



Gary Hanson, Chair  
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## **SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**

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August 11, 2008

Ms. Patricia Van Gerpen  
SD Public Utilities Commission  
500 E. Capitol Ave  
Pierre, SD 57501

Re: TC06-0178, 188 – Request for Production of Contractual Language

Dear Ms. Van Gerpen:

The parties to the above dockets have had on going discovery discussions both inside and outside the formal Commission setting. Throughout this process, complicated issues and arguments more to the merits of the case than necessarily restricted to discovery have been raised. As a result, I believe the purpose of the filing has been lost. The applicants, Sprint Communications Company, L.P. (herein "Sprint") and MediaCom, have filed separate applications for a Certificate of Authority. The Commission hears requests for similar types of applications at nearly every Commission meeting. Although the applications at issue are unique in that services are provided through a partnership in a rural area, the Commission has already granted a Certificate of Authority to companies using a similar business model. The only distinguishing characteristic then is the service area for which the Certificates are being requested.

To obtain a Certificate of Authority a company must submit all material for review and analysis as is dictated by the PUC statutes and rules. A Telecommunications Company (as defined by SDCL 49-31-1) can not provide services without first obtaining a certificate of authority from the Commission. In turn, according to SDCL 49-31-71 the Commission shall grant the Certificate if all statutory showing is met. A company may amend its service territory or other elements in its Certificate through the same application process. Both companies at issue have a certificate of authority to serve in select non-Swiftel service areas of this state. This request to serve is distinguishable only because the companies at issue now desire to provide a service option in a rural area, Swiftel service area, where currently no options exist.

I assume the involved discovery issues originate from Swiftel's position as the sole provider in a rural area, now facing the idea of competition. Staff does recognize the unique challenges rural telephone companies face. Accordingly, Staff looks to SDCL 49-31-73 in conjunction with 47 USC Section 214 (e)(1), the legally prescribed rules, to determine what additional obligations come along with serving rural areas. Both applicant companies also recognize the additional obligations and previously sought to show both ability and desire to meet them.

Within the context then of a Certificate of Authority proceeding, I do not believe Swiftel's remaining discovery requests are relevant. Specifically, Swiftel identified several items in the MediaCom/Sprint business contract it believes are relevant to a Certificate of Authority proceeding. Those items, in broad categories are:

- Agreement Term
- Transport of Commercial Business
- Agreement Termination
- Service Level
- Initial Market List and Deployment Schedule

Nothing in the South Dakota Certificate of Authority regardless of whether service takes place in rural areas, requires a time frame for which service must be provided. Further, the Commission has established rules to protect consumers when a provider opts to discontinue service. See ARSD 20:10:32:13. Neither the term of the contract nor the process by which it may be terminated are relevant to show whether or not a Certificate of Authority should be granted. Neither item goes to the elements of proof in a Certificate of Authority application.

This Commission has and will continue to have jurisdiction regarding quality of service in the event these companies are granted the requested Certificate. Quality of service or service level expectations is, however, established by the Commission and in effect regardless of what the contract at issue may indicate. The business terms as agreed to by the contracting parties neither dictates nor influences this Commission's expectations and is irrelevant to whether a Certificate of Authority should be granted. In the event the Commission's service expectations are not met, the businesses' Certificates are in jeopardy. The Commission may remove the businesses' ability to do business by revoking its Certificate of Authority.

As a potential new rural provider, and thus a competitor, the applicant companies must make a showing to this Commission above what non-rural Certificate applicants must show. Nothing, however, requires the applicant companies to disclose its market list or deployment schedule. Both items, clearly are relevant and quite useful to a competitor, however, for its own business use. Neither item is, however, relevant to this proceeding.

In conclusion, I recommend the Commission deny Swiftel's remaining discovery requests as they are irrelevant to a Certificate of Authority proceeding. Federal and state rules dictate what must be examined by this Commission when a Certificate to do

business in South Dakota is requested. The requested items are above and beyond such items and useful only to Swiftel.

Sincerely,

A handwritten signature in black ink that reads "Kara Semmler". The signature is written in a cursive style with a large, looped initial "K".

Kara Semmler