resources of Two Service Providers
- C. Sprint's Business Model is Wholly Consistent with the Pro-Competitive Goals of the Act
- D. The Sprint Business Model Provides the Same Switching and Interconnection Capabilities that it Provides for its Other Voice Services While the Loop Connection is Provided by Another Service Provider
- E. Under Sprint's Business Model, the Customer Receives a Voice Service, not a Cable Modem Service or a Internet-Based Voice Over Internet Protocol Service
- F. Current Regulatory Status of Interconnected VoIP Services and its Relevance to this Proceeding
- G. Sprint Offers its Services Indiscriminately

Section IV: Disputed Issues.

SECTION III. SPRINT/CABLE BUSINESS MODEL

A. SPRINT'S BUSINESS MODEL PROPOSES TO BRING A NEW COMPETITIVE VOICE SERVICE TO SWIFTEL'S SERVING TERRITORY.

Q. Can you describe your understanding of the current competitive environment in Swiftel's serving territory?

A. Setting aside the discussion of the proposed services that are at issue in this proceeding, currently there is little or no competition for facilities-based wireline local voice services in Swiftel's serving territory. Swiftel is serving most, if not all, of the customers of local voice services in its territory.

Q. How will Sprint's service help introduce competition into Swiftel's serving territory?

A. The service resulting from Sprint's business model would be one of the first, if not the first, competitive landline telecommunications ventures into Swiftel's serving territory. In addition, the service does not require the customer to invest in a broadband connection and a computer, which the customer would have to purchase to utilize an Internet-based Voice over Internet Protocol ("VoIP") service. Sprint believes that there is a demand for local voice services provided by providers other than Swiftel.

B. SPRINT'S BUSINESS MODEL UTILIZES THE COMBINED RESOURCES OF TWO SERVICE PROVIDERS TO BRING COST-EFFECTIVE NEW VOICE SERVICES TO SOUTH DAKOTA CUSTOMERS SOONER THAN IF EITHER SERVICE PROVIDER ATTEMPTED TO PROVIDE THIS SERVICE ALONE.

Q. Please describe the business model that Sprint has chosen to bring local voice services to South Dakota consumers in Swiftel's serving territory.

A. Sprint has chosen to combine and leverage resources, capabilities, expertise, assets and market position with other competitive service providers, including

MCC, to bring facilities-based competitive voice services to consumers in South Dakota in Swiftel's serving territory. These services are positioned to compete directly with urban and rural Incumbent Local Exchange Carrier ("ILEC") services. The model is simple. Sprint provides:[1]

- end office switching;
- public switched telephone network ("PSTN") interconnectivity including all inter-carrier compensation;
- numbering resources, administration and porting;
- domestic and international toll service;
- operator and directory assistance; and
- numerous back-office functions.

In this case, MCC provides:

- last-mile facilities to the customer premise (commonly referred to as the loop);
- sales;
- billing;
- customer service; and
- installation.

This business model has proven to be effective in providing well over 1.5 million consumers a viable alternative to their ILEC service in 31 states with 12 different cable companies. Sprint is providing these services under approved interconnection agreements serving consumers in urban, suburban and rural

[1]Attachment JRB-1 to this testimony provides a more complete list of services.

markets in Alabama, Arkansas, Arizona, California, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New York, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Washington and Wisconsin. Sprint continues to look for additional relationships similar to those already established by it and cable companies seeking to compete with ILECs to provide local exchange services.

Q. Please explain the relationship between Sprint and MCC in providing the proposed voice service to South Dakota customers.

A. Sprint has entered into a business relationship with MCC to jointly provide facilities-based competitive local and long distance voice service within several markets already receiving cable TV and broadband services from MCC.

Q. As to the services proposed to be offered, are Sprint and MCC each the agent of the other party?

A. No. As explained below, both Sprint and MCC have independent obligations under their contract to provide parts of their network and expertise to jointly provide the competitive local voice products to customers in Swiftel's serving territory. But as a regulated provider of toll services and local exchange services in South Dakota, Sprint would be required to abide by all relevant regulations, orders, resolutions, and legal requirements established by the Commission and the Federal Communications Commission ("FCC"). In addition, the contracts

between Sprint and MCC obligate Sprint to abide by all applicable local, state, and federal laws and regulations.

Q. Why have Sprint and MCC chosen this business model?

A. While I do not speak for MCC, I believe that one of the more important reasons why Sprint and MCC have chosen this business model is because it capitalizes on the resources and capabilities of each company to allow for market entry far sooner than if either company were to attempt to enter the market alone.

Q. What resources does Sprint contribute to this business model?

A. For its part, Sprint has switches capable of providing competitive local and long distance voice services, a nationwide long distance network consisting of transport facilities and switches, knowledge of CLEC services, experience in interconnection, number portability, dialing parity, inter-carrier compensation, operator services, etc., but it does not have facilities directly to the customer premises in certain areas such as in Swiftel's serving territory. It would be cost prohibitive for Sprint to duplicate the loop facilities maintained by ILECs such as Swiftel or the "loop like" facilities such as those maintained by MCC, and difficult to do so using unbundled network elements ("UNEs"). Accordingly, the synergies of the Sprint/MCC business model are obvious. MCC has last-mile facilities consisting of its Hybrid Fiber Coax ("HFC") network and existing relationships with current video and high-speed Internet customers. Sprint has over a hundred years of experience in the voice telecommunications market, a

robust long distance network, switches and other equipment with connections to the PSTN, and years of experience negotiating interconnection and provisioning facilities-based competitive voice service.

Q. Please describe in more detail the services and functions provided by Sprint.

A. Sprint will provide local and toll service and all PSTN interconnection. Sprint will also be responsible for all inter-carrier compensation including exchange access and reciprocal compensation. In this regard, Sprint is the billing and billed party for all intercarrier compensation. Sprint will be responsible for all number assignment by using existing numbers or acquiring new numbers and will provide all number administration functions including the filing of number utilization reports ("NRUF") with the North American Numbering Plan Administrator ("NANPA"). Sprint will perform the porting function whether the port is from the "ILEC" or a "CLEC" to Sprint or vice versa. Sprint will be responsible for such direct end-user services as operator services, directory assistance, and directory assistance call completion. Sprint will also provision 911 circuits to the appropriate Public Safety Answering Points ("PSAP") through the ILEC selective routers, perform 911 database administration and will negotiate contracts with PSAPs where necessary. Finally, Sprint will place directory listings on behalf of end-user customers in the ILEC or third-party directories.

Q. What resources does MCC contribute to this business model?

A. MCC has facilities to customer premises and existing relationships with customers. On the other hand, it is Sprint's understanding that MCC, in seeking to provide services that are comparable to Plain Old Telephone Service ("POTS"), desired to benefit from Sprint's capabilities with regard to end office switching, negotiated interconnection agreements with ILECs, nationwide long distance network, systems to bill reciprocal compensation or exchange access, and corresponding expertise regarding competitive local exchange carrier operations.

Q. What customer benefits will result from implementation of the business model described above?

A. Implementation of this business model permits South Dakota customers in Swiftel's serving area to have a meaningful alternative for voice services. The presence of that choice, alone, will produce competitive advantages to customers in the form of lower prices and better services as competitors respond to the new competition offered through this business model.

C. SPRINT'S BUSINESS MODEL IS WHOLLY CONSISTENT WITH THE PRO-COMPETITION GOALS OF TELECOMMUNICATIONS ACT OF 1996.

Q. Before discussing the specific Sprint/MCC arrangement, can you please describe the network elements or functions that a competitive entrant must obtain in order to provide local service.

A. In its simplest form, a competitive entrant must obtain three network elements or functions in order to provide local service: (1) it must have access to a connection to the customer premise, *e.g.,* the last mile or the loop; (2) it must have access to an end office switching function; and (3) it must be able to interconnect to the PSTN which allows the calls to be routed to and from the called and calling parties.

Q. Does a competitive entrant have choices in how it obtains each of three network elements or functions you just described?

A. Yes. The Act gives competitive entrants flexibility in how it obtains these three network elements or functions. It can provide them itself or it can outsource them to other telecommunications carriers or the ILEC. For example, to get to the customer premise, a competitive entrant can build and use its own loop, purchase the loop from an ILEC, or purchase it from another service provider. The same is true for switching and interconnection; the CLEC can self-provision these capabilities or purchase them from the ILEC or another service provider.

Q. Please provide an example of how a competitive voice provider is allowed under the Act to enter the market through the exclusive use of another entity's network.

A. There are two examples of how a competitive entrant can use the network elements or functions of another entity exclusively. The first is called the "Unbundled Network Element Platform," commonly referred to as UNE-P. The

second is resale. UNE-P is typically purchased from the ILEC. A competitive entrant purchases all the network elements and functions from the ILEC, combines them, brands the service as its own, and provides and bills the completed service at retail to its customers. The second example involves a CLEC which provides services through resale. There are two forms of resale: resale of an ILEC's service or resale of a CLEC's service. In both forms of resale, the competitive entrant purchases a complete service consisting of loop, switching, and interconnection, re-brands the service as its own, and provides it at retail to its customers.

Q. Please expand on the resale example in which a competitive entrant purchases a complete service from a CLEC and re-brands the service in its own name for sale to its customers.

A. The Act requires all local exchange carriers, including CLECs, to resell their services. As a result of this requirement of the Act, a facilities-based CLEC owning its own switch and provisioning its own local interconnection trunks pursuant to a Section 251 interconnection agreement with an ILEC is required to resell its service, including the local interconnection function, to any other requesting carrier. In other words, assume CLEC 'A' is a facilities-based CLEC with its own switch interconnected to the ILEC pursuant to a section 251 interconnection agreement. CLEC 'B' has the right to resell the telecommunications services of CLEC 'A'. The resulting situation would be a retail customer served by CLEC 'B' using the switch and interconnection trunks

of CLEC 'A'. This is comparable to what Sprint and MCC have agreed to do. Therefore, the business model being utilized by Sprint and MCC is consistent with the requirements of the Act.

Q. Please provide an example of the combined approach you mentioned above and compare it to the Sprint/MCC arrangement.

A. There are two forms of the combined approach I would like to describe and compare to the Sprint/MCC arrangement.

Example 1: In over 30 markets across the United States, Sprint, as the retail service provider, has purchased switching and interconnection from another CLEC and purchased its own loops from the ILEC. This is comparable to the Sprint/MCC arrangement in that Sprint is the retail provider (comparable to MCC in the current situation) purchasing switching and interconnection from another CLEC (comparable to Sprint's role in the current situation).

Example 2: Sprint purchased unbundled network elements in the form of UNE-P from another CLEC who purchased them from the ILEC. Sprint provided retail service in this manner in over 30 states and the District of Columbia. This is comparable to the Sprint/MCC arrangement because, again, Sprint as the retail service provider has purchased from another CLEC the network elements and functions necessary to provide a complete local service.

Q. Is there an example of this wholesale/retail relationship that is commonplace in the long distance industry?

A. Yes. It is commonplace for long distance providers to resell the services of other carriers. A significant portion of Sprint revenue is derived from selling long distance service to other carriers on a wholesale basis. In other words, Sprint as a carrier provides wholesale long distance service to another carrier who provides long distance service to end users on a retail basis. I am not aware of a single instance where Sprint's status as a carrier has been challenged when selling wholesale long distance service or where an ILEC, including an RLEC has hesitated to charge Sprint access charges. In fact, I would assume Swiftel is purchasing long distance service on a wholesale basis from another carrier or carriers. Yet, when Sprint attempts to enter the local market using a wholesale model Swiftel claims Sprint is not authorized to do so. This seems grossly inconsistent and self-serving.

Q. Is the provision of a retail service utilizing the combined networks of two service providers a form of local competition authorized by the Act?

A. Yes. Regardless of the scenario selected, the Act established a framework to permit competitors to enter the market in a variety of ways to allow customers to receive the benefits of having more choices for their voice services. Second, the two examples being used by Sprint that I just explained are very similar to the Sprint/MCC arrangement. In both instances one carrier, Sprint, is providing the retail service and another carrier is using its rights under the Act to acquire UNEs

and/or local interconnection and providing it to Sprint. The Sprint/MCC arrangement is essentially the same but puts Sprint in the position of being the carrier attempting to exercise its rights to interconnect with the RLECs' and provide Sprint's service to MCC, the retail provider. The Sprint/MCC arrangement may be the only model that will provide consumers in Swiftel's franchise territory an alternative provider of voice service.

Q. Why is it important to consider the various market entry models you just described?

A. It is important to consider the various market entry models I previously described to illustrate the flexibility available to competitive service providers because the Sprint/MCC is another example of a business model that is consistent with the flexibility provided by the Act. As I have previously stated, Congress and the FCC contemplated and anticipated creative forms of market entry to ensure the goals of the Act could be realized, *i.e.*, local competition.

Q. Why are the options or forms of market entry relevant to this proceeding?

A. The various forms or options for market entry made available through the Act are important to this proceeding because the business model Sprint and the cable companies, in this case MCC, have chosen to utilize to provide competitive voice alternatives to Swiftel is characterized as inconsistent with the plain language and intent of the Act. Nothing could be further from the truth. The business model whereby two entities combine resources to jointly provide competitive

alternatives is exactly the type of innovative approach contemplated by the Act. The Act was structured in such a manner as to allow for innovation, creativity and flexibility. In fact, this very business model is probably the single largest contributor to competitive choice in rural markets today.

Q. If the business model as described in your testimony is the type of market entry approach contemplated by the Act, why is Sprint encountering resistance from Swiftel in this proceeding?

A. I can only provide my opinion as to why Swiftel is resisting the competitive entry by Sprint and MCC. Swiftel, like many rural LECs ("RLECs") in other states in which Sprint has encountered similar resistance, is seeing a competitive threat unlike any it has ever seen before. I have to assume that the idea of a true facilities-based competitor is of great concern to Swiftel. For the most part Swiftel has been isolated from competition for the entirety of its existence. Even the passage of the Act in 1996, which was intended to bring competitive choices to all Americans, did not result in real competition in rural markets. RLECs are now faced with the realities of competition and they likely will take whatever means available to them to keep competition out of their markets. Failing that, they will delay competitive market entry as long as possible. Finally, there is no down side for Swiftel to challenge Sprint and MCC's entry attempts.

Q. Have the courts given any guidance relative to the current proceeding on how to interpret provisions of the Act?

A. Yes. The United States Court of Appeals for the Eighth Circuit, in a ruling regarding disputed issues between a wireless company and an incumbent local exchange carrier, made it very clear that intent of the Act was to eliminate monopolies and foster competition. The Court also made it very clear that a potentially vague provision should be interpreted in a manner that reduces barriers to entry:

> First, all else being equal, if a provision of the Act is vague we are inclined to interpret the provision in a manner that promotes competition. It is undisputed that Congress passed the Act with the intention of eliminating monopolies and fostering competition. We do not suggest that this general intent should be used to impose duties on incumbents beyond those created by Congress. We do, however, believe that this general intent should guide our consideration of competing interpretations of the Act. Such guidance suggests that we should be wary of interpretations that simultaneously expand costs for competitors (such as a requirement for direct connections) and limit burdens on incumbents (such as a limitation of dialing parity to local exchange boundaries). If a cost is imposed on a competitor, it becomes a barrier to entry and rewards the company who previously benefited from monopoly protection. Because Congress passed the Act with a clear intent to foster competition, we are more inclined to interpret a vague provision in a manner that reduces barriers to entry.[2]

D. IN THE SPRINT BUSINESS MODEL, SPRINT PROVIDES THE SAME SWITCHING AND INTERCONNECTION CAPABILITIES THAT IT PROVIDES FOR ITS OTHER VOICE SERVICES, WHILE THE LOOP CONNECTION TO THE CUSTOMER IS PROVIDED BY ANOTHER SERVICE PROVIDER, SUCH AS MCC.

Q. Under this business model, which company provides the three network elements or functions: the loop, switching and interconnection?

A. The business model can be explained in terms of these three elements or functions I described earlier. Sprint provides switching and interconnection, and MCC provides the loop connecting the customer premises to Sprint's end office switch.

[2] *WWC License v. Boyle,* 459 F3d 880, 891 (8th Cir. 2006).

Q. Please describe the network configuration being deployed by Sprint and MCC.

A. Following is a description of the network configuration being deployed by Sprint and MCC. Please refer to Attachment JRB-2 which represents the Sprint/MCC network configuration for a functional diagram of what I am describing. MCC's customers will have a device located in their home called an eMTA or embedded Multi-media Terminal Adapter. This device connects the customer's telephones and the coaxial cable that enters the home. The coaxial cable exits the customer's home and terminates in MCC's head end. A head end is the originating point of the video signals in a cable television system. At the head end, television signals are separated out from the voice and data signals. The voice and data signals are routed to a device called a CMTS or Cable Modem Termination System. The CMTS aggregates customer voice traffic for transmission to Sprint's end office switch. The CMTS routes the Internet traffic to the public Internet. The Sprint end office switch uses the calling party and called party information to route the traffic to the appropriate destinations. For example, if the calling party and called party are within the same local calling area the call will be routed to the interconnection trunks between Sprint and the ILEC for termination to the appropriate called party. If the customer dials 911, the call is routed over the trunks Sprint has provisioned between the Sprint end office switch to the appropriate selective router based on the physical location of the customer dialing 911. The eMTA, coaxial cable and CMTS are all provided by MCC. Sprint

provides the end office switch. The transport between the CMTS and Sprint's end office switch can be provided by either Sprint or MCC. Sprint is responsible for all the interconnectivity to the PSTN for the termination of local, 911, toll, operator and directory calls. In this manner, MCC relies on Sprint's end office switch and interconnection functionality to permit their subscribers to complete telephone calls to the PSTN.

E. UNDER SPRINT'S BUSINESS MODEL, THE CUSTOMER RECEIVES A VOICE SERVICE, NOT A CABLE MODEM SERVICE OR AN INTERNET-BASED VOICE OVER INTERNET PROTOCOL ("VOIP") SERVICE.

Q. Is the proposed service a cable modem service?

A. No. The proposed service is not cable modem service, and does not provide connection to the public Internet as is the case with cable modem service. Cable modem service provides customers with high speed access to the Internet, over the fixed cable network of the cable company. In contrast, the proposed services are voice services that are comparable to the Plain Old Telephone Service ("POTS") provided by Swiftel and other local exchange carriers. Customers can use the same type of telephones used by the Swiftel customers. The customers of the proposed service will only be able to originate and terminate calls from the customer's premises as Swiftel's customers currently do. The proposed services do not require the customer to subscribe to the cable company's cable modem service or any other broadband service like DSL, and do not require a computer at either end of the voice call. The customer's "telephone number" is fixed to his or

her physical location, and therefore, the proposed services are not "nomadic" or "mobile."

Q. Is the proposed service an Internet Telephony or Internet-based VoIP service?

A. No. I am not speaking to the regulatory treatment of these services, but rather, the functionality of the proposed service and why it is not an Internet Telephony or Internet-based VoIP service as these terms are generally used in the industry. The terms Internet Telephony and/or Internet-based VoIP are used to describe voice services that utilize the public Internet. An example would be the service provided by Vonage. By contrast, the proposed service does not use the public Internet in any manner. Internet Telephony and Internet-based VoIP services are also nomadic services. In other words, customers of Internet Telephony and Internet-based VoIP services can use the service wherever they have a broadband Internet connection. The voice service provided by Sprint and MCC is not nomadic; the customers only use the service in their homes. Internet Telephony and Internet-based VoIP services have also struggled with providing 911 service consistent with customer or public safety official expectations. The voice service provided by Sprint and MCC provides reliable E-911 service.

Q. How could any observer confuse Internet Telephony or Internet-based VoIP services with the voice service being provided by Sprint and MCC?

A. There is one factor that is sometimes used to attempt to create confusion between Internet Telephony and Internet-based VoIP service and the voice service being provided by Sprint and MCC. It is the fact that both services happen to use the Internet protocol.[3] Since both services use the Internet protocol, there is a tendency to claim the services are the same. The mere fact that there is one technical similarity, use of the Internet protocol, should not lead one to the conclusion that the services are the same.

F. CURRENT REGULATORY STATUS OF INTERCONNECTED VOIP SERVICES AND ITS RELEVANCE TO THIS PROCEEDING.

Q. Is the service being provided by the Sprint and MCC an interconnected VoIP service as defined by the FCC?

A. Yes. The service provided by Sprint and MCC is an interconnected VoIP service as the FCC has defined it.[4]

Q. What is the current regulatory status of interconnected VoIP service?

A. The FCC has not yet determined the regulatory classification of interconnected VoIP service. However, the FCC has recognized the proliferation of the service and the value it provides to subscribers. In so doing, the FCC has required providers of interconnected VoIP service to comply with certain regulations such

[3] The Internet protocol is part of the TCP/IP family of protocols that establish the rules or protocol that must be followed by devices connected to one another utilizing the protocol.

[4] 47 C.F.R. 9.3 Interconnected VoIP service. An interconnected Voice over Internet protocol (VoIP) service is a service that: (1) Enables real-time, two-way voice communications; (2) Requires a broadband connection from the user's location; (3) Requires Internet protocol-compatible customer premises equipment (CPE); and (4) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

as 911, CALEA and USF contributions.[5] In addition, the FCC has recognized that interconnected VoIP services interconnect with the PSTN. In fact, the FCC specifically recognizes that interconnected VoIP service providers interconnect with the PSTN through third parties.[6]

Q. Is the regulatory classification, or lack thereof, relevant to Sprint's right to interconnect with the PSTN via 251/252 interconnection with incumbent local exchange carriers ("ILECS")?

A. No. Sprint is providing telecommunications services to the cable companies in the business model described. Moreover, Sprint is utilizing its current CLEC certification to provide identical services in other parts of South Dakota. With respect to interconnection, Sprint's right to interconnect is based on the fact that it is a telecommunications carrier under the Act, not the regulatory classification of the interconnected VoIP service. Second, Sprint is not seeking to interconnect VoIP traffic to the PSTN through an ILEC. Sprint is seeking traditional time division multiplex ("TDM") interconnection using SS7 signaling. This traditional type of interconnection is not affected by the fact that the Internet protocol is used at the customer premise. Third, as I stated previously, the FCC has recognized the necessity of PSTN interconnectivity and that sometimes that will be done through third parties. PSTN interconnection is inherent in the term the FCC has chosen for this service and is part of the definition used by the FCC.

[5] FCC WC Docket No. 05-196, FCC 05-116 E911 Requirements for IP-Enabled Service Providers; FCC WC Docket No. FCC ET Docket No. 04-295 RM-10865 FCC 04-187 Communications Assistance for Law Enforcement Act and Broadband Access and Services; FCC WC Docket No. 06-122, FCC 06-94 Universal Service Contribution Methodology.

[6] FCC WC Docket No. 06-122, FCC 06-94 Universal Service Contribution Methodology Released June 27, 2006, p. 41.

Q. Is the traffic that Sprint will route to Swiftel in this proceeding different from any other voice traffic?

A. No. The traffic that Sprint will be routing to Swiftel in this proceeding is no different from any other voice traffic exchanged with Swiftel. Sprint will utilize standard interconnection trunks with standard SS7 signaling just as it has in the 31 other states, including South Dakota, in which it is providing competitive voice service in conjunction with several different cable companies.

G. SPRINT OFFERS ITS SERVICES INDISCRIMINATELY.

Q. When did Sprint begin discussions with cable companies such as MCC?

A. Although I do not work in the department that developed the strategy of creating relationships with cable companies and other similarly situated companies, I provide regulatory support for this effort. I first got involved in this work in early 2003.

Q. How did Sprint approach this new business opportunity you have previously described as jointly provided service?

A. Sprint identified cable companies as natural partners for a jointly provided competitive voice service offering. Sprint identified potential "business partners" through various means including trade associations such as the National Cable Television Cooperative ("NCTC"), a buying consortium that represents over 1,000 independent cable operators, including many smaller operators; attendance

at trade shows; etc. Sprint attended one trade show in 2003, four trade shows in 2004, three trade shows in 2005, numerous trade shows in 2006 and will attend multiple trade shows in 2007. The purpose of attending these trade shows and meeting with the NCTC was to convey to as many cable companies as possible that Sprint was interested in forming relationships to provide competitive voice services.

Q. Are cable companies divided into categories and has Sprint offered its services to each of them?

A. Yes, the cable industry is divided into categories labeled Tier 1, Tier 2 and Tier 3.[7] Tier 1 consists of the top 10 companies, Tier 2 consists of numbers 11-44 and Tier 3 are number 45 and above. Sprint has approached virtually all cable companies through the various means I mentioned above. Sprint has held discussions with all of the Tier 1 companies, a majority of the Tier 2 companies and several of the Tier 3 companies.

Q. Briefly describe Sprint's results working with cable companies.

A. Sprint has seen considerable success to date in working with cable companies. Sprint has entered into agreements with twelve different cable companies, including, MCC, Time Warner Cable, SuddenLink, Wide Open West, Wave Broadband and Blue Ridge Communications, currently serving in 31 states with over 30 million households passed. Sprint's agreements cover cable companies of all sizes bringing customers a choice of voice services in large, small, urban and rural communities across the United States.

[7] Ranking of cable companies is from the 2004 Kagan Broadband Cable Financial Databook.

Q. Does Sprint offer its interconnection services to all parties within a class similarly situated to MCC, on a non-discriminatory basis?

A. Yes. Sprint offers its interconnection services, including those services previously listed, to all entities that are similarly situated to MCC. That means Sprint intends to provide the interconnection services to all entities who desire to take them and who have "last mile" facilities comparable to the cable companies.

Q. Does the policy to offer the interconnection services to all within a class substantially similar to MCC mean that the network configuration will be *identical for each provider?*

A. No. Sprint will offer the same services to all within the class similar to MCC to allow those services effectively to be offered to the public; however, the network configurations will not be identical for each entity that intends to use Sprint's services. Further, the amount of services purchased will also differ. Some cable companies for example will require different switching capabilities from other cable companies, but all will be offered the opportunity indiscriminately to purchase use of Sprint's end office switch. In addition, the actual interconnection costs incurred by Sprint with different ILECs will be different which may impact Sprint's relationship with "last-mile" providers. Because the Sprint/last-mile provider relationship is a business relationship, some aspects of the final agreement will, of necessity, reflect business differences. The presence of such differences, however, does not mean that Sprint will discriminate between

members in the class; just as a carrier offering a tariffed service is not discriminating when it is permitted to price the product differently depending upon the minimum commitment level purchased or the length of a particular circuit as is the case with ILEC special access services. As in the tariff example, as long as the tariffing carrier offers the same conditions to entities within each class to which it is offered, no discrimination occurs. To be clear, Sprint offers the services previously identified to all within the class of entities who desire the services and who have comparable "last mile" facilities to the cable companies. In fact, should the Commission require Sprint to file a tariff or informational filing for this offering, it will make the offering available pursuant to such requirement.

Q. Does Sprint alter the content of end-user communications?

A. No. Sprint does not alter the content of the voice communications between end-users. While different technologies or protocols may be required as the voice communications traverses the network from one source to its destination, the fact remains that the message/voice that is spoken on the one end is the message/voice that is heard on the other end.

IV. DISPUTED ISSUES

ARBITRATION ISSUE NO. 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? (SWIFTEL ISSUES 2 AND 6)

Q. Please describe Arbitration Issue No. 1.

A. Arbitration Issue No. 1 is unique in that an unfavorable ruling will keep Sprint and MCC from entering the market leaving the subscribers within the Swiftel territory with little choice as to who provides their voice service. I refer to Issue No. 1 as a "threshold issue."

Q. Please explain.

A. As I mentioned above, Arbitration Issue No. 1 can have the effect of keeping Sprint and MCC out of the market entirely if it is not clear that end-users served through the joint efforts of Sprint and MCC are able to make and receive calls through the interconnection established between Sprint and Swiftel. While Swiftel attempts to shift the focus by stating that it does not argue that the Agreement cannot apply to wholesale services (Swiftel Response at page 17), it goes on to question whether the agreement can apply to the end-users Sprint serves with MCC. Therefore, it appears that Swiftel does not have an issue with Sprint providing wholesale services as long as those services are provided in the manner Swiftel suggests.

Q. Are you aware of any rule or regulation that prohibits Sprint from providing the wholesale services Sprint intends to provide?

A. No. Further, as I discuss in my testimony today, Sprint is providing these services through its relationship with cable companies to over 1.5 million consumers pursuant to approved interconnection agreements.

Q. Do you agree with Swiftel that the only parties to the Agreement are Sprint and Swiftel?

A. Yes. Sprint has never stated that MCC is or should be a party to the agreement between Sprint and Swiftel. Sprint requested interconnection with Swiftel. It is Sprint's network and Sprint's end office switch that originates and terminates all of the traffic that will be exchanged between Sprint and Swiftel. Under the business model the traffic that is being exchanged is Sprint's traffic and, therefore, appropriately covered by the interconnection agreement Sprint is seeking with Swiftel. All of the rights and obligations under the Interconnection Agreement will flow between Sprint and Swiftel. In fact, in an effort to make this clear, Sprint offered language to Swiftel to assure Swiftel that Sprint would be the responsible party in this situation. Apparently, Swiftel now does not agree with the inclusion of that language in the contract. Sprint, however, is willing to keep the language in if it helps bring clarity.

Q. What specific language did Sprint propose?

A. Sprint proposed the following language be included in section 20.6:

> **The Parties specifically agree that ILEC's responsibilities hereunder are only to Sprint and not any such "wholesale customer" and, *correspondingly, Sprint is obligated to comply with all provisions of* this Agreement for Traffic it originates from and terminates to such**

wholesale customers served by Sprint. Notwithstanding any limitation of liability in Section 18 or indemnification in Section 19, Sprint shall indemnify ILEC if any such wholesale customer bills and ILEC pays for the same services that Sprint has already billed ILEC under this Agreement and ILEC promptly notifies Sprint of the invoice and cooperates with Sprint in resolving the billing issues. The preceding sentence does not apply to any tort action or claim that any "wholesale customer" or ILEC may have against each other outside the obligations of this Agreement.

Q. If the interconnection agreement is between Sprint and MCC, why did Sprint tell Swiftel about its business model with MCC?

A. While Sprint has never believed that the business model is relevant to the interconnection issues between Sprint and the interconnecting ILEC Sprint decided to let the rural LECs know about Sprint's plans so that they could not accuse Sprint of "hiding the ball." Sprint did not want them to have another reason to try to insert delay into to the interconnection agreement process.

Q. Do you agree with Swiftel's statement that Sprint's propose language regarding End-User somehow extinguishes the rights of telecommunications carriers/MCC *that are not a party to this Agreement*?

A. Absolutely not. Swiftel's unsupported argument that Sprint is somehow extinguishing the rights of MCC or any telecommunications carrier is nonsensical. MCC has entered into a business relationship with Sprint. MCC is compensating Sprint for certain services so that together Sprint and MCC can bring a competitive alternative to consumers in Swiftel's territory. Sprint is not seeking to extinguish MCC's or any telecommunications carriers' rights. Sprint offers its services to all third party cable companies. If they choose to use

Sprint's services, they are choosing to exercise their rights in a different manner then perhaps Switel is accustomed.

Q. How should the Commission resolve Issue No. 1?

A. The Commission should rule that Sprint is a telecommunications carrier with all the rights afforded a telecommunications carrier under the Act, including the right to interconnect with Swiftel for purposes of Sprint's wholesale business model. In doing so, the Commission should order the parties to adopt the language proposed by Sprint as follows:

- Scope of the Agreement, Section 1.1,
- Definition of End User, Section 2.7 and as the term is used throughout the document, and
- Third Party Beneficiaries, Section 20.6.

<u>ARBITRATION ISSUE NO. 2:</u> DOES THE TELECOMMUNICATIONS ACT AUTORIZE 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?

Q. Please describe Issue No. 2.

A. Issue No. 2 as presented in Sprint's Petition for Arbitration asks the Commission to determine that it has the authority under the Act to arbitrate a 251(a) agreement. In Swiftel's response, it suggest the agreement should be limited to the duties found in Sections 251(b)(2), (3) and (5), number portability, dialing

parity and reciprocal compensation. Swiftel suggests that interconnection under 251(a) was not negotiated and should not be decided by the Commission.

Q. Has anything transpired *since Sprint filed its Petition and Swiftel filed its* response to Sprint's Petition that could impact the outcome of this arbitration proceeding?

A. Yes. On January 30, three days before Direct Testimony was due, Swiftel filed a Petition for Suspension or Modification of Dialing Parity, Number Portability and Reciprocal Compensation Obligations.

Q. Should Swiftel's Petition have any effect on this arbitration proceeding?

A. No. The Swiftel Petition should not have any effect on this Arbitration proceeding. Swiftel should not be allowed to frustrate Sprint and MCC's market entry by this late filing. Sprint sent a Bona Fide Request (BFR) for wireline to wireline number portability on March 6, 2006. The BFR and subsequent correspondence is included as Attachment JRB-3. Sprint sent a request for interconnection to Swiftel on November 9, 2005. This request and subsequent correspondence is included as Attachment JRB-4. Sprint filed its Petition for Authority to Provide Local Exchange Services in Certain Rural Areas which included Swiftel's territory on October 20, 2006.[8] Swiftel's obligation for number portability, lacking a suspension or modification of their obligations, was to implement local number portability within six months of Sprint's BFR or

[8] Docket No. TC06-178.

September 6, 2006.[9] The Commission should, at a minimum, reject Swiftel's petition relative to number portability because Swiftel's opportunity to seek a suspension or modification of this obligation has long since passed. Swiftel should have filed to suspend or modify their obligations as soon as it received Sprint's BFR to allow for the 180 day Section 252(f)(2) statutory interval. As to dialing parity and reciprocal compensation, the Commission should also reject Swiftel's petition. It has been 14 months since Sprint requested to negotiate an interconnection agreement with Swiftel as of the filing of this testimony and now on the eve of an arbitration hearing Swiftel files a petition that may have significant impacts on Sprint's and MCC's ability to provide competitive service in Swiftel's territory. Swiftel should not be allowed to abuse the regulatory process in this manner.

Q. What could the impact be to Sprint and MCC's market entry?

A. The timing of Swiftel's Petition could have the impact of delaying Sprint and MCC's efforts by another 15 months. This presumes the statutory 180 days (six months) to render a decision on Swiftel's Petition then another nine months for the parties to negotiate and arbitrate the terms for number portability, dialing parity and reciprocal compensation – assuming Swiftel is not successful and is required to provide number portability, dialing parity and reciprocal compensation. A 2009 market entry is extremely favorable to Swiftel and very detrimental to Sprint and MCC as compared to a currently scheduled 2007 market entry.

[9] 47 C.F.R. 52.23(c).

Q. Is the scenario of a 15 month delay necessary or required?

A. No. Assuming Swiftel did not intend to delay Sprint's and MCC's market entry, the Commission can either dismiss Swiftel's Petition as I've suggested above or address the issues in the context of this arbitration. The Commission could proceed with the arbitration on the issues related to number portability, dialing parity and reciprocal compensation and render its decision. If for some reason the Commission finds that it cannot dismiss Swiftel's untimely Petition, it must proceed on both the arbitration proceeding and the suspension proceeding in parallel since both have statutory intervals the Commission must follow.[10] Because the 180 days allowed for the Commission to act on Swiftel's Petition will fall outside the nine months allowed for the Commission to resolve the disputed issues in this proceeding, the Commission can address the disputed issues and modify them later if Swiftel prevails in any of its requested suspensions and modifications, i.e., number portability, dialing parity or reciprocal compensation.

Q. Does Sprint agree with Swiftel's position that Sprint did not request 251(a) interconnection or that Swiftel did not agree to negotiate interconnection terms.?

A. No. Attachment JRB-4 clearly shows that Sprint requested interconnection pursuant to Section 251(a) and 251(b)(2), (3) and (5) and that Swiftel

[10] Section 252(b)(4)C) requires state commissions to "conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.", i.e., Sprint's request for interconnection taking into account any extensions agreed to by the parties. Section 251(f)(2) requires the state commission to act upon any petition for suspension and modification within 180 days after receiving a petition.

acknowledged the request and agreed to interconnection negotiations. It is disingenuous for Swiftel to claim in its response to Sprint's Petition that Sprint did not seek 251(a) interconnection or that Swiftel did not agree to negotiate interconnection terms.

Q. Is the Commission authorized to arbitrate the issues presented in Sprint's Petition?

A. Yes. First, Section 252 clearly gives the Commission the authority; in fact it assigns the authority to the Commission to arbitrate disputed issues in a 251(a) and (b) agreement.

Second, several other state commissions have arbitrated disputed issues and/or approved section 251(a) and (b) interconnection agreements. Sprint has arbitrated section 251(a) and (b) agreements in Iowa, Illinois, Indiana, New York and Nebraska and Sprint has negotiated section 251(a) and (b) agreements in the states of Alabama, Florida, Georgia, Illinois, Indiana, Kentucky, Minnesota, Mississippi, New York, North Carolina, and Tennessee. Each were approved by the respective state commissions.

Third, this Commission has approved a section 251(a) and (b) agreement between Swiftel and Western Wireless (WWC). If a state commission has the authority to approve a secion 251(a) and (b) agreement pursuant to its authority under Section 252, then it certainly has the authority to arbitrate section 251(a) and (b) agreements pursuant to its authority under section 252 of the Act.

Q. How would you suggest the Commission address threshold Issue No. 2?

A. The Commission should rule in Sprint's favor on threshold Issue No. 2, that the Commission has the authority to arbitrate terms and conditions for interconnection obtained under Section 251(a) of the Act.

ARBITRATION ISSUE NO. 3: SHOULD THE INTERCONNECTION AGREEMENT PERMIT THE PARTIES TO COMBINE WIRELESS AND WIRELINE TRAFFIC ON THE INTERCONNECTION TRUNKS? (SWIFTEL ISSUE 4 AND 10)

Q. Please describe Issue No. 3

A. Sprint is simply requesting that the interconnection agreement permit the parties to gain network efficiencies by combining different "types" of traffic, i.e., wireless intraMTA and wireline local, onto the same trunks. Sprint refers to this arrangement as "multi-use" trunking. Generally, Sprint has three separate network interconnections to ILECs. These include a wireline local interconnection, a wireless local interconnection for intraMTA traffic and an access interconnection for toll traffic. Sprint seeks to establish a more efficient network interconnection by combining all of its traffic onto a common trunk. Just to be clear, Issue No. 3 pertains to what Sprint calls multi-use trunking which addresses two of the three types of traffic Sprint wishes to combine, i.e., combining wireless intraMTA and wireline local traffic. Placing the third type, access or toll traffic, onto local interconnection trunks is referred to as multi-jurisdictional trunking and is covered by Sprint Issue No. 4. Issue No. 4 is discussed later in my testimony.

Q. Why is this issue important to Sprint?

A. Multi-use trunking permits more efficient trunking. By combining Sprint's traffic onto a single PSTN interconnection, Sprint will improve its network efficiency, reduce network costs, expand coverage for all services, and support integrated or converged services such as converged VoIP services. There have been advancements in switching technology that enable Sprint to combine its different types of traffic onto a common switching platform and Sprint is in the process of doing just that. However, it would be highly inefficient for Sprint to combine the different traffic types onto a common switching platform on a single network but then have to segregate that traffic onto separate trunks where it interfaces with the ILEC. Rather, Sprint seeks a single interconnection with Swiftel by combining all of its traffic on a single trunk group. A term used by Sprint and the industry to describe the consolidation of network platforms and service offerings is called convergence. Sprint is merely "keeping up with the times" by utilizing the latest technology has to offer and responding to customer demands to provide converged or integrated services. It only follows that the form of interconnection for these converged platforms and services be supported through efficient PSTN interconnections.

Q. Are you aware of any technical reasons that would prohibit combining wireless and wireline traffic on the same trunks?

A. No. I am not aware of any technical reasons that would prohibit combining wireless and wireline traffic on the same trunks. Sprint has raised this issue with

other ILECs and it is apparent that the concern centers on the ability to render an accurate invoice for traffic on mixed trunks. As I will discuss later in my testimony, Sprint has a solution to that concern. In addition, I will also discuss later in my testimony that carriers pass wireless and wireline traffic between them today on the same trunks.

Q. What are Swiftel's claimed concerns regarding multi-use Trunking?

A. Based on Swiftel Issues 4 and 10 as well as questions propounded by Swiftel in discovery, Sprint believes that Swiftel Telephone's major concern is that it will not be paid the correct amount of revenue for each type of traffic that is carried over the multi-use trunk. Swiftel does not want the agreement to include CMRS traffic, traffic subject to access charges, or VoIP traffic (see Swiftel Issues 4 and 10).

Q. What is Sprint's response to Swiftel?

A. Sprint wants the interconnection agreement to include CMRS traffic (Sprint refers to this as intraMTA wireless traffic), traffic subject to access charges and VoIP traffic. Sprint/MCC's VoIP-originated voice traffic is at the heart of this agreement. If Sprint cannot have an agreement that covers VoIP traffic, then Sprint and MCC cannot provide service in Swiftel's service territory. I addressed why it should not matter what technology is used by the end user in Section III of this testimony. Additionally, Sprint wants this interconnection agreement to include intraMTA wireless traffic and traffic subject to access charges so that

Sprint can combine this traffic with its local traffic in order to more efficiently terminate traffic to Swiftel. I suspect that Swiftel is seeking to exclude Sprint's VoIP traffic in order to thwart Sprint and MCC's plans to provide competitive phone service in Brookings. Further, Swiftel may be opposing Sprint's inclusion of intraMTA wireless traffic and traffic subject to access charges for fear that it will not be correctly compensated for terminating that traffic. As I have discussed in my testimony and as Sprint has shown in its petition and in response to discovery, Sprint will clearly identify all traffic (intraMTA wireless, local wireline and access) using industry standard SS7 signaling so that Swiftel can properly identify the traffic and render an invoice to Sprint.[11] Alternatively, Sprint has proposed to develop auditable billing factors that Swiftel can use to render an invoice to Sprint. Sprint's intention is to provide Swiftel the information it needs to render a correct invoice and be fully compensated for the various types of traffic that it terminates for Sprint. Just to be clear, it is not Sprint's intent to modify the existing intercarrier compensation schemes relative to the various forms of traffic Sprint wants to include on the interconnection trunks. Further, Sprint will not combine traffic until it has the processes in place to correctly identify the traffic.

Q. Why is it important for Sprint to have this language now?

[11] The local wireline traffic that Sprint is referring to is the local traffic that will be exchanged between Sprint and Swiftel for the service being jointly provided by Sprint and MCC. This traffic does utilize the IP protocol at the customer premise, but is converted to standard TDM traffic before it is placed on the interconnection trunks that will be provisioned pursuant to the terms and conditions of this agreement.

A. Sprint will incur significant costs to develop the capability to identify the various traffic types correctly. Therefore, Sprint needs assurance that it can implement the proposed solution as described below.

Q. Please describe in more detail the proposal Sprint has presented to ensure accurate intercarrier compensation is applied to the different traffic types.

A. Sprint's proposed solution is quite simple. First, the traffic must be segregated between wireline and wireless. Then the jurisdiction for each type must be determined. Sprint will populate the following fields in the SS7 signaling information.

- Originating Line Information Parameter (OLIP) – this field will be populated using standard traffic designations that will differentiate wireline from local traffic
- Calling Party Number (CPN) – The calling party number is used to determine the originating location of the call.
- Called Party Number (CLD) – The called party number is used to determine where the call is terminated.

Swiftel can utilize this information to properly invoice Sprint for the different traffic types. If Swiftel does not have the ability or does not want to use this information to invoice Sprint, Sprint will utilize the information to develop factors for the various types of traffic that Swiftel can use to invoice Sprint. Sprint will provide Swiftel the ability to audit the information Sprint used to develop the factors if it chooses to do so. Sprint is open to discussing alternative methods of identifying the traffic.

Q. What benefits accrue to Sprint by virtue of multi-use trunking?

A. Sprint's network is converging onto a single switching platform. Historically, there were separate networks, including separate switches, for intraMTA wireless traffic, wireline local traffic and access traffic. There have been advancements in switching technology that enable Sprint to combine different types of traffic onto a common switching platform. Additionally, new services that customers are demanding are also pushing Sprint to a common switching platform. In fact, the very nature of some of the services being provided within the industry today and being developed by Sprint will require the combining of the different traffic types. For example, there are services available that allow a user to have a single telephone number assigned to both a mobile and desk telephone. This creates the situation where it may not be known whether a particular call is a wireline call or wireless call until the user answers either his wireline telephone or his wireless telephone because the two telephones are effectively integrated into a single service with a single telephone number. This reality creates the situation where carriers exchanging traffic over segregated trunks will not know which trunk to place the call on because its true nature is not known until the call is answered. Many services are no longer viewed as wireless or wireline, but rather are viewed as integrated or converged services.

Multi-use trunking also permits better trunk utilization by combining different traffic types which may peak at different times allowing more overall traffic to be placed on fewer trunks. With multi-use trunks this traffic can be distributed across fewer trunks. Fewer trunks mean fewer trunk ports on both the ILEC and

Sprint switches. Fewer trunks and trunk ports also mean less trunk orders required to be processed. And fewer trunks also means that the capacity of the interconnection facility carrying these trunks may be less than if required to segregate the traffic onto separate trunks.

Q. Should Swiftel have any concerns regarding intercarrier compensation for local traffic carried on multi-use trunks?

A. No. First, Sprint has repeatedly stated that it will be responsible for 100% of the traffic that Sprint terminates to Swiftel over the multi-use trunks. Thus, there is no "phantom" traffic. Swiftel will be paid for every minute of traffic it terminates from Sprint. Second, the types of traffic Sprint proposes the parties be permitted to combine on multi-use trunks, i.e., intraMTA wireless traffic and wireline local traffic are all subject to reciprocal compensation governed by sections 251(b)(5) and 252(d)(2) of the Act. There is no difference in the compensation rates for these forms of local traffic. Sprint has proposed a bill and keep arrangement for 251(b)(5) traffic so that both parties can exchange this traffic without incurring unnecessary transaction costs.

Q. Do subtending ILECs, such as Swiftel, already receive wireline and wireless local traffic from a tandem provider that has been combined onto a single multi-use trunk group today?

A. Yes. ILECs, such as Swiftel, often subtend another carrier's tandem, (the ILEC owning the tandem is often referred to as the tandem provider) in order to

indirectly interconnect with other ILECs, wireless carriers (CMRS), interexchange carriers (IXCs), and CLECs. These various carriers (ILECs, CMRS providers, IXCs, and CLECs) interconnect with the PSTN at one of the tandem provider's tandems and can pass their traffic from their networks indirectly to the subtending ILECs network via this tandem connection (this is referred to as indirect interconnection). The subtending ILEC will install common trunks between its switch and the tandem provider's tandem. The tandem provider will combine its own local and toll traffic with local and toll traffic from other ILECs, CMRS providers, IXCs, and CLECs onto these common trunks and pass it to the subtending ILEC. In addition, the tandem provider will typically pass along billing information to the subtending ILEC so that the subtending ILEC knows the type of traffic (local wireline, wireless, or access), the Minutes of Use (MOUs) for each traffic type, and the carrier that originated the traffic it is receiving, so that the ILEC can render a correct invoice to each carrier from whom it receives traffic. Given that Swiftel receives combined, multi-use traffic today, it is puzzling why Swiftel is opposed to Sprint handing it combined, multi-use traffic.[12]

Q. Will Swiftel combine its wireline and wireless local traffic onto a single multi-use trunk group and hand it off to Sprint that way?

[12] It must be noted that subtending carriers do not always get the information they need to bill the originating carrier. This is the situation that may result in what is referred to as phantom traffic. As stated in my testimony, phantom traffic is not an issue in this proceeding because Sprint is taking full responsibility for all traffic it terminates to Swiftel. It must also be noted that the issue of phantom traffic is before the FCC and the proposal being most looked at does not require the segregation of traffic, but instead focuses on better identification of the traffic. It must also be noted that these common trunk groups are currently being used throughout the industry and to suggest they not be used would have tremendous consequences across the entire telecommunications industry.

A. Yes. Despite Swiftel's objection to receiving Sprint's wireline and wireless traffic combined over a multi-use trunk, Swiftel will likely hand Sprint its wireline and its affiliate's wireless traffic over the interconnection trunks installed between the parties pursuant to this agreement. Attachment JRB-5 is a diagram that illustrates how Swiftel's wireline and Swiftel's affiliate wireless traffic will likely be delivered to Sprint.

Q. Have other state commissions addressed the issue of combining different *types of local traffic on interconnection trunks?*

A. Yes. The Indiana Utility Regulatory Commission ("IURC") has ruled in at least two arbitrations, Sprint's and Level 3's, that multi-use can be combined on the same trunk group. In the recent Sprint Arbitration, the IURC stated that,

> "Sprint's arguments on the general issue of whether the Interconnection Agreement permits the combination of differing types of traffic on the same multi-use interconnection trunks are persuasive. No technical reasons have been raised by the RTCs why Sprint's proposal here should not be adopted..... We agree that the combination of wireline, wireless, and IP-PSTN traffic as the parties have defined it in the proposed interconnection agreement would create network efficiencies for both parties."
>
> "We further agree with Sprint that the intercarrier compensation aspects do not pose roadblocks to combining the different types of traffic on the same trunks."

In an earlier Indiana arbitration order addressing interconnection between Level 3 and SBC Indiana, the IURC decided that interconnection trunks could be used for

all forms of traffic.[13] The IURC quoted an FCC order as part of its justification for allowing multi-use trunking. Specifically, the Commission found as follows:

> The FCC provides guidance for us in the appropriate manner in which to address the issue of whether Level 3 can carry all types of traffic over its interconnection trunk groups. For instance, in the *Virginia Arbitration Order*, Verizon had attempted to impose on WorldCom the obligation to create trunk group facilities distinct from WorldCom's existing trunk groups solely for the purpose of routing non-local exchange traffic. WorldCom objected because it imposed a disproportionate expense on WorldCom to create these additional trunk groups. Verizon contended that the separate trunk groups were necessary to ensure that it was receiving accurate compensation from WorldCom. The FCC Bureau, however, rejected the ILEC's argument:
>
> > We also find that establishing separate trunks for these calls, as Verizon proposes, would impose costs on WorldCom that are disproportionate to the problem sought to be solved. [FN608] Carriers typically establish separate trunks when traffic levels are sufficient to make separate trunks cost- effective. Establishing separate trunks to carry only minimal volumes of calls would impose disproportionate costs on WorldCom compared to the benefits of Verizon's proposed solution. [FN609]
> >
> > * * *
> >
> > We believe, however, that measures less costly than establishing separate trunking may be available to ensure that Verizon receives appropriate payment.[14]

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[13] *Arbitration Order, In the Matter of Level 3 Communications, LLC's Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Indiana Bell Telephone Company d/b/a SBC Indiana,* Cause No. 42663 INT-01, at 10-11, (December 22, 2004) ("*Level 3 Order*").

Sprint is aware that this Order was vacated by the Commission on March 10, 2005, in response to a joint motion to vacate the decision by Level 3 and SBC Indiana, when those parties reached a 13 state agreement **after** the IURC issued its Arbitration Order, but before the parties filed a conforming agreement. However, Sprint has no reason to believe that the Commission would rule any differently in this proceeding than it previously ruled in the Level 3 proceeding on the identical substantive issue.

[14] *Memorandum Opinion and Order, Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration,* 17 FCC Rcd 27039 (2002), ¶ 180-182, ("*Virginia Arbitration Order*").

We also note that other state commissions have previously addressed the issue of whether a CLEC can use its interconnection trunks to carry all of its traffic. As far back as 1997, the Michigan Public Service Commission has found the proper policy to be one of allowing all types of traffic over the interconnection trunk groups. The Michigan Commission has held that, consistent with the FCC's *Local Competition Order*:

> It appears to the Commission that economic entry into the market requires that Sprint be permitted to use its existing trunks for all traffic whenever feasible. Sprint has committed to provide accurate, auditable billing records. Moreover, there are ways around the connection problems, as reflected by Suzanne Springsteen's admission that Ameritech Michigan can put local and non-local on the same trunk. The problems for Ameritech Michigan appear to be billing and measurement problems, which can be reasonably resolved through establishing percentage of use factors.[15]

And finally, in Sprint's recent arbitration with several rural ILECs in Iowa last year, the Iowa Utilities Board approved Sprint's proposal to combine various types of local traffic on the same trunk groups. The Board stated,

> "Because Sprint has indicated that it is technically possible to perform the measurement of traffic, but that it simply has not yet implemented those procedures, the Board will approve provisions related to commingling various types of traffic on individual trunks."[16]

Q. How should the South Dakota Commission rule on Sprint Issue No. 3?

A. The Commission should adopt the language proposed by Sprint, as identified as Issue No. 3 in the DPL, that it will permit both parties to combine wireline,

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[15] Order Approving Arbitration Agreement with Modifications, *In the matter of the application of Sprint Communications Company, L.P. for arbitration to establish an interconnection agreement with Ameritech Michigan*, Case No. U-11203, pp. 4-5 (1997) ("*Sprint Arbitration Order*").

[16] See *In the Arbitration of Sprint Communications Company L.P. Petitioning Party, vs. Ace Communications Group., et. al. Responding Parities*, Before the Iowa Utilities Board, in Docket Nos. Arb-05-2, Arb-05-5, and Arb-05-6; at p. 15; March 24, 2006.

wireless, and IP-PSTN traffic on interconnection trunks. The lower costs that can be realized from the network efficiencies will benefit both parties and their customers.

ARBITRATION ISSUE NO. 4: SHOULD THE INTERCONNECTION AGREEMENT PERMIT THE PARTIES TO COMBINE TRAFFIC SUBJECT TO RECIPROCAL COMPENSATION CHARGES AND TRAFFIC SUBJECT TO ACCESS CHARGES ONTO THE INTERCONNECTION TRUNKS? (SWIFTEL ISSUES NOS. 2, 3, 8, 11, 12, 13, 16, AND 17.)

Q. Please describe Sprint Issue No. 4.

A. As discussed in Sprint Issue No. 3 above, Sprint wants this interconnection agreement to include wireless traffic, traffic subject to access charges, and VoIP traffic. Multi-jurisdictional trunking refers to the ability to combine traffic of different jurisdictions; i.e., traffic that is subject to access charges with traffic that is subject to reciprocal compensation on the same trunk group. Swiftel opposes Sprint combining these different types of traffic; and thus, opposes the interconnection agreement including CMRS traffic and traffic subject to access charges.

As stated in the previous issue, Sprint is seeking to establish efficient network interconnection. The combination of traffic on interconnection trunks, regardless of what regulatory jurisdiction the traffic falls under or the type of compensation that applies to the traffic, provides network efficiencies that the parties will not realize if required to segregate the traffic onto separate trunks. In addition to multi-use trunks in the previous issue, Sprint is requesting that the interconnection

agreement permit the parties to realize the network efficiencies of combining different "types" of traffic. In this case, traffic that is subject to access charges and traffic that is subject to reciprocal compensation.

As I have discussed in my testimony and as Sprint has shown in its petition and in response to discovery, Sprint will clearly identify all traffic (wireless, wireline and access) using industry standard SS7 signaling so that Swiftel can properly identify the traffic and render an accurate invoice. Alternatively, Sprint has proposed to develop auditable billing factors that Swiftel can use to render an invoice to Sprint. Sprint's intention is to provide Swiftel the information it needs to render a correct invoice and be fully compensated for the various types of traffic that it terminates for Sprint.

Q. What network efficiencies are derived with multi-jurisdictional trunking?

A. Multi-jurisdictional trunking permits the same trunk utilization efficiencies described in the previous issue that are not possible when traffic is segregated onto separate trunks. As with multi-use trunking, multi-jurisdictional trunking can reduce the number of trunks required, reduce the number of trunk ports on each party's switch, and reduce trunk order processing. In addition, reduced trunk requirements can reduce the capacity of the interconnection facility on which the trunks ride, e.g., the parties may be able to provision a single DS1 (24 trunks) between their switches instead of multiple DS1s or a DS3 (672 trunks) if they require fewer interconnection trunks.

Q. Are you aware of any technical reasons that would prohibit combining traffic subject to reciprocal compensation and traffic subject to access charges on the same trunks?

A. No. I am not aware of any technical reasons that would prohibit combining traffic subject to reciprocal compensation and traffic subject to access charges on the same trunks. Sprint has raised this issue with other ILECs and it is apparent that the concern centers on the ability to render an accurate invoice for traffic on mixed trunks. As I will discuss later in my testimony, Sprint has a solution to that concern. In addition, I will also discuss later in my testimony that carriers pass wireless and wireline traffic between them today on the same trunks.

Q. Why is this issue in dispute?

A. With this issue, it appears that Swiftel's primary objection to multi-jurisdictional trunking concerns the separate intercarrier compensation regimes that apply to access traffic and reciprocal compensation traffic. While Sprint acknowledges that different compensation applies to the types of traffic that will ride on multi-jurisdictional trunks, Sprint has proposed language that would ensure proper compensation for section 251(b)(5) traffic and the access traffic on the trunks. Differences in compensation for different types of traffic do not necessitate inefficient segregation of traffic onto different trunks. Sprint's proposal simply implements the current industry solution that is in widespread use today. That is, Sprint will provide Swiftel with the ability to identify the traffic appropriately and

invoice Sprint accordingly or if Swiftel does not desire to invoice Sprint directly from this information, Sprint will develop factors that will accomplish the same thing. It should be noted that Swiftel objects to the use of a percent local use (PLU) factor and a percent interstate use (PIU) factor (see Swiftel Issues No. 8 and 12), however, the use of PIU and PLU factors for identifying and billing traffic is well established in the telecommunications industry and is the standard procedure for identifying and billing traffic. PIU has been used for 20+ years since the establishment of access charges while PLU has been used for the past 10+ years since the passing of the Federal Telecommunications Act of 1996 which allowed local competition. Since Sprint is the first facilities-based local competitor to come to Brookings, SD, Swiftel has likely not seen PLU factors and may be unfamiliar with their widespread acceptance in the industry. In fact, Swiftel uses PIU because according to its response to Sprint's Discovery Request 12, Swiftel complies with the NECA and LECA tariffs which use the PIU factor.[17] Additionally, Swiftel is also accustomed to using factors to determine the percentage of wireless traffic that is interMTA as is evidenced by the use of the interMTA factor in Swiftel's interconnection agreement with Western Wireless.[18] Swiftel's use of a factor to calculate the amount of interMTA wireless traffic would be similar to using a PLU factor to calculate the amount of local

[17] See National Exchange Carrier Association, Inc. ("NECA") Tariff F.C.C. No. 5 Access Service, Section 2.3.11(C)(1) Percentage of Interstate Use (PIU) and see also Local Exchange Carrier Association, Inc. ("LECA") Tariff No. 1, Access Service Section 5.2.1(A) Access Ordering Requirements – Switched Access Service.

[18] See Brookings Municipal Utilities d/b/a Swiftel Communications Response to Sprint's Discovery Requests in Docket No. TC06-176; response to request 4, Reciprocal Interconnection, Transport, and Termination Agreement between Swiftel Communications and WWC License L.L.C. (CMRS provider) in section 7.2.1 – Billing.

traffic that is carried in the MOUs from a combined multi-use, multi-jurisdictional trunk group.

Q. How does Sprint's proposal ensure proper intercarrier compensation for the different types of traffic riding multi-jurisdictional trunks?

A. Sprint's solution for multi-use trunking described above will also work for multi-jurisdiction trunking.

Q. Have other state commissions addressed the issue of combining local and access traffic on interconnection trunks?

A. Yes. Indiana, Iowa, Wisconsin and Florida have both approved multi-use trunking. In Sprint's arbitration order in Indiana, the Commission found that:

> "..we find no reason why Sprint should not be allowed to combine different types of traffic on the same interconnection trunks. It makes no difference whether the traffic is all subject to section 215(b)(5) as in Issue 2 or is section 251(b)(5) traffic combined with access traffic as is the issue here. We find that there are no technical impediments to implementing a clearly more efficient network solution."[19]

In Sprint's arbitration with BellSouth in Florida, the FPSC found that,

> "Upon consideration, we find that the parties' agreement shall contain language providing Sprint with the ability to transport multi-jurisdictional traffic over a single trunk group, including an access trunk group."[20]

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[19] *Arbitration Order, In the Matter of Sprint Communications, L.P.'s Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Ligonier Telephone Company, Inc.,* Cause No. 43052 INT-01, at 22, (September 6, 2006) ("*Sprint Indiana Arbitration Order*").

[20] *Arbitration Order, In the Matter of Sprint Communications Company Limited Partnership for arbitration of certain unresolved terms and conditions of a proposed renewal of current interconnection agreement*

In a recent Wisconsin PSC Order investigating the treatment of transiting traffic and whether local, toll, and access traffic could be mixed on the same trunk groups, the WPSC found that,

> "... the Commission finds that joint use of FGC trunks by AT&T and other tandem transit providers is not prohibited and, therefore, lawful."[21]

And finally, in Sprint's recent arbitration with several rural ILECs in Iowa last year, the Iowa Utilities Board approved Sprint's proposal to combine local traffic and traffic subject to access charges on the same trunk groups. The Board stated,

> "Because Sprint has indicated that it is technically possible to perform the measurement of traffic, but that it simply has not yet implemented those procedures, the Board will approve provisions related to commingling various types of traffic on individual trunks."[22]

Q. How should the Commission rule on Sprint Issue No. 4?

A. The Commission should adopt the language proposed by Sprint that will permit both parties to combine reciprocal compensation traffic and traffic subject to access charges on interconnection trunks. There is no basis for prohibiting combining of 251(b)(5) and access traffic onto the same trunks and the lower costs realized from the network efficiencies will benefit both parties and their customers.

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with BellSouth Telecommunications, Inc., Docket No. 000828-TP; Order No. PSC-01-1095-FOF-TP, at 37 - 38, (May 8, 2001) ("*Sprint Florida Arbitration Order*").

[21] See *Investigation on the Commission's Own Motion Into the Treatment of Transiting Traffic Before the Public Service Commission of Wisconsin*, Order No. 5-TI-1068 Phase 1; at p. 15 (November 8, 2006).

[22] See *In the Arbitration of Sprint Communications Company L.P. Petitioning Party, vs. Ace Communications Group., et. al. Responding Parities*, Before the Iowa Utilities Board, in Docket Nos. Arb-05-2, Arb-05-5, and Arb-05-6; at p. 15; March 24, 2006.

ARBITRATION ISSUE NO. 6: SHOULD SPRINT'S PROPOSED LANGUAGE REGARDING LOCAL NUMBER PORTABILITY BE ADOPTED AND INCORPORATED INTO THE INTERCONNECITON AGREEMENT? (SWIFTEL ISSUE NOS. 7, 19, AND 21.)

Q. Please describe Arbitration Issue No. 6.

A. Sprint seeks to allow customers selecting the Sprint/MCC jointly provided service to keep their telephone numbers. This requires Swiftel to port telephone numbers to Sprint. 47 C.F.R. §52.23(c) requires all ILECs, including Swiftel, to make number portability available within six months of a bona fide request. Well over six months have passed since Sprint requested on March 6, 2006 that Swiftel make available number portability so Swiftel should now have LNP capability. Sprint has included language in the interconnection agreement which clarifies and provides details to the LNP rules developed by the FCC. Swiftel seeks to only incorporate the FCC's rules which are very general in nature and do not provide all of the necessary detail. Sprint seeks to add the required detail for LNP into the contract. Sprint's language incorporates a reference to the "rules and regulations as prescribed by the FCC and the guidelines set forth by the North American Numbering Council ("NANC")."

Q. Why is this issue important to Sprint?

A. It is important for Sprint's customers to be able to port their telephone numbers from Swiftel to Sprint in a timely and non-disruptive manner. The NANC is the industry body recognized by the FCC that establishes the necessary detail to the

FCC's numbering rules so that numbering issues such as local number portability can work smoothly between carriers. It is imperative that the NANC rules be incorporated into the contract language so that Swiftel has a clear understanding of what is expected of it with regard to porting numbers to Sprint. Sprint has also incorporated additional language into the contract to ensure that Swiftel will port numbers in a timely and efficient manner.

Q. Should Swiftel's last minute filing of a Section 251 (f)(2) petition seeking to suspend its obligation to provide local number portability prevent the Commission from ruling on local number portability in this arbitration? (Swiftel Issue Nos. 19 and 21)

A. Absolutely not. Sprint requested number portability from Swiftel on March 6, 2006, approximately eleven months ago. The FCC rules (which Swiftel claims it wants to abide by) state that ILECs must make LNP available within six months. If Swiftel knew it could not make LNP available by the deadline, it should have filed its request for suspension at that time. Swiftel's filing of its petition days before the hearing is nothing more than a ploy by Swiftel to delay the implementation of LNP, and thus, local competition for as long as it possibly can. The Commission should not honor Swiftel's tactics, but should instead, move forward with the issue in this arbitration proceeding and require Swiftel to provide LNP to Sprint. The Commission should not preserve the status quo of Swiftel's noncompliance with the FCC's rules to provide LNP within six months of Sprint's bona fide request.

Q. How should the Commission rule on Arbitration Issue No. 6?

A. The Commission should adopt Sprint's proposed language for Local Number Portability. Sprint is simply asking the Commission to order Swiftel to abide by the industry standards for porting numbers as established by the NANC which provides details to the FCC's LNP rules.

ARBITRATION ISSUE NO. 7: DIRECTORY LISTINGS AND DISTRIBUTION SERVICES. SHOULD THE ILEC-PROPOSED DIRECTORY LISTING PROVISIONS, AS MODIFIED BY SPRINT BE ADOPTED AND INCORPORATED INTO THE INTERCONNECTION AGREEMENT? (SWIFTEL ISSUE NO. 22.)

Q. Please describe Sprint Issue No. 7.

A. Sprint seeks to modify the directory listing provisions found in Section 15 and proposed by Swiftel with a number of modifications. In principle, Sprint desires to be able to audit Swiftel's directory listings and Directory Assistance Database to ensure that Sprint's End Users are correctly listed in those databases. Additionally, Sprint does not want to pay for directory listings or services that are above and beyond what Swiftel would charge to itself or its customers or to pay for directory listings or services that are customarily provided without charge. The disputed paragraphs of Section 15 are discussed below separately.

Q. What is Sprint's position regarding the proposed language in Section 15.3?

A. Sprint does not intend to give Swiftel information regarding Sprint's End User's that have selected "non-published" with Sprint so, there does not appear to be a

disagreement on this issue. However, if Swiftel starts to require Sprint to give them non-published End Users' information, then Sprint does not want to pay Swiftel for providing that information. Thus, Sprint included language in section 15.3 as a safeguard. I would ask that the Commission retain that language in section 15.3 as a safeguard as there is no harm to Swiftel in leaving the language in the contract.

Q. What is Sprint's position regarding the proposed language in Section 15.4?

A. Upon further review, Sprint agrees to the inclusion of Swiftel's proposed language in Section 15.4.

Q. What is Sprint's position regarding the proposed language in Section 15.5?

A. Upon further review, Sprint agrees to drop the language proposed for addition in Section 15.4; i.e., the second sentence of Section 15.4.

Q. What is Sprint's position regarding the proposed language in Section 15.9 about directory distribution?

A. Sprint disagrees with Swiftel on this section. In Swiftel's response to Sprint's discover Request 38, Swiftel responded in part that "Swiftel's current rate for directories is $13.60 per directory. If Sprint is agreeing to pay Swiftel's directory rate, as that rate may change from time to time, Swiftel does not oppose Sprint's proposed language in section 15.9." Sprint asked Swiftel to clarify what this charge applied to in its response in Sprint's Motion to Compel, but was denied.

Without knowing specifically what this charge covers, Sprint is unable to determine how section 15.9 will be interpreted.

Q. What does section 15.9 address?

A. Section 15.9 basically says that Swiftel will deliver directories to Sprint end users (however that term is eventually defined through the resolution if Issue No. 1) in the same manner Swiftel delivers directories to its end users. It also says that Swiftel will place the same restrictions on Sprint's end users as it does for itself when assigning book quantities. These two concepts have been agreed to by the parties. Swiftel wants additional language that says Sprint will pay Swiftel's list price per directory for any additional directories requested.

Q. What clarification is Sprint seeking?

A. Sprint is seeking to understand if the $13.60 is the list price for the initial directory or quantity of directories Swiftel will deliver or if it only applies to any additional directories. This was the purpose behind Sprint's motion to compel and is confused as to why Swiftel was not willing to provide this clarifying information to Sprint. Sprint's fear is that Swiftel may interpret the language in 15.9 to mean that Sprint would pay Swiftel $13.60 for the initial directory or initial quantity of directories.

Q. Is Sprint willing to accept Swiftel's proposed additional language to section 15.9 if the correct interpretation is that the $13.60 only applies to additional

directories and what is determined to be additional directories is based on what a Swiftel end user would pay?

A. Yes. If Swiftel will agree that the $13.60 only applies to additional directories and not the initial directory or the initial quantity of directories delivered Sprint will agree with the additional language proposed by Swiftel.

Q. Why is this issue important to Sprint?

A. Sprint is willing to pay just and legitimate charges for directory listings but does not believe that it should be required to pay prices or pay for services that are above and beyond those traditionally charged in the industry for directory listings. In addition, Sprint is not willing to pay for the delivery of initial directories. This would be contrary to industry norms and financially burdensome to Sprint.

Q. What is Sprint's position regarding the proposed language in Section 15.12?

A. Sprint seeks to include Section 15.12 so that it can audit Swiftel's directory listings for Sprint's End User's as they are found in Swiftel's database to ensure that Sprint's End User's listings are correct. This is a standard industry practice. The RBOCs provide Sprint with an auditable database of Sprint's directory listings free of charge so that Sprint can review the RBOCs' directory listing database to ensure that Sprint's End Users' listings are listed correct in the RBOCs' directory listing database. Sprint is simply asking that Swiftel provide Sprint the same opportunity to audit and verify the correctness of its End Users'

directory listings in Swiftel's directory database twice a year. I would ask that the Commission approve Sprint's proposed language for this section.

Q. What is Sprint's position regarding the proposed language in Section 15.14.1?

A. Sprint seeks to include Section 15.12 so that it can audit its Swiftel's Directory Assistance Database listings for Sprint's End User's as they are found in Swiftel's Directory Assistance Database to ensure that Sprint's End User's listings are correct. Again, this is a standard industry practice. The RBOCs provide Sprint with an auditable database of Sprint's Directory Assistance listings free of charge so that Sprint can review the database to ensure that its End Users' listings are listed correct in the RBOCs' directory database. Sprint is simply asking that Swiftel provide Sprint the same opportunity to audit and verify the correctness of its End Users' directory listings in Swiftel's directory database. Sprint is requesting the ability to audit the Directory Assistance Database four times a year because the Directory Assistance Database needs to be reflect changes on a more timely basis than does a published directory. I would ask that the Commission approve Sprint's language in section 15.14.1 to allow Sprint to audit it's End Users' listing as they are found in Swiftel's Directory Assistance Database four times a year.

Q. How should the Commission rule on Issue No. 7?

A. The Commission should adopt the language changes for Directory Listings, Directory Assistance Database, and Distribution Services as discussed above with the exception I mentioned for Section 15.9 assuming there is clarification on how the $13.60 is applied.

ARBITRATION ISSUE NO. 8: 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? (SWIFTEL ISSUE NO. 24. CONTRACT SECTIONS 17.3 AND 17.5.)

Q. Please describe Sprint Issue No. 8.

A. This issue involves the parties' dispute over whether either party should be permitted to unilaterally terminate the Interconnection Agreement. Swiftel proposes that either party may terminate the agreement; 1) upon a timely notice to the other party; 2), for a material breach; 3) if the other party's authority to provide services is revoked; or 4 or the other party is insolvent or files for bankruptcy.

Q. What is Sprint's position on this issue?

A. Sprint disagrees with Swiftel's language because it enables one party to unilaterally terminate the Interconnection Agreement to the detriment of consumers while disregarding the important role the Commission has in ensuring

consumers are able to make and receive calls in any one of these circumstances. Further, as I understand it from my attorneys, Swiftel's proposal may also be unenforceable under federal bankruptcy law. Sprint's proposal, however, is reasonable and is consistent with industry practice.

Q. Please explain.

A. First, with respect to section 17.3, it should be noted that Sprint must make a timely notice to renegotiate; therefore, the terms of the Interconnection Agreement cannot last in perpetuity. This allows Sprint and Swiftel to continue business as usual without any interruption of service to consumers or in intercarrier compensation during the pendency of negotiations and if necessary an arbitration. It also ensures that either party can seek changes to the existing agreement within a reasonable period of time.

Q. Why is this issue important to Sprint?

A. It is imperative that the existing Interconnection Agreement, whether the original or a renewal agreement, remain in effect while Sprint and Swiftel are in the process of negotiating or arbitrating a new agreement. To allow the Interconnection Agreement to expire would be disastrous for Sprint's customers and ruinous to Sprint. It is standard industry practice for interconnected telecommunications carriers to continue to operate under the terms of an existing Interconnection Agreement while a new agreement is being negotiated in order to

allow both parties to continue to exchange traffic and provide service to their customers without interruption.

Q, Why does Sprint oppose Swiftel's proposed section 17.5?

A. Swiftel's proposal places all the decision-making regarding termination in the hands of the parties notwithstanding the important role the Commission would play if any of the events Swiftel lists would occur. Indeed, Swiftel incorrectly believes it can block Sprint's services to customers by unilaterally terminating the interconnection agreement when in its opinion Sprint has materially breached the Interconnection Agreement, or if it believes Sprint's authority to provide services has been revoked or in the case of bankruptcy/insolvency. It is the Commission's role, not Swiftel's, to determine whether the parties are complying with the Interconnection Agreement, or whether the Interconnection Agreement should be terminated if there is a question regarding a party's authority to provide services. It is also my understanding that Swiftel could not unilaterally terminate the Interconnection Agreement in the case of bankruptcy. Again, Swiftel's proposal totally disregards the role this Commission would play in ensuring consumers are able to make and receive calls in any of these scenarios.

Q. What competitive harm will Sprint suffer if its proposed language is not adopted and Swiftel's language changes are adopted?

A. Swiftel's opposition to continuing the Interconnection Agreement while a new contract is being negotiated or arbitrated and Swiftel's proposed language in section 17.5 to unilaterally terminate the agreement are both detrimental to Sprint

because they will severely hamper Sprint's ability to provide local telecommunications service to its customers. Termination of the Interconnection Agreement only benefits Swiftel because it eliminates Swiftel's competitor. Similarly, terminating the Interconnection Agreement only hurts Sprint because it destroys Sprint's ability to provide competitive local telecommunications service in Swiftel's territory. Telecommunications customers will not want to purchase local telecommunications service from Sprint/MCC if they cannot reach the bulk of local customers that will still be served by Swiftel. Swiftel has opposed Sprint's entry into its territory and has sought to delay or prevent an Interconnection Agreement from being successfully negotiated and signed. Terminating the Interconnection Agreement benefits Swiftel, but incapacitates Sprint.

Q. How should the Commission rule on Sprint Issue No. 8?

A. The Commission should adopt the language proposed by Sprint that will permit the Interconnection Agreement to remain in effect while both parties negotiate and arbitrate a new agreement. Additionally, the Commission should reject the language proposed by Swiftel in section 17.5 as it could provide a means for Swiftel to unilaterally terminate the Interconnection Agreement without cause.

<u>ARBITRATION ISSUE NO. 9:</u> WHAT 911 LIABILITY TERMS SHOULD BE INCLUDED IN THE INTERCONNECTION AGREEMENT? (SECTION 16.1)

Q. What is the current status of Issue 9?

A. Sprint has agreed to remove its proposed language so the issue should be resolved.

SWIFTEL ARBITRATION ISSUE 18: SHOULD SWIFTEL BE ALLOWED TO AVOID ITS STATUATORY OBLIGATION TO PROVIDE DIALING PARITY BY FILING A LAST MINUTE 251 (f)(2) PETITION?

Q. Please describe Arbitration Issue No. 18.

A. Swiftel seeks to avoid its obligation to provide dialing parity to Sprint by filing a last minute 251 (f)(2) petition seeking a waiver of that requirement.

Q. Should Swiftel's last minute filing of a Section 251 (f)(2) petition seeking to *suspend its obligation to provide local number portability* prevent the Commission from ruling on local number portability in this arbitration? (See Swiftel Issue No. 18.)

A. Absolutely not. Sprint requested interconnection from Swiftel in November of 2005. All carriers are required to provide dialing parity.[23] Rural ILECs can seek a suspension or modification to this requirement, which is what Swiftel has done. However, until they have been successful in getting a suspension and modification they have no choice but to comply with the requirement. Swiftel's filing of its petition days before the hearing is nothing more than a ploy by Swiftel to delay the implementation of dialing parity, and thus, local competition for as long as it possibly can. The Commission should not honor Swiftel's anti-competitive tactics, but should instead, move forward with the issue in this arbitration proceeding and require Swiftel to provide dialing parity to Sprint.

Q. How should the Commission rule on Arbitration Issue No. 18?

[23] §251(b)(3) of the Act.

A. The Commission should adopt Sprint's proposed language for Dialing Parity. Sprint is simply asking the Commission to order Swiftel to abide by the FCC rules and industry standards for providing dialing parity.

SWIFTEL ARBITRATION ISSUE 20: IDENTIFICATION OF NETWORK CONTACTS

Q. Does Sprint agree to include a network contact person?

A. Yes. Sprint has identified network contact information. This should resolve Swiftel Issue No. 20.

Q. Does this conclude your testimony?

A. Yes it does.