

**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 TELECOMMUNI- )  
CATIONS ACT OF 1996 TO RESOLVE )  
ISSUES RELATING TO AN INTER- )  
CONNECTION AGREEMENT WITH )  
BROOKINGS MUNICIPAL UTILITIES )  
D/B/A SWIFTEL COMMUNICATIONS )**

**Docket No. TC06-176**

**SPRINT COMMUNICATIONS COMPANY L.P.'S MEMORANDUM IN SUPPORT OF  
MOTION TO COMPEL**

Sprint Communications Company L.P. ("Sprint") by and through its attorneys, hereby files its Memorandum in Support of its Motion to Compel. Sprint's Motion seeks an Order from the Commission requiring that Brookings Municipal Utilities d/b/a Swiftel Communications ("Swiftel") provide complete responses to the following Request Nos.: 2, 3, 15, 19, 26, 29, and 38. Sprint's Motion is properly granted under A.R.S.D. 20:10:01:22.01 and S.D.C.L. § 15-6-37(a), because Swiftel failed to provide accurate and complete responses to the aforementioned requests.

**INTRODUCTION**

On December 8, 2006, Sprint served upon Swiftel its First Set of Interrogatories, Requests to Produce Documents, and Requests for Admissions. Swiftel provided responses thereto on December 22, 2006. The responses contained therein are incomplete with respect to the interrogatories posed in 2, 3, 15, 19, 26, 29, and 38. *See* Swiftel's Responses to Sprint's Discovery Requests, set forth in full, *infra.* at pages 4 - 10.

After receiving Swiftel's responses and reviewing those responses, Sprint determined that various responses were incomplete and, given the ways Swiftel responded to some questions, that Swiftel misconstrued some of the questions. In an effort to resolve these issues without the need of filing a motion to compel, Sprint presented to Swiftel an email setting forth each request it felt was incomplete or misunderstood and sought clarification or a supplemental response to the discovery. For those questions where it appeared Swiftel might be misconstruing or confusing the intent of the questions, the questions were clarified and narrowed. Sprint representatives also offered to have a conference call to try to further resolve any of these issues. See email attached as Exhibit A.

As a follow-up to the original email, Sprint contacted counsel for Swiftel on Monday, January 8, 2007, and asked whether Swiftel desired to discuss any of the requests for supplementation or clarifications of the discovery. Counsel for Swiftel informed Sprint that Swiftel would stand by its answers as originally propounded. See email attached as Exhibit B.

In addition, as of the time of filing this Memorandum, Swiftel has not provided any additional responses to this request to resolve these discovery issues. As a result, Sprint has filed its Motion to Compel responses to the same.

## **DISCUSSION**

### **A. Discovery legal standard and obligations**

*Public Utilities Commission Administrative Rule 20:10:01:22.01*, provides the Commission the authority to compel discovery. Specifically, it states,

A party may obtain discovery from another party without commission approval. The commission at its discretion, either upon its own motion or for good cause shown by a party to a proceeding, may issue an order to compel discovery. The taking and use of discovery shall be in the same manner as in the circuit courts of this state.

Id. As indicated in this rule, discovery in this arbitration is to be consistent with the pertinent rules of civil procedure. Id.

As a result, S.D.C.L. Ch. 15-6, sets forth the applicable manner and scope of discovery.

The scope of discovery in this action is governed by S.D.C.L. § 15-6-26(b). It states:

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

- (1) In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The South Dakota Supreme Court has held the discovery rules are to be accorded a “broad and liberal treatment.” Kaarup v. St. Paul Fire and Marine Insurance Co., 436 N.W.2d 17, 21 (S.D. 1989). Under S.D.C.L. § 15-6-26(b), when a party puts an issue or fact in controversy, discovery is broad in obtaining relevant information regarding the subject matter. Id. “A broad construction of the discovery rules is necessary to satisfy the three distinct purposes of discovery: (1) narrow the issues; (2) obtain evidence for use at trial; (3) secure information that may lead to admissible evidence at trial.” Id. (*citing* 8 C. Wright and A. Miller, Federal Practice and Procedure, § 2001 (1970)). The South Dakota Supreme Court has affirmatively stated that all relevant matters are discoverable unless privileged. Id.; S.D.C.L. § 15-6-26.

Written interrogatories and production of documents are proper methods for which a party may obtain relevant information. S.D.C.L. § 15-6-26(a). Under S.D.C.L. § 15-6-26(a), the Court is to look to S.D.C.L. § 15-6-33 for the procedures which govern written discovery. South Dakota Codified Law § 15-6-33(a) states, “Each interrogatory shall be answered separately and

fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer.”

Moreover, S.D.C.L. § 15-6-37(a), provides a party a right to seek a motion to compel if discovery responses are evasive, incomplete, or if an answer or document inspection is not provided. Sprint respectfully requests the Commission find the same sufficient to satisfy the requisite good cause necessary for an order to compel under A.R.S.D. 20:10:01:22.01.

**B. Swiftel’s discovery responses**

In the present matter before this Commission, Swiftel’s answers are evasive and incomplete. For convenience, Sprint has set forth below each request and the response given by Swiftel followed by Sprints explanation of why the response is inadequate. Regarding Request Nos. 2 and 3, the explanation of why the responses are inadequate are grouped together after the restatement of the response to Request No. 3 as reading those requests jointly explains the intent of both requests clearly.

**Request 2:** Please identify each Telecommunications Carrier to whom you have originated any Telecommunications Traffic or from whom you have terminated any Telecommunications Traffic either directly or indirectly through a tandem connection during the past 12 months pursuant to a written agreement.

a. For each Telecommunications Carrier identified in response to Request 2, with whom a written agreement exists, please provide a copy of such agreement and any amendments thereto.

b. For each Telecommunications Carrier identified in response to Request 2, please list which carriers are indirectly interconnected via another Telecommunication Carrier’s tandem switch.

**Response:** To Swiftel’s knowledge, it has not originated or terminated any Telecommunications Traffic through a tandem connection either directly or indirectly to any Telecommunications Carrier pursuant to a written agreement during the past 12 months.

**Request 3:** Please identify each Telecommunications Carrier to whom you have originated any Telecommunications Traffic or from whom you have terminated any Telecommunications Traffic either directly or indirectly through a tandem connection during the past 12 months without the benefit of an agreement.

a. For each Telecommunications Carrier identified in response to Request 3, please provide the rates, terms and conditions associated with the origination and termination of such traffic.

b. For each Telecommunications Carrier identified in response to Request 3, please provide all documentation which supports or describes the rates, terms and conditions associated with the origination and termination of such traffic.

**Response:** To Swiftel's knowledge, it has not originated any Telecommunications Traffic through a tandem connection either directly or indirectly to any Telecommunications Carrier without the benefit of an agreement during the past 12 months. With respect to traffic termination, Swiftel is not aware of the identity of any Telecommunications Carrier for which it may have terminated any Telecommunications Traffic through a tandem connection either directly or indirectly without the benefit of an agreement during the past 12 months.

Swiftel further states that it provides Extended Area Service (EAS) between its exchanges and Interstate Telecommunications Cooperative Inc.'s Brookings and Sinai Exchanges and the Qwest Volga Exchange. Swiftel does not know whether its connection to ITC and Qwest is to a tandem.

Additionally, Swiftel receives terminating traffic from Qwest over terminating trunks which lack sufficient SS7 signaling information in order to correctly identify the originating carrier. This unidentifiable traffic is commonly known as Phantom Traffic.

With respect to Request Nos. 2 and 3, Swiftel did not answer the questions fully. Rather, Swiftel only addressed tandem connections. Sprint seeks an order compelling Swiftel to respond to the direct connections portions of the questions. Request Nos. 2 and 3 clearly require Swiftel to identify with whom Swiftel is exchanging traffic with, either directly or indirectly, with or without an agreement. Obviously, Swiftel is exchanging traffic with other telecommunications companies. It appears Swiftel used a forced reading of these questions to try to conclude that the

requests required only responses if the traffic was exchanged over a tandem connection. The requests clearly covered direct connections or tandem connections. Accordingly, Swiftel owes Sprint a response with respect to direct connection.

Further, even if Swiftel's reading was that the requests only apply to tandem connections, Swiftel cannot simply ignore its situations and say it does not know how other telecommunications carriers or companies are delivering traffic. Obviously, if Swiftel has interconnection agreements with other companies, it is receiving traffic from those companies. Swiftel knows how that traffic is being delivered, either directly or indirectly, and Swiftel, under the rules of discovery, has to inform Sprint of how that traffic is being delivered. Finally, with respect to the EAS areas Swiftel identified, Swiftel states that it does not know whether the connections with ITC and Qwest are to a tandem. If this information is not in an agreement between Swiftel and these companies or unknown by Swiftel's engineers or consultants, Swiftel is in the best position to contact ITC and Qwest and simply ask whether these are tandem connections.

**Request 15:** If your answer to Question 14 above is that it is not technically feasible to directly connect at Swiftel's remote offices, where does Swiftel propose that Sprint directly interconnect with Swiftel to serve customers within each of the Brookings exchanges. In your response please:

- a. identify the full and complete CLLI(s) and address(es); and
- b. describe in detail how the interconnection(s) would be designed and installed, from Swiftel's perspective. Please include in this description a network diagram, Vertical and Horizontal (V&H) coordinates and a call flow diagram depicting how a local call would be delivered from Sprint to a Swiftel end user customer in the Brookings exchange to Swiftel's proposed Point of Interconnection.

**Response:** For CLEC to ILEC interconnection, Swiftel's proposed location of direct interconnection is :

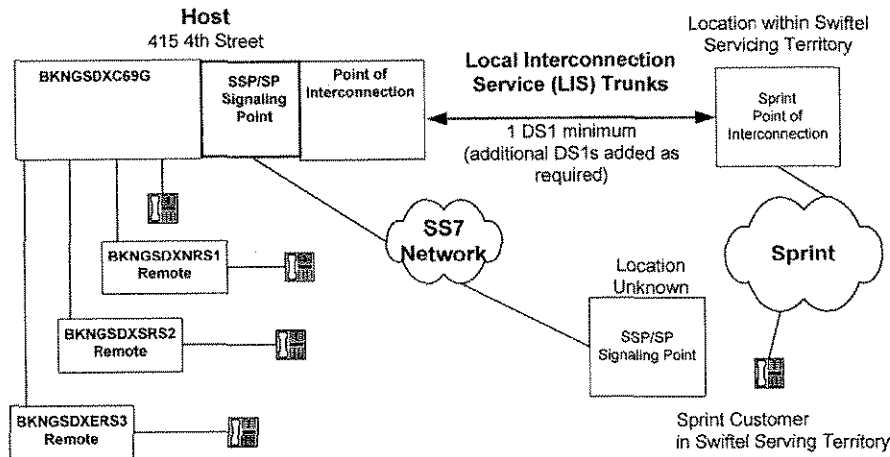
Brookings Host Office

415 4th Street  
 Brookings South Dakota  
 CLLI code of BKNGSDXC69G  
 WCV 06129 WCH 04972  
 LATA 640

The following describes in general terms the exchange of local Telecommunications Traffic from a Sprint end user to a Swiftel end user, both located within Swiftel's Authorized Service Territory which is contained within the city limits of Brookings, SD

Sprint end user placing a local call to a Swiftel end user.

- Sprint received a call from one of its ender users dialing a local Swiftel Communications end user phone number.
- Sprint sends the call to Swiftel's Host office.
- The Swiftel Host switch (BKNGSDXC69G) receives the call and terminates it on remotes (BKNGSDXRS2, BKNGSDERS3, BKNGSDNRS1) send and receive calls through the Host office.



Regarding request No. 15, Swiftel provided an incomplete response. Therefore, Sprint requests Swiftel be compelled to indicate whether the Local Interconnection Service (LIS) trunk will be a one-way or two-way facility and whether Swiftel will agree to share with Sprint the cost of a two-way facility based on proportionate usage. While Swiftel's diagram does provide some information, the diagram does not identify the local interconnection service trunks as one-way or two-way facilities and does not identify how costs are shared under this system.

**Request 19:** Would you agree to a two-way direct interconnection facility between Sprint and the CLLIs identified in your responses to Requests 15, 16 and 17 for the exchange of traffic between the parties? If not, do you intend to install a one-way facility to deliver your originated traffic to Sprint at those destinations?

**Response:** Direct interconnection is not technically feasible at Swiftel's remote offices. See the response to Request 15 for a description of the exchange of Telecommunications Traffic between Swiftel's host and remote offices and for the exchange of Telecommunications Traffic between Swiftel and Sprint.

Turning to request No. 19, Swiftel did not answer the question posed. Sprint requests that a response to the question asked be compelled. The question specifically asks whether Swiftel would agree to a two-way direct interconnection facility between Sprint and Swiftel's host switch which was identified in Request No. 15. Further, the question specifically asks if Swiftel would not agree whether Swiftel will plan on installing a one-way facility to deliver Swiftel originated traffic to Sprint. Swiftel's host switch is identified in Request No. 15, and Swiftel ignores the specific request concerning that switch.

**Request 26:** For purposes of this question, "technical issues" do not include *billing or measurement of traffic issues*.

Admit or deny. There are no technical issues preventing Respondent from interconnection indirectly with Sprint for the exchange of traffic. If you contend there are technical issues please state in detail all facts supporting that claim.

**Response:** Sprint has not provided sufficient information and, therefore, Swiftel is without sufficient information to know whether or what technical issues would prevent Swiftel from interconnection indirectly with Sprint for the exchange of traffic. Therefore, Swiftel denies that there are no technical issues preventing Swiftel from interconnection indirectly with Sprint for the exchange of traffic.

With respect to Request No. 26, Swiftel did not provide a complete response to the inquiry. Sprint requests Swiftel be compelled to answer whether there are any network issues



preventing Swiftel from interconnecting indirectly with Sprint for the exchange of traffic, and if so, a detail of all facts supporting this claim.

In an attempt to resolve the issue regarding Request No. 26, Sprint clarified that the request is only looking for technical network issues in case Swiftel interpreted technical issues to mean legal issues. While Sprint believes that the question was clear and should have been read easily to only apply to network issues, Sprint clarified this issue to make sure that no misunderstanding had occurred. Still, Swiftel refuses to answer the straightforward question.

**Request 29:** For purposes of this question, “technical issues” do not include billing or measurement of traffic issues. Describe any technical issues preventing Sprint from sending access traffic and traffic subject to reciprocal compensation (see 47 U.S.C. § 251(b)(5)) to Swiftel on the same trunks.

**Response:** Pursuant to orders by the FCC and the Public Utilities Commission of the State of South Dakota which established South Dakota Network (SDN) as a centralized equal access provider in South Dakota, Swiftel currently routes all access traffic over common trunks to SDN, which performs the centralized equal access switching function and transmits the calls to the appropriate interexchange carrier (IXC) or terminating carrier. As a result, Swiftel currently does not distinguish calls to specific IXCs at its switch. Because SDN performs the centralized equal access function at its switch, in order to be able to transport Sprint’s access traffic, including 800 traffic, over a facility other than the common trunks to SDN, Swiftel would have to implement end office equal access in its switch. This would include performing the 800 database query, which currently is performed by SDN. For those 800 calls that are not ultimately routed to Sprint (and instead are routed to SDN) they may be blocked.

Swiftel did not respond to the question posed in request No. 29. As such, Sprint requests that Swiftel be compelled to provide an answer to the question. In fact, it appears that Swiftel misread the question. The question asks what technical issues prevent Sprint from sending access traffic and traffic subject to reciprocal compensation to Swiftel on the same trunks. Swiftel then talks about how it routes all access traffic to SDN, which SDN in turn transmits the call to the appropriate IXC or terminating carrier. Swiftel is looking at the questions as if it is a Swiftel originated call as opposed to a Sprint originated call. As a way of clarification, Sprint

has set forth two questions to try to flesh out how Sprint originated calls would be treated. Swiftel should respond to these questions. The second question contained in the emails attached as Exhibit B , should have read “Could a long distance call from XYZ interexchange carrier terminating to a Swiftel subscriber be routed over the local interconnection trunks Sprint establishes with Swiftel?”

**Request 38:** Identify all facts supporting the italicized statement on page 24, paragraph 66, of the Response “*Swiftel opposes Sprint’s language because it seeks to obtain preferential treatment for Sprint’s end users.*”

**Response:** Swiftel’s price list for directory listings supports Swiftel’s statement. A copy of the price list is attached hereto.

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.

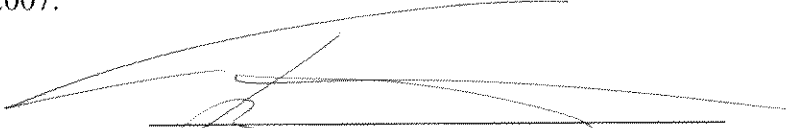
Lastly, Swiftel did not provide a complete response to request No. 38. Sprint requests Swiftel be compelled to identify if the \$13.60 charge is only for additional directories delivered to subscribers over and above the initial directories that are delivered free of charge.

“The proper standard for ruling on a discovery motion is whether the information sought is ‘relevant to the subject matter involved in the pending action....’” Kaarup, 436 N.W.2d at 20. The aforementioned requests are relevant to the pending arbitration. As such, Sprint requests the Commission find the requisite good cause exists to exercise its authority under A.R.S.D. 20:10:01:22.01; and compel complete discovery responses from Swiftel.

## CONCLUSION

Sprint Communications Company L.P., respectfully requests the Commission find the requisite good cause necessary to issue an order under A.R.S.D. 20:10:01:22.01. Specifically, Sprint requests the Commission compel complete discovery responses from Swiftel to Requests Nos. 2, 3, 15, 19, 26, 29, and 38.

DATED this 9<sup>th</sup> day of January, 2007.



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Monica M. Barone  
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Overland Park, Kansas 66251  
Voice: 913-315-9134  
Fax: 913-523-2738  
Email: [monica.barone@sprint.com](mailto:monica.barone@sprint.com)

ATTORNEYS FOR  
SPRINT COMMUNICATIONS COMPANY L.P.

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 9th day of January 2007, a copy of the foregoing was served electronically and by first-class mail to:

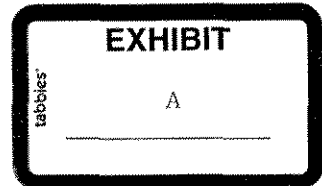
<p><u>kara.vanbockern@state.sd.us</u> Ms Kara Van Bockern Staff Attorney SD PUBLIC UTILITIES COMMISSION 500 East Capitol Pierre SD 57501</p> <p><u>harlan.best@state.sd.us</u> Mr. Harlan Best Staff Analyst SD PUBLIC UTILITIES COMMISSION 500 East Capitol Pierre SD 57501</p>	<p><u>mjs@bloostonlaw.com</u> <u>bhd@bloostonlaw.com</u> Mary J. Sisak Ben Dickens Blooston, Mordkofsky 2120 L Street, NW - #300 Washington, DC 20037</p> <p><u>rjh1@brookings.net</u> Richard Helsper 415 8<sup>th</sup> Street South Brookings, SD 57006</p>
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Talbot J. Wiczorek

**Talbot J. Wiczorek**

**From:** Talbot J. Wiczorek  
**Sent:** Friday, January 05, 2007 11:36 AM  
**To:** 'Mary J. Sisak (mjs@bloostonlaw.com)'  
**Cc:** 'Barone, Monica [LEG]'  
**Subject:** Discovery follow up  
**Contacts:** Mary J. Sisak



Mary:

We have been reviewing the Swiftel responses and have found some incomplete and some answers that appear to misconstrue the questions. Therefore, this email is to serve and an attempt to resolve these issues and prevent the need for a motion to compel. Following are the responses we found incomplete.

**Request No. 2.** Swiftel did not answer the question fully. It appears Swiftel only addressed indirect tandem connections and did not address direct connections. Therefore, please respond to the following questions:

Please identify each telecommunications carrier to whom you have originated or terminated any Telecommunications Traffic directly pursuant to a written agreement.

Please identify each telecommunications carrier to whom you have originated or terminated any Telecommunications Traffic indirectly pursuant to a written agreement.

**Request No. 3.** Swiftel did not answer the question fully. It appears Swiftel only addressed indirect tandem connections and did not address direct connections. Therefore, please respond to the following questions:

Please identify each telecommunications carrier to whom you have originated or terminated any Telecommunications Traffic directly without a written agreement.

Please identify each telecommunications carrier to whom you have originated or terminated any Telecommunications Traffic indirectly without a written agreement.

In addition, Swiftel's response was inadequate when it stated that it "does not know whether its connection to ITC and Qwest is to a tandem." Swiftel either has this information in its possession or can obtain this information by conducting a reasonable inquiry. Please answer whether Swiftel's connections to ITC and Qwest are to a tandem and if so, identify whose tandem.

**Request No. 15.** In order for Swiftel's diagram to be a complete description as requested, Sprint needs the following information:

Is the local interconnection service trunk a one-way or two-way facility?

Will Swiftel agree to share with Sprint the cost of a two-way facility based on proportionate usage?

**Request No. 19.** Swiftel did not answer the question posed. Would Swiftel agree to a two-way direct interconnection facility between Sprint and the host switch identified in Request 15 (Brookings Host office, 415 4<sup>th</sup> St.)? If not, do you intend to install a one-way facility to deliver your originated traffic to Sprint at that destination?

**Request No. 26.** For clarification, Sprint's request is limited to network issues. With that clarification, please answer whether there are any network issues preventing Swiftel from interconnection indirectly with Sprint for the exchange of traffic. If so, please state

1/8/2007

in detail all facts supporting that claim.

**Request No. 29.** It appears Swiftel did not answer the question posed. For clarification, please answer the following questions:

Could a 1+800 call from a Sprint subscriber be routed over the local interconnection trunks Sprint establishes with Swiftel?

Could a long distance call from XYZ interexchange carrier terminating to a Sprint subscriber be routed over the local interconnection trunks Sprint establishes with Swiftel?

If the answer to either or both is no, please state in detail all facts supporting the claim(s).

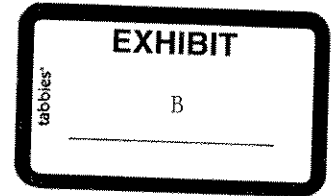
**Request No. 38.** For clarification, is the \$13.60 only for additional directories delivered to subscribers over and above the initial directory/directories that are delivered free of charge?

We would be available Monday to discuss these responses in an attempt to avoid the need for the Motion to Compel. Monica and I are available 10:00 to 11:00 eastern and after 1:30 eastern. Please let us know if you would like to discuss these responses.

Talbot J. Wiczorek

**Talbot J. Wiczorek**

**From:** Mary Sisak [mjs@bloostonlaw.com]  
**Sent:** Monday, January 08, 2007 12:38 PM  
**To:** Talbot J. Wiczorek  
**Cc:** Barone, Monica [LEG]; Browning, Diane C [GA]  
**Subject:** RE: Discovery follow up



Talbot,

At this point, we stand by our answers.

Mary

Mary J. Sisak  
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP  
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**From:** Talbot J. Wiczorek [mailto:tjw@gpgnlaw.com]  
**Sent:** Monday, January 08, 2007 1:44 PM  
**To:** Mary Sisak  
**Cc:** Barone, Monica [LEG]; Browning, Diane C [GA]  
**Subject:** RE: Discovery follow up

Mary:

I just wanted to follow up on this email I sent last Friday. Do you wish to discuss any of these requests today?

Talbot

-----Original Message-----

**From:** Talbot J. Wiczorek  
**Sent:** Friday, January 05, 2007 11:36 AM  
**To:** 'Mary J. Sisak (mjs@bloostonlaw.com)'  
**Cc:** 'Barone, Monica [LEG]'  
**Subject:** Discovery follow up

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Could a long distance call from XYZ interexchange carrier terminating to a Sprint subscriber be routed over the local interconnection trunks Sprint establishes with Swiftel?

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Talbot J. Wiczorek