
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
TELECOMMUNICATIONS ACT OF
1996 TO RESOLVE ISSUES RELATING
TO AN INTERCONNECTION
AGREEMENT WITH BROOKINGS
MUNICIPAL UTILITIES D/B/A
SWIFTEL COMMUNICATIONS

Docket No. TC06-176

RESPONSE TO MOTION TO COMPEL

Brookings Municipal Utilities d/b/a Swiftel Communications (Swiftel) by its attorneys, hereby responds to the motion to compel filed by Sprint Communications Company L.P. (Sprint). In its motion, Sprint alleges that Swiftel's responses to Request Nos. 2, 3, 15, 19, 26, 29, and 38 are not "complete" and "appropriate." As shown below, however, Swiftel has responded to Sprint's requests and, therefore, its motion should be denied.

Swiftel also objects to the new discovery questions propounded by Sprint contained in the e-mail messages attached to Sprint's Motion. Through these e-mail messages, it appears that Sprint is attempting to ask new discovery questions which were not propounded by December 8, 2006, as required by the Commission's Procedural Order. These new questions, therefore, are untimely and they should be stricken.

Swiftel provides its specific response to Sprint's Motion with respect to each question below.

Requests 2 and 3

Sprint alleges that Swiftel did not answer these questions fully because Swiftel's responses addressed tandem connections only. Sprint states that Swiftel should be compelled "to respond to the direct connections portions of the questions."¹

Swiftel believes that its responses are based on a fair reading of Sprint's requests. However, even assuming that Sprint's interpretation of the meaning of its questions is correct, Sprint's Motion should be denied because the information concerning the telecommunications carriers with whom Swiftel directly connects has been provided. With respect to Request 3, Swiftel's response provides the information concerning the "direct connections portions of the questions" when it states that Swiftel provides extended area service between its exchanges and Interstate Telecommunications Cooperative, Inc.'s Brookings and Sinai Exchanges and the Qwest Volga Exchange. With respect to Request 2, Swiftel provided information concerning the carriers with whom it exchanges traffic directly pursuant to an agreement and provided a copy of the agreements in Response to Request 4. Request 4 and Swiftel's response is as follows:

Request 4:

Please identify each and every exchange in which the Respondent or its Corporate Affiliate is offering service as an incumbent local exchange carrier, a competitive local exchange carrier, or as a CMRS provider and provide all Interconnection Agreements used to provide these services.

Objection: In addition to Swiftel's General Objection, Swiftel objects to identifying every exchange in which it operates as a CMRS provider and to providing all the Interconnection Agreements used to provide CMRS service as this requirement is burdensome.

Response:

¹ Sprint Communications Company L.P.'s Motion to Compel (Motion) at 5.

Swiftel offers incumbent local exchange service in the Brookings, South Remote, East Remote and North Remote Exchanges, in Brookings, South Dakota.

Swiftel has a Reciprocal Transport and Termination Agreement with CommNet Cellular (now Verizon), Western Wireless Corporation (now Alltel), and with its own CMRS operation. A copy of these agreements is attached.

Accordingly, the information sought by Sprint in its Motion has already been provided.

It would be duplicative to require Swiftel to provide this information again.

Sprint also argues that Swiftel's responses concerning tandem connections are deficient. Sprint appears to be making two different arguments to support this position:

1) that Swiftel must inform Sprint of how traffic is being delivered, either directly or indirectly and 2) that Swiftel must contact ITC and Qwest to ask whether Swiftel's connections with ITC and Qwest are to a tandem.

With respect to Sprint's first argument, the plain language of Request 2 and 3 does not support Sprint's argument. Requests 2 and 3 ask Swiftel to identify each Telecommunications Carrier to whom Telecommunications Traffic has been originated or terminated either directly or indirectly through a tandem. It does not ask Swiftel to separately identify Telecommunications Carriers based on whether the connection is direct or indirect. This interpretation is supported by Sprint Request 2.b. which asks Swiftel to list the Telecommunications Carriers identified in response to Request 2 which are indirectly interconnected. Request 3 does not have a similar requirement.

Accordingly, Sprint's request is a new request not allowed by the Procedural Order adopted by the Commission which required the service of all discovery by December 8, 2006. Not only would it be contrary to the Procedural Order to grant Sprint's motion in

connection with this issue, it would be unfair to allow one party to propound new discovery questions after the deadline.

With respect to Sprint's second argument, that Swiftel must contact ITC and Qwest to ask whether Swiftel's connections with ITC and Qwest are to a tandem, Sprint's demand goes beyond the rules of discovery. A respondent only is required to provide information known to him or available to him through his agents or representatives.² ITC and Qwest are not Swiftel's agents or representatives and, therefore, Swiftel is not required to seek information from them. Further, a party may not be compelled to do the interrogating party's investigation for him.³ Accordingly, Sprint's motion should be denied.

Request 15

Sprint argues that Swiftel's response is incomplete because Swiftel did not indicate whether the Local Interconnection Service (LIS) trunk shown on the diagram provided by Swiftel 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. With respect to Sprint's allegation concerning the LIS trunk, the diagram clearly shows an arrow in both directions on the trunk, which is generally accepted industry practice to show the exchange of traffic in both directions. Accordingly, the information requested by Sprint has been provided.

As to Sprint's second point, Request 15 contains no language that could be construed as requesting Swiftel to indicate whether it will agree to share the cost of a two-way facility. The request only asks where Swiftel proposes direct interconnection

² See, *Olmert v. Nelson*, 60 F.R.D. 369 (D.D.C. 1973); *N.L.R.B. v. Rockwell-Standard Corp., Transmission & Axel Division, Forge Division*, 410 F.2d 953 (Sixth Cir. 1969).

³ *Olmert v. Nelson*, 60 F.R.D. 369 (D.D.C. 1973).

and asks Swiftel to a) identify the full and complete CLLI(s) and addresses; and b) describe how interconnections would be designed and installed. Sprint's request for cost information is a new discovery request, which is not allowed by the Procedural Order adopted by the Commission which required the service of all discovery by December 8, 2006. Not only would it be contrary to the Procedural Order to grant Sprint's motion in connection with this issue, it would be unfair to allow one party to propound new discovery questions after the deadline.

Request 19

Sprint asks the Commission to compel Swiftel to state whether it would agree to a two-way direct interconnection facility between Sprint and Swiftel's host switch.

Swiftel's response refers to its response to Request 15, in which Swiftel proposes a two-way direct interconnection facility between Sprint and Swiftel's host switch.

Accordingly, the question has been answered.

Request 26

Sprint asks the Commission to compel Swiftel 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." The Commission should deny Sprint's request because it is a new request not allowed by the Procedural Order adopted by the Commission which required the service of all discovery by December 8, 2006. In Request 26, Sprint asked Swiftel to admit or deny Sprint's statement concerning the existence of technical issues in connection with indirect interconnection. Sprint did not ask Swiftel to state or identify any network issues preventing Swiftel from interconnecting indirectly with Sprint for the exchange of traffic.

Sprint's follow-up request asked "If you contend there are technical issues please state in detail all facts supporting that claim." Swiftel, however, denied Sprint's statement on the basis that Sprint did not provide sufficient information for Swiftel to know whether or what technical issues might exist. Accordingly, Swiftel did not contend that there are technical issues that would prevent indirect interconnection. Rather, Swiftel responded that it did not have sufficient information to make that determination.

Not only is Swiftel's response complete, it is entirely reasonable and appropriate. Sprint provided no information in its question concerning the method or nature of the indirect interconnection contemplated. Swiftel could not, and should not be required to, speculate about all possible methods of indirect interconnection in connection with the admission sought by Sprint. In light of the total lack of information provided by Sprint, its request is nothing more than an attempt to "trap" Swiftel in an admission and not a good faith attempt to adduce information to advance this proceeding. In addition, respondents are allowed to state that they lack necessary information to make a full, fair and specific answer to an interrogatory.⁴ Contrary to Sprint's assertion, therefore, Swiftel has provided a complete response to the inquiry.

Request 29

In Request 29, Swiftel was asked to "[d]escribe any technical issues preventing Sprint from sending access traffic and traffic subject to reciprocal compensation ... to Swiftel on the same trunks. In response, Swiftel described a technical issue concerning the routing of access traffic and reciprocal compensation traffic on the same trunks. Sprint argues that Swiftel's answer demonstrates that Swiftel misread the question. Then, by way of "clarification," Sprint asks two new questions.

⁴ *Pilling v. General Motors Corp.*, 45 F.R.D. 366 (D. Utah 1968).

Sprint's new discovery requests are not allowed by the Procedural Order adopted by the Commission which required the service of all discovery by December 8, 2006. Not only would it be contrary to the Procedural Order to grant Sprint's motion in connection with this issue, it would be unfair to allow one party to propound new discovery questions after the deadline. To the extent the Commission believes Swiftel did not respond to Sprint's request, Swiftel should be compelled to respond to the original request as written by Sprint only.

Request 38

In this Request, Sprint asked Swiftel to identify all facts supporting a certain statement made by Swiftel in its Response concerning directory listings and directory rates. Swiftel identified the facts that it believes support its statement, including the fact that Swiftel's current rate for directories is \$13.60 per directory. Sprint now asks the Commission to compel Swiftel to explain its answer. Request 38 does not ask Swiftel to explain why it believes the facts identified support its statement and, therefore, this is a new discovery request, which is not allowed by the Procedural Order adopted by the Commission which required the service of all discovery by December 8, 2006. Not only would it be contrary to the Procedural Order to grant Sprint's motion in connection with this issue, it would be unfair to allow one party to propound new discovery questions after the deadline.

Based on the foregoing, Swiftel asks the Commission to deny Sprint's Motion to Compel in all respects.

Respectfully submitted,

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D/B/A/ SWIFTEL COMMUNICATIONS

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January 12, 2007

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 12th day of January, 2007, a copy of the RESPONSE TO MOTION TO COMPEL was served via email and by U.S. Mail, postage prepaid, to the following:

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