

Douglas, Tina (PUC)

From: PUC Docket Filings
Sent: Monday, October 30, 2006 2:28 PM
To: Kolbo, Delaine; Zebroski, Carol; Douglas, Tina (PUC); Forney, Heather; Van Gerpen, Patty
Subject: FW: TC06-175 and TC06-176

From: Jody Harrell[SMTP:JODYH@CUTLERLAWFIRM.COM]
Sent: Monday, October 30, 2006 2:29:00 PM
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Cc: Van Gerpen, Patty; VanBockern, Kara; Best, Harlan; tjw@gpgnlaw.com; diane.c.browning@sprint.com; monica.barone@sprint.com; rjh1@brookings.net; mjs@bloostonlaw.com; Meredith Moore
Subject: TC06-175 and TC06-176
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Ms. Van Gerpen~

Attached for filing, please find the Joint Motion for Deferral in the above matters. Please feel free to contact Meredith Moore at 605-335-4950 with any questions you may have.

Jody Harrell
 Legal Assistant to Meredith A. Moore

Jody Harrell
 Cutler & Donahoe, LLP
 100 N. Phillips Ave., 9th Fl.
 Sioux Falls, SD 57104-6725
 Main: (605) 335-4950
 Fax: (605) 335-4966
jodyh@cutlerlawfirm.com

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**STATE OF SOUTH DAKOTA
PUBLIC UTILITIES COMMISSION**

In the Matter of Sprint Communications Company L.P.’s Petition for Consolidated 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 Interstate Telecommunications Cooperative.))))))))))))	Docket No. TC06-175
And))))	
In the Matter of Sprint Communications Company L.P.’s Petition for Consolidated 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 Brookings Municipal Utilities d/b/a Swiftel Communications ¹ .))))))))))))	Docket No. TC06-176

**JOINT MOTION OF INTERSTATE TELECOMMUNICATIONS COOPERATIVE, INC. AND
BROOKINGS MUNICIPAL UTILITIES D/B/A SWIFTTEL COMMUNICATIONS FOR DEFERRAL
OF HEARING ON SPRINT COMMUNICATIONS COMPANY’S REQUEST FOR
CONSOLIDATION**

COME NOW Interstate Telecommunications Cooperative, Inc. (“ITC”) and Brookings Municipal Utilities d/b/a Swiftel Communications (“Swiftel”) by and through their respective counsel of record and hereby jointly request that the South Dakota Public Utilities Commission (the “Commission”) defer hearing and determination on the Request for Consolidation filed by Sprint Communications Company, L.P. (“Sprint”).

¹ In the original Petition for Arbitration filed by Sprint Communications Company, Brookings Municipal Utilities was incorrectly identified as “City of Brookings Utilities d/b/a Swiftel Communications.” Consequently, counsel for Brookings Municipal Utilities d/b/a Swiftel Communications has changed the caption to accurately reflect the company name. Counsel will make a formal request to change the caption at the time of the October 31, 2006 Commission meeting.

1. On October 16, 2006, Sprint filed a petition for arbitration of certain unresolved terms and conditions of a proposed Interconnection Agreement between ITC and Sprint pursuant to Section 252 of the Telecommunications Act of 1934, as amended by the Telecommunications Act of 1996, which matter is styled as *In the Matter of Sprint Communications Company L.P.'s Petition for Consolidated 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 Interstate Telecommunications Cooperative*, Docket Number TC06-175.

2. On October 16, 2006, Sprint Communications Company (“Sprint”) also filed a petition for arbitration of certain unresolved terms and conditions of a proposed Interconnection Agreement between Swiftel and Sprint pursuant to Section 252 of the Telecommunications Act of 1934, as amended by the Telecommunications Act of 1996, which matter is styled as *In the Matter of Sprint Communications Company L.P.'s Petition for Consolidated 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 Brookings Municipal Utilities, d/b/a Swiftel Communications*, Docket Number TC06-176.

3. In each of the Petitions for Arbitration, Sprint requested that the Petitions be consolidated because they contained many identical issues which could be addressed within one joint proceeding. See Petition for Arbitration and Request for Consolidation, p. 3.

4. ITC and Swiftel do not believe Sprint's characterization of the negotiations underlying the Petitions for Arbitration as collective is accurate. The parties did not participate in common or joint negotiations concerning the proposed interconnection agreement.

5. Pursuant to A.R.S.D. 20:10:32:30, "a non-petitioning party may respond to the petition for arbitration and provide additional information within 25 days after the commission receives the petition." To date, ITC and Swiftel have not submitted their respective responses to the Sprint Petitions and both parties are in the process of responding to the Petitions and identifying and defining any additional open issues which they believe require arbitration or determination by this Commission. Following the service and filing of the respective Petitions, counsel for ITC and Swiftel have engaged in communication to discuss whether there may be a commonality of factual or legal issues so as to justify consolidation or similar proceeding in which any such common factual or legal issues could be addressed, while ensuring preservation of any unique issues which may exist for either or both ITC and Swiftel. Until the parties complete their assessment of the issues in their own cases, however, they will not be able to determine whether, or the extent to which, any common issues exist.

6. Accordingly, ITC and Swiftel believe that it is premature to discuss Sprint's Request for Consolidation because the parties have not been afforded a full opportunity to determine whether the factual and legal issues raised in Sprint's Petitions are sufficiently identical so as to warrant consolidation. The parties believe that after they have fully analyzed the factual and legal issues raised by all of the pleadings they will better be able to address whether the issues can be adequately and efficiently

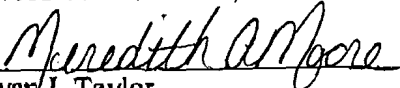
presented to the Commission in one proceeding. As such, ITC and Swiftel respectfully request that the Commission defer making a determination on Sprint's Request for Consolidation until after the parties have had an opportunity to submit their respective Responses to the Commission at which time the parties can best determine whether there is a commonality of factual and legal issues so as to warrant consolidation.

6. ITC and Swiftel believe that their respective responses will be submitted in a timely fashion so as not to result in any undue delay to the scheduling and resolution of either of the respective Petitions.

Dated this 30th day of October, 2006.

Respectfully Submitted,

CUTLER & DONAHOE, LLP



Ryan J. Taylor

Meredith A. Moore

100 North Phillips Avenue, 9th Floor

Sioux Falls, SD 57105

Telephone: (605) 335-4950

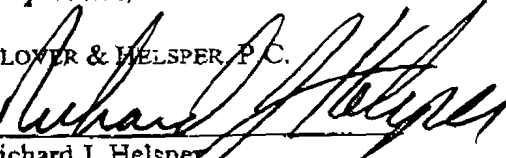
Fax: (605) 335-4966

e-mail: ryant@cutlerlawfirm.com

meredithm@cutlerlawfirm.com

Attorneys for Interstate Telecommunications
Cooperative, Inc.

GLOVER & HELSPER, P.C.



Richard J. Helsper

415 8th Street South

Brookings, SD 57006

Phone: (605) 692-7775

Fax : (605) 692-4611

email: rijh1@brookings.net

And

BLOOSTON, MORDKOFKY, DICKENS, DUFFY
& PRENDERGAST, LLP

Benjamin H. Dickens, Jr.
Mary J. Sisak
2120 L Street, NW Suite 300
Washington, DC 20037
Telephone: (202) 828-5554
Fax: (202) 828-5568
E-mail: bhd@bloostonlaw.com
mjs@bloostonlaw.com
*Attorneys for Brookings Municipal Utilities
d/b/a Swiftel Communications*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was sent via email to the following:

Patricia Van Gerpen
patty.vangerpen@state.sd.us

Talbot Wiczorek
tjw@gpgnlaw.com

Kara Van Bockern
kara.vanbockern@state.sd.us

Diane C. Browning
diane.c.browning@sprint.com

Harlan Best
Harlan.best@state.sd.us

Monica Barone
monica.barone@sprint.com

on this 30th day of October, 2006.

Meredith A. Moore