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July 9, 2008

### E-FILING

Patricia Van Gerpen  
South Dakota Public Utilities Commission  
Capitol Building, 1<sup>st</sup> Floor  
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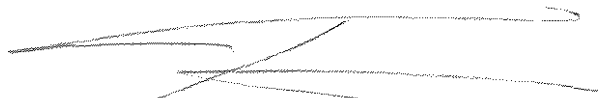
RE: In the Matter of the Petition of Sprint Communications Company, LP Petition for  
Authority to Provide Local Exchange Service in Certain Rural Areas Served by  
Brookings/Swiftel – Docket TC06-178 GPNA File No. 08509.0003

Dear Ms. Van Gerpen:

Enclosed for filing please find Sprint's Response to Swiftel's Motion to Compel in the above-entitled matter. By copy of same, counsel have been served via e-mail.

If you have any questions, please call me.

Sincerely,



Talbot J. Wieczorek

TJW:klw

Enclosures

c: Service List  
Diane Browning  
Bret Lawson

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

In the Matter of Sprint Communications                    )  
Company L.P. Petition for Authority to Provide        )  
Local Exchange Service in Certain Rural             )       Docket No. TC06-178  
Areas Served by Brookings Municipal Utilities       )  
d/b/a Swiftel Communications                            )

**SPRINT COMMUNICATIONS COMPANY L.P.’S RESPONSE  
TO BROOKINGS MUNICIPAL UTILITIES D/B/A SWIFTEL  
MOTION TO COMPEL**

This matter before the Commission upon Brookings Municipal Utilities d/b/a Swiftel Communications’ (hereinafter “Swiftel”) Motion to Compel, Sprint Communications Company, LP (hereinafter “Sprint”) hereby submits its response:

**PRELIMINARY STATEMENT**

As a preliminary matter, it should be noted that the majority of Sprint’s objections deal with requests that seek extensive discovery on Sprint’s operating system and whether Sprint has the financial capabilities to provide service to the town of Brookings. In this proceeding, Sprint requests to provide local exchange services under an existing Certificate of Authority that granted Sprint authority “to offer its services statewide throughout South Dakota.” See **In the Matter of the Application of Sprint Communications Company, LP for Amended Certificate of Authority to Provide Local Exchange Access Telecommunication Services in South Dakota, Docket TC96-159, Order Granting Amended Certificate of Authority dated April 28, 1997**. The only proviso in that Order to providing local exchange access telecommunication services was the requirement that Sprint show the Commission that it could meet the requirements of 47 U.S.C. § 214(e)(1) prior to providing service in a rural service area by commencing a separate proceeding. *Id.* See also A.R.S.D. §20:10:32:15. Thus, the order only

requires Sprint satisfy the eligible telecommunication carrier requirements. These requirements are as follows:

1. Voice Grade Access to Public Switch Telephone Network.
2. Local Usage meeting the prescribed amount of minutes of use of local exchange services provided free of charge to end users.
3. Dual tone multiple frequency signaling or its functional equivalent.
4. Single party service or it is functional equivalent.
5. Access to emergency services.
6. Access to operator services.
7. Access to interconnection service.
8. Access to directory assistance.
9. Toll limitation for qualified low income consumers.

Swiftel's overly burdensome and extensive discovery on the type of network and backbone Sprint uses to deliver calls is not relevant nor likely to lead to admissible evidence in this case. Thus, Sprint objected to providing the information.

Nevertheless, prior to the filing of the Motion to Compel, Swiftel's counsel provided an e-mail asking for further responses and Sprint provided responses to most of the requests. See E-mail String attached hereto as **Exhibit A**. While Sprint still maintains the information is not relevant nor likely to lead to admissible evidence in this proceeding, Sprint in a reply e-mail on June 12, 2008, advised Swiftel that Swiftel could review the discovery produced in the arbitration between the parties, TC06-176, as the majority of information requested by Swiftel had previously been produced in that action. To the extent that it would be necessary to modify any protection order, Sprint also agreed to modify the protection order in TC06-176 but reserved the right to raise objections to use of the material at the hearing. See Exhibit A, E-mail of June

12, 2008 from Sprint counsel to Swiftel Counsel. Swiftel found this unacceptable and requested the documents provided in the arbitration be related to the specific questions pending. An explanation was then provided to Swiftel on July 1, 2008. See Exhibit A.

Additionally, Sprint with the initial set of interrogatories provided descriptions of services in its network that it had previously provided to Staff.

### ARGUMENT

Swiftel moves to compel discovery requests numbers 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and number 26 and production of documents, 1, 3, 4, 5 and 7. Each of those interrogatories and requests are specifically addressed below. The requests or interrogatories are restated in full with the corresponding response. Explanation of why the responses should stand as submitted and why any objections are valid then follows. As much as possible, Sprint follows the same grouping Swiftel used in its Motion.

**Request No. 2:** At page 3 of Sprint's Petition, Sprint states that Sprint and MCC Telephony of the Midwest, Inc. (MCC) have entered into a contract to provide facilities-based competitive local and long distance voice service. Identify the contract Sprint and MCC have entered to provide service within the area served by Swiftel.

**Response:** Sprint objects to the request on the grounds that it is not likely to lead to the discovery of admissible evidence, and is unduly burdensome. This request is directed to the nature of Sprint/MCC business model, which is not relevant to Sprint's CLEC certification. The validity of the Sprint/cable company business model has been upheld by every federal court to have considered it, as well as the FCC. Re-litigating the validity of the business model is unreasonable and unduly burdensome. Furthermore, the business model is currently operating in South Dakota serving subscribers in the Qwest territory. The business model that will be used in Swiftel territory is no different than the model already deployed in Qwest territory. Following is a list of federal court and FCC dockets in which the business model has been approved:

**FCC – WC Docket No. 06-55**

**Southern District of Iowa – Docket Nos. 4:06 cv 00291 and 4:06 cv 00376**

**District of Nebraska – Docket No. 4:05 cv 3260**

**Southern District of Illinois – Docket No. 3:06 cv 00073**

**Western District of New York – Docket No. 6:05 cv 06502**

**Western District of Texas – Docket Nos. 1:06 cv 00065 and 1:06 cv 00825**

**Request No. 3:** For the contract identified in Discovery Request 2, state the term of the contract.

**Response: See Request No. 2.**

**Request No. 4:** For the contract identified in Discovery Request 2, identify the circumstances under which either Sprint or MCC can terminate the contract.

**Response: See Request No. 2.**

**ARGUMENT:** These requests deal with the contract between MCC and Sprint. On June 12, 2008, counsel for Sprint informed Swiftel's counsel that Swiftel could use the discovery in the arbitration. The arbitration discovery included a redacted copy of the agreement between MCC and Sprint.<sup>1</sup> The e-mail permission to review the contract provided in the other proceeding and Sprint's guaranty to make whatever modifications Swiftel felt necessary to avoid any possible violation of the protection order sufficiently responds to these data requests. Sprint stands by its objections as to the relevancy of these documents in these proceedings and reserves the right to object to use of documents or information derived from the document at the hearing.

**Request No. 5:** Identify and provide a copy of all statements made to financial analysts concerning Sprint's CLEC business, other than Sprint's joint provision of service with cable companies, during the years 2005, 2006, and 2007. Identify and provide a copy of all statements made to financial analysts concerning Sprint's joint provision of service with cable companies during the years 2005, 2006, and 2007.

**Response: Sprint objects to this request on the grounds that it is overly broad and unduly burdensome. Sprint is a publicly traded company with over 56,000 employees, operating in all 50 states. It would be impossible to identify all statements requested. Furthermore, Sprint objects to this request on the grounds that it is not likely to lead to the discovery of admissible evidence. The Commission has already found that Sprint has "demonstrated sufficient technical, financial and managerial capabilities to offer telecommunications services in South Dakota." See Order Granting Amended Certificate of Authority, Docket No. TC96-156. Sprint's financial capability to operate as a CLEC is not in question.**

**Subject to and without waiving the foregoing objection, Sprint responds as follows:  
Non-proprietary information about Sprint, including but not limited to financial**

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<sup>1</sup> The South Dakota Public Utilities Commission by Order in TC06-176, dated January 18, 2007, approved the providing of a redacted copy to Swiftel.

statements and SEC filings, are available to investors and the general public through the Investor Relations link on Sprint's website.  
<http://investors.sprint.com/phoenix.zhtml?c=127149&p=irol-IRHome>

**Request No. 6:** Identify and provide a copy of all statements made to shareholders concerning Sprint's CLEC business, other than Sprint's joint provision of service with cable companies, during the years 2005, 2006, and 2007. Identify and provide a copy of all statements made to shareholders concerning Sprint's joint provision of service with cable companies during the years 2005, 2006, and 2007.

**Response:** See Request No. 5.

**ARGUMENT:** Sprint continues in its objections to these data requests. These data requests seek any statements made by any Sprint employee regarding service with cable companies or to analysts or any shareholders. Sprint has provided a reference cite to its public information on its corporate position and that should suffice. Data Requests 5 and 6 are the epitome of a "fishing expedition". Swiftel's rationale to justify the request is its belief Sprint has suffered financial difficulties and "whether those financial difficulties have caused Sprint to reassess the commitments to CLEC services in the likelihood that Sprint will seek to terminate this arrangement with MCC." Since the only real desire by Swiftel is knowing whether Sprint is seeking to terminate its arrangement with MCC, Sprint can answer that it is not seeking to terminate its arrangements with MCC.

The South Dakota Supreme Court has stated generally that "[n]o overbroad or carte blanche disclosure, unduly burdensome or lacking in specificity, should be allowed." *Maynard v. Hereen*, 1997 SD 60, ¶25, 563 NW2d 830 (dissent, Konenkamp)(motion to compel granted based on adequate waiver of privileged information); *citing Lopez v. Huntington Autohaus Ltd.*, 540 NYS2d 874, 876 (NYAppDiv 1989). In a case seeking extensive guest information at a resort, the South Dakota Federal District Court has stated that the "considerations [codified in SDCL 15-6-26(b)(1)(A)]...are to be applied in a commonsense and practical manner." *Brown v. Sandals Resorts Int.*, 2000 DSD 14, ¶ 5; *See, In Re: Convergent Tech. Securities Litigation*, 108

FRD 328, 331 (DC Cal. 1985). Additionally, “[e]ven when dealing with requests for relevant information, the rules recognize that discovery may be limited when the benefits to be obtained are outweighed by the burdens and expenses involved. *Brown*, 2000 DSD at ¶5.

In this situation, Swiftel fished for some type of intent to terminate MCC out of a casual statement would be incredible costly to search for and have little, if any, bearing on this proceeding. As such, the objection is proper and the request should be denied.

**Request No. 7:** Provide a list of all equipment and facilities in South Dakota which are owned, leased or controlled by Sprint, including but not limited to switching equipment (Stored Program Control Class 5 and Class 4 switches including remote switches for these switches, Next Generation / Soft Switches including all servers or ancillary gateways, IP PBXs, analog PBXs), data routers / switches, and transport equipment (ATM, SONET, MPLS, Frame Relay, IP, and wave division multiplexing) which are available for use to provide facilities-based competitive local and long distance voice service with MCC.

**Response:** Sprint objects to the request on the grounds that it is not likely to lead to the discovery of admissible evidence. The Commission has already found that Sprint has “demonstrated sufficient technical, financial and managerial capabilities to offer telecommunications services in South Dakota.” See Order Granting Amended Certificate of Authority, Docket No. TC96-156. All of the equipment and facilities Sprint will use to provide the jointly-provided service in Swiftel territory is the same as the equipment and facilities currently used to provide the jointly-provided service in Qwest territory. There is no question that the jointly-provided service in Qwest territory is operating effectively and that Sprint has sufficient technical, financial, and managerial capabilities to provide the jointly-provided service. Furthermore, as explained in the response to Request No. 2, the Sprint/cable business model has been repeatedly upheld by federal courts and the FCC.

**Request No. 8:** Provide a list of all equipment and facilities in South Dakota which Sprint intends to use to provide facilities-based competitive local and long distance voice service with MCC, including but not limited to switching equipment (Stored Program Control Class 5 and Class 4 switches including remote switches for these switches, Next Generation / Soft Switches including all servers or ancillary gateways, IP PBXs, analog PBXs), data routers / switches, and transport equipment (ATM, SONET, MPLS, Frame Relay, IP, and wave division multiplexing).

**Response:** See Request No. 7.

**Request No. 9:** Provide a list of the locations by street address of all equipment and facilities identified in Discovery Requests 7 and 8. These locations shall include but not be limited to locations of buildings, huts, collocation sites, and electronic equipment cabinets both pad and pole mounted.

Response: See Request No. 7.

**ARGUMENT:** Again, while Sprint stands by its objections, in an e-mail dated June 12, 2008, Sprint advised Swiftel it could review the materials that were produced in the arbitration. These materials included equipment component lists regarding equipment used by Sprint to provide services in South Dakota that would also be used to provide services to consumers in Brookings. Thus, Sprint is at a loss to understand the motion to compel. This equipment is already being used to provide local exchange service in South Dakota in Qwest areas. Therefore, there is no question regarding the technical feasibility or the ability for Sprint to provide this service to Brookings consumers.

**Request No. 10:** Identify Sprint's annual maintenance budget for the equipment and facilities identified in Discovery Requests 7 and 8 for the years 2006 and 2007 and Sprint's projected maintenance budget for facilities in South Dakota for 2008 and 2009.

**Response:** Sprint objects to the request on the grounds that it is not likely to lead to the discovery of admissible evidence. The Commission has already found that Sprint has "demonstrated sufficient technical, financial and managerial capabilities to offer telecommunications services in South Dakota." See Order Granting Amended Certificate of Authority, Docket No. TC96-156. All of the equipment and facilities Sprint will use to provide the jointly-provided service in Swiftel territory is the same as the equipment and facilities currently used to provide the jointly-provided service in Qwest territory. There is no question that the jointly-provided service in Qwest territory is operating effectively and that Sprint has sufficient technical, financial, and managerial capabilities to provide the jointly-provided service, including a sufficient maintenance budget. Furthermore, Sprint is not seeking ETC status and therefore will not collect any federal Universal Service Fund support. Sprint is required to demonstrate satisfaction of the 214(e) criteria solely for the purpose of getting certified to provide service in the rural LEC territories of Swiftel and Interstate. Accordingly, Sprint's maintenance and construction budgets are not relevant.

Subject to and notwithstanding the foregoing objection, Sprint responds as follows: Financial reports and other general financial information available to the public may be found at the Investor Relations link on Sprint's web site through the URL provided in the Response to Request No. 5.

**Request No. 11:** Identify Sprint's annual maintenance budget for all equipment and facilities in South Dakota for the years 2006 and 2007 and Sprint's projected maintenance budget for all equipment and facilities in South Dakota for 2008 and 2009.

**Response:** See Request No. 10.



**Request No. 12:** Identify Sprint's annual construction budget for facilities in South Dakota for 2006 and 2007 and Sprint's projected construction budget for facilities in South Dakota for 2008 and 2009.

**Response:** See Request No. 10.

**ARGUMENT:** These data requests center around requests that Sprint provide some type of maintenance construction budget for facilities in South Dakota. It appears Swiftel claims it needs to know the maintenance and construction budgets for specific equipment in South Dakota to make a determination of whether Sprint will provide acceptable service levels, quality of service, and has sufficient financial ability to provide those services. Again, the request constitutes a fishing expedition. Sprint and MCC are already providing service in Qwest territory in South Dakota, and Sprint's wherewithal to maintain its equipment and facilities in South Dakota have never been questioned. For a publicly traded company as large as Sprint to obtain this data on a state-specific level would be extremely burdensome.

Moreover, as recognized by the Federal District Court in South Dakota, "even when dealing with requests for relevant information, the rules recognize that discovery may be limited when the benefits to be obtained are outweighed by the burden of expenses involved." *Brown*, 2000 DSD at ¶ 5. Clearly, even if one were to assume some relevance of the information forcing Sprint to try to review all budgets and break out budgeted materials for maintenance and construction of equipment that is used to deliver calls in South Dakota as suggested by Swiftel, the burden rises to a level of harassment as any information would be questionable in its relevance and would have no impact on these proceedings.

Finally, Sprint has referred Swiftel to its website to obtain financial reports and general financial information. If the financial health of the company is the issue that Swiftel supposedly

trying to ascertain, then the financial information given subject to Securities and Exchange Commission's requirements is more than sufficient.

**Request No. 26:** Identify all financial arrangements made with Mediacom and provide a copy of all documents associated with those financial arrangements.

**Response:** Sprint objects to this request on the grounds that it is not likely to lead to the discovery of admissible evidence. Sprint's business arrangements with Mediacom are not relevant to Sprint's CLEC certification. The Sprint/cable business model has been repeatedly upheld by federal courts and the FCC. A detailed list of the federal court and FCC docket numbers was provided in the response to Request No. 2 in the First Set of Data Requests.

**ARGUMENT:** The financial arrangements with Mediacom, pursuant to the agreement that has been previously produced in the arbitration and was discussed in response to DR 2 through DR4, would appear to fully answer the data request.

#### **REQUEST FOR PRODUCTION**

1. Produce all documents:
  - a. That were referenced by you in responding to any Discovery Request
  - b. That were identified in any Discovery Request;
  - c. That you contend support your responses to the Discovery Requests propounded herein.

**Response:** With respect to DR#2, #5, and #6, Sprint objects to this request on the grounds that it is unduly burdensome. FCC and court decisions referenced in DR #2 are publicly available documents. Documents referenced in #5 and #6 are publicly available through the Sprint web site (URL provided). With respect to the SDPUC order granting Sprint's CLEC authority referenced in DR #5, #7, and #10, that order is attached hereto. With respect to any and all references to Sprint's agreement with Mediacom, Sprint reiterates its objection as set forth in the response to DR #2.

**ARGUMENT:** Where objections were not set forth in the responses to the data requests, documents were provided or a site where the documents could be reviewed electronically was

provided. Thus, while Sprint stands by its objection that the way the request for production was asked, it is overly broad, any specifically referenced documents have been provided or a web address where the documents could be located. It appears Swiftel contends that because Sprint provided a website where Swiftel could electronically review public information that Sprint must some how now must provide hard copies of all documents on the website. Clearly, that would be overly broad given the fact Sprint has provided a location where Swiftel can review the documents. To respond to a request for production, copies need not be produced, the document need only be provided for inspection. **SDCL 15-6-34(a)**.

In addition, given that Sprint has agreed that Swiftel can review discovery produced in the arbitration, Sprint has complied with any obligation it has in response to this request for production.

3. Provide a diagram of the facilities identified in Discovery Requests 7 and 8.

**Response: See objection set forth in DR #7.**

**ARGUMENT:** Sprint, as part of the arbitration documents, provided information regarding facilities. The Commission may recall that Sprint informed the Commission when a diagram was required in the arbitration it had no specific diagram of the specific facilities. Sprint still does not have a specific diagram and given that Swiftel has the ability to review the facility information in the arbitration proceeding this request for production has been fulfilled.

4. Provide a copy of the contract and other documents, including addendums and amendments, with establish and govern the operations and business relationship between Sprint and MCC.

**Response: See objection set forth in DR #2.**

5. Provide all agreements between Sprint including its affiliates and MCC including its affiliates that are required to implement the delivery of services as outlined in its Petition.

**Response: See objection set forth in DR #2.**

**ARGUMENT:** Based on Sprint's offer to allow Swiftel to review the agreement produced in the arbitration proceeding, it would appear the requests have been met. Sprint has also confirmed in **Exhibit A** there have been no amendments or addendums.

7. Provide a copy of all testimony filed by each individual Sprint intends to call as a witness in this proceeding. Provide a copy of all testimony filed on behalf of Sprint in connection with a request for a certificate of authority or state proceeding requesting authority to operate as a competitive local exchange carrier.

**Response: Sprint objects to this request on the grounds that it is overly broad and unduly burdensome. In over 20 years at Sprint, Mr. Burt has testified in dozens of proceedings, many of which have nothing to do with the issues in this proceeding. Furthermore, Sprint is or has been a CLEC in most, if not all, states. Subject to and notwithstanding the foregoing objection, Sprint responds as follows: The following is a list of state commission docket numbers in which Sprint has filed testimony in a certification proceeding in connection with the Sprint/cable business model (response provided by Mary Ellen Hassell).**

**Illinois 05-0301  
Nebraska C-3204  
Wisconsin 6055-NC-103  
Indiana 42999  
Oklahoma PUC-200700054  
Pennsylvania A-310183F0002AMD-AMK**

**ARGUMENT:** Swiftel contends that its interrogatory requested testimony in six dockets. The request for production is objected to because it required all testimony, no matter what kind of proceeding and was without time limit.

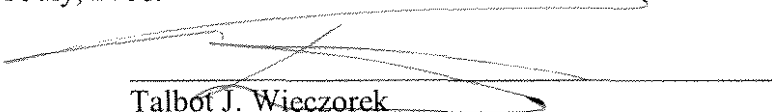
Even if Swiftel has modified the request to only six dockets, going back through providing testimony in dockets that are years old constitutes a substantial burden. Moreover, in the context of looking at past testimony, the federal rules of civil procedure have limited the obligations of witness to simply providing sufficient information that the testimony can be

located by the requesting party. The rules do not place a burden on the non-requesting party to hunt down previous testimony. Thus, identification of the dockets is sufficient response to the request for production.

**CONCLUSION**

Given the supplemental information that has been provided by Sprint since responding to the interrogatories, Sprint requests the Commission to deny the motion to compel in all aspects.

Dated this 9th day of July, 2008.



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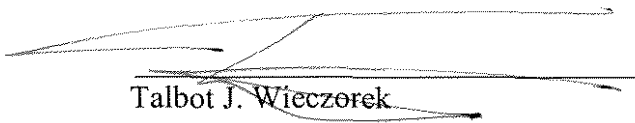
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ATTORNEYS FOR  
SPRINT COMMUNICATIONS COMPANY L.P.

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 9th day of July 2008, a copy of **Sprint's Response to Swiftel's Motion to Compel** was served via email to:

<p><a href="mailto:kara.vanbockern@state.sd.us">kara.vanbockern@state.sd.us</a> MS KARA VAN BOCKERN STAFF ATTORNEY SOUTH DAKOTA PUBLIC UTILITIES COMMISSION 500 EAST CAPITOL PIERRE SD 57501</p> <p><a href="mailto:Richcoit@sdtaonline.com">Richcoit@sdtaonline.com</a> Richard D. Coit Attorney at Law South Dakota Independent Telephone Coalition P.O. Box 57 Pierre, SD 57501</p>	<p><a href="mailto:harlan.best@state.sd.us">harlan.best@state.sd.us</a> MR HARLAN BEST STAFF ANALYST SOUTH DAKOTA PUBLIC UTILITIES COMMISSION 500 EAST CAPITOL PIERRE SD 57501</p> <p><a href="mailto:rjh1@brookings.net">rjh1@brookings.net</a> Richard J. Helsper Glover &amp; Helsper, P.C. 415 8<sup>th</sup> Street South Brookings, SD 57006</p> <p><a href="mailto:mjs@bloostonlaw.com">mjs@bloostonlaw.com</a> <a href="mailto:bhd@bloostonlaw.com">bhd@bloostonlaw.com</a> Benjamin H. Dickens, Jr. Mary J. Sisak Blooston, Mordkosfsky, Dickens, Duffy &amp; Prendergast, LLP 2120 L Street NW, Suite 300 Washington, DC 30027</p>
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Talbot J. Wiczorek

**Karen Webb**

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**From:** Talbot J. Wiczorek  
**Sent:** Tuesday, July 01, 2008 3:11 PM  
**To:** 'Mary J. Sisak'  
**Cc:** Kara.Semmler@state.sd.us; rjh1@brookings.net; Browning, Diane C [GA]; Lawson, William [LEG]  
**Subject:** RE: Sprint's responses to Swiftel-- TC06-178

In response to your request that Sprint specify the documents produced in the arbitration responsive to specific requests in the CLEC proceeding, here is a list of the documents provided in the previous arbitration docket and how they connect to the current DRs listed in the Swiftel Motion to Compel.

DRs 2, 3, 4, 26 – Sprint provided Confidential Attachment 3 to its Supplemental Responses dated January 19, 2007 in the TC06-176 docket. This consisted of a redacted copy of the letter of intent between Sprint and MCC Telephony of the Midwest, Inc. dated August 20, 2004. That document is still effective today and no changes have been made amending or superseding it.

DRs 7, 8, 9 – Sprint provided Confidential Attachments 1.23, 1.24, and 1.25 to its Supplemental Responses dated January 19, 2007 in the TC06-176 docket. These consisted of detailed lists of Sprint's equipment and facilities involved in the provision of the jointly-provided service. In addition, in response to DR 24 in the TC-06-176 docket, Sprint also provided a physical address for Sprint's equipment and facilities in Swiftel service territory.

As mentioned in my previous email, Sprint still objects to the admissibility of any of the above referenced documents as not relevant in this proceeding, and production in the prior docket was subject to a protective order which prohibits using documents in another proceeding, so Sprint is willing to modify the prior protective order for the limited purpose of your review of the documents for this proceeding and to the extent necessary for you to make an offer of proof to the Commission. Please provide the language you feel necessary to amend the order.

DRs 5 and 6 were asking for financial information and statements made to shareholders while 10, 11, and 12 were asking for the maintenance and construction budgets for equipment and facilities. Sprint stands by its responses to those questions and any other responses not specifically mentioned. Let me know if you have any questions.

Talbot J. Wiczorek  
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-----Original Message-----

**From:** Mary J. Sisak [<mailto:mjs@bloostonlaw.com>]  
**Sent:** Monday, June 16, 2008 7:16 AM  
**To:** Talbot J. Wiczorek  
**Cc:** Kara.Semmler@state.sd.us; rjh1@brookings.net; Browning, Diane C [GA]; Lawson, William [LEG]  
**Subject:** RE: Sprint's responses to Swiftel-- TC06-178

Mr. Wieczorek:

Thank you for your response below. Sprint's offer to allow Swiftel to review the agreement previously provided, however, does not resolve Swiftel's issues with Sprint's responses to interrogatories.

Swiftel requests substantive responses and the provision of documents to the following Discovery Requests and Request for Production of Documents:

Requests: 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 26  
Request for Production of Documents: 1, 3, 4, 5, 7

All of these questions and requests for documents are related to Sprint's arrangement with Mediacom specifically or its business plans in providing CLEC services. The responses to these questions are relevant to examine Sprint's claims in its application concerning its relationship with Mediacom and how that relationship qualifies Sprint for COA authority. The responses also are necessary to evaluate whether Sprint's application is in the public interest.

Sprint's offer to allow Swiftel to review the agreement previously provided does not satisfy these questions. Sprint does not identify the document so as to make clear what document Sprint believes is responsive to the question. Sprint also does not state which question(s) it is offering to answer. Further, it is not clear whether the agreement has been amended, whether other agreements may exist etc. Accordingly, responses to the specific questions propounded are necessary.

Swiftel also notes that discovery responses are to be supported by affidavit. Accordingly, Swiftel requests that Sprint provide answers to the above-referenced questions and document requests and affidavits to support all of its responses.

As to your statement concerning modification of the protective order in the arbitration proceeding, Swiftel believes that is unnecessary and would needlessly make work and delay the production of documents and responses in this proceeding. It also would shift the burden to Swiftel to try to determine which answers and documents previously provided are responsive to the current questions.

In light of the proposed briefing schedule, Swiftel requests that Sprint respond to this request by Tuesday, June 24, 2008.

Mary Sisak

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**From:** Talbot J. Wieczorek [mailto:tjw@gpgnlaw.com]  
**Sent:** Thu 6/12/2008 8:08 PM  
**To:** Mary J. Sisak  
**Cc:** Kara.Semmler@state.sd.us; rjh1@brookings.net; Browning, Diane C [GA]; Lawson, William [LEG]  
**Subject:** RE: Sprint's responses to Swiftel-- TC06-178

Dear Ms. Sisak:

This is in response to your email dated June 9, 2008 regarding Sprint's responses to Swiftel's First and Second Data Requests. Without providing any analysis, you have demanded Sprint provide a substantial amount of information and documentation that Sprint believes is not admissible or likely to lead to discoverable evidence.

As I am sure you recall, Sprint complied with the Commission's order compelling discovery in the arbitration case (TC 06-176) and pursuant to that order, Sprint produced to Swiftel (among other things) the Sprint/Mediacom agreement, as well as detailed confidential



information about Sprint's network and equipment used in the jointly-provided Sprint/MCC service. Accordingly, it appears Swiftel already has possession of most, if not all, the information requested in your discovery.

While Sprint believes that information is not relevant in this proceeding, it would seem to be reasonable to allow Swiftel to review that information for use in this docket rather than providing those copies again. Therefore, Sprint will not object to Swiftel reviewing that information in relation to the CLEC matter. Because the arbitration case (TC 06-176) is subject to a protective order, and the current docket also has a similar protective order in place, Sprint is willing to modify the TC 06-176 protective order to the extent necessary to permit responses and documents produced in that docket to be treated as having been produced in the current docket (TC 06-178).

Sprint reiterates its objection that any and all data requests related to the validity of the Sprint/MCC business model or its technical operation are irrelevant and not likely to lead to the discovery of admissible evidence, as the business model is currently operating successfully in Qwest territory in South Dakota, and numerous federal courts and the FCC have upheld the validity of the business model. Accordingly, Sprint reserves the right to object to the admissibility or use of any of the above-referenced information or documents as evidence in this proceeding.

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

**From:** Mary J. Sisak [<mailto:mjs@bloostonlaw.com>]  
**Sent:** Monday, June 09, 2008 3:43 PM  
**To:** Talbot J. Wiczorek  
**Cc:** Kara.Semmler@state.sd.us; rjh1@brookings.net  
**Subject:** RE: Sprint's responses to Swiftel-- TC06-178

Dear Mr. Wiczorek and Ms. Browning:

Swiftel requests that Sprint provide responses to Discovery Requests 2 through 21 and Requests for Production of Documents 1 through 5 from the Brookings Municipal Utilities d/b/a/ Swiftel Communications First Set of Data Requests.

Swiftel further requests that Sprint provide responses to Discovery Requests 23, 24, and 26, and Request for Production of Documents 7 from the Brookings Municipal Utilities d/b/a Swiftel Communications Second Set of Data Requests.

Swiftel believes all of these responses and documents to be relevant to the proceedings and likely to lead to the discovery of admissible evidence. Please provide responses to the above mentioned items by Friday, June 13, 2008.

Swiftel transmits this request in anticipation of filing a motion to compel, if necessary.

Mary J. Sisak