
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

<p>In the Matter of</p> <p>The Petition of Sprint Communications Company, L.P. for Arbitration Pursuant to the Telecommunications Act of 1996 to Resolve Issues Relating to an Interconnection Agreement with Brookings Municipal Utilities d/b/a Swiftel Communications.</p> <p>The Application of Sprint Communications Company L.P. for a Certificate of Authority to Provide Local Exchange Service in the Brookings Exchange</p> <p>The Application of MCC Telephony of the Midwest, Inc., d/b/a Mediacom for a Certificate of Authority to Provide Interexchange and Local Exchange Services in the Brookings Exchange</p> <p>The Petition of Brookings Municipal Utilities d/b/a Swiftell Communications for Suspension or Modification of Dialing Parity, Number Portability, and Reciprocal Compensation Obligations</p>	<p>Docket No. TC06-176</p> <p>Docket No. TC06-178</p> <p>Docket No. TC06-188</p> <p>Docket No. TC07-007</p>
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SETTLEMENT AGREEMENT AND STIPULATION

WHEREAS, Sprint Communications Company, L.P. (Sprint) filed the above-referenced Petition for Arbitration seeking the arbitration of an Interconnection Agreement (Agreement) between itself and Brookings Municipal Utilities d/b/a Swiftel Communications (Swiftel); and

WHEREAS, Sprint filed the above-referenced petition seeking a certificate of authority in Swiftel's service area; and

WHEREAS, MCC Telephony of the Midwest, Inc. d/b/a Mediacom (MCC) filed the above-referenced petition seeking a certificate of authority in Swiftel's service area; and

WHEREAS, Swiftel has filed the above-referenced petition seeking the suspension and/or modification of certain provisions of the Communications Act of 1934, as amended; and

WHEREAS, Swiftel, Sprint and MCC (the Parties) desire to resolve their disputes in these dockets;

NOW, THEREFORE, the parties hereby agree and stipulate as follows:

I. Sprint and Swiftel agree to resolve the issues raised in the Petition for Arbitration.

1. The Parties agree to resolve Issue No. 1 "Should the definition of End User in this Agreement include end users of a service provider for which Sprint provides interconnection, telecommunications services or other telephone exchange services?" by revising the Interconnection Agreement (ICA) to state the following:

A. Sprint will be responsible for the payment of compensation to Swiftel for all of Sprint's originating wireless and wireline traffic which is exchanged pursuant to this agreement.

B. Sprint agrees that at the time of this agreement, third party traffic is currently limited to cable companies such as Mediacom. Sprint will provide notice to Swiftel if another company becomes an active third party during the term of the agreement.

C. Section 1.1 will be revised as follows: 1.1 This Agreement may be used by Sprint to provide retail services to residential or business subscribers or wholesale services to third-party last mile providers, Sprint's End Users. The third-party Telecommunications Traffic, Intra MTA CMRS Traffic, and Traffic subject to access Sprint delivers to ILEC, is treated under this Agreement as Sprint Traffic, and all billing

associated with the Telecommunications Traffic and Traffic subject to access will be in the name of Sprint subject to the terms and conditions of this Agreement.

D. Section 2.7 will be revised as follows:

2.7 End user means the residential or business subscriber of telecommunications services provided by either of the Parties or, when Sprint has a business arrangement with a third party last mile provider for interconnection services, the ultimate user of voice services provided by the last mile provider.

E. Section 20.6 will be revised as follows:

20.6- First sentence renumbered 20.6A. Remainder renumbered 20.6B and modified as follows:

Sprint has indicated that it has or intends to use the services provided herein for its wholesale customers. The Parties specifically agree that ILEC's responsibilities hereunder are only to Sprint and not any such "wholesale customer" and, correspondingly, Sprint is obligated to comply with all provisions of this Agreement for traffic it originates from and terminates to such wholesale customers served by Sprint. Notwithstanding any limitation of liability in Section 18 or indemnification in Section 19, Sprint shall indemnify ILEC if any such wholesale customer bills and ILEC pays for the same services that are covered by this Agreement. The preceding sentence does not apply to any tort action or claim that any "wholesale customer" or ILEC may have against each other outside the obligations of this Agreement. The parties agree to cooperate with each other in conducting any investigation to determine whether a Sprint wholesale customer is billing for the same services covered by this Agreement.

If it is shown that a Sprint wholesale customer is billing for the same services covered by this Agreement, Sprint shall reimburse Swiftel for its fees and costs to conduct the investigation.

If any wholesale customer of Sprint implements an interconnection agreement with Swiftel pursuant to Section 251 of the Act, and exchanges traffic pursuant to that agreement, Swiftel's obligation to Sprint under the Agreement with respect to the traffic of said wholesale customer is terminated.

2. The Parties agree to resolve Issue No. 2 "Should arbitration of certain terms and conditions of interconnection be obtained under Section 251 (a) of the Telecommunications Act?" "Should interconnection provisions be included in the interconnection agreement if the following proposal is adopted/accepted?" as follows:

A. With respect to whether interconnection should be arbitrated, the parties agree to drop that issue.

B. Sprint agrees to direct connection and the Parties agree to revise the ICA as follows:

1. The Parties will establish a direct physical interconnection at Swiftel's central office in Brookings. Each Party is financially responsible for the interconnection facility on its own side of the service territory boundary.

2. The indirect interconnection language will be removed from the agreement.

3. Section 4.1 will be revised as follows:
Each party will establish a direct physical interconnection at Swiftel's central office in Brookings.

3. The Parties agree to resolve Issue No. 3 "Should the Interconnection agreement permit the Parties to combine wireless and wireline traffic on interconnection trunks?" as follows:

A. The following language would be added to the agreement:

For purposes of this interconnection agreement, for calls that originate from an ILEC landline customer and terminate to a Sprint wireless customer, the ILEC may continue to route the calls as they are routed prior to the contract taking effect. The ILEC is not required to route ILEC-originated calls over the interconnection facility to Sprint and through Sprint's local network.

B. Language would be added to the agreement which states: Swiftel can continue to route calls from its subscribers to points outside of its service territory as toll calls, even if they terminate to a Sprint wireless customer in the MTA.

4. The Parties agree to resolve Issue No. 4 "Should the Interconnection agreement permit the Parties to combine all traffic subject to reciprocal compensation and traffic subject to access charges onto the interconnection trunks? As follows:

A. Sprint agrees to withdraw its request for multijurisdictional trunks and will conform the agreement accordingly.

B. The agreement will include the following language: Sprint may send local wireline and intraMTA wireless traffic terminating to Swiftel over the

interconnection facility established pursuant to this Agreement but shall not send any traffic subject to access over the same facility.

5. The Parties agree to resolve Issue No. 5 “What is the appropriate reciprocal compensation rate for the termination of Telecommunications Traffic, as defined by Sprint in the Agreement? As follows:

A. The following language will be added to the agreement:

“The Parties assume and agree that the exchange of Telecommunications Traffic is either roughly balanced or *de minimus* unless traffic studies indicate otherwise. Accordingly, an initial Bill and Keep arrangement will be in place between the Parties. In the event that either Party’s originating/terminating ratio exceeds 60%/40% established through a minimum of three (3) consecutive months of traffic data, then a reciprocal compensation rate of \$0.007 will apply beginning on the first month following the 3 month threshold period. At such time when the parties have determined the traffic is out of balance and the rate applies, if the monthly bill for terminating such traffic results in a net payment between the Parties of less than \$500.00, within any individual month, neither Party will bill the other for Telecommunications Traffic for that month’s traffic. If traffic volumes fall below the 60%/40% threshold established through a minimum of three (3) consecutive months of traffic data, Bill and Keep will be established in lieu of the rate, beginning on the first month following the 3 month threshold period.

Notwithstanding the above, and in order to address traffic stimulation activities by the terminating party, if through a minimum of three consecutive months, one party originates 80% or more of the Telecommunications Traffic or the volumes of traffic originated by one Party increases by 200% or more for the year-ago three-month period (Traffic Increase) either party may request renegotiation of the reciprocal compensation rate and the terms and conditions in connection with reciprocal compensation. The renegotiation period will be for 3 months from the day renegotiation was requested. During the renegotiation period, Telecommunications Traffic will be exchanged at Bill and Keep. If the Parties are unable to renegotiate the reciprocal compensation rate and the terms and conditions in connection with reciprocal compensation during the renegotiation period, the dispute will be submitted to the state commission for arbitration. The reciprocal compensation rate that results from negotiation or arbitration will be applied retroactively to the date the Traffic Increase began.

6. The Parties agree to resolve Issue No. 6 Local Number Portability as follows:

A. For purposes of this agreement only, Sprint agrees to Swiftel’s proposal to implement LNP 4 months after Sprint is certified and the agreement will be changed accordingly.

B. The Parties agree to replace Section 9 of the agreement with the following:

9. Local Number Portability (LNP)

9.1. The Parties shall provide LNP query, routing, and transport services in accordance with rules and regulations as prescribed by the FCC and the guidelines set forth by the North American Numbering Council ("NANC"). However, if the provisions in this Agreement conflict with the industry guidelines regarding routing and transport, the Agreement shall govern. The applicable charges for LNP query, routing, and transport services shall be billed in accordance with each Party's applicable tariff or contract.

9.2. Both Parties will perform testing as specified in industry guidelines and cooperate in conducting any additional testing to ensure interoperability between networks and systems. Each Party shall inform the other Party of any system updates that may affect the other Party's network and each Party shall, at the other Party's reasonable request and, perform tests to validate the operation of the network.

9.3. The Parties agree that Traffic will be routed via a Location Routing Number ("LRN") assigned in the accordance with industry guidelines. However, if the provisions in this Agreement conflict with the industry guidelines regarding routing, the Agreement shall govern.

9.4. Coordinated LNP Activities During Non-Business Hours. There will be no premium charges between the Parties or compensation provided by one Party to the other Party for the coordinated routine LNP activities between the normal business hours of 8:00 a.m. and 3:00 p.m. LNP requests received after 3:00 p.m. will be considered to have been received the following business day and will not be assessed a premium charge. If an "LNP Date Modifications/ End User Not Ready" request is made outside normal business hours (if available) or is made within normal business hours and requires additional internal or outside work force, the Requesting Party (i.e. the Porting Party or the New Service Provider) will be assessed an Expedited Order Charge.

9.5. Each Party is responsible for obtaining a authority from each End User initiating LNP from one Party to the other Party. The Parties agree to follow Federal, and where applicable State rules.

9.6. The Parties agree to coordinate the timing for disconnection from one Party and connection with the other Party when an End User ports his or her telephone number.

9.7. Combined LNP Requests. Each Party will accept LNP requests from the other Party for one End User that includes multiple requests for LNP only where the End User will retain each of the telephone numbers identified in the LNP request.

9.8. The Parties agree that LNP will be implemented and provided pursuant to the Agreement 4 months after the Commission grants Sprint's Certificate of Authority.

9.9. The Parties agree to comply with the porting interval established by applicable FCC rules or orders.

7. The Parties agree to resolve Issue No. 7 Directory Listings as follows:

- A. Section 15.3 Sprint agrees to remove last sentence from Section 15.3.
- B. Section 15.4 Sprint agrees to accept Swiftel's proposed language (last sentence in Section 15.4).
- C. Section 15.5 Sprint agrees to remove the bold/underlined language.
- D. Section 15.9 Sprint agrees to Swiftel's added language (last sentence in Section 15.9).
- E. The parties agree to change Section 15.12 to state that ILEC will provide one auditable copy of listings of End Users per year (instead of twice per year). Typically this would occur prior to the publish date.
- F. The Parties agree to change Section 15.14.1 as follows:
 - a. To the extent ILEC maintains its own Directory Assistance Database, ILEC will include and maintain Sprint subscriber listings in ILEC's directory assistance databases at no charge.
 - b. In the case of rate centers and markets where ILEC does not maintain its own Directory Assistance Database Sprint will obtain its own agreement with the Directory Assistance Provider. ILEC will not interfere with Sprint to obtain the necessary documentation to conduct an audit related to this service.

G. The Parties agree to change Section 15.5 as follows:

Sprint's End Users' standard primary listing information in the telephone directories will be provided at no charge. Sprint will pay Telco's charges as contained in Telco's general subscriber service tariff, for additional and foreign telephone directory listings that may be assessed to its End Users. No other charges will apply to directory listings.

8. The Parties agree to resolve Issue No. 8 Termination Clauses in Agreement (Sections 17.3 and 17.5) as follows:

- A. The Parties agree to change 17.3 as follows:

Either party may seek to terminate this Agreement by providing written notice to the other Party at least sixty (60) days prior to expiration of the initial term or any succeeding term. If either party sends a timely notice to terminate and the other

party replies with a timely notice for re-negotiation under section 18.2, this Agreement will continue in full force and effect until a new Agreement is effective through either negotiation, mediation or arbitration under 47 U.S.C. 252.

B. The Parties agree to change 17.5 as follows:

Either Party may terminate this Agreement for cause upon thirty (30) days written notice if (a) the other Party's authority to provide the services provided herein is revoked or terminated or (b) the other Party is insolvent, or files for bankruptcy. Termination of this Agreement for any cause shall not release either Party from any liability which at the time of the termination had already accrued to the other Party or which thereafter accrues in any respect for any act or omission occurring prior to the termination relating to an obligation which is expressly stated in this Agreement.

9. The Parties agree to resolve Issue No. 9 911 Liability as follows:

A. Sprint agrees to remove the underlined language in the following section. "To the extent that a Party incorrectly routes such Traffic, that Party shall fully indemnify and hold harmless the other Party for any claims, including claims of third parties, related to such calls to the extent liability is not limited under federal or state law."

10. The Parties agree to resolve Issue No. 10 Force Majeure – (Sections 20.1, 20.4, 20.5, 20.6) as follows:

A. Sprint agrees to Swiftel's changes to sections 20.1, 20.4 and 20.5.

11. The Parties agree to revise Section 35.8 Regulatory Changes by adding a new sentence 2 as follows:

If a Federal or State regulatory agency or a court of competent jurisdiction issues a rule, regulation, law or order which has the effect of limiting or modifying Sprint's authority to provide local exchange service in Swiftel's service area, then the Parties shall negotiate in good faith to modify this Agreement in a manner consistent with the form, intent, and purpose of this Agreement as necessary to reflect such rule, regulation, law or order.

12. The Parties agree to revise Section 1.7 as follows:

The Parties agree that this Agreement excludes all Internet Service Provider (ISP) and ISP bound Traffic.

13. The Parties agree to revise Section 2.21 as follows:

Telecommunications Traffic is as defined in 47 C.F. R. 51.701(b), subject to 251(b)(5) and excludes CMRS Traffic.

14. The Parties agree to modify any other terms and conditions of the agreement as necessary to conform with the issues agreed to in this settlement and stipulation within 45 days.

II. Docket No. TC07-007 – Swiftel 251(f)(2) Proceeding

1. Part II (LNP) of the Petition – As part of this settlement proposal, Sprint agrees to the 4 month period Swiftel requests.
2. Part III A. As part of this settlement, Sprint agrees to direct connection and to be financially responsible for the facilities up to the exchange boundary.
3. Part III. B. Sprint is not requesting Swiftel to re-route its wireline traffic terminating to Sprint PCS over the local interconnection trunks or to change the dialing pattern of Swiftel customers. Please see proposed language above regarding Multi-use (section 5.6.4.).
4. Part III C. Multijurisdictional – As part this settlement, Sprint agrees to withdraw its request to deliver access traffic over the interconnection facility. (800/1010XXX traffic originating from Sprint/Mediacom.) Also, Sprint is not asking Swiftel to re-route its traffic or change the dialing pattern of its customers.
5. Part IV – Sprint agrees the ICA does not require Swiftel to pay reciprocal compensation to a wireless carrier.
6. Based on the terms and conditions of this Settlement and Stipulation, Swiftel will seek to withdraw its Suspension Petition without prejudice and Sprint and MCC will support Swiftel's request.

III. COA PROCEEDINGS

1. Based on the terms and conditions of this Settlement and Stipulation, Swiftel will seek to withdraw from the COA proceedings.

IV. PROCEDURAL ISSUES

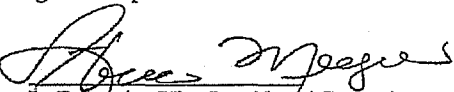
1. The Parties agree that this Settlement Agreement and Stipulation may be signed in counterpart and transmitted by facsimile.

2. The Parties agree to ask the Commission to delay the hearing in Docket 07-007, which is scheduled to begin on August 26, 2008, to allow the Commission to take any action necessary to rule on this Settlement Agreement and Stipulation before the hearing.

SIGNATURE PAGE TO FOLLOW


DATED this 16th day of August, 2008.

Brookings Municipal Utilities d/b/a Swiftel Communications

By: 
Its Executive Vice President / General Manager

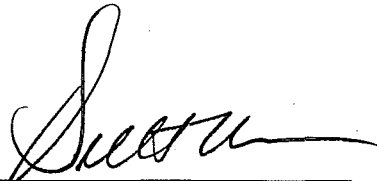
DATED this 18 day of August, 2008.

Sprint

By: 
Its William Bret Lawson
Counsel

DATED this 18 day of August, 2008.

MCC

By: 
Its Cowleywood