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November 20, 2006

VIA EMAIL: PUCDOCKETFILINGS@state.sd.us

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 Opposition to SDTA's Petition for Authority to Provide Local Exchange Service in Certain Rural Areas Served by Brookings Municipal Utilities TC06-178

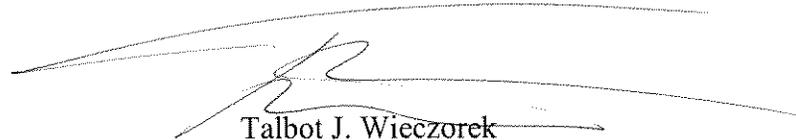
GPGN File No. 8509.060584

Dear Ms. Van Gerpen:

Enclosed you will find Sprint's Opposition to SDTA's Petition to Intervene in the above-entitled matter. By copy of same, opposing counsel have been served via email and U.S. Mail.

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

Sincerely,



Talbot J. Wiczorek

TJW:klw

Enclosure

c: Rich Helsper
Rich Coit
Ben Dickens
Mary J. Sisak
Kara Van Bockern

**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 Local Exchange Service in)	
Certain Rural Areas Served by)	DOCKET TC06-178
Brookings Municipal Utilities)	
d/b/a Swiftel Communications)	

SPRINT'S OPPOSITION TO SDTA PETITION TO INTERVENE

Sprint Communications Company L.P. ("Sprint") by and through its attorneys, files its opposition to the South Dakota Telecommunications Association's ("SDTA") Petition to Intervene in the above-captioned proceeding. Based on the fact that SDTA has no "pecuniary interest [that] would be directly and immediately affected" by any decision made, SDTA may not intervene. See SDCL 1-26-17.1. It would also be prejudicial to Sprint in that SDTA companies would have access to advice and knowledge about Sprint's operations even though Sprint has not requested approval to operate in the territories served by most of SDTA's members. Accordingly, Sprint urges the South Dakota Public Utilities Commission ("SDPUC" or "Commission") to deny SDTA's Petition, as explained more fully below.

I. SDTA's PETITION

On November 7, 2006, SDTA filed its Petition to Intervene in this docket where Sprint is requesting authority under ARSD § 20:10:32:15 to provide local exchange service in certain ILEC rate centers served by Brookings Municipal Utilities d/b/a Swiftel ("Swiftel"). SDTA asserts that it should be allowed intervention "based on the interest of Swiftel, an SDTA member, and also the pecuniary interests of other SDTA member

companies” that are “likely to be bound and affected either favorably or adversely by the outcome of the proceeding.” See Petition to Intervene, ¶ 6, citing A.R.S.D. § 20:10:01:15.05. SDTA asserts that based on the Sprint/MCC business model, Sprint may not be allowed to seek certification in rural areas and may not be entitled to interconnection rights under Section 252 of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56, 47 U.S.C. Section 151 *et seq.*, (the “Act”). **Id.** Despite SDTA’s arguments to the contrary, SDTA is not entitled to intervene in this proceeding under South Dakota law.

II. SDTA SHOULD NOT BE ALLOWED TO INTERVENE

Under South Dakota law, a petition for authority to serve rural territories pursuant to ARSD§ 20:10:32:15 should be treated as a contested case. SDCL § 1-26-1(2), in pertinent part, defines a contested case as “a proceeding, including rate-making and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.” See also SDCL § 1-26-1(4), encompassing “certificate” within the definition of “license.” Accordingly, the intervention requirements under SDCL § 1-26-17.1 should apply.

The standard for intervention in a contested case is set forth in the state Administrative Procedures and Rules statutes. Specifically, SDCL § 1-26-7.1 states:

A person who is not an original party to a contested case and whose pecuniary interests would be directly and immediately affected by an agency's order made upon the hearing may become a party to the hearing by intervention, if timely application therefor is made.

This Commission has adopted administrative rules that generally address petitions to intervene. Under those rules, the petitioner filing the intervention must show

“that the petitioner is specifically deemed by statute to be interested in the matter involved, that the petitioner specifically declared by statute to be an interested party to the proceedings, or that by the outcome of the proceedings the petitioner will be bound and affected either favorably or adversely with respect to an interest peculiar to the petitioner as distinguished from an interest common to the public or to the taxpayers in general.” ARSD § 20:10:01:15.05.

The standards to intervene under the state statute versus the regulation are slightly different; however, as explained above, petitions for authority should be treated as contested cases. Thus, the statutory intervention standard SDCL § 1-26-17.1, controls.¹ In either case, SDTA fails to meet the standards to be allowed to intervene.

First, it should be noted that the pleadings in this docket demonstrate that Swiftel does not need the SDTA to intervene on its behalf or to defend its pecuniary interest or any other interest Swiftel may have in the proceeding. This is not a situation where Swiftel is incapable of representing its interests. Swiftel is a successful telecommunications company who has retained multiple counsel to represent it in this action.

Because Swiftel can represent itself, SDTA cannot use Swiftel’s interest as grounds to allow intervention of SDTA. That leaves SDTA’s claim that its intervention is necessary to protect the “pecuniary interests of other SDTA member companies.” SDTA cannot claim another’s interest as ground to support intervention. SDCL § 1-26-17.1 is specific that before a person is allowed to intervene there must be a showing that the person’s “pecuniary interest would be directly and immediately affected” by the Commission’s decision. By its own admissions, SDTA has no direct interest in this proceeding. There is no representation that any individual members of its organization are interested in intervening or have a concern that their interests are at risk. Further, if

¹ It is noted that in the Commission’s proposed changes to its procedural rules the intervention rules are being changed to apply only to contested cases.

such a member did have a concern, SDCL § 1-26-17.1 requires that member to intervene, not a surrogate.

Analysis of the Commission's rules reaches the identical conclusion. A.R.S.D. § 20:10:01:15.05 requires that the person seeking intervention show that the intervening petitioner's interests will be "bound and affected" and that the intervener's interest is "peculiar" to the intervenor. SDTA will not be bound or affected by these decisions. It only argues that some of its members may be bound and affected. SDTA has no direct interest in this action as it does not provide telecommunication services, possesses no Certificate of Authority, and makes no claim that it has any direct rights impacted by these proceedings.

Courts have recognized the inefficiency of duplicative representation by generally holding that where the interests of a potential intervenor are the same as those of an existing party, representation of that position will be presumed adequate, and intervention inappropriate, unless special circumstances are shown. See Wright, Miller & Cooper, *Federal Practice and Procedure*, §1909, p. 324 (2005); *Citizens Utility Board v. Public Service Comm'n of Wisconsin*, 2003 WI App 206, 671 N.W.2d 11 ("Normally, a trial court considers whether the potential intervenor has standing and whether that intervenor's interests are already adequately represented by another party.").

SDTA acknowledges that the only interest at issue for its members who are not already parties to this proceeding is the possibility that it will result in some form of adverse precedent. (See Petition to Intervene at ¶ 6). SDTA then makes conclusory claims that are not supported by any facts or argument, such as when it posits that "all of the SDTA member companies are interested in this proceeding and stand to be affected

by the Commission's decisions herein." (**Id.**). SDTA has utterly failed to show how its members will be affected by this proceeding. These amorphous interests and conclusory statements are far too broad to confer standing on SDTA. If fear of adverse precedent were sufficient, then the number of intervenors in nearly every kind of proceeding or lawsuit, from regulatory matters to tort and contract actions, and whether at the Commission or in court, would be limitless.

In addition, SDTA's intervention would be inefficient and would not promote judicial economy. Again, SDTA has not articulated any legally recognized interest different from those raised by its member (Swiftel) that is already a party. In short, SDTA is asking the Commission to allow it to reiterate positions that Swiftel is already poised to take. Mere repetition, by an association, of its member's positions will not advance the efficiency of this proceeding. Rather, the paucity of SDTA's request suggests that it is intended solely to delay this proceeding by adding an unnecessary party.

Under similar circumstances, intervenor status was denied to an association of telecommunications carriers in *Mountain Solutions, Inc. v. State Corporation Comm'n of the State of Kansas*, 173 F.R.D. 300, 304 (D. Kan. 1997). In *Mountain Solutions*, the association sought to intervene into a case that included as intervening parties several of the association's members. The court tersely ruled that

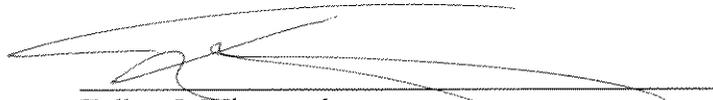
The association gives no indication of what specific interests it has in the property at issue here nor does it explain how its interests would be impaired by any disposition of the case. Most importantly, it does not even suggest that its interests are not protected adequately by the parties in the suit. Because the association has failed to satisfy the requisite elements of Fed. R. Civ. P. 24(a)(2), the court denies its motion to intervene.

Id. SDTA's request for intervention suffers the same defects, and should suffer the same fate.

III. CONCLUSION

SDTA is not entitled to intervene in this proceeding South Dakota law. SDTA has failed to establish that it has a "pecuniary interest that would be directly and immediately affected" by the Commission's decision in this proceeding or that it will be bound and affected either favorably or adversely with respect to an interest peculiar to the SDTA. Further, allowing SDTA to intervene would be inefficient because it would merely allow SDTA to reiterate positions that Swifel will take. Accordingly, SDTA's Petition to Intervene should be denied.

Respectfully submitted this 20 day of November 2006,



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SPRINT COMMUNICATIONS COMPANY L.P.

CERTIFICATE OF SERVICE

The undersigned certifies that on this 20th day of November 2006, a copy of **Sprint's Opposition to SDTA Petition to Intervene** was served via email and first class mail to:

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