

**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) DOCKET TC07-007
Communications for Suspension or)
Modification of Dialing Parity, Number)
Portability and Reciprocal)
Compensation Obligations)**

**Rebuttal Testimony of
James R. Burt
On Behalf of
Sprint Communications Company L.P.**

August 8, 2008

Table of Contents

I. Introduction and Purpose of Testimony..... 1

II. Swiftel’s Interrogatory Responses..... 1

III. Response to the Direct Testimony of Mr. Dan Caldwell..... 6

IV. Response to the Direct Testimony of Mr. Dan Davis 7

1 **I. Introduction and Purpose of Testimony**

2
3 **Q. Please state your name, business address, employer and current position.**

4 A. My name is James R. Burt. My business address is 6450 Sprint Parkway,
5 Overland Park, KS 66251. I am employed as Director – Policy for Sprint Nextel.

6
7 **Q. Are you the same James R. Burt that filed Revised Direct Testimony in this**
8 **proceeding on June 6, 2007?**

9 A. Yes.

10
11 **Q. What is the purpose of your Rebuttal Testimony?**

12 A. The purpose of my Rebuttal Testimony is to supplement my Direct Testimony
13 filed on June 6, 2007 based on some of the Swiftel responses to Sprint's
14 Interrogatories and Admissions. I will also respond to the Direct Testimony of Mr.
15 Dan Caldwell testifying on behalf of South Dakota Network, LLC and Mr. Dan
16 Davis testifying on behalf of The South Dakota Telecommunications Association.

17
18 **II. Swiftel's Interrogatory Responses**

19
20 **Q. Does the Swiftel Response to Sprint Interrogatory 18 and 36 contradict the**
21 **statements made by Mr. Adkins in his Direct Testimony on pages 3-4?**

1 A. Yes. I have provided a comparison in tabular form as Attachment JRB-2. It does
2 appear that Swiftel's responses to Sprint's Interrogatory 18 and 36 contradict Mr.
3 Adkins' Direct Testimony. Mr. Adkins claims that Swiftel lost 1200 customers to
4 wireless carriers "prior to 2004" and 1550 customers to wireless carriers "since
5 2004." This contradicts Swiftel's Interrogatory Responses. As the chart in
6 Attachment JRB-2 indicates, "prior to 2004" Swiftel lost 2,286 access lines
7 compared to Mr. Adkins' testimony of 1,200 (an understatement of 90%
8 difference). The chart also indicates that "since 2004" only 415 have been lost
9 compared to Mr. Adkins' testimony of 1,550 (an overstatement of nearly 400%).

10

11 **Q. Can these differences be explained by the differences in residential versus**
12 **business access line changes?**

13 A. I do not think so. In Sprint Interrogatory 36 Sprint asked Swiftel the following
14 question.

15 Interrogatory 36: On page 3 of Mr. Adkins direct testimony he states;
16 "Since 2004, Swiftel has lost over 1,550 additional access lines."

17 Regarding those 1,550 lost access lines, please indicate;

- 18 a) The number of access lines lost as a result of an end user
19 switching to wireless service, and identify those access lines by
20 wireless service provider.
21 b) The number of access lines lost as a result of an end user
22 disconnecting a second or additional line.
23 c) The number of access lines lost as a result of an end user
24 relocating outside of the Swiftel service territory.
25 d) The number of access lines lost as a result of an end user
26 switching to a "Vonage-like" VoIP service.
27

28 Swiftel responded as follows.

1 Response: See response to Interrogatory 18. With respect to the
2 additional detail requested by Sprint in this Interrogatory, Swiftel does not
3 gather or maintain the information in the manner requested.
4

5 The context of Mr. Adkins' testimony was that the 1,550 access lines were "As a
6 result of the migration of customers from landline to wireless service." Based on
7 the fact that Sprint asked for a more detailed explanation of the 1,550 access
8 lines lost to wireless carriers and Swiftel's response that it "does not gather or
9 maintain the information in the manner requested," I have to believe they don't
10 track the information. In addition, comparing Mr. Adkins' testimony to only the
11 residential or only the business access line losses from Swiftel's interrogatory
12 response doesn't yield an explanation either. The information provided in the
13 interrogatory responses does contradict the testimony of Mr. Adkins given he
14 represents the numbers in his testimony. Given that Swiftel doesn't track its
15 access line losses or changes very closely, I'm confused as to how Mr. Adkins
16 can make the statement he makes in his testimony.
17

18 **Q. Could the differences possibly be explained by the fact that Mr. Adkins**
19 **uses general timeframes such as "prior to 2004" and "since 2004?"**

20 A. I do not think so. In Sprint Interrogatory 18, Sprint asked for business and
21 residential access lines for each of the last 12 months and for year-end 2000
22 through 2006 inclusively. Swiftel only provided annualized data for the years
23 2001 through 2006. I presume that since Sprint asked for the year 2000 and
24 Swiftel did not provide it, they don't have the information. If that presumption is

1 wrong and Mr. Adkins had it, but for whatever reason Swiftel chose not to provide
2 it to Sprint in its interrogatory response, it could mathematically account for the
3 “prior to 2004” discrepancy. However, it wouldn’t account for the “since 2004”
4 discrepancy. I say it doesn’t account for the “since 2004” discrepancy because
5 Mr. Adkins’ testimony is dated May 23, 2007 so he likely used 2006 data since
6 Swiftel apparently doesn’t keep monthly data based on the fact Swiftel did not
7 provide Sprint monthly data as requested in Interrogatory 18.

8
9 **Q. What conclusion would you draw from the discrepancy between the**
10 **testimony of Mr. Adkins and Swiftel’s responses to Sprint’s**
11 **Interrogatories?**

12 A. A reasonable conclusion would be to question the credibility and/or accuracy of
13 Mr. Adkins’ testimony or the credibility and/or accuracy of Swiftel’s interrogatory
14 responses.

15
16 **Q. How do you respond to Swiftel’s response to Sprint’s Request for**
17 **Admission 3?**

18 A. Swiftel’s response to Sprint’s Request for Admission 3 appears to ignore the
19 reality within the industry and seems to misrepresent the findings of the South
20 Dakota Public Utilities Commission (“Commission”). I will provide the request
21 and response below.

22 Request for Admission 3: Admit that wireless penetration rate in Swiftel’s
23 service territory will likely be greater when LNP is available.

1 Response: Swiftel denies this statement because the South Dakota
2 Public Utilities Commission has found that there is no demand for wireless
3 LNP. Further there is no evidence that the lack of LNP has prevented
4 customers from subscribing to wireless service.
5

6 **Q. How does Swiftel's response ignore the realities within the industry?**

7 A. It is a known fact that end-users benefit from the ability to switch service
8 providers without having to change their telephone numbers. Hundreds of
9 millions of dollars, if not billions, have been spent by service providers and end-
10 users to make LNP possible. Swiftel's witness Mr. Adkins states on page 3 of his
11 Direct Testimony that Swiftel has lost nearly 3000 end-users to wireless carriers.
12 Therefore, it is only logical that an end-user that will not switch services unless
13 they can port their number will not switch to wireless service. Even though some
14 customers will disconnect wireline service and switch to wireless service without
15 LNP, more customers will make the switch if they have the ability to port their
16 number.
17

18 **Q. Are there industry statistics that indicate there is demand for wireline to
19 wireless porting?**

20 A. Yes. The FCC's recent Annual Report and Analysis of Competitive Market
21 Conditions With Respect to Commercial Mobile Services states that 2.083 million
22 subscribers ported their numbers from a wireline carrier to a wireless carrier from

1 December 2003 through December 2006.¹ That same report stated that wireless
2 substitution for wireline service has grown significantly in recent years.²
3

4 **Q. Why do you think Swiftel's response has misrepresented the**
5 **Commission's findings?**

6 A. Swiftel states in its response that the Commission has found that there is "no
7 demand for wireless LNP." While Swiftel provides no cite for this statement it is
8 inconsistent with the Findings of Fact in TC04-047.³ The entirety of the
9 discussion in TC04-047 was on the level of demand for intermodal LNP. There is
10 not a single statement in the TC04-047 order that there "is no demand." It was
11 also recognized TC04-047 that it is difficult to determine the demand for
12 something that isn't yet available. In other words, it is difficult to determine the
13 demand for intermodal LNP in a particular market until it is actually available and
14 marketed by service providers.
15

16 **III. Response to the Direct Testimony of Mr. Dan Caldwell**
17

¹ In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 and Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, FCC WT Docket No. 07-71, FCC 08-28, Released February 4, 2008, paragraph 191.

² *Id.* paragraph 246.

³ In the Matter of the Petition of Brookings Municipal Utilities D/B/A Swiftel Communications for Suspension or Modification of 47 U.S.C. § 251(b)(2) of the Communications Act of 1934 as Amended, Amended Final Decision and Order; Notice of Entry, TC04-047 Before the Public Utilities Commission of the State of South Dakota, January 3, 2005.

1 **Q. Is Mr. Caldwell’s understanding of Sprint’s interconnection request with**
2 **Swiftel accurate?**

3 A. No. Sprint has made it very clear what its interconnection request with Swiftel
4 consists of and what it is not requesting. Sprint did explain its intent very clearly
5 in its Response to Swiftel’s Petition. Mr. Caldwell’s suggestion with respect to
6 Sprint’s request for a “multi-use facility” is inaccurate.

7

8 **Q. On page 3 and 7, Mr. Caldwell states that Sprint’s interconnection request**
9 **will remove access traffic from SDN’s centralized equal access network**
10 **and is an attempt to circumvent access tariffs and bypass the centralized**
11 **equal access network. Is Mr. Caldwell correct?**

12 A. No. Mr. Caldwell bases his statement on his incorrect understanding of Sprint’s
13 request to Swiftel. As Sprint has stated, it is not asking Swiftel to alter the way it
14 routes originating toll traffic from Swiftel end-users. Sprint’s explanation on page
15 8 and 9 and Attachment 6 of its Response to Swiftel’s Petition make it clear that
16 Sprint is not attempting to “circumvent access tariffs and bypass the centralized
17 equal access network.” Swiftel is free to route originating toll traffic from its end-
18 users however it wishes.

19

20 **IV. Response to the Direct Testimony of Mr. Dan Davis**

21

1 **Q. On page 7-8 of Mr. Davis' Direct Testimony he expresses support for**
2 **Swiftel's request that it not have to implement LNP until 4 months after**
3 **CLEC certification. Does Sprint agree to this aspect of Swiftel's request in**
4 **this proceeding?**

5 A. Yes. As I stated in my Direct Testimony on page 6, Sprint is willing to accept that
6 Swiftel will implement LNP 4 months after Sprint's CLEC certification. As I also
7 stated, Sprint interprets this offer to mean that Swiftel will begin porting numbers
8 once the 4 months has lapsed and they do not intend to begin to develop the
9 capabilities once the 4 months has lapsed.

10

11 **Q. Does this conclude your testimony?**

12 A. Yes.