
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

In the Matter of the Application of MCC
Telephony of the Midwest, Inc., d/b/a
Mediacom for a Certificate of Authority to
Provide Local Exchange Service in the
Brookings Exchange

Docket No. TC06-188

**MOTION TO COMPEL RESPONSES AND PRODUCTION OF
DOCUMENTS ADDRESSED TO MCC TELEPHONY OF THE MIDWEST, INC.,
D/B/A MEDIACOM AS PROPOUNDED BY
BROOKINGS MUNICIPAL UTILITIES D/B/A
SWIFTEL COMMUNICATIONS**

Brookings Municipal Utilities d/b/a Swiftel Communications (Swiftel) by its attorneys, hereby moves for an order, pursuant to SDCL 15-6-37(a), compelling MCC Telephony of the Midwest, Inc., d/b/a Mediacom (MCC) to provide substantive, non-evasive responses to discovery requests 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 28, 30, and 32 and to produce the documents requested in Requests for Production of Documents 1, 3, 4, 5, 6, 7, and 8 contained in the Discovery Requests of Brookings Municipal Utilities d/b/a Swiftel Communications to MCC dated April 18, 2007 and April 21, 2008. Because the information sought in these discovery requests and requests for production of documents is relevant and discoverable, MCC's objections should be overruled and MCC should be directed to provide meaningful answers and to produce documents responsive to the subject discovery and document requests.

In addition, Swiftel asks the Commission to compel MCC to provide its answers under oath. SDCL Section 15-6-33(a) states that:

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for the objection and shall answer to the extent the interrogatory is not objectionable.

MCC has not provided the required oath supporting its responses and, therefore, MCC is not in compliance with this requirement.

Swiftel's specific arguments in connection with each discovery request and document production request are detailed below. The discovery request and document production request, along with MCC's objections and response, are provided before Swiftel's argument in connection with each such objection and response.

DISCOVERY REQUESTS (DR) 2, 3, 4 and 30

2. At page 5 of its Amended Application, MCC refers to an agreement with Sprint. Identify the agreement Sprint and MCC have entered to provide various services within the area served by Swiftel.

Answer: MCC objects to this request on the grounds that it is not likely to lead to admissible evidence, is unduly burdensome and is not relevant to the issues at hand.

3. For the agreement identified in Discovery Request 2, state the term of the contract.

Answer: See objection to Number 2, above.

4. For the agreement identified in Discovery Request 2, identify the circumstances under which either Sprint or MCC can terminate the agreement.

Answer: See objection to Number 2, above.

30. Identify all financial arrangements made with Sprint and provide a copy of all documents associated with those financial arrangements.

Answer: MCC objects to this request on the grounds that it is not likely to lead to the discovery of admissible evidence. The business arrangements between MCC and Sprint are not relevant to this certification proceeding.

ARGUMENT

The responses to these questions will provide evidence in connection with MCC's representations in its Amended Application for Certificate of Authority, filed on February 20, 2007 (Petition), concerning its agreement with Sprint and whether it meets the requirements to be granted a certificate of authority. It is MCC that relies on its agreement with Sprint to support its Petition and, therefore, MCC's objections as to relevance must be rejected. For example, at pages 5 and 6 of the Petition, MCC relies on its agreement with Sprint to argue that it meets various eligible telecommunications carrier requirements, including providing 1) voice grade access to the public switched telephone network; 2) access to emergency services; 3) access to operator services; 4) access to interexchange service; and 5) access to directory assistance. MCC also relies on its agreement with Sprint to meet the criteria in Sections 20:10:32:03 and 20:10:32:06, which are the basis for granting a certificate of authority. Thus, at pages 7-8, MCC describes its reliance on Sprint to provide emergency services, operator services, interexchange services, directory assistance, and telecommunications relay services, as required by Section 20:10:32:03 (10). Further, at page 9, paragraph 12., MCC states that it intends to interconnect through Sprint to exchange traffic with the public switched telephone network, as required by Section 20:10:32:03(12).

DR 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16

5. Provide a list of all equipment and facilities in South Dakota which are owned, leased or controlled by MCC which are available for use to provide local exchange service in the Brookings exchange.

Answer: MCC objects to this request on the grounds that it is not likely to lead to admissible evidence, is unduly burdensome and is not relevant to the issues at hand.

Without waiving said objection, MCC offers that it has available for use a Mediacom Headend at Flandreau, and HFC distribution plant, (Mediacom cable facilities) located in Brookings.

6. Provide a list of all equipment and facilities in South Dakota which MCC intends to use to provide local exchange service in the Brookings exchange.

Answer: MCC objects to this request on the grounds that it is not likely to lead to admissible evidence, is unduly burdensome and is not relevant to the issues at hand. Without waiving said objection, MCC offers that it has available for use the equipment in #5, above, and also the Sprint equipment per agreement with Sprint.

7. Provide a list of the locations by street address of all equipment and facilities identified in Discovery Requests 5 and 6. These locations shall include but not be limited to locations of buildings, collocation sites, and electronic equipment cabinets.

Answer: MCC objects to this request on the grounds that it is not likely to lead to admissible evidence, is unduly burdensome and is not relevant to the issues at hand.

8. Identify all streets and business and residential locations that are passed by MCC's fiber optic, coaxial or copper transmission facilities. Identify business and residential locations by street address and post office address. Provide a map showing the location of MCC's fiber optic, coaxial or copper transmission facilities.

Answer: MCC objects to this request on the grounds that it is unduly burdensome and is not relevant to the issues at hand.

9. Identify MCC's annual maintenance budget for its equipment and facilities in Brookings, South Dakota for the years 2006 and 2007 and MCC's projected maintenance budget for facilities in Brookings, South Dakota for 2008 and 2009.

Answer: MCC objects to this request on the grounds that it is not likely to lead to admissible evidence, is unduly burdensome and is not relevant to the issues at hand.

10. Identify MCC's annual maintenance budget for all equipment and facilities in South Dakota for 2006 and 2007 and MCC's projected maintenance budget for all equipment and facilities in South Dakota for 2008 and 2009.

Answer: MCC objects to this request on the grounds that it is not likely to lead to admissible evidence, is unduly burdensome and is not relevant to the issues at hand.

11. Identify MCC's annual construction budget for facilities in Brookings, South Dakota for 2006 and 2007 and MCC's projected construction budget for facilities in Brookings, South Dakota for 2008 and 2009.

Answer: MCC objects to this request on the grounds that it is not likely to lead to admissible evidence, is unduly burdensome and is not relevant to the issues at hand. Without waiving said objection, MCC offers that it has no current definite plans for construction in Brookings in the timeframes requested.

12. Identify the streets where MCC will install fiber optic, coaxial or copper transmission facilities in 2007, 2008 and 2009.

Answer: See answer to #11, above.

13. Identify the number of outages that MCC's cable network experienced in Brookings, South Dakota in 2005, 2006 and 2007.

Answer: MCC objects to this request on the grounds that it is overbroad, not likely to lead to admissible evidence, is unduly burdensome and is not relevant to the issues at hand.

14. Identify the length of time to respond and resolve the outages identified in Discovery Request 13.

Answer: See answer to #13, above.

15. Describe the redundancy features of MCC's network, including the MTSO.

Answer: MCC objects to this request on the grounds that it is overbroad, not likely to lead to admissible evidence, is unduly burdensome and is not relevant to the issues at hand.

16. Describe how MCC's facilities will operate during a power outage. If any MCC facilities have battery back-up or back-up generators, identify those facilities and the length of time for which back-up power is available.

Answer: MCC objects to this request on the grounds that it is not likely to lead to admissible evidence, is unduly burdensome and is not relevant to the issues at hand. Without waiving said objection, MCC offers that it uses battery backup at the customer premises and headend, and makes no use of generators.

ARGUMENT

In these questions, Swiftel seeks information concerning MCC's equipment and facilities, its maintenance and construction budgets for equipment and facilities, and the reliability of MCC's equipment and facilities, and, therefore, its proposed service.

Pursuant to Section 20:10:32:05 of the Commission's rules, MCC has the burden of proving that it has sufficient technical, financial and managerial capabilities to provide the local exchange services it seeks to provide. The responses to these questions will

provide evidence concerning MCC's technical capabilities to provide service. They also will provide evidence on whether MCC's application and proposed service is in the public interest. Accordingly, MCC's objections to these questions should be denied.

In addition, with respect to DR 5 and 6, although MCC has provided some information, it appears that MCC's response is not complete. For example, in DR 5, the only equipment and facilities MCC states that it has is a Headend in Fladreau and distribution plant in Brookings. In DR 6, MCC states that it will use the equipment listed in DR 5 and "the Sprint equipment per agreement with Sprint." MCC, however, does not provide a list of the equipment in the agreement with Sprint referenced in its answer and, therefore, its response is not complete.

MCC also provided information in response to DR 11 and 12. With respect to these questions, Swiftel requests that the Commission deny MCC's objection, which will require MCC to provide a complete answer and to amend its answer if new information comes to light or circumstances change.

DR 19, 20, 21, 22, 23, 24

19. At page 5 of its Amended Application, MCC refers to interconnection to the PSTN through Sprint. If the contract identified in Discovery Request 2 is not renewed or is terminated by either Sprint or MCC, explain how MCC will provide voice grade access to the public switched telephone network to end users.

Answer: MCC objects to this request on the grounds that it is not likely to lead to admissible evidence, is unduly burdensome and is not relevant to the issues at hand.

20. If the contract identified in Discovery Request 2 is not renewed or is terminated by either Sprint or MCC, explain how MCC will provide single-party service or its functional equivalent to end users.

Answer: MCC objects to this request on the grounds that it is not likely to lead to admissible evidence, is unduly burdensome and is not relevant to the issues at hand.

21. If the contract identified in Discovery Request 2 is not renewed or is terminated by either Sprint or MCC, explain how MCC will provide access to emergency services to end users.

Answer: MCC objects to this request on the grounds that it is not likely to lead to admissible evidence, is unduly burdensome and is not relevant to the issues at hand.

22. If the contract identified in Discovery Request 2 is not renewed or is terminated by either Sprint or MCC, explain how MCC will provide access to operator services to end users.

Answer: MCC objects to this request on the grounds that it is not likely to lead to admissible evidence, is unduly burdensome and is not relevant to the issues at hand.

23. If the contract identified in Discovery Request 2 is not renewed or is terminated by either Sprint or MCC, explain how MCC will provide access to interexchange services to end users.

Answer: MCC objects to this request on the grounds that it is not likely to lead to admissible evidence, is unduly burdensome and is not relevant to the issues at hand.

24. If the contract identified in Discovery Request 2 is not renewed or is terminated by either Sprint or MCC, explain how MCC will provide access to directory assistance to end users.

Answer: MCC objects to this request on the grounds that it is not likely to lead to admissible evidence, is unduly burdensome and is not relevant to the issues at hand.

ARGUMENT

In these questions, Swiftel seeks information concerning how MCC will provide the services required by the Commission's rules if its agreement with Sprint is terminated. In its application, MCC states that it will rely on Sprint to provide certain required services and in DR 6 MCC indicates that it will use Sprint equipment in order to meet the Commission's requirements. Accordingly, the question of how MCC will meet those requirements if the Sprint services and equipment are not available to MCC is relevant to this proceeding. Therefore, MCC's objections must be denied.

DR 25

25. At page 4 of its Amended Application, MCC states that it may choose to provide resold services using the facilities of other certificated local exchange carriers or network providers. Identify the local exchange carriers and network providers to which MCC refers.

Answer: MCC objects to this request on the grounds that it is not likely to lead to admissible evidence, is unduly burdensome and is not relevant to the issues at hand. Additionally, the question presumes timing and facts which are not apparent.

ARGUMENT

This question seeks information concerning MCC's representation made in its application that it may provide resold services using the facilities of other certificated local exchange carriers or network providers. Swiftel asks MCC to identify the carriers and network providers to which it refers. MCC objects on relevance and burden. MCC also objects because, allegedly, the question presumes timing and facts which are not apparent.

The response to Swiftel's question will provide evidence as to whether there is any basis for MCC to have made this representation. It also will provide evidence as to whether MCC's application is in the public interest for the following reason. Swiftel believes that MCC's facilities do not cover Swiftel's entire service area. And, MCC, in its response to DR 11 states that it has no current plans for construction of new facilities in Brookings during 2008 and 2009. Accordingly, it appears that MCC only could serve Swiftel's entire service area by reselling services. The cost and ability of MCC to do so, is dependent on whose services are available for resale. Therefore, MCC's claims concerning relevance and the presumption of timing and facts must be denied.

As to its claim of burden, MCC has provided no evidence to support such a claim and it seems unlikely that such a claim can be supported. The only other local exchange

carrier in Swiftel's service area is Swiftel. If MCC has identified some carrier or network provider other than Swiftel whose services it could resell, MCC should identify that entity. If the answer is there are no such carriers or network providers, then MCC should so state. Accordingly, MCC's objections should be denied.

DR 28

28. Identify the interface points, including street address or geographical coordinates, between Sprint's network and MCC's network in South Dakota. For each interface point, identify all Sprint equipment at the interface point. For each interface point, identify all Mediacom equipment at the interface point.

Answer: The interface point is located at 1000 North Cliff Avenue, Sioux Falls, South Dakota 57103. MCC objects to the remainder of the question on the grounds that it is not likely to lead to the discovery of admissible evidence. The Commission has already found that MCC has "demonstrated sufficient technical, financial and managerial capabilities to offer services in South Dakota." See Order Granting Amended Certificate of Authority, Docket No. TCO6-046. All of the equipment and facilities MCC 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. Finally, MCC objects to the portion of the request which seeks information regarding Sprint's equipment as the question requires MCC to answer on behalf of Sprint.

ARGUMENT

Swiftel requests information concerning MCC and Sprint equipment at the interface point between the Sprint and MCC networks. MCC objects on the basis that the Commission has already found MCC's technical, financial and managerial capabilities sufficient in South Dakota and that the equipment and facilities MCC will use are already used in connection with its service in Qwest territory. Finally, MCC objects to providing information about Sprint's equipment.

All of MCC's objections must be rejected. With respect to MCC's claims about its service in South Dakota, Swiftel has a statutory right to participate in a proceeding in

which a potential competitor requests certification in its service area. SDCL § 49-31-70. Further, SDCL §49-31-69 states that an application for an amended certificate is subject to the same requirements as an application for an initial certificate. Therefore, even if the Commission found MCC's technical qualifications sufficient in Qwest territory, MCC is required by statute to prove its technical qualifications again in this petition to amend its certificate.

Swiftel also notes that this Commission denied intervention to Swiftel in MCC's certificate of authority proceeding for Qwest territory.¹ This Commission precedent and MCC's argument here would operate to effectively deny Swiftel from participating in any MCC certification proceeding. Such a result would deny Swiftel its statutory right and effectively gut the rules and protections that apply to rural service territories.

Finally, MCC's objection to providing information about Sprint's equipment must be denied because MCC relies on Sprint's equipment to support its Petition.

DR 32

32. At page 4 of the Amended Application, MCC states that it "will interconnect through Sprint, which will manage the soft switch and gateways used to exchange traffic with the public switched telephone network ("PSTN") for call completion." Identify the soft switch and gateways referred to in this sentence, including the location, type, and model number of each soft switch and gateway.

Answer: MCC objects to this request on the grounds that it is irrelevant and not likely to lead to the discovery of admissible evidence. Further, MCC objects to the request on the ground that it seeks information regarding Sprint's equipment and requires MCC to answer on behalf of Sprint.

¹ *In The Matter Of The Application Of Mcc Telephony Of The Midwest, Inc. D/B/A Mediacom For A Certificate Of Authority To Provide Interexchange Telecommunications Services And Local Exchange Services In South Dakota*, TC06-046, Order Denying Intervention, June 21, 2006.

ARGUMENT

Swiftel requests information concerning the soft switch and gateways referenced in its MCC's application at page 4. MCC objects on the basis of relevance and that the question requires MCC to answer on behalf of Sprint.

MCC's relevance objection must be rejected because the question seeks information concerning MCC's technical ability to provide service and its ability to interconnect to the public switched network, which is one of the application criteria MCC must meet. MCC's objection to providing information about Sprint's equipment also must be denied because it is MCC that offers information about Sprint's equipment to support its Petition. Accordingly, MCC should be compelled to respond.

REQUEST FOR PRODUCTION OF DOCUMENTS (RPD) 1, 4, 5, and 7

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.

Answer: As noted in answers above, MCC objects to this request on the grounds that it is unduly burdensome. FCC and court decisions referenced are publicly available documents. With respect to the SDPUC order granting MCC's CLEC authority referenced above, that order is attached hereto. With respect to any and all references to Sprint's agreement with MCC, MCC reiterates its objection as set forth in the response to #2, above.

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

Answer: See objections set forth above as to #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.

Answer: See objections set forth above as to #2.

7. Provide all documents that you relied on or that support your answers to the Discovery Requests or that were identified in your response.

Answer: MCC objects on the grounds that the request is unduly burdensome.

ARGUMENT

MCC objects to providing any documents referenced, identified or that support its discovery responses as burdensome. MCC further objects to the provision of its agreements with Sprint (RFP 1, 4, 5, 7) as not relevant.

Because MCC has provided no evidence to demonstrate, or even indicate, that it would be burdensome to produce the documents requested, this objection should be denied. With respect to MCC's agreements with Sprint, the documents requested will provide evidence in connection with MCC's representations in its Petition concerning its agreement with Sprint and whether MCC meets the requirements to be granted a certificate of authority. It is MCC that relies on its agreement with Sprint to support its Petition and to meet the criteria in Sections 20:10:32:03 and 20:10:32:06 of the Commission's rules. Therefore, MCC's objections as to relevance must be rejected.

RPD 3:

3. Provide a diagram of the facilities identified in Discovery Requests 5 and 6.

Answer: See objections set forth above as to #2.

ARGUMENT

MCC objects to providing a diagram of the facilities identified in DR 5 and 6 as burdensome and not relevant. MCC's facilities and their location is relevant to

determining whether MCC's technical capabilities are sufficient; the area covered by MCC's proposed service; and whether MCC's application is in the public interest. All of these elements must be demonstrated before MCC's application can be granted.

RPD 8

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

Answer: MCC objects on the grounds that the request is unduly burdensome.

ARGUMENT

With respect to Swiftel's request for the previous testimony of witnesses, MCC argues that the request is burdensome. However, in its Petition, MCC states that it is certificated in only seven (7) states and it is not clear if MCC was required to file testimony in all seven proceedings. MCC provides no support for an argument that the production of testimony in at most seven proceedings is burdensome and, therefore, MCC should be required to provide the referenced testimony.

CONCLUSION

For all of the above reasons, Swiftel requests that the Commission direct MCC to provide complete, non-evasive substantive responses to discovery requests 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 28, 30, and 32 and to produce the documents requested in Requests for Production of Documents 1, 3, 4, 5, 6, 7, and 8 contained in the First and Second Discovery Requests of Brookings Municipal Utilities d/b/a Swiftel Communications to MCC Telephony of the Midwest d/b/a Mediacom dated April 18, 2007 and April 21, 2008. Swiftel also asks the Commission to compel MCC to provide its answers under oath as required by SDCL Section 15-6-33(a).

Respectfully submitted,

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D/B/A/ SWIFTEL COMMUNICATIONS

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June 26, 2008

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 26th day of June, 2008, a copy of the **Motion to Compel Responses and Production of Documents addressed to MCC Telephony Of The Midwest, Inc., D/B/A Mediacom as propounded by Brookings Municipal Utilities D/B/A Swiffel Communications** was served via electronic mail and by U.S. Mail, postage prepaid, to the following:

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