

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

In the Matter of the Petition of Brookings Municipal)
Utilities D/B/A Swiftel Communications for)
Suspension or Modification of Dialing Parity, Number)
Portability, and Reciprocal Compensation Obligations.) Docket No. TC07-007

**BRIEF IN SUPPORT OF ALLTEL’S MOTION TO COMPEL
DISCOVERY FROM BROOKINGS MUNICIPAL UTILITIES**

COMES NOW, the above-named Alltel Communications, Inc., by and through its counsel of record, Talbot J. Wiczorek of Gunderson, Palmer, Nelson & Ashmore, LLP, and Stephen B. Rowell of Alltel Communications, Inc., and hereby files this Brief in Support of Alltel’s Motion to Compel discovery from Brookings Municipal Utilities d/b/a Swiftel Communications (hereinafter “Swiftel”) requiring Swiftel to completely answer interrogatories propounded by Alltel as part of discovery. This motion is properly granted because (1) the information sought is relevant to the economic impact assertions that are presently before the Commission; (2) the requests as refined as follows are not unduly burdensome; and (3) any confidential information sought is protected under the Protective Order that governs this matter.

BACKGROUND

In 1996, Congress enacted the Telecommunications Act of 1996 (hereinafter the “Act”). This Act was intended to effectuate comprehensive changes to the 1934 Telecommunications Act. Pub.L. 104-104, 110 Stat. 56 (codified as amended in sections of Title 47, United States Code). The 1996 Act’s primary purpose, “...was to reduce regulation and encourage the rapid deployment of new telecommunications technology.” Reno v. American Civil Liberties Union, 521 U.S. 844, 857-58 (1997). Moreover, the Court noted that many of the provisions found in the Act were intended to, “promote competition in the local telephone service market, the multi-

channel video market, and the market for over-the-air broadcasting.” *Id.*; *See Also* Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, first Report and Order, 11 F.C.C.R. 15499, FCC 96-325 (1996).

Several LEC obligations are set forth in this Act under Section 251(b). These obligation include, but are not limited to: Intermodal Portability, Section 251(b)(2); Dialing Parity, Section 251(b)(3); and Reciprocal Compensation, Section 251(b)(5). 47 U.S.C. § 251(b). Pursuant to Section 251(f)(2), local exchange carriers with fewer than two percent of the Nation’s subscriber lines have the ability to petition the State Commission for a suspension or modification of the obligations found in Section 251(b).

Section 251(f)(2) states,

A local exchange carrier with fewer than 2 percent of the Nation’s subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) of this section to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification –

(A) is necessary –

- (i) to avoid a significant adverse economic impact on users of telecommunications services generally;
- (ii) to avoid imposing a requirement that is unduly economically burdensome; or
- (iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

The State commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

47 U.S.C. § 251(f)(2). In 1998, South Dakota promulgated S.D.C.L. § 49-31-80, which adopted the requirements set forth in 47 U.S.C. § 251(f)(2). Under both, the party filing the petition for suspension or modification bears the burden of establishing the above required factors. Iowa

Utilities Board v. Federal Communications Commission, 219 F.3d 744, 761 (8th Cir. 2000), *reversed in part on other grounds by* Verizon Communications Inc. v. Fed'l Communications Comm'n, 535 U.S. 467 (2002).

On January 30, 2007, Swiftel filed a Section 251(f)(2) Petition for Suspension or Modification of the following Section 251(b) obligations: Dialing Parity, Number Portability and Reciprocal Compensation Obligations. Alltel Communications, Inc. (hereinafter "Alltel"), filed a Petition to Intervene in the Swiftel proceeding on February 12, 2007.¹ An Order Granting Intervention was entered on March 30, 2007.

Alltel's First Set of Interrogatories and Document Requests to Swiftel was electronically served on June 1, 2007. Swiftel provided responses to the same which contained various objections to the subject matter sought. The parties conferred in an attempt to resolve their respective positions regarding Swiftel's responses on July 9, 2008. While some clarifications provided in that call resolved questions Alltel had, on most of the areas of concern these efforts were unsuccessful. Alltel herein seeks an Order compelling responses to Interrogatories 3, 8a, 12, 14, 20, 40, 41, 42, 43, 44; and Requests for Production 14, 30, and 33.

LEGAL ANALYSIS

Public Utilities Commission Administrative Rule 20:10:01:22.01, provides that, "The taking and use of discovery shall be in the same manner as in the circuit courts of this state."

Adhering this direction, discovery is governed by SDCL § 15-6-26(b):

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

- (1) In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether

¹ Other intervening parties include Sprint Communications Company, LP, South Dakota Network, Midcontinent Communications, South Dakota Telecommunications Association, and MCC Telephony of the Midwest, Inc. d/b/a Mediacom.

it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The discovery rules are to be accorded a “broad and liberal treatment.” Kaarup v. St. Paul Fire and Marine Insurance Co., 436 N.W.2d 17, 21 (S.D. 1989). Under S.D.C.L. § 15-6-26(b), when a party puts an issue or fact in controversy, discovery is broad in obtaining relevant information regarding the subject matter. Kaarup, 436 N.W.2d at 21. “A broad construction of the discovery rules is necessary to satisfy the three distinct purposes of discovery: (1) narrow the issues; (2) obtain evidence for use at trial; (3) secure information that may lead to admissible evidence at trial.” Id. (citing 8 C. Wright and A. Miller, Federal Practice and Procedure, § 2001 (1970)).

The South Dakota Supreme Court has stated that all relevant matters are discoverable unless privileged. Id.; S.D.C.L. § 15-6-26. Written interrogatories and production of documents are proper methods for which a party may obtain relevant information. S.D.C.L. § 15-6-26(a). Under S.D.C.L. § 15-6-26(a), the Court is to look to S.D.C.L. § 15-6-33 for the procedures which govern written discovery. South Dakota Codified Law § 15-6-33(a) states, “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.” Further, the production of documents is appropriately sought pursuant to S.D.C.L. § 15-6-34(a). South Dakota Codified Law § 15-6-37(a), provides a party a right to seek a motion to compel if discovery responses are evasive, incomplete, or if an answer or document inspection is not provided.

Under the aforementioned statutory authority, Alltel seeks an Order compelling Swiftel to respond to the following discovery requests. For the Convenience of the Commission, the

request and the related objections and/or responses are provided below. Alltel's position regarding the discoverability of the information sought follows each request and related response.

I. Interrogatory 3 Is Properly Compelled Because The Capacity Information Sought Directly Relates To Swiftel's Claimed Adverse Economic Impact Justification In Support Of Its Petition For Suspension.

Interrogatory 3: Identify Swiftel switches, interoffice transport routes, intercompany transmission facilities, points of interconnection with other carriers, and call record data collection points. Identify capacity and in-service plant associated with each switch, transport transmission equipment, route, and/or facility.

Objection: Swiftel objects to providing capacity and in-service plant associated with each, transport transmission equipment, route, and/or facility because the information requested seeks highly sensitive competitive information that is proprietary and confidential. Further, the information is not relevant and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Swiftel objects to the request as unduly burdensome.

Response: See response to Sprint Interrogatory 4.

As a preliminary matter, a Protective Order was entered on April 2, 2007. See Protective Order. Swiftel's proprietary and confidentiality objections are therefore covered under this Order.

The information sought is appropriately compelled because it will aid in the determination of whether Swiftel has existing transport capacity to mitigate its claimed expense impact. Specifically, Swiftel has alleged in its petition, and through the testimony of Peter Rasmussen, that Swiftel will be required to invest in additional transport to deliver traffic to wireless carriers. See May 23, 2007, Direct Testimony of Peter Rasmusson, pp. 15-17. To the extent that Swiftel has existing capacity on some or all of its intercarrier transport routes, such idle capacity could be used to satisfy transport requirements without incurring additional investment. As a result, the information sought is relevant to the issues before the Commission and is therefore properly compelled.

Lastly, Alltel has narrowed the request to address Swiftel's undue burden objection.

Based upon the above, Alltel requests the Commission enter an Order compelling a response to Interrogatory 3.

II. Interrogatory 8a Is Properly Compelled Because The Data Supporting Exhibit 3 Of The Petition Is Relevant To The Issues Before The Commission.

Interrogatory 8: Provide the information requested in the form attached as Discovery Template 2 (MOU data) by providing 2006 minute of use data (or data for the most recent period available), indicate whether the reported data are actual measured or estimated, and identify the records that support the responses. Provide your response in electronic form.

- (a) To the extent the MOU data provided in Discovery Template 2 differs from the MOU data used in Exhibit 3 to your Petition, explain and reconcile these differences.
- (b) To the extent the MOU data are actual, identify all usage terminating to an ISP trunk group.
- (c) To the extent the MOU data are actual, identify all usage originated to Alltel and the trunk group that carries that traffic to Alltel.

Objection: Swiftel objects to this interrogatory because it seeks information that is not relevant and that is not reasonably calculated to lead to the discovery of admissible evidence and the request is unduly burdensome. Swiftel objects to data for any service other than a service provided by Swiftel ILEC pursuant to the General Objection. Swiftel objects to Part (b) as the information requested seeks highly sensitive, competitive information that is proprietary and confidential. With respect to the template, Swiftel objects to column (a) as this information is highly sensitive, competitive information.

Response: Template 2 and MOU data is provided in Attachment Interrogatory 8. Swiftel does not have information responsive to columns c, d and g of the template.

- a) Exhibit 3 of the Petition includes a 30 day sample of the minutes originating from Swiftel subscribers to wireless providers in the MTA. These minutes are routed through the SDN tandem by an interexchange carrier (IXC). Swiftel bills switched access to the IXC and these MOU are included in Template 2 with the interstate and interstate toll for a twelve month period. Template 2 and Exhibit 3 are not reconcilable because of the time and type of traffic.
- b) Swiftel does not measure minutes use for the ISP truck group.
- c) Under the terms of the Reciprocal Interconnection Transport and Termination Agreement between Swiftel and Alltel (f/k/a Western Wireless), Swiftel does not measure originating minutes of use to Alltel.

Again, a Protective Order was entered in this proceeding on April 2, 2007. Thus, Swiftel's proprietary and confidentiality objections are therefore covered under this Order.

Swiftel's response refers to a 30 day traffic study sample. However, Exhibit 3 of the Petition only includes a summary of this data and does not provide any usage or detail of any kind. See CONFIDENTIAL EXHIBIT, attached hereto as Exhibit "A", sample pages from response. This information is essential to understanding Swiftel's claims regarding the volume of traffic it is required to transport to wireless carriers. The 30 day study will show both the volume of traffic being sent and to which carriers it is being sent. This detailed information will assist in forecasting the actual transport requirement (volume and transport location) rather than a theoretical scenario. Further, it is anticipated that the vast majority of traffic in the study will be destined to wireless carriers that have a point of presence in South Dakota and who may already have an interconnection agreement with Swiftel.

It appears that Swiftel did provide much of the related data in response to Sprint RFP 2c-3. Id. If this is accurate, then Alltel requests that the data be provided in electronic format (i.e. excel) so that it may be readily analyzed. Alltel's narrowing of the focus of this request addresses Swiftel's undue burden objection. As production of the requested information in an electronic format is relevant, and not unduly burdensome, Alltel seeks an Order compelling the same. Finally, the information does not break out the numbers by wireless carrier but Swiftel must have completed such an analysis to arrive at the wireless carriers possibly involved. Swiftel provided this for Sprint wireless but no other. See CONFIDENTIAL EXHIBIT, attached hereto as Exhibit "B." This information for each wireless carrier should also be provided.

III. Interrogatory 12 Is Properly Compelled Because The Agreement Terms Sought Are Directly Related To Swiftel's Economic Impact Claims.

Interrogatory 12: Identify the names and Operating Company Numbers (OCN) of all carriers with which you currently exchange any traffic and describe the terms of the arrangement, the nature of the traffic exchanged, how such traffic is routed, whether such traffic is recorded, and how such traffic is rated.

Objection: Swiftel objects to this question in reference to how traffic is rated and whether such traffic is recorded. The information requested is not relevant and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Swiftel further objects because the request is burdensome.

Response: Without waiving the foregoing objection, and to the extent this information is known, a listing of the names and OCN's of carriers that exchange traffic with Swiftel is provided in Sprint Interrogatory #3. For the exchange of traffic with IXCs, Swiftel follows the terms and condition in the NECA and LECA switched access tariffs. The traffic exchanged is originating and terminating switched access to and from the CEA tandem except for Qwest IntraLATA toll which is delivered via the Quest tandem. For the exchange of local traffic, Swiftel provided the agreements that provide the terms and conditions of the exchange of traffic in response to Sprint Request for Production 23. Local traffic is routed over direct or indirect connections with the identified carriers.

Preliminarily, no agreements with Qwest and Interstate were provided. The only written agreements provided were those with CMRS carriers. To the extent any other written agreements exist, Alltel seeks an Order requiring that they be provided. An Order requiring the same is appropriate because these agreements establish the terms under which Swiftel can route traffic over existing direct connections with Qwest and Interstate. Since wireless carriers are known to have customers in rate centers served by Qwest and Interstate, and it is known that Swiftel currently routes some traffic to Alltel via these carriers; these agreements will specify the extent to which these routes can mitigate Swiftel's transport cost claims especially in cases of EAS traffic.

Further, the request specifically seeks a description of the terms of agreements between Swiftel and any carriers with which Swiftel currently exchanges traffic. During the meet and confer conference, counsel for Swiftel indicated that there are unwritten terms under which these parties operate. Alltel requests these unwritten terms be explained. Further, it is unknown how production of the same would be unduly burdensome as Swiftel operates under these terms on a daily basis. For the reasons set forth above, Alltel seeks an Order compelling a description of these unwritten terms that exist between Swiftel and the carriers with which Swiftel currently exchanges traffic.

IV. Interrogatory 14 Is Properly Compelled Because The Requested Cost Sharing Information Sought Directly Relates To Swiftel's Position Regarding Economic Impact.

Interrogatory 14: If Brookings Municipal Utilities' wireless operating company (OCN 6982) is occupying any building space, land or is utilizing any equipment or power identify the Affiliate, the specific Swiftel resource occupied and/or utilized, the amount of costs allocated among the entities, services or enterprises.

Objection: Swiftel objects to the question pursuant to the General Objection. Swiftel also objects to this question because it seeks confidential, competitive information concerning a direct competitor to Alltel.

A Protective Order was entered in this proceeding on April 2, 2007. Swiftel's confidentiality objection is therefore covered under this Order.

The allocation of costs and the potential for cross-subsidization is important to validate the economic burden claims of Swiftel. Swiftel has invested at least than \$1.1M in its wireless affiliate and the Brookings Municipal Utilities Annual Report shows substantial transfer activity in its accounting consolidations between ILEC and CMRS operations. As a result, the information sought is properly compelled to afford Alltel the opportunity to address Swiftel's claimed economic impact.

V. Interrogatory 20 Is Properly Compelled Because The Requested Deployed Network Transmission Costs Are Relevant To Swiftel's Economic Impact Claims.

Interrogatory 20: Identify any detailed cost information for each transmission network project undertaken in the past five years and for each project identify if it was performed jointly with another company or an Affiliate. Include all information associated with new fiber placements over the past five years.

Objection: The information requested seeks highly sensitive competitive information that is proprietary and confidential. Further, the information is not relevant and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence and it is unduly burdensome.

A Protective Order was entered in this proceeding on April 2, 2007. Swiftel's proprietary and confidentiality objections are therefore covered under this Order.

The information sought through this request will provide a comparison between the actual cost of Swiftel's transport network and the proxy NECA pooled rate Swiftel has used as the basis for pricing transport. As a result, this information is relevant to the question of the economic burden claimed by Swiftel.

Additionally, Alltel is requesting information regarding transmission network projects undertaken in the last five years. In the event that none have been undertaken, then no burden is imposed under the request. If any have been undertaken, the information should be readily available.

VI. Interrogatory 40 Is Properly Compelled Because Any Self-Help Efforts, Or Lack Thereof, Directly Impact The Economic Burden Claimed By Swiftel.

Interrogatory 40: Describe in detail any and all efforts on the part of Swiftel to negotiate interconnection and reciprocal compensation arrangements with each of the fifteen (15) wireless carriers it has identified as operating within the MTA (see Page 4 of Adkins Direct Testimony and Page 10 lines 16-18 of Rasmussen Direct Testimony)

- a) Identify the wireless carrier contacted.
- b) Identify the dates of initial and each subsequent contact.
- c) Identify whether the issue of local routing of all intraMTA NPANXXs was discussed and, if discussed, how the issue was resolved.
- d) Identify whether the issue of direct or indirect interconnection was discussed and, if discussed, how the issue was resolved.
- e) Identify whether the issue of reciprocal compensation was discussed and, if discussed, how the issue was resolved.

Objection: Swiftel objects to this question as it seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence and it is burdensome. Swiftel also objects to part b, c, d and e of this question to the extent it seeks information concerning negotiation discussions as this information is confidential, competitive information and its production would be contrary to the Communications Act requirements of negotiations between parties and public policy principles. Swiftel further objects to part b. of this question as burdensome.

Response: Without waiving the foregoing objection, see Sprint Interrogatory 23.

A Protective Order was entered in this proceeding on April 2, 2007. Swiftel's confidentiality objection is therefore covered under this Order.

The information sought through Interrogatory 40, will address Swiftel's commitment to self-help to reduce its claimed economic burden for transport. Swiftel has been able to identify potential carriers with whom it may be required to transport traffic. Swiftel has the right (Section 20.11(f)) to enter into negotiations with any of these carries in an effort to establish efficient interconnect arrangements. In the event Swiftel has failed to pursue this path of self-help, such a failure would have a direct bearing on the validity of its economic burden claims. As this information is relevant to the issues before the Commission, Alltel seeks an Order compelling a response to Interrogatory 40.

Lastly, Alltel is requesting information regarding what actions Swiftel may have taken to avoid this expensive and prolonged suspension process. If, indeed, Swiftel has taken actions, those actions are relevant and can easily be summarized in a response. If Swiftel has taken no action, Swiftel merely needs to state as much. It is unclear how a response to the posed request creates an undue burden upon Swiftel. As a result, Alltel requests an Order compelling a response to Interrogatory 40.

VII. Interrogatory 41 Is Properly Compelled Because Is Also Addresses Self-Help Opportunities Available To Swiftel That Directly Impact Its Economic Burden Claims.

Interrogatory 41: Describe in detail any and all efforts on the part of Swiftel to encourage SDN to provide local tandem functionality for traffic originating and/or terminating to Swiftel.

- a) Identify the dates of initial and each subsequent contact concerning this matter.
- b) Identify the outcome of any such discussion and explain the rationale for that outcome.

Objection: Swiftel objects to his question pursuant to the General Objection. Swiftel objects to this question as it seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Swiftel objects to this question as it seeks confidential, competitive information.

A Protective Order was entered in this proceeding on April 2, 2007. Swiftel's confidentiality objection is therefore covered under this Order.

The subject routing alternative is being explored and tested by other SD RLECs as a means of reducing the cost of transport associated with routing traffic to wireless carriers. This option presents another self-help opportunity for Swiftel to substantially reduced its claimed economic burden that was originally suggested in Swiftel's 2004 LNP suspension proceedings. As a consequence, Swiftel's related actions, or lack thereof, directly impact an appropriate analysis of its current claimed economic burden. Therefore, Alltel seeks an Order compelling a response to Interrogatory 41.

VIII. Interrogatory 42 Is Properly Compelled Because The Customer Information Sought Is Relevant To Swiftel's Economic Impact Claims.

Interrogatory 42: Identify the number of customers of your affiliated wireless operations Swiftel PCS (OCN 6982), and how many of those customers are also a customer of your local exchange carrier (LEC) operations.

Objection: Swiftel objects to this question pursuant to the General Objection.

The information sought through this request will serve as a proxy to test the allocation of common and shared expenses between Swiftel's RLEC and CMRS operations. Brookings Municipal Utilities operates its wireless and wireline as a closely integrated enterprise. Certain financial data provided in discovery response is integrated for wireless and wireline operations. Swiftel has already provided a count of its wireline customers. A count of wireless customers will provide total picture of the customer base served and a reasonable basis for assessing the integrated Brookings Municipal financial data. As a result, it is relevant to Swiftel's claimed economic impacts. Alltel herein seeks an Order compelling a response to Interrogatory 42.

IX. Interrogatory 43 Is Properly Compelled Because The Information Sought Relates To Swiftel's Purported Economic Burden.

Interrogatory 43: Identify the amount of traffic exchanged between Swiftel's LEC operations and Swiftel's PCS (OCN 6982) operations.

- a) originated by Swiftel LEC operations and terminated to Swiftel PCS (OCN 6982)
- b) originated by Swiftel PCS and terminated to Swiftel LEC

Objection: Swiftel objects to this question because it seeks carrier specific traffic information which is highly sensitive, competitive and confidential information.

Response: Without waiving the foregoing objection, see Attachment Interrogatory 8.

A Protective Order was entered in this proceeding on April 2, 2007. Swiftel's confidentiality objection is therefore covered under this Order.

Further, this information is relevant because Swiftel's traffic exchange with its own wireless affiliate should not be included in Swiftel's claimed transport burden. This exchange information may represent a substantial portion of the total traffic exchange for which Swiftel is claiming as burdensome. Inclusion of the same is improper because no transport would be required and therefore no incremental cost would be incurred. Further, the volume of traffic exchanged between these affiliated entities operating in the same market would provide a good proxy to estimate/validate the ceiling for the volume of traffic expected to be originated by Swiftel customers to a wireless subscriber and thus extrapolated to predict overall demand.

Lastly, a cursory review of the information provided in response to Interrogatory 8 is grouped in a manner which reflects all wireless carriers. A break down of the information per carrier is necessary to properly analyze the economic burdens alleged. As a result, Alltel requests the Commission enter an Order compelling a response to Interrogatory 43.

X. Interrogatory 44 Is Properly Compelled Because The Existing Response Is Incomplete.

Interrogatory 44: Does Brookings Municipal Utilities Telephone Fund have an interconnection agreement with Qwest?

- a) If so, does that agreement contain provisions for Qwest transit services?
- b) If the interconnection agreement contains provisions for Qwest transit services, at what rate is Qwest providing those services?

Response: Swiftel ILEC does not have an interconnection agreement with Qwest.

Swiftel's response to this interrogatory is incomplete. It did not respond with respect to its CMRS carrier. It is Alltel's understanding that the Brookings Municipal Utilities Telephone Fund is parent to Swiftel CLEC and RLEC operations. In addition, it is likely that the Telephone Fund has an agreement with Qwest for transit to support wireless operations. Those transit arrangements may also be available to the RLEC operations via such an agreement. At the very least, production of any related agreement would demonstrate that Swiftel is aware such transit arrangements are readily available to its RLEC operations and would provide lower cost transport solution than what has been claimed by Swiftel. Therefore, Alltel requests that a complete response to this interrogatory be provided.

XI. Request For Production 14 Is Properly Compelled Because The Information Sought Is Relevant To Swiftel's Claims Of Economic Burden.

Request for Production 14: Provide any agreements (or the terms of any business arrangements) Swiftel has with SDN

Objection: Swiftel objects because the information requested is not relevant and it is not reasonably calculated to lead to the discovery of admissible evidence. Swiftel further objects because SDN's centralized equal access service was described in the FCC and SDPUC proceedings in which it was approved and all documents associated with those proceedings are public documents. With respect to any other business arrangements, the information requested is not relevant and it is not reasonably calculated to lead to the discovery of admissible evidence. Further, it is confidential, competitive information.

A Protective Order was entered in this proceeding on April 2, 2007. Swiftel's confidentiality objection is therefore covered under this Order.

Additionally, the information sought is relevant to the issues before the Commission: Swiftel is a 7.76% owner of SDN and Swiftel uses an SDN access tandem for all toll traffic. Swiftel also likely buys and sells special access and/or fiber optic transport capacity to/from SDN. Any agreement to buy/sell transport capacity and/or service would have a direct bearing on Swiftel's transport claims because Swiftel has utilized a proxy NECA rate to derive its transport cost impact and not actual market costs. Further, SDN provides substantial annual

dividends to Swiftel (as reported in Swiftel financials and discovery response from SDN). Swiftel is claiming a portion of its economic burden will be caused by reduction in revenues associated with traffic crossing SDN's network. Any agreements that speak to Swiftel's rights to continuing dividends and/or commitments to traffic/revenue generation and/or rights to pooled SDN revenue will be directly relevant to Swiftel's burden claims. Therefore, a Response to Request for Production 14 is properly compelled.

XII. Request For Production 30 Is Properly Compelled Because The Data Provided In The Previous Suspension Proceeding Can Provide Economic Burden Information Claimed By Swiftel.

Request for Production 30: Provide a copy of all Petitioner-specific documentation, including LNP implementation cost analysis, submitted in support of your Petition for Suspension of Intermodal Number Portability in South Dakota Docket TC04-047.

Objection: Swiftel objects to this question as burdensome because the information requested is publicly available from the Commission and was already provided to Alltel in Docket TC04-047.

There is no question that this information was produced in a prior proceeding in which Alltel was involved. However, in an effort to overcome Swiftel's claim of burden during the meet and confer conference between the parties, Alltel requested a clarification regarding whether or not Swiftel would agree to modify the confidentiality agreement in the prior proceeding to afford Alltel an opportunity to review the information for possible relevance in this proceeding. Swiftel expressly refused to modify the confidentiality agreement in the prior proceeding. In essence, Swiftel's position appears to be that Alltel cannot look at the information from the prior proceeding without running the risk of a later claim that Alltel violated the confidentiality agreement in the prior proceeding. However, Swiftel refuses to provide the information in this proceeding under a claim it would be too burdensome. As a result, Alltel requests that Swiftel either reproduce the information under the existing

confidentiality agreement, or in the alternative agree to modify the prior agreement so that the information can be reviewed for relevant information in this proceeding.

XIII. Request For Production 33 Is Properly Compelled Because An Analysis Regarding End User Rate Uses Will Afford Alltel An Opportunity To Assess The Related Portion Of Swiftel's Economic Burden Claims.

Request for Production 33: Provide a copy of any supporting analysis and/or documentation associated with any increase in basic local service rates since January 1, 2001.

Objection: The information requested is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence. Further, Swiftel objects because the request seeks confidential, competitive information.

A Protective Order was entered in this proceeding on April 2, 2007. Swiftel's confidentiality objection is therefore covered under this Order.

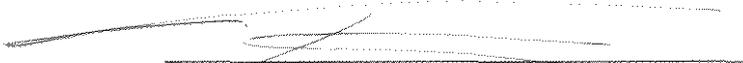
Additionally, Swiftel's assessment of the impact of local rate increases is directly relevant to the adverse impact on users and the public interest standard required for suspension. Swiftel has increased monthly local residential and business end user rates three times since 2000. Each increase should have been accompanied by an economic analysis addressing the impact on Swiftel and on its customer base. As the information is relevant to the issues before the Commission, Alltel requests an Order compelling a response to Request for Production 33.

CONCLUSION

Based upon the aforementioned arguments and authorities, Alltel Communications Inc., respectfully requests the Commission enter an Order compelling responses to Interrogatories 3, 8a, 12, 14, 20, 40, 41, 42, 43, 44; and Requests for Production 14, 30, and 33. An Order requiring the same is appropriate because the information sought is relevant to economic impact allegations raised by Swiftel in this proceeding. In addition, as delineated above the requests as refined.

Dated this 11th day of July.

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of July 2008, a true and correct copy of **BRIEF IN SUPPORT OF ALLTEL'S MOTION TO COMPEL DISCOVERY FROM BROOKINGS MUNICIPAL UTILITIES ALLTEL's MOTION TO COMPEL TO BROOKINGS MUNICIPAL UTILITIES** was sent by e-mail to:

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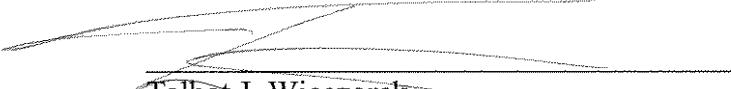
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