

**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)	DOCKET NO.
OR MODIFICATION OF DIALING PARITY,)	
NUMBER PORTABILITY AND RECIPROCAL)	
COMPENSATION OBLIGATIONS)	

**PETITION FOR SUSPENSION OR MODIFICATION
OF DIALING PARITY, NUMBER PORTABILITY AND RECIPROCAL
COMPENSATION OBLIGATIONS**

Pursuant to Section 251(f)(2) of the Communications Act of 1934, as amended (the Act), and South Dakota Codified Laws SDCL § 49-31-80, Brookings Municipal Utilities d/b/a/ Swiftel Communications (Swiftel or Petitioner) hereby respectfully requests that the Public Utilities Commission of the State of South Dakota (Commission) grant a suspension or modification of Sections 251(b)(2), 251(b)(3) and 251(b)(5) of the Act.

SUMMARY OF MODIFICATIONS REQUESTED

This Petition requests that the Commission exercise its authority to address the effect of number portability, dialing parity and reciprocal compensation on Swiftel and its subscribers and to grant a modification of these requirements as discussed herein. The number portability requirement pursuant to Section 251(b)(2) of the Act states that all local exchange carriers (LECs) have “[t]he duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission. The FCC’s regulations in connection with this requirement as it applies to wireline to wireline number portability, only requires porting where the LECs have facilities within the same rate center. Swiftel requests a

modification of the wireline local number portability (LNP) requirement until 4 months after a competitive LEC is certificated to provide service in Swiftel's service territory. Swiftel also requests a modification of this requirement to the extent that it would require Swiftel to pay for the transport of ported numbers beyond its service territory.

The dialing parity requirement pursuant to Section 251(b)(3) of the Act states that all LECs have "[t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays."¹ The FCC's regulation on this section states that "[a] LEC shall permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identity of the customer's or the called party's telecommunications service provider."² Swiftel requests modification of wireline local dialing parity to make clear that Swiftel is not required to pay for the transport of local calls to a point beyond its service territory.

As a result of its interpretation of the Act and the FCC's finding that the major trading area (MTA) is the "local" area for wireless carriers for the purpose of reciprocal compensation, it appears that the U. S. Court of Appeals for the Eighth Circuit has ruled that all calls that originate and terminate within the MTA, even calls that go beyond the LEC's local calling area, are subject to the local dialing parity requirement. According to the Court, such calls must be delivered at the LEC's expense to the wireless carrier's point of interconnection, even if that point is outside of the LEC's service territory. In the case of Swiftel, calls that terminate beyond Swiftel's service territory and within the MTA are handed off to the calling party's presubscribed

¹ 47 U.S.C. §251(b)(3).

² 47 C.F.R. §51.207.

interexchange carrier. For these calls, the calling party must dial the call as a toll call and Swiftel does not pay to transport the call. Swiftel requests a modification of the dialing parity requirement to the extent that it requires Swiftel to allow its customers to dial toll calls as local calls and to the extent that it requires Swiftel to transport calls beyond the wireline local calling area.

Swiftel also requests a modification of the toll dialing parity requirement to the extent it requires Swiftel to perform the equal access function at the end office or establish access traffic transport facilities other than the common trunks to South Dakota Network (SDN). Swiftel also asks the Commission to modify any requirement that Swiftel would not be able to collect access charges for toll traffic.

The reciprocal compensation requirement pursuant to Section 251(b)(5) of the Act states that all LECs have “[t]he duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.”³ Based on their interpretation of the Act and the FCC’s finding that the MTA is the “local” area for wireless carriers for reciprocal compensation purposes, some courts have found that a LEC also must pay reciprocal compensation to a wireless carrier for calls that originate and terminate within the MTA, even if the call is a toll call that the LEC hands off to the calling party’s presubscribed interexchange carrier (IXC). In the case of Swiftel, calls that terminate beyond Swiftel’s service territory and within the MTA are handed off to the calling party’s presubscribed interexchange carrier. For these calls, Swiftel receives originating access charges from the interexchange carrier and the interexchange carrier receives compensation from the calling party. Swiftel does not pay reciprocal compensation to the terminating carrier, even if that carrier is a wireless provider, for such calls. Swiftel requests a modification of the reciprocal compensation requirement such that

it is not required to pay reciprocal compensation on traffic terminating to a wireless carrier within the MTA that is handed off to an IXC in accordance with Swiftel's wireline local calling area.

As demonstrated herein, the statutory criteria for the modifications requested are met. A grant of this Petition will permit the Commission to ensure that the public interest, convenience and necessity are not undermined.

SECTION 20:10:32:39 REQUIREMENTS

The following information is provided in accordance with Section 20:10:32:39 of the Commission's rules.

(1) The applicant is Brookings Municipal Utilities d/b/a Swiftel Communications located at 525 Western Avenue, Brookings, South Dakota 57006. The designated contacts are:

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(2) As of 2006, Swiftel had approximately 12,500 subscriber lines nationwide.

³ 47 U.S.C. §251(b)(5).

(3) Swiftel seeks to modify the number portability, dialing parity and reciprocal compensation obligations in 47 U.S.C. §251(b)(2), (b)(3) and (5) of the Act.

(4) Swiftel requests modification of the local number portability requirement such that it is not required to implement wireline local number portability until 4 months after a competitive LEC is certified to provide local service in Swiftel's service territory. Swiftel also requests modification of the local number portability requirement such that Swiftel is not required to transport ported numbers beyond its service territory. Swiftel requests modification of the dialing parity requirement such that Swiftel is not required to provide local dialing and it is not required to transport traffic outside of its service territory. Swiftel also requests modification of the toll dialing parity requirement such that Swiftel is not required to perform the equal access function at the end office or establish access traffic transport facilities other than the common trunks to South Dakota Network (SDN). Swiftel also asks the Commission to modify any requirement that Swiftel would not be able to collect access charges for toll traffic. Swiftel requests a modification of the reciprocal compensation requirements such that it is not required to pay reciprocal compensation on traffic terminating to a wireless carrier within the MTA that is handed off to an IXC in accordance with Swiftel's wireline local calling areas. Swiftel also requests immediate temporary suspension of the 251(b)(2), (3) and (5) requirements as described above pending this Commission's consideration of this request.

(5) Swiftel requests that the modification of Sections 251(b)(2), (3) and (5) be effective on release of the Commission's order in this proceeding. Swiftel requests that the temporary suspension of Sections 251(b)(2), (3) and (5) be effective immediately.

(6) The information supporting this petition is contained on pages 5 through 21 and Exhibits 1-7 of this Petition.

(7) Swiftel requests that the Commission grant a temporary stay or suspension of the number portability, dialing parity and reciprocal compensation requirements in Sections 251(b)(2), (3) and (5) of the Act.

THE PETITIONER MEETS THE REQUIREMENTS OF SECTION 251(f)(2)

The Petitioner is a rural telephone company as defined by the Act and provides telecommunications services within South Dakota. Petitioner provides local exchange, exchange access and other telecommunications services to subscribers within its South Dakota service area, with a total of approximately 12,500 subscriber lines.

The Petitioner satisfies the criteria set forth in Section 251(f)(2), which provides in pertinent part, that “a local exchange carrier with fewer than two percent of the Nation’s subscriber lines installed in the aggregate nationwide may petition a state commission for a suspension or modification”⁴ of the local dialing parity and reciprocal compensation requirements. Pursuant to Section 251(f)(2), the Commission shall grant a petition for suspension or modification to the extent that, and for such duration as, the 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.⁵

⁴ 47 U.S.C. § 251(f)(2).

⁵ 47 U.S.C. § 251(f)(2).

Section 251(f)(2) of the Act requires the Commission to act on this application within 180 days after receipt. Pending such action, the 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) and SDCL 49-31-80.

Petitioner has received a request for local number portability, dialing parity and reciprocal compensation that will be affected by this Petition from Sprint Communications Company, L.P. (Sprint). In addition, because of the ability of carriers to opt-in to any approved LEC interconnection agreement,⁶ all other telecommunications carriers operating in Swiftel’s service area will be able to obtain local number portability, dialing parity and reciprocal compensation on the same basis approved in any agreement. Accordingly, this Petition also discusses the additional impact of these requirements for other carriers as well.

ARGUMENT

I. Summary

This Petition requests that the Commission grant a modification of number portability, dialing parity and reciprocal compensation as these requirements apply to Swiftel. As demonstrated herein and in Exhibits 1 through 7 (incorporated herein by reference), without the modification, the Petitioner will experience substantial costs to implement number portability, dialing parity and reciprocal compensation and a decline in revenues, which will have a significant adverse economic impact on users of telecommunications services generally and will be economically burdensome. Also, as shown herein, grant of the requested modifications is consistent with the public interest, convenience and necessity. Accordingly, for the reasons provided herein, the Petitioner respectfully requests that the Commission grant its requested modifications of number portability, local dialing parity and reciprocal compensation.

II. The Criteria in Section 251(f)(2) for Granting Relief Are Met in Connection with LNP

Swiftel requests a modification of wireline to wireline LNP in two respects. First, Swiftel asks that it not be required to implement wireline LNP until 4 months after a competitive LEC is certificated to provide service in its service territory. Second, Swiftel asks that it not be required to transport ported calls beyond its wireline local calling area or service territory.⁷

As shown in Exhibit 1A, Swiftel estimates that the costs of implementing LNP would be \$104,600 in non-recurring costs and \$3,920 in monthly recurring costs. Assuming a 5-year period to recover the non-recurring costs, Swiftel's additional cost per line to implement LNP would be \$0.52 per line per month. If Swiftel is required to pay for the transport of ported numbers beyond their service territory, costs for LNP would be as shown in Exhibit 1B. Assuming a 5-year period to recover the non-recurring costs, Swiftel's additional cost per line to implement LNP would be \$1.11 per line per month. Swiftel notes that the cost of transport in Exhibit 1B would increase if it is required to transport ported calls to additional carriers. The cost of transport also would be higher if any carrier's POP is farther away than Sioux Falls, because the cost of transport is distance sensitive.

As shown, the cost of wireline LNP is significant. Swiftel contends that the cost would have a significant adverse economic impact on users of telecommunications services generally, especially in light of the fact that Swiftel's subscribers cannot port numbers. This is so because currently no competitive wireline telecommunications carrier is authorized to provide local service in Swiftel's service territory. Therefore, there is no ability to port numbers at this time. Although Sprint and MCC have applied for certification, it is not clear whether those

⁶ 47 U.S.C §252(j).

applications will be granted. In fact, both applications appear defective. Swiftel and its subscribers should not be required to incur the cost of LNP when there is no possibility that numbers may be ported. Thus, Swiftel requests modification of the wireline LNP requirement such that it is not required to implement wireline LNP and bear the cost of such implementation until 4 months after a competitive wireline carrier is authorized to provide service in Swiftel's service territory. This modification will ensure that Swiftel's subscribers are required to bear the cost of LNP only when they are able to benefit from LNP and, therefore, it is consistent with the public interest, convenience and necessity.

Even after this time, however, Swiftel requests a modification of wireline LNP such that it is not required to transport calls to ported numbers beyond its service territory. Wireline to wireline LNP is only required for customers in the same rate center. In this case, Swiftel operates in the Brookings, South Dakota rate center and Sprint has requested certification as a competitive LEC for Swiftel's service territory.⁸ Even though local calls between customers of Swiftel and Sprint would originate and terminate within Swiftel's service territory, it appears that Sprint would have Swiftel and its subscribers incur the cost of transporting those calls to Sioux Falls (or beyond). There is no justification for such a result, except that Sprint would like to shift the cost of implementing its network to Swiftel and Swiftel's subscribers.

As shown in Exhibit 1B, the cost of transport in connection with wireline to wireline ported calls also is significant and would impose a significant adverse economic impact on users of telecommunications services generally. Moreover, the local service area requested by Sprint is Swiftel's service territory. Accordingly, there is no basis to contend that ported wireline local calls should include transport beyond Swiftel's service territory. Therefore, the Commission

⁷ Swiftel's wireline local calling area is the same as its service territory.

⁸ MCC also has requested certification as a competitive LEC for Swiftel's service territory.

should grant a modification of wireline to wireline LNP such that Swiftel is not required to transport ported wireline calls beyond its service territory.

This modification will not prevent Sprint or any other competitive carrier from implementing its network in the manner that it wants. It simply will ensure that Sprint, or any other competitor, cannot shift those costs to Swiftel and its subscribers. Accordingly, the modification is consistent with the public interest, convenience and necessity.

III. The Criteria in Section 251(f)(2) for Granting Relief Are Met in Connection with Dialing Parity

Swiftel requests a modification of local dialing parity in connection with wireline to wireline calls and wireline to wireless calls. Swiftel also requests a modification of toll dialing parity.

A. Wireline Local Dialing Parity

Local dialing parity requires local calls to be dialed and transported on a local basis. In the case of wireline local calls, Swiftel subscribers dial local calls on a seven-digit basis. Swiftel does not transport local calls beyond its service territory. Calls that are transported beyond Swiftel's service territory must be dialed on a one plus ten-digit basis and are routed to South Dakota Network (SDN).⁹

It appears that Sprint would have Swiftel transport wireline local calls beyond Swiftel's service territory. Thus, even though a wireline to wireline call would originate and terminate within Swiftel's service territory, it appears that Sprint would require Swiftel to pay to transport such a call to its POP in Sioux Falls, or a more distant location.

⁹ The only exception to this involves EAS calls exchanged with Interstate Telecommunications Cooperative.

Exhibits 2A and 2B contain estimates for the cost of transport, which is the cost of installing new DS1s to carry local wireline traffic to Sprint's POP in Sioux Falls, South Dakota. This is the same transport cost included in Exhibit 1B for the transport of LNP calls. Assuming that 30% of the current access lines would switch from Swiftel's wireline service to the wireline service of a competitive LEC, a total of 5 DS1s would be required to carry this traffic. As shown in Exhibit 2A, Swiftel estimates that the additional costs of implementing wireline dialing parity, with interconnection outside its territory, would be \$1,838 in non-recurring costs and \$6,446 in monthly recurring costs. Assuming a 5-year amortization period for the non-recurring costs, Swiftel's additional cost per loop is \$0.59 per access line per month. In the event that additional access lines are captured by a wireline competitor, Swiftel's transport costs would increase by \$442 in non-recurring costs and \$1,289 in monthly recurring costs for every additional DS1 required to transport local traffic for additional access lines captured by a competitor (Exhibit 2B). Assuming a 5-year amortization period for the non-recurring costs, Swiftel's additional cost per loop is \$0.12 per access line per month per DS1. Of course, the cost of transport to Swiftel and its customers could be higher because transport costs are driven by distance and it is not clear that Sprint's POP will be in Sioux Falls. Moreover, it is not possible to know the POP that other carriers might select.

As with wireline LNP, there is no justification to require Swiftel to pay to transport wireline to wireline calls that originate and terminate within its service territory to a point outside of its service territory. Not only would such transport impose a significant cost burden on Swiftel and its subscribers, it is not necessary for wireline local competition within Brookings. Further, this modification would not prevent Sprint or any other competitive carrier from implementing its network in the manner that it wants. It simply would ensure that Sprint, or any

other competitor, could not shift the costs of implementing its network in its preferred manner to Swiftel and its subscribers. Accordingly, the modification is consistent with the public interest, convenience and necessity.

B. Wireless Local Dialing Parity

With respect to wireless local dialing parity, this issue is impacted by the 8th Circuit's recent decision finding that wireless carriers are entitled to local dialing parity for calls that originate and terminate within the MTA. Swiftel's service territory is within the Minneapolis MTA, which includes the eastern two thirds of South Dakota, parts of northern Iowa, western Wisconsin, most of Minnesota and all of North Dakota. For calls to subscribers of wireless carriers that terminate within Swiftel's service territory, Swiftel subscribers currently dial such calls using seven-digit dialing. However, for calls to subscribers of wireless carriers that terminate beyond Swiftel's service territory, even if such calls terminate within the MTA, Swiftel subscribers currently dial such calls using one plus ten-digit dialing. And, such calls are handed-off to the subscriber's presubscribed IXC for transport to the wireless carrier.

Because of the 8th Circuit's decision, it appears that Swiftel could be required to transport a call from its subscriber to a subscriber of a wireless carrier as a local call to any point within the MTA, whether that point is within Swiftel's service territory or beyond Swiftel's service territory. As part of this argument, some wireless carriers claim that a LEC must transport calls to a POP anywhere within the MTA if the wireless carrier has populated the local exchange routing guide (LERG) so as to rate the call to a Swiftel wire center, even though the LERG dictates the routing of a call beyond the wireline local calling area or LEC's service territory.

As an initial matter, this Commission granted a suspension of wireline to wireless LNP to Swiftel and other incumbent LECs in South Dakota, in part, based on the cost of the same type of

transport requirement in connection with wireline to wireless LNP and, in part, because the issue of transport was being examined by the FCC in a pending proceeding.¹⁰ These same concerns are present here and compel the conclusion that a modification of wireline to wireless dialing parity also should be granted.

As shown in Exhibit 3, the facilities required for transport in connection with wireline to wireless dialing parity would place additional cost on Swiftel. Exhibit 3 contains the estimate for the costs of implementing wireless dialing parity, including the cost of installing a DS1 to carry the additional Sprint wireless local traffic to Sprint's POP in Sioux Falls, South Dakota. Based on the current volume of calls to Sprint wireless NPA-NXXs in the Minneapolis MTA, Swiftel estimates that the additional costs of implementing wireless dialing parity would be \$40,884 in non-recurring costs and \$8,078 in monthly recurring costs. Assuming a 5-year amortization period for the non-recurring costs, Swiftel's additional cost per loop is \$0.80 per access line per month. If additional wireless carriers request the same treatment, Swiftel's transport costs would increase by \$442 in non-recurring costs and \$1,289 in monthly recurring costs for every additional DS1 required to transport local wireless traffic for a competitor (Exhibit 2B). Of course, the cost of transport to Swiftel and its customers could be higher because transport costs are driven by distance and it is not clear that the wireless carriers' POPs will be in Sioux Falls. Assuming a 5-year amortization period for the non-recurring costs, Swiftel's additional cost per loop is \$0.12 per access line per month per DS1.

In addition, to implement local call routing to all wireless NPA-NXXs in the Minneapolis MTA, ten-digit dialing would be required for all local calls – wireline and wireless – made from

¹⁰ See, *In the Matter of Sprint Corp. Petition for Declaratory Ruling Regarding the Routing and Rating of traffic by ILECs*, CC-Docket 01-92, Petition of Sprint, May 9, 2002 ("Sprint Petition"). The FCC solicited further comments on the Sprint Petition in the Intercarrier Compensation Proceeding. *Developing a Unified Intercarrier*

the Brookings rate center. Ten-digit dialing would be required because several NXXs are used in more than one NPA within the Minneapolis MTA. (For example, the 996 NXX is used in the 702, 605 and 612 NPA.) Ten-digit dialing would require switch translations changes that could require the implementation of additional switch memory.

Wireless dialing parity also would result in a reduction in toll minutes and an increase in local minutes, which would shift more of the cost of Swiftel's facilities to the local jurisdiction. As a result, costs which currently are recovered through interstate and intrastate access charges would have to be recovered through local rates. As shown in Exhibit 4, \$610 per month or \$0.06 per access line per month would be shifted to the local jurisdiction. If all other wireless providers implemented similar plans, \$6,450 per month or \$0.59 per access line per month would be shifted to the local jurisdiction (Exhibit 4).¹¹

As shown in Exhibit 5, implementing wireless local dialing parity as requested by Sprint also would increase Swiftel's reciprocal compensation expense because of the increased number of local minutes. If the reciprocal compensation rate paid to wireless carriers is \$0.01310 (which is the amount of compensation determined in Swiftel's forward-looking cost study) Swiftel's reciprocal compensation expense would increase by \$107 per month or \$0.01 per access line per month. If all wireless providers implemented similar plans, Swiftel's reciprocal compensation expense would increase by an additional \$881 per month or \$0.09 per access line per month. (Exhibit 5).

Furthermore, if all calls to wireless carriers in the MTA become local calls, the number of calls (and minutes) placed by wireline customers to wireless numbers would increase. Based on demand stimulation when wireline EAS routes replace wireline toll routes, the minutes of use

Compensation Regime, CC Docket No. 01-92, *Further Notice of Proposed Rulemaking* (2005). This matter is still pending.

could increase by a factor of three. If Swiftel were required to add additional DS1s to carry the additional local wireless traffic originated by Swiftel's customers to wireless customers, each additional DS1 would increase Swiftel's cost by \$442 in non-recurring costs and \$1,289 in monthly recurring costs or \$0.12 per access line per month (Exhibit 2B). This same scenario would apply to each wireless carrier that requested the same treatment as Sprint. Swiftel believes that it terminates traffic to 15 wireless providers within the MTA. Assuming a DS1 for each carrier, the total cost would be \$1.80 per access line per month (Exhibit 2B per line cost times 15 carriers).

The cumulative impact of these factors plus the cost of transport would be a substantial increase in local service expenses, which only could be recovered from local ratepayers. Accordingly, this requirement would impose a significant adverse economic impact on users of telecommunications services.

Grant of the modification to wireless dialing parity would serve the public interest by preserving fair competition without imposing undue burdens on Swiftel or its subscribers. The modifications requested by Swiftel with respect to wireless dialing parity would preserve the current relationships between Swiftel and wireless carriers, namely, Swiftel currently does not transport calls outside of its service territory as local calls and such calls must be dialed on a one plus ten-digit basis. The modifications requested by Swiftel would ensure that all local calls for all competitors—both wireline and wireless carriers—are treated the same. Accordingly, by granting the modifications requested, local dialing parity would be provided in the same manner and to the same extent to all competitive carriers and fair competition would be advanced. On the other hand, if Swiftel is required to pay for transport beyond its service territory, Swiftel and

¹¹ This cost is artificially low due to the recent settlement which caps LECA's rates.

its subscribers would be subsidizing the services provided by competitive carriers, which would confer an unfair competitive advantage on those carriers.

Grant of this Petition also would allow Swiftel to maintain seven-digit dialing for local calls. On the other hand, if Swiftel must impose ten-digit dialing for local calls, businesses would incur costs to reprogram or update their telecommunications equipment to accommodate ten-digit dialing. And, ten-digit dialing most likely would face significant negative reaction from the public in general.

This modification also would prevent a significant and adverse impact on the LECA pool. As the Commission is aware, nearly all of the rural LECs in South Dakota participate in the LECA pool in order to ensure that all rural subscribers are provided a wide choice of toll calling plans at reasonable rates. However, the jurisdictional shifts that would result from wireless dialing parity would jeopardize the continuation of the LECA pool.

Granting the Petition also would not impede the provision of service by Sprint or any other wireless carrier. As indicated, the modifications requested by Swiftel would, essentially, preserve the conditions under which wireless carriers have been operating since the implementation of the Telecommunications Act of 1996. It was in this environment that there has been unprecedented investment in cell phone tower sites in South Dakota and significant growth in the number of wireless subscribers. Accordingly, there is no evidence that a continuation of the current practices would impede wireless service.

Further, as indicated, the issue of transport in connection with wireline to wireless calls currently is pending at the FCC. The 8th Circuit recognized this in its recent decision and stated that once the FCC acts it may have to revise its decision concerning the scope of local dialing parity in connection with wireless calls. Just as the Commission granted a suspension of wireless

LNP, in part, because of the uncertainty of the final resolution of this issue at the FCC, the Commission should grant the current request for modification of wireline to wireless dialing parity.

In light of the above, grant of the requested modification is consistent with the public interest, convenience and necessity.

C. Toll Dialing Parity

Sprint has indicated that it expects toll traffic to be routed over the same facilities used for local traffic to and from the Sprint POP. Pursuant to orders by the FCC and this Commission which established South Dakota Network (SDN) as a centralized equal access provider in South Dakota, Swiftel currently routes all access traffic over common trunks to SDN, which performs the centralized equal access switching function and transmits the calls to the appropriate interexchange carrier (IXC) or terminating carrier. As a result, Swiftel currently does not distinguish calls to specific IXCs at its switch. In addition, all toll traffic to Swiftel, other than Qwest intrastate toll traffic, is routed to Swiftel via SDN. Swiftel does not pay for the transport of calls to and from SDN. Rather, Swiftel assesses interstate or intrastate access charges to the interexchange carrier.

Because SDN performs the centralized equal access function at its switch, in order to be able to transport Sprint's access traffic, including 800 traffic, over a facility other than the common trunks to SDN, Swiftel would have to implement end office equal access in its switch. As shown in Exhibit 6, additional costs of approximately \$17,000 in non-recurring costs and \$140 in monthly recurring costs would be incurred to enable Swiftel to perform the 800 database query, which currently is performed by SDN. Assuming a 5-year amortization period for the

non-recurring costs, Swiftel's additional cost per loop would be \$0.05 per access line per month to be able to identify Sprint's toll traffic, including 800 calls, at Swiftel's switch. Swiftel notes that to identify 800 calls that should be routed to Sprint, it would have to query the 800 database for all 800 calls. And, for those 800 calls that are not ultimately routed to Sprint (and instead are routed to SDN) certain calls may be blocked by SDN.

Sprint's request to use universal trunks for the exchange of local, wireless and access traffic also would require Swiftel to install and pay for DS1s to transport access traffic, which is currently paid for by Sprint. Exhibit 7 contains an estimate for the cost of transport, which is the cost of installing new DS1s to carry Sprint's access wireline traffic to and from its POP in Sioux Falls, South Dakota. Based on current access minutes billed to Sprint, a total of 8 DS1s would be required to carry this traffic at a cost of \$2,885 in non-recurring costs and \$10,313 in monthly recurring costs. Assuming a 5-year amortization period for the non-recurring costs, Swiftel's additional cost per loop is \$0.94 per access line per month.

If other IXC's also required the installation of separate access trunks, this cost would increase exorbitantly. As shown in Exhibit 7, based on the current IXC's serving Swiftel's subscribers, 44 DS1s would be required to provide the protected service equivalent to that provided today on 16 DS1s. Furthermore, the cost to Swiftel for these 44 DS1s would be \$15,449 in non-recurring costs and \$56,722 in monthly recurring costs. Assuming a 5-year amortization period for the non-recurring costs, Swiftel's additional cost per loop is \$5.18 per access line per month.

Finally, even if Sprint pays access charges on all appropriate access minutes, because Swiftel would now be required to pay for transport that is currently paid for by IXC's, Swiftel's access revenues would decrease by the costs shown in Exhibit 7. Moreover, although Sprint

indicates that they would identify and report access minutes to Swiftel to allow Swiftel to bill for those minutes, Swiftel would be replacing a reliable billing mechanism with an unknown and untested one. Currently, Swiftel records the actual access minutes of use and bills based on its records. It is unclear whether the Sprint records would be as accurate for billing purposes. Furthermore, current call detail records provided to Swiftel by Sprint and other telecommunications carriers do not provide information on a consistent basis that would allow Swiftel to properly determine the jurisdiction of the call (i.e., reciprocal compensation, interstate access or intrastate access). Even if this information would be provided, Swiftel's current billing system is not capable of using the information to produce a bill. An upgrade to the billing system would be required to produce a bill based on the information. While the cost for this software and conversion has not been precisely determined, the cost would be very significant. A range of costs between \$800,000 and \$1,100,000 would be reasonable. This would equate to \$1.21 to \$1.67 per access line per month based on a 5-year amortization period.

Grant of the requested modification would serve the public interest by ensuring choice of long distance providers for consumers in connection with toll calling. As this Commission is aware, SDN is the centralized equal access provider for nearly all rural LECs in South Dakota. SDN was created when IXC's did not provide long distance service to customers in rural LEC areas because the cost in relation to the number of potential subscribers was prohibitive. By aggregating traffic and providing one interconnection point through which all potential subscribers in the rural LECs' service territories could be accessed by all IXC's, including Sprint, on a pay-as-you-go basis, SDN was the catalyst for equal access and toll choice in South Dakota. Removal of toll traffic from SDN would adversely impact SDN and the other rural LECs (and their subscribers) that rely on SDN as a centralized equal access provider. SDN's annual

revenues would decrease by \$131,000 if Sprint's access traffic associated with Swiftel subscribers is removed from the SDN network. If additional IXCs followed Sprint's lead, SDN would lose more revenues, which could lead to higher rates for the remaining IXCs. This, in turn would most likely encourage more IXCs to remove their traffic from SDN.

IV. The Criteria in Section 251(f)(2) for Granting Relief Are Met in Connection with Reciprocal Compensation

Recent court decisions in some states have found that LECs must pay reciprocal compensation on all calls originating from their subscribers and terminating to a wireless subscriber within the MTA, even those calls that are handed-off to an IXC. Reciprocal compensation in this manner would have a significant adverse economic impact on users of telecommunications services generally because it would significantly increase Swiftel's expenses. As indicated, Swiftel receives originating interstate or intrastate access charges from interexchange carriers for calls handed-off to them. However, recent court decisions could require Swiftel to pay reciprocal compensation on intraMTA calls that are handed-off to IXCs. Based on a reciprocal compensation rate of \$0.01310 (which is the amount of compensation determined in Swiftel's forward-looking cost study) Swiftel's reciprocal compensation expense would increase by \$881 per month or \$0.09 per access line per month. (Exhibit 5).

Grant of this request is in the public interest because it would preserve the current reciprocal compensation relationships between Swiftel and wireless carriers. Swiftel currently does not pay reciprocal compensation on calls handed-off to IXCs. The modifications requested by Swiftel would ensure that all competitors—both wireline and wireless carriers—are treated the same. Accordingly, by granting the modifications requested, all competitive carriers would be treated the same and fair competition would be advanced.

Granting the Petition also would not impede the provision of service by Sprint or any other carrier. As indicated, the modifications requested by Swiftel would, essentially, preserve the conditions under which wireless carriers have been operating since the implementation of the Telecommunications Act of 1996. It was in this environment that there has been unprecedented investment in cell phone tower sites in South Dakota and significant growth in the number of wireless subscribers. Accordingly, there is no evidence that a continuation of the current practices would impede wireless service.

V. Section 251(f)(2)(A)(ii) Criteria is Met (Avoid Imposing a Requirement that is Unduly Economically Burdensome)

A grant of a modification of the LNP, dialing parity and reciprocal compensation requirements would avoid imposing requirements that are unduly economically burdensome to the Petitioner and its subscribers. As a small telephone company, the Petitioner has a limited customer base over which to spread its costs.¹² As noted in Exhibits 1 through 7, the costs associated with implementing LNP, dialing parity and reciprocal compensation are significant. The table below summarizes Swiftel’s total cost of implementing LNP, dialing parity, reciprocal compensation and the use of universal trunks.

Section 251B Obligations	Per Month Cost Per Access Line	Location of Detail
Local Number Portability	\$.52	Exhibit 1A
Dialing Parity	\$.86-\$4.69	Exhibit 3 and Exhibit 4
Reciprocal Compensation	\$.01 - \$.09	Exhibit 5
Transport (Local Traffic)	\$.59	Exhibit 2A
Transport (Access Traffic)	\$.99-\$5.23	Exhibit 6 and Exhibit 7
Total	\$2.97-\$11.12	

¹² See id. at 262 (The per line cost of implementing the technology for number pooling, which is the same technology that is used to implement number portability, would “be significantly higher for small and rural carriers operating outside of the largest 100 MSAs than for carriers operating inside urban and metropolitan areas because of these carriers’ limited customer bases.”)

An increase in local rates would make Petitioner's service offering less competitive with the services provided by other carriers. Wireless carriers and other competitive carriers already enjoy a number of competitive advantages over incumbent LECs. For example, because of their FCC licensed service areas, wireless carriers have larger local calling areas, larger service territories and more potential customers to absorb the cost of operating. By increasing the cost of service, LNP, dialing parity and reciprocal compensation would make incumbent LEC services even less competitive with wireless services.

In addition, if local rates are increased, some segment of Petitioner's subscribers may discontinue service or decrease the number of lines to which they subscribe. The resulting reduction in line count would increase further the per-subscriber cost of these requirements, which, in turn, could lead to more rate increases followed by additional losses in access lines.

Moreover, by requiring Swiftel to pay for transport beyond its service territory, Swiftel and its subscribers would be subsidizing the services provided by competitive carriers, which would confer a further competitive benefit on those carriers.

VI. Request for Immediate Suspension Pending Consideration of this Petition is Warranted and Necessary to Serve the Public Interest

Petitioner requests immediate suspension of the 251(b)(2), (3) and (5) requirements as discussed herein, pending this Commission's consideration of this request in order to maintain the status quo until the Commission acts on this Petition. An immediate suspension is necessary because the local number portability, dialing parity and reciprocal compensation requirements for which Swiftel requests modification are part of a separate arbitration petition before this

Commission and the two proceedings have different statutory timeframes for resolution. Thus, Section 251(f)(2) provides that the Commission is to act on this instant Petition within 180 days, or July 29, 2007.¹³ However, the Commission must resolve the arbitration petition by May 11, 2007. In order to ensure that Swiftel is not required to incur expenses for requirements as a result of the arbitration proceeding, which the Commission may ultimately modify for Swiftel, an immediate suspension is necessary.

Conclusion

As demonstrated, Petitioner has met the criteria set forth in 47 U.S.C. § 251(f)(2)(A) and the suspension requested in this proceeding is consistent with the public interest, convenience and necessity requirement set forth in 47 U.S.C. § 251(f)(2)(B). Accordingly, the Commission must grant the petition for suspension or modification. The Commission also should grant Petitioner's request for an immediate suspension, pending the Commission's consideration of this request for the reasons stated herein.

Respectfully submitted,

BROOKINGS MUNICIPAL UTILITIES D/B/A/
SWIFTEL COMMUNICATIONS

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¹³ 47 U.S.C. § 251(f)(2)

ITS ATTORNEYS

January 30, 2007

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 30th day of January, 2007, a true and correct copy of the foregoing PETITION FOR SUSPENSION OR MODIFICATION OF DIALING PARITY, NUMBER PORTABILITY AND RECIPROCAL COMPENSATION OBLIGATIONS was served via email and by U.S. Mail, postage prepaid, to the following:

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EXHIBITS FILED AS CONFIDENTIAL