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From: PUC Docket Filings
Sent: Friday, October 20, 2006 4:16 PM
To: Kolbo, Delaine; Zebroski, Carol; Douglas, Tina (PUC); Forney, Heather; Van Gerpen, Patty
Subject: FW: New Docket Filing

From: Karen Webb[SMTP:KWEBB@GPGNLAW.COM]
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October 20, 2006

VIA EMAIL: PUCDOCKETFILING@state.sd.us

U.S. MAIL

Patty Van Gerpen, Executive Director
South Dakota Public Utilities Commission
Capitol Building, 1st Floor
500 East Capitol Avenue
Pierre SD 57501-5070

RE: Sprint Communications Company L.P.'s Petition for Authority to Provide Local Exchange Service in Certain Rural Areas - **City of Brookings Utilities d/b/a/ Swiftel Communications**

GPGN File No. 8509.060584

Dear Ms. Van Gerpen:

Enclosed you will find the Petition filed on behalf of Sprint Communications Company, L.P., seeking authority to provide local exchange service in certain rural areas. The original Petition will be mailed to you today.

If you need anything additional from me for these filings, please let me know immediately.

Sincerely,



Talbot J. Wieczorek

TJW:klw

Enclosures

c: Mary Sisak
W. James Adkins, Swiftel
Clients

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

In the Matter of Sprint Communications)
Company L.P.'s Petition for Authority to Provide) DOCKET NO. _____
Local Exchange Service in Certain Rural Areas)
Served by City of Brookings d/b/a Swiftel)

**PETITION FOR AUTHORITY TO PROVIDE
LOCAL EXCHANGE SERVICE IN CERTAIN RURAL AREAS**

Pursuant to ARSD 20:10:32:15, Sprint Communications Company L.P. (hereinafter, "Sprint") petitions the South Dakota Public Service Commission (the "Commission) for authority to provide local exchange service in certain rural exchanges, as follows:

BACKGROUND

1. On or about April 28, 1997, the Commission entered its Order Granting Amended Certificate of Authority, Docket No. TC96-156 (hereinafter, the "CLEC certificate"), authorizing Sprint to offer local exchange telecommunications services "statewide throughout South Dakota."¹

2. Sprint's CLEC certificate also states that "with respect to rural telephone companies, Sprint will have to come before the Commission in another proceeding before being able to provide service in that rural service area pursuant to 47 U.S.C. §253(f) which allows the Commission to require a company that seeks to provide service in a rural service area to meet the requirements of 47 U.S.C. §214(e)(1)."² This is consistent with ARSD §20:10:32:15, which provides as follows:

¹ CLEC Certificate, p. 1, para. 5.

² *Id.*

“Rural service area – Additional service obligations. If a telecommunications company is seeking authority to provide local exchange service in the service area of a rural telephone company, the company shall satisfy the service requirements imposed on eligible telecommunications carriers pursuant to 47 U.S.C. §214(e)(1) (September 10, 1998) and applicable federal regulations. After notice and opportunity for hearing, these service requirements shall be imposed on the alternative local service provider throughout a geographic area as determined by the commission, unless a waiver is granted pursuant to §20:10:32:18. The local service provider seeking authority in the rural service area shall be required to meet the eligible telecommunications carrier service requirements within 24 months of the later of:

(1) the date of the commission’s order granting the provider a certificate of authority to provide local exchange services; or

(2) the date of the commission order approving any agreements for resale, interconnection, or network elements that are necessary for the provider to provide its local exchange services. The 24 month time requirement may be extended by the commission if good cause is shown.”

3. As set forth more fully below, Sprint satisfies the requirements of an eligible telecommunications carrier under 47 U.S.C. §214(e)(1) as required by ARSD §20:10:32:15 for the purpose of providing local exchange service in the rural areas identified in Section 4 below. To the extent the Commission determines that Sprint does not satisfy any requirement under 47 U.S.C. §214(e)(1) as set forth in ARSD §20:10:32:15, Sprint requests a waiver of such requirement under ARSD §20:10:32:18. By this application, Sprint seeks only authorization to provide service in the specified rural areas. Sprint is not seeking designation as an eligible telecommunications carrier for purposes of eligibility to receive high-cost support.

4. Sprint seeks authority to provide service in the ILEC rate centers identified below:

ILEC

City of Brookings d/b/a Swiftel
415 South 4th St.
Brookings, SD 57006

Rate Centers

Brookings

CABLE TELEPHONY BUSINESS MODEL

5. Sprint and MCC Telephony of the Midwest, Inc. (“MCC” or “Mediacom”) have entered into a contract to provide facilities-based competitive local and long distance voice service within several markets already receiving cable TV and broadband services from MCC in South Dakota. 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. These services are positioned to compete directly with urban and rural ILEC services in South Dakota.

6. The model is simple. Sprint provides 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; 911 circuit provisioning, database administration, and contract negotiation; and numerous back-office functions. In this case, MCC provides last-mile facilities to the customer premise, sales, billing, customer service, and installation.

7. This business model has proven to be effective in providing well over 1,000,000 consumers a viable alternative to their ILEC service in 22 states. In conjunction with its business relationships with several cable companies, Sprint is providing these services under approved interconnection agreements with ILECs in Alabama, Arizona, California, Florida, Georgia, Illinois, Iowa, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New York, New Jersey, Ohio, Pennsylvania, Texas, Washington, and Wisconsin.

8. The proposed cable telephony service utilizes Internet protocol³ technology, but is otherwise indistinguishable from “plain old telephone service” (POTS) provided by the ILECs in these areas and other local exchange carriers. Customer calls travel over the PSTN. Customers receive the same reliable E-911 service they currently receive from other local exchange carriers. Customers can use the same type of telephones they currently use, and they do not need to have a broadband internet connection or a computer. The proposed service is not an internet telephony service, such as the service provided by Vonage. Unlike the Vonage service, the cable telephony service is not “nomadic” (i.e., it is not capable of being used wherever a broadband internet connection is used), and calls do not travel over the public internet.

SPRINT IS ENTITLED TO INTERCONNECTION WITH THE RLECS

9. The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 151 *et seq.*) (hereinafter, the “Act”) defines “telecommunications carrier” as “any” provider of telecommunications services.⁴ And it defines “telecommunication services” as the offering of telecommunications for a fee directly to the public “*or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.*”⁵ (Emphasis added.) This language plainly encompasses Sprint’s proposed offering in South Dakota. Sprint is working with MCC to provide voice service to the public. Sprint will be responsible for all intercarrier compensation and Sprint will provide to MCC, among other things, local and toll service, PSTN interconnection, number

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 U.S.C. §153(44).

⁵ 47 U.S.C. § 153(46) (emphasis added).

assignment and administration functions, number porting, operator and directory assistance, 911 circuit provisioning, 911 database administration, and 911 contract negotiation. This service is “telecommunications service” that is “effectively available directly to the public.” Accordingly, Sprint is a “telecommunications carrier” within the meaning of the Act.

10. Sprint offers its interconnection and other services indifferently to all within the class of users consisting of cable companies and other entities who desire the services and who have comparable “last mile” facilities to the cable companies. Each company may choose to purchase different services or different combinations of services from Sprint; therefore, each company’s contract will reflect the pricing, terms, and conditions of the particular circumstances. However, each company is offered the same array of Sprint services from which to choose. In addition, Sprint will not alter the content of the voice communications by end users. Accordingly, Sprint satisfies the definition of “common carrier” as that term is described in applicable case law.

11. The Act provides that all telecommunications carriers have a duty to connect “directly or indirectly” with other telecommunications carriers.⁶ In addition, the Act imposes on local exchange carriers various obligations, including the duties to provide number portability and dialing parity, and the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.⁷ Because Sprint is a telecommunications carrier within the meaning of the Act, Sprint is entitled to interconnect, either directly or indirectly, with the RLECs, and other rights including reciprocal compensation, number portability, and dialing parity.

⁶ 47 U.S.C. §251(a).

⁷ 47 U.S.C. §251(b).

12. The Iowa Utilities Board,⁸ the Illinois Commerce Commission,⁹ the New York Public Service Commission,¹⁰ and the Indiana Utility Regulatory Commission¹¹ have all held that Sprint is a telecommunications carrier (and thus is entitled to interconnection) under the business model at issue here. In addition, the Public Utility Commission of Ohio¹² ruled in favor of MCI MetroAccess under a nearly identical business model.

13. Sprint has actively negotiated with the ILEC identified in Section 4 above to obtain interconnection for the Sprint/MCC business model. On October 16, 2006, Sprint filed a petition for arbitration under §252 of the Act for that interconnection agreement.

SPRINT SATISFIES THE ETC REQUIREMENTS

14. In accordance with 47 C.F.R. §54.101, Sprint satisfies the eligible communications carrier (ETC) requirements as follows:

(1) **Voice grade access to the public switched telephone network.** Among other things, Sprint will provide the underlying switching and interconnection to the public switched telephone network (PSTN) for the Sprint/MCC jointly provided service.

⁸ In re Sprint Communications Company L.P. v. Ace Communications et al, Docket No. ARB-05-2, *Order on Rehearing*, November 28, 2005.

⁹ Cambridge Telephone Company, et al, Docket Nos. 05-0259 et al, *Final Order*, July 13, 2005, Rehearing/Reconsideration denied on August 23, 2005.

¹⁰ Petition of Sprint Communications Company L.P. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Intercarrier Agreement with Independent Companies, Docket Nos. 05-C-0170 and 05-C-0183, *Order Resolving Arbitration Issues*, May 24, 2005, and *Order Denying Rehearing*, August 24, 2005.

¹¹ In the Matter of Sprint Communications Company 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., Docket No. 43052-INT-01 (consolidated with 43053-INT 01 and 43055-INT 01), *Order* issued September 6, 2006.

¹² In the Matter of the Application and Petition in Accordance with Section II.A.2.b. of the Local Service Guidelines Filed by the Champaign Telephone Company et al., Docket No. 04-1494-TP-UNC et seq., *Order on Rehearing*, April 13, 2005.

(2) **Local usage meaning a prescribed amount of minutes of use of local exchange service provided free of charge to end users.** With respect to the jointly provided service, MCC has proposed to charge a flat monthly service fee for local service with no limit to the number of calls made or received, or minutes of usage. Under the business model, Sprint does not bill or charge the consumer.

(3) **Dual tone multi-frequency signaling or its functional equivalent.** With respect to the jointly provided service, MCC will provide DTMF signaling for all customers in the relevant exchanges.

(4) **Single-party service or its functional equivalent.** With respect to the jointly provided service, MCC will provide only single-party service in all areas served.

(5) **Access to emergency services.** With respect to the jointly provided service, among other things, Sprint will provide 911 circuit provisioning and connectivity to all appropriate Public Safety Answering Points, 911 database administration, and 911 contract negotiation.

(6) **Access to operator services.** With respect to the jointly provided service, among other things, Sprint will provide access to operator services, including 0- and 0+ services.

(7) **Access to interexchange service.** With respect to the jointly provided service, Sprint will provide access to interexchange service.

(8) **Access to directory assistance.** With respect to the jointly provided service, Sprint will provide access to directory assistance.

(9) **Toll limitation for qualifying low-income consumers.** With respect to the jointly provided service, MCC's voice service package includes unlimited local and domestic long distance calling. It does not presently offer a "local only" product.

15. With respect to the jointly provided service, Sprint and MCC offer these services utilizing their own facilities or a combination of their own facilities and resale of other carriers' services, consistent with 47 C.F.R. §54.201(d)(1).

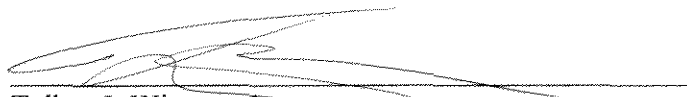
16. With respect to the jointly provided service, consistent with 47 C.F.R. §54.201(d)(2), MCC will advertise the availability of its local exchange services and the charges therefor in media of general distribution throughout the exchange areas served.

17. Granting Sprint's petition is in the public interest. Currently, there is little or no competition for wireline local voice telephone services in rural areas of South Dakota. Rural LECs are serving most, if not all, of the customers of local voice service in their territories. The service resulting from Sprint's business model would be one of the first, if not the only, competitive landline telecommunications ventures into the rural areas identified above.

RELIEF REQUESTED

WHEREFORE, Sprint Communications Company L.P. requests the Commission enter its Order granting Sprint's petition with respect to the rural territories described herein and issuing such other and further relief as is just and proper.

Respectfully submitted on this 20 day of October, 2006.



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ATTORNEYS FOR
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CERTIFICATE OF SERVICE

The undersigned does certify that on this 20 day of October, 2006, a copy of the foregoing document was served by U.S. Mail to each of the following:

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