

**STATE OF SOUTH DAKOTA
PUBLIC UTILITIES COMMISSION**

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
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REBUTTAL TESTIMONY OF DAN DAVIS

**ON BEHALF OF THE SOUTH DAKOTA TELECOMMUNICATIONS
ASSOCIATION**

AUGUST 8, 2008

1 **I. Background**

2

3 **Q1. Please state your name, employer and business address.**

4

5 **A.** My name is Dan Davis. I am employed with Consortia Consulting. My business
6 address is 233 South 13th Street, Suite 1225, Lincoln, Nebraska, 68508.

7 **Q2. Did you file direct testimony on behalf of the South Dakota**
8 **Telecommunications Association?**

9

10 **A.** Yes. I filed direct testimony on behalf of the South Dakota Telecommunications
11 Association on June 6, 2007 in this proceeding.

12 **Q3. Have you read the direct testimony of Mr. Randy G. Farrar on behalf of**
13 **Sprint and Mr. Ron Williams on behalf of Alltel?**

14

15 **A.** Yes.

16 **Q4. What is the purpose of your rebuttal testimony?**

17 **A.** The purpose of my rebuttal testimony is to respond to those portions of Mr.
18 Farrar's direct testimony relating to local dialing parity and originating carrier
19 transport responsibilities for local calls. I will also respond to a limited portion of
20 Mr. Williams' direct testimony regarding local dialing parity. My rebuttal
21 testimony will support a conclusion that pursuant to Section 251(f)(2)(B) of the
22 Act, it is in the public interest not to require Swiftel to provide local dialing parity
23 for calls routed to locations outside of its ILEC network.

24 **Q5. Mr. Farrar claims on page 9 of his testimony that based upon 47 C.F.R**
25 **51.709(b), the costs of interconnection facilities should be shared between two**
26 **interconnecting carriers. Do you agree with Mr. Farrar's assessment?**

27

28 **A.** No, I do not. Mr. Farrar, in Docket No. TC06-176, testified that Sprint's Point of
29 Presence was to be located in Sioux Falls. Mr. Farrar at page 19 of his testimony
30 in TC06-176 has claimed that 47 C.F.R § 51.709(b) explicitly contemplates that

1 the cost of the facilities between Sioux Falls and Brookings should be shared by
2 the carriers and he continues to make that claim here.

3 Sprint wants Swiftel to pick up a portion of the cost of facilities between the
4 Swiftel network and Sioux Falls where Sprint has decided to locate physically.
5 The facilities that Sprint would like Swiftel to share belong to Qwest, not Swiftel,
6 and the costs of those facilities are Sprint's costs, as Sprint is the one deciding not
7 to extend its network into the Swiftel network. Not only is this not in compliance
8 with the directive under the FCC rules that any POI be within the ILEC's
9 network, it is not in the public interest. I will discuss this point in response to
10 Question 7 and discussion on FCC Rule 51.305(a)(2) which requires that the POI
11 be within the ILEC's network.

12 Section 51.709 of the FCC rules is entitled the "Rate Structure for Transport and
13 Termination." According to Section 51.701 of the FCC rules, Transport is the
14 portion of the network from the interconnection point to the terminating carrier's
15 end office switch. Since the interconnection point must be within the ILEC
16 network, an RLEC calculates the transport rate from its interconnection point
17 *within its network* back to the end office switch (emphasis added). Therefore,
18 even assuming it is applicable, Section 51.709 explicitly addresses the sharing of
19 the costs of facilities of the ILEC from the interconnection point to the end office
20 switch. Nothing in this FCC rule supports the conclusion that Swiftel should
21 calculate its transport rate to include Qwest facilities that are outside of Swiftel's
22 network or to share in the cost of transport for Qwest facilities outside of the
23 Swiftel network. Moreover, as demonstrated by Swiftel, imposing the cost of

1 transport as proposed by Sprint would result in a significant adverse economic
2 impact on users of telecommunications services and it would not be in the public
3 interest. Sprint has decided to locate its physical presence outside of Swiftel's
4 network at a location in Sioux Falls and it is Sprint, not the Swiftel subscribers,
5 that is responsible for the cost of the facilities from Sprint's physical presence to
6 the Swiftel network.

7 **Q6. Mr. Farrar claims on page 14 of his testimony that the FCC stated in a**
8 **Verizon Arbitration Order, that an ILEC is financially responsible for**
9 **delivering traffic to a CLEC anywhere within the LATA where the ILEC is**
10 **located. Have you reviewed paragraph 52 of the Virginia Arbitration Order**
11 **as referenced in footnote 6 of Mr. Farrar's Testimony.**

12
13 A. Yes I have.

14
15 **Q7. Does Paragraph 52 of the Virginia Arbitration Order support Mr. Farrar's**
16 **conclusion in the context of this proceeding, that a CLEC can locate its single**
17 **point of interconnection anywhere in the LATA, in this case Sioux Falls,**
18 **thereby requiring Swiftel to be responsible to deliver its originating traffic to**
19 **Sprint's CLEC location in Sioux Falls?**

20
21 A. No, it does not. The first sentence of paragraph 52 of the Virginia Arbitration
22 Order states "Under the Commission's rules, competitive LEC's may request
23 interconnection at any technically feasible point." At the end of this statement is a
24 footnote that references the specific FCC rule which is 47 C.F.R. 51.305(a)(2).¹
25 This rule states the following: An incumbent LEC shall provide for the facilities
26 and equipment of any requesting telecommunications carrier, interconnection
27 with the incumbent LEC's network at any technically feasible point *within* the
28 incumbent LEC's network (emphasis added). Sioux Falls is not within Swiftel's
29 incumbent LEC network.

¹ 47 C.F.R. 51.305 is the FCC's attendant rule to Section 251(c) of the Act. As a rural telephone company, Swiftel is exempt from Section 251(c) pursuant to Section 251(f)(1)(A) of the Act and no party has requested termination of such exemption in accordance with 251(f)(1)(B).

1 Swiftel's ILEC network is located in Brookings, not in Sioux Falls. Thus,
2 according to FCC Rule 51.305(a)(2), any technically feasible point "within the
3 ILEC's network" would be in Brookings, not in Sioux Falls. Sprint's
4 interpretation would lead one to believe the rule states that the ILEC is required to
5 establish a POI at any technically feasible point outside of the ILEC network,
6 Sioux Falls in Sprint's example, as opposed to what the rule specifically states –
7 that the POI must be within the ILEC network.

8 **Q8. Does Mr. Farrar explain the difference between the ILEC in the Virginia**
9 **arbitration case and the ILEC in this case?**

10
11 A. No, he does not. It is apparent that it is Sprint's desire for this Commission to treat
12 Swiftel, a rural ILEC, in the same manner that it would treat a larger
13 telecommunications carrier such as Verizon with respect to interconnection
14 locations. Thus, Sprint takes the position that it can dictate the location of the
15 point of interconnection regardless of the extent Swiftel's network or the scope of
16 its service area. SDTA disagrees with Sprint's position and maintains that
17 Swiftel's obligation with respect to the point of interconnection with Sprint and its
18 financial obligations to such point is not without limits.

19 The ILEC in the Virginia Arbitration case was Verizon Virginia, Inc, part of the
20 Regional Bell Holding Company ("RBOC") of Verizon. As the predominant
21 ILEC in the state of Virginia, Verizon Virginia has ILEC facilities throughout the
22 state of Virginia, serving 4.1 million access lines, roughly 88% of the total access
23 lines in Virginia. In fact, Verizon Virginia serves approximately 10 times the total
24 access line count of South Dakota. The ILEC in this case, Swiftel serves
25 approximately 12,000 access lines within a single exchange in the town of

1 Brookings or approximately 3% of the total access lines in South Dakota. Thus,
2 when Mr. Farrar cites an FCC finding regarding a single point of interconnection
3 in a LATA, it is important to recognize the specific ILEC involved and the size
4 and scope of that particular ILEC's network. Verizon Virginia's network
5 encompasses the vast majority of the LATA in which it operates. Therefore, a
6 CLEC can establish a point of interconnection on Verizon Virginia's vast network
7 anywhere in the LATA where the ILEC network is located. Swiftel's ILEC
8 operation is confined to Brookings, not the entire LATA which encompasses the
9 entire state of South Dakota. The CLEC's point of interconnection must therefore
10 be within the Swiftel network in Brookings.

11 **Q9. What precedent would be set if the Commission denies Swiftel's Petition and**
12 **accepts Mr. Farrar's proposal regarding a single point of interconnection**
13 **anywhere within the LATA?**

14
15 A. Given South Dakota has only one LATA, Rural ILECs could be required to
16 transport local calls and to pay for such transport throughout the state to any
17 location chosen by a CLEC.

18 **Q10. Do you agree with Mr. Farrar's statement on page 25 of his testimony that**
19 **regardless of cost, it is the originating carrier that is financially responsible**
20 **to deliver its traffic to the terminating carrier's network?**

21
22 A. I do not. This entirely ignores the right given to rural carriers to suspend or
23 modify certain requirements under the Act if they can demonstrate facts sufficient
24 to meets standards of a 251 Suspension Petition. In addition, under Sprint's
25 proposal, the so called "local" interconnection facilities addressed by Mr. Farrar
26 on page 26 of his testimony, stretch beyond the required Point of Interconnection

1 location and beyond that in which Swiftel provides its own end-users to make
2 local calls to other Swiftel end-users.

3 Since FCC rule 51.305(a)(2) requires the interconnection point to be within the
4 ILEC network, the only facilities costs that would be shared would be the
5 facilities within Swiftel's network.

6 **Q11. Do you agree with Mr. Farrar's conclusion on page 25 of his testimony that,**
7 **the "Calling Party Network Pays" concept results in the conclusion that that**
8 **the originating caller, that is a Swiftel subscriber, is the cost causer and is**
9 **financially responsible for the delivery of the call to the terminating carrier?**

10
11 A. No. Mr. Farrar wants the Swiftel subscribers to pay the additional costs to route
12 the call to Sioux Falls *beyond the proper placement of the POI within the Swiftel*
13 *network* in order to make a local call to an MCC end user (emphasis added).²

14 Under Sprint's rationale, Sprint is asking the Commission to pass on to Swiftel's
15 end users the cost of Sprint's decision to locate physically at Sioux Falls, a
16 location far outside of Swiftel's ILEC network. Swiftel's subscribers did not
17 cause Sprint to decide to locate its physical presence in Sioux Falls. That decision
18 was made by Sprint, and, therefore, Swiftel's subscribers should not be held
19 financially responsible for Sprint's decision. The point of interconnection
20 between Sprint and Swiftel should be located within Swiftel's network.

21 Sprint, in conjunction with its business relationship with MCC, is going to compete
22 with Swiftel for Swiftel's wireline subscribers in Brookings. It makes no sense for
23 Sprint/MCC to compete for Swiftel's wireline subscribers in its ILEC service area
24 in Brookings, but then require Swiftel to route local wireline-to-wireline calls and
25 to pay costs of transporting local calls to a location removed from the location in

² The fact that MCC may have contracted with Sprint to perform switching on behalf of MCC does not change where the proper placement of the POI must be located.

1 which Sprint/MCC has chosen to compete. Yet this is precisely what the Sprint is
2 proposing. Such a proposal would require Swiftel to incur the cost of facilities to
3 a location in Sioux Falls even though Swiftel has no intent to compete with Sprint
4 in Sioux Falls. Contrary to Sprint's assertion, Swiftel's subscribers do not benefit
5 from incurring the cost imposed on them when local wireline-to-wireline calls are
6 routed outside of the network serving them to Sioux Falls based on Sprint's
7 independent decision that it will physically locate in Sioux Falls. Again, Mr.
8 Farrar wants the Commission to order a superior form of transport for local calls
9 to Sprint and then have Swiftel's end users pay for it.³

10 In other words, when a Swiftel subscriber calls another Swiftel subscriber as a
11 local call, the originating Swiftel subscriber does not incur costs to route that local
12 call to a location outside of the Swiftel ILEC network, say to Sioux Falls. Or, as
13 stated in my direct testimony, where two carriers interconnect for purposes of
14 exchanging local traffic, as in the case of a traditional Extended Area Service
15 (EAS) arrangement, a POI between the two networks is established and each
16 carrier takes responsibility for transport to that POI. Based on FCC rules cited
17 above, the POI, for purposes of exchanging local traffic, must be on the
18 incumbent LEC's network. This limitation is consistent with the obligations
19 imposed on interconnecting carriers in traditional direct interconnect situations
20 and is determinative in defining the responsibilities of incumbent carriers in
21 delivering traffic. Again, in the case of an EAS arrangement, the Swiftel

³ FCC Rule 51.305(a)(3) requires the ILEC to provide interconnection that is at a level of quality that is equal to that which the incumbent LEC provides itself.

1 originating Swiftel subscriber does not incur costs to route that local call to a
2 location outside of the Swiftel ILEC network.

3 **Q12. Mr. Williams, on page 6 of his direct testimony, states that dialing parity is a**
4 **concept and requirement that simply allows a customer within a local calling**
5 **area to reach telephone numbers assigned to customers within that local**
6 **calling area using the same dialing pattern without incurring toll or long-**
7 **distance charges. Do you agree with Mr. Williams' assessment?**

8
9 A. Yes and no. I agree that FCC rule 51.207 states that “A LEC shall permit
10 telephone exchange service customers within a local calling area to dial the same
11 number of digits to make a local call notwithstanding the identity of the
12 customer’s or called party’s telecommunications service provider.” I don’t agree
13 that FCC rule 51.207 states anything about “without incurring toll or long-
14 distance charges”

15 **Q13. Does this conclude your rebuttal testimony?**

16 A. Yes.

17
18